



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

EGYPT

IAA reference: IAA23/10548

Date and time of decision: 7 September 2023 10:03:00

K Allen, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Egyptian national from [Village 1] in the north of Egypt.
2. He departed Egypt lawfully by air from Cairo airport [in] June 2013 and travelled to [Country 1]. He departed [Country 1] by boat and arrived on Christmas Island [in] July 2013. He applied for a Safe Haven Enterprise Visa (SHEV) on 26 April 2017, making the claim that he fears harm from the Muslim Brotherhood because he refused to join them.
3. On 21 September 2018, a delegate of the Minister for Immigration and Border Protection (the delegate) decided under s.65 of the *Migration Act 1958* (the Act) to refuse to grant the visa, finding that Australia did not owe protection obligations to the applicant. On 26 September 2018, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
4. The IAA affirmed the delegate's decision on 30 October 2018. However, [in] August 2023 the Federal Court of Australia (FCA) quashed the IAA's decision on the basis that the IAA relied on a misunderstanding and misstatement of the oral evidence given by the applicant at a protection visa interview with the delegate on 19 September 2018. The FCA remitted the matter back to the IAA for reconsideration of the applicant's claims for protection.
5. This is a *de novo* decision; my task is to consider the applicant's claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate, or the IAA.

Information before the IAA

6. I have had regard to the material given by the Secretary in 2018 under s.473CB of the *Migration Act 1958* (the Act).
7. S.473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information; and the new information was not and could not have been provided to the Minister; or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
8. When this application was remitted back to the IAA in 2023, the Secretary provided the IAA with an updated portfolio with additional documents from the Department's holdings. These documents had not formed part of the Secretary's original referral to the IAA and they were not considered in the 2018 IAA decision. The additional documents provided to the IAA by the Secretary are in my view, administrative documents that either replicate biographical information already provided or they are not relevant to my consideration of the applicant's claims for protection. I have not considered any of these administrative documents.
9. The IAA received a submission from the applicant's representative on 24 October 2018. The submission does not comply with the IAA *Practice Direction for Applicants, Representatives and Authorised Recipients* (the Practice Direction) as it was provided more than 21 days after the delegate's decision and it exceeds the five page limit by three pages. Nevertheless, to the

extent that the submission engages in argument with the delegate's decision, I have had regard to it.

10. The submission contains new information to the effect that the applicant has physical permanent injuries to his head and body which demonstrate that he was beaten. If these injuries occurred while the applicant was in Egypt, I am not satisfied that the new information was not and could not have been provided to the Minister. There is no information that corroborates that the applicant has these injuries such as photographs or medical reports. Given the applicant raised concerns about his mental health and his representative provided supporting documentation, I consider that if the applicant did have physical injuries he would have, at the very least raised this or his representative would have provided information to corroborate that claim. Even if I do accept that the applicant is injured there is no way of knowing how the injuries occurred which means that the information has limited probative value. I am not satisfied that this is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. Having regard to those factors and the lack of explanation for any delay, I am not satisfied that there are exceptional circumstances which justify considering the new information.
11. The submission refers to incidents of sectarian violence in Egypt between 1972 and 2017. This information was not before the delegate and is new information. Given this pre-dates the delegate's decision and noting the applicant was represented, I am not satisfied that this new information was not and could not have been provided to the Minister. The information is not sourced and no copy of the source information is provided in accordance with the Practice Direction. Further it is country information and does not appear to be personal information in the relevant sense. I am not satisfied that this is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. The applicant had an opportunity to provide country information at the primary stage and had been made aware by the delegate that she would have regard to any information which was provided to her before a decision was made. The applicant's representative has not provided any reason for the late provision of this information. Considering these factors as a whole and placing weight on the fact that the information is unsourced and somewhat dated, I am not satisfied that there are exceptional circumstances to justify considering this new information.
12. The applicant's representative also provided a letter from [Pastor A] from [Church 1][Church 1] dated 23 September 2018. The letter states that he has known the applicant since 18 February 2018 when the applicant visited the church and that he has occasionally attended Sunday morning church services since then. While this letter is dated 23 September 2018, two days after the decision, the content of the letter relates to events that pre-date the delegate's decision. No reasons have been provided as to why this new information could not have been provided before the date of the delegate's decision. The applicant was advised by the delegate at his protection interview that she would consider any further information he provided before she made her decision. However, on its face the letter contains credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. Given the relevance to the applicant's claims about his Christian conversion, and the fact that this matter was remitted to the IAA on the point of church attendance, I am satisfied that there are exceptional circumstances to justify considering this new information.
13. The submission also included a letter from [Ms B], Case Manager, [named Mental Health service] dated 26 September 2018. She states that the applicant has been receiving mental health services since September 2017. He has a diagnosis of post-traumatic stress disorder

(PTSD), Schizophrenia and a previous history of self-harm. The letter provides an update on developments in the applicant's mental health since the previous 2015 report and I am satisfied that this is new information was not and could not have been provided to the delegate. I am also satisfied, given the source of this information, that it is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. Overall, given the changes in the applicant's mental health since the previous report, I am satisfied there are exceptional circumstances to justify considering this new information.

14. At the primary stage the applicant had flagged that his mental health affected his ability to recall details of his claims such as dates that things occurred. Although he had not specifically made claims to the effect that he feared harm on his return to Egypt because of his mental health, the previous IAA Reviewer decided to consider that claim and obtained new information about treatment of people with mental illness in Egypt. That new information included, World Health Organisation (WHO), "Health Profile 2015 Egypt", Al Monitor, "Egypt raising awareness about mental illness", 11 October 2017 and Egypt Today, "25% of Egyptians suffer from mental health issues: survey" 18 April 2018. I am satisfied that there are exceptional circumstances to consider this information. I also note that over five years have passed since most of that information was obtained. I have therefore obtained recent information about mental illness in Egypt in order to confirm that conditions have not changed since that previous assessment. I have therefore obtained. WHO, "2023 Egypt, Mental Health <https://www.emro.who.int/egy/programmes/mental-health.html> (accessed on 5 September 2023) which is an update on the 2017 report. I have also had regard to related information from the WHO including "Egypt launches mental health platform", 18 May 2022, accessed at <https://www.emro.who.int/egy/egypt-news/egypt-launches-the-first-national-electronic-mental-health-platform-for-free.html>. I have also had regard to recent reporting from Egyptian news sources about the current state of mental health care in Egypt, Daily News Egypt, "Number of mental health facilities in Egypt increases to 192", 3 September 2023; Egyptian Streets, "WHO Egypt Launches Campaign to Prioritize Mental Health", 9 August 2023; and Egypt Independent, "Egypt will provide mental health services in hospital emergency departments", 7 March 2023. Given the passage of time since the previous decision and the need to make correct decision based on the most up-to-date information available, I am satisfied that there are exceptional circumstances to justify considering this new information.
15. The IAA also obtained a copy of the 17 June 2019 Department of Foreign Affairs and Trade (DFAT) country report Egypt. The 2019 DFAT report it is an update of the 2017 report considered by the delegate. The report has been prepared by DFAT for protection status determination purposes and is informed by DFAT's on-the-ground knowledge and discussions with a range of sources in Egypt and takes into account relevant and credible open source reports. It provides DFAT's best judgement and assessment at time of writing and is distinct from Australian Government policy with respect to Egypt. I am satisfied that there are exceptional circumstances to justify considering the new information.
16. On 15 August 2023, the IAA was advised that the applicant had new legal representation and the applicant's new representative provided an authority to act on his behalf. On 16 August 2023 the IAA wrote to the applicant and his representative advising them to act quickly in their dealings with the IAA as a decision may be made at any time. On 17 August 2023 the applicant's representative requested that a decision not be made for 28 days in order for them to gather evidence and make submissions. The IAA telephoned the applicant's representative and explained that in order for the IAA to properly consider the extension of time request, it would be helpful to have more details about what he intends to provide and

why he requires additional time to provide it. In response the representative wrote to the IAA stating that he intended to provide a medical report about the applicant's mental illness and evidence of his church attendance. The IAA wrote back to the representative on 17 August 2023 stating that it agreed not to make a decision before 24 August 2023 so that the representative had time to provide that new information. The IAA also noted that it had received submissions back in 2018 and that if the representative wanted to provide further submission they should consider withdrawing or amending the previous submission to ensure compliance with the Practice Direction. No information was forthcoming until 29 August 2023 when the representative wrote again noting that he needed an extension of time to provide "researched argument". As the IAA already had legal submissions on file, the IAA tried to telephone the applicant's representative to discuss the extension and the fact that there were already submissions on file. The IAA was not put through to him and was told to put their reason for calling in writing. On 30 August 2023 the IAA wrote to the applicant's representative noting that the IAA had received submissions in 2018 and had sought to discuss with him how he wished to proceed in terms of amending or replacing those submissions. No response was received. Since then, the extension of time which was granted for the provision of new information has passed and no further information has been received from the applicant's representative. I have had regard to the fact that the applicant has already provided evidence in support of his church attendance and mental health and that he was provided with opportunities after the SHEV interview to provide additional information in support of his claims. I have therefore proceeded to make a decision in relation to this matter based on the information before me including submissions and new information from the applicant's previous representative.

Applicant's claims for protection

17. The applicant's claims can be summarised as follows:
 - He was born in [year] to a Sunni Muslim family in the north of Egypt. His parents still live in Egypt in the family home along with his [number] brothers. He also has [number] married sisters who live with their husbands in Egypt.
 - He worked on the family farm until 2009 and then left for [Country 2] where he worked legally until 2013, mainly in the restaurant industry.
 - When he returned to Egypt in 2013 the Muslim Brotherhood tried to recruit him. He refused and was threatened and harmed by them on four occasions.
 - As result of this, he departed Egypt legally [in] June 2013. He fears that if he returns to Egypt he will be killed by the Muslim Brotherhood because he refused to join them.
18. On 30 April 2018 the applicant provided the Department with a completed 'Change of Circumstances' form, with the following new claim:
 - In 2018 he converted to Christianity in Australia. He was baptised [in] March 2018. He fears harm on the basis of his religion as he stopped practicing Islam and is a Christian convert.
19. On 19 September 2018 the applicant made the following new claim at his SHEV interview:
 - He fears he will be harmed by the family members of the girlfriend he had in Egypt about three months before his departure because they know he and the girl had a sexual relationship.

20. The applicant did not explicitly make a claim of fear of harm for reasons of his membership of a particular social group, that is, returned failed asylum seekers, however, like the previous IAA Reviewer, I accept this claim arises on the material before me and have assessed the claim.
21. The applicant did not explicitly make a claim of fear of harm for reasons of his membership of a particular social group, that is, people with a mental health condition. However, like the previous IAA Reviewer, I consider this claim arises on the material and have assessed this claim.

Factual findings

Identity

22. The applicant claims he was born into a Sunni Muslim family in [Village 1] and that he is an Egyptian national. The applicant has provided a relatively consistent and natural account of his family, home and work life. There has been some inconsistency with dates and with the spelling of his name but I accept that these may be attributable to his mental health and its impact on his memory, the passage of time and transliteration. The applicant states that he attended school until approximately year [level] and then worked on his family [farm] until 2009. He obtained a passport and visa to work legally in [Country 2] where he remained from 2009 to 2011 for about 2½ years. He returned to family home from 2011-2013 before leaving for Australia. The applicant states that his parents and [number] siblings continue to live in Egypt. His parents still live in the family home with his first brother who is divorced and who works on the family [farm]; and his second brother who is a student. He claims his father was a manager of an educational institution but is now retired. He states that his [number] sisters in Egypt are married and have moved out of the family home. In support of his claimed identity the applicant has submitted copies of his birth certificate, National Identity Card and military service exemption card which were translated by the interpreter at interview. I note that the applicant advised that he disposed of his passport en route to Australia at the advice of people smugglers. I accept the applicant's nationality and identity are as claimed and find Egypt to be the receiving country for the purpose of the application.

Muslim Brotherhood

23. The applicant claims that he cannot return to Egypt because he will be killed by the Muslim Brotherhood. He claims that they wanted him to join them after he returned from [Country 2] but he refused. He claims they threatened him and he fears they will know that he has returned to Egypt and will find him and harm him. The applicant has provided a somewhat confused account of the harm he faced at the hands of the Muslim Brotherhood. I note that the applicant advised at interview that he has some memory problems due to his mental health and I have taken that into account in assessing his claims.
24. At his entry interview on 14 August 2013 the applicant stated he left Egypt because he was threatened by the "Muslim Brothers Group" (Ekhwan Moslimon) when they came to the village to try to force people to join them. He was targeted because he refused to join them and consequently had been threatened "many, many times". He was against their ideas and their movement and "this is against the Islamic Sharia Law". When asked how many times he had been threatened he said, "four times". When asked what they did, he said "the threat is that I have been detained by them, held by them, beaten." He said he was detained just before he left Egypt in May 2013, however, when asked how long he was detained he said, "not as such, no I haven't been detained, but every day on the streets, they hold people, they

harass people and force people to join them". He then said nothing happened in May this year. "They say I am against them by not joining them". When asked if any event happened that caused him to leave other than the threats he said no, but he knew that if he stayed he would be harmed later on. The applicant went on to state that there is no peace in Egypt and a lot of problems that make things unsafe, such as bullying on the streets.

25. In his 2017 SHEV application the applicant expanded on his claims stating that the Muslim Brotherhood came to his village and forced the young people including himself to join them. He refused to join them and as such became a target and was threatened with harm many times. They accused him of being a traitor because he was going against their ideas and their movement which to them is against Sharia law. He was beaten and tortured by them four times, the last occasion being just before he departed Egypt. He now suffers extreme depression and anxiety and he is too scared to return to Egypt knowing he will suffer extremely there. He believes if he returns he will be detained or killed. He cannot seek protection as the Muslim Brotherhood is fighting against the authorities who are also corrupt. Everyone else is too scared to get involved. He believes he could not relocate because the Muslim Brotherhood occupies his village and if he was to move to another area he would be questioned by locals and turned away. Muslim Brotherhood members "are throughout Egypt". The applicant attached a media report from the Daily Mail dated 2 December 2012 which stated that activists claim that Egypt's ruling party is paying gangs of thugs to sexually assault women protesting in Cairo's Tahrir Square against President Mohamed Morsi. Activists also claim that the Muslim Brotherhood is paying gangs to beat up men who are taking part in the latest round of protests. The article does not relate to the applicant's specific home area but it does indicate that in 2012 there were protests and civil unrest in Cairo and this accords with the applicant's statement on arrival that there are a lot of problems in Egypt that make things unsafe, such as bullying on the streets.
26. In his 2018 SHEV interview the applicant stated that he had been approached by the Muslim Brotherhood soon after his return from [Country 2] and that he had commenced making arrangements to flee Egypt soon after. He stated he departed Egypt for his travel to Australia approximately five months after his return from [Country 2]. It was put to the applicant that from the evidence he provided on his SHEV application and at his entry interview, he had lived in Egypt after his return from [Country 2] for over two years, namely from January 2011 until June 2013. In response, the applicant stated he suffers from memory loss and hence could not remember exactly when he had been threatened by the Muslim Brotherhood. However he asserted that he had never been personally harmed in Egypt. He claimed that he made plans and left Egypt four to five months after the threats. The delegate noted again that this timeline was different to his SHEV application which stated that he was in Egypt for two or more years after he returned from [Country 2]. The applicant appeared to be genuinely confused as to the timeline and I place limited weight on that noting the applicant's memory issues. The applicant had stated that the Muslim Brotherhood had specifically come to his village to recruit members. He was asked why his brothers were not targeted or threatened, given that they lived in the same village. The applicant did not answer this clearly. He said he did not know if they were asked to join or not. He did say his father was in a car accident after he came to Australia and while he is not entirely sure, he suspects the accident was caused by the Muslim Brotherhood. Because of the applicant's confusion in the interview, the applicant was given the opportunity to provide any additional information or clarification in writing after the interview.
27. In the submissions made to the IAA in October 2018, the applicant's representative stated that the reason the applicant denied he was harmed by the Muslim Brotherhood at the SHEV interview was due to his mental health and his loss of memory and confusion. I have had

regard to the letter accompanying this submission from a social worker at [named Mental Health service] provided in support of him being granted a refugee visa. It states that the applicant has a diagnosis of PTSD, Schizophrenia and a previous history of self-harm. The applicant presents as anxious, on occasion dissociates and often is quite forgetful. This is consistent with the applicant's inability to recall dates and other details surrounding his claims.

28. There is limited country information before me about how the Muslim Brotherhood operated in the applicant's village. I accept however, that the Muslim Brotherhood was active in Egypt after the Presidential elections held in June 2012, when Mohammed Morsi of the Muslim Brotherhood was elected. It is therefore plausible that they did try to recruit young Sunni men to join their organisation including in the applicant's village. Despite having given an account of what happened to him on multiple occasions, the applicant has not provided any compelling detail about how the Muslim Brotherhood tried to recruit him, such as whether they were local or outsiders, whether he knew them, why they would choose him if he was apolitical or exactly how they threatened him. He has not provided a plausible explanation as to why an organisation which requires a deep commitment to Sharia law would try to forcibly recruit him to the point of using violence. He has not indicated that he was in any protests where Muslim Brotherhood thugs might have beaten him up. He does not claim to have any special skills of interest to the Muslim Brotherhood, noting he was exempted from military service due to an eye condition.
29. I consider it plausible that in 2012 and 2013 the Muslim Brotherhood did try to recruit members both in the lead up to the election and afterwards when the organisation came under heavy criticism and protest camps were set up in 2013. I also accept as plausible that the Muslim Brotherhood engaged in violence against protesters against President Morsi. In that context it is plausible that the applicant, as a young Sunni man, was asked to join the organisation and was of the view that there was violence on the streets. However, if the Muslim Brotherhood was conducting large scale recruitment it is unclear why they would not have tried to recruit the applicant's brothers as well as him. The applicant has not provided any evidence to support that he was beaten four times such as medical reports or police reports. In fact at his SHEV interview he denied being hurt by the Muslim Brotherhood. He also stated that he was not politically active so does not claim to have been targeted for any involvement in protests. Because of these inconsistencies and lack of corroboration, I have some concerns about the applicant's evidence about whether he was beaten or 'only' threatened by members of the Muslim Brotherhood in his local area. However, country information¹ indicates there was significant civil unrest between 2012 and 2013. The applicant appears to have some difficulty presenting his evidence due to his mental health. In these circumstances, where I cannot be certain, I am prepared to accept that he was threatened prior to his departure from Egypt from people he believed to be members of the Muslim Brotherhood. I am also prepared to accept that he was beaten at some point in street violence and the perpetrators may have been members of the Muslim Brotherhood.

Christian conversion

30. When the applicant arrived in Australia in 2013 he advised the Department that his religion was Sunni Islam. On 30 April 2018, the applicant provided the Department with a completed 'Change of Circumstances' form, advising that he is no longer a Sunni Muslim and that he is

¹ DFAT, "DFAT Country Information Report Egypt", 19 May 2017, CISED50AD4203; DFAT "DFAT Country Information Report Egypt", 17 June 2019, 20190617130817; Freedom House, "Freedom in the World 2017 – Egypt", 15 April 2017, NG2A465F554.

now a Protestant Christian. The applicant also provided the Department with a Baptism certificate dated Good Friday, 30 March 2018, issued by [Church 1], [Suburb 1], NSW. At his SHEV interview of 19 September 2018 he explained that he had stopped practising Islam after his arrival in Australia in 2013 and that five or six months ago he converted to the Christian faith. He stated that his family were not aware of his conversion as he did not want to upset his father. When asked how he had become involved in Christianity he said he was introduced by a friend who was an Iranian Muslim who had converted. When asked why he converted he said because of his hatred for the Muslim Brotherhood for what they did and they made him hate religion. He said it was his own conviction and his friend did not influence him. When asked what he had learnt about Christianity that made him want to change religions, the applicant said in Christianity there is no radicalism, there are no killings, no cutting hands off and no beheadings.

31. When asked to describe his religious practice, the applicant stated that he was baptised in March 2018. When asked, he did not provide a clear answer as to how long that was after he started attending church. He did say that he does not usually go to [Church 1] as it is too far away. He only goes when he has money for a taxi. He said he attends a church near his home every week. He said he did not know the name of the church as he can't read English but he stated that it is a Protestant church. He said that the services are only in English and Persian and he does not understand what is being said, just that he feels good. He claimed to have an Arabic Bible that he reads. When asked what he had read he said, "what makes a human dirty is what he does". When asked what else, he said he had also read about the Sabbath and it is a day off. When asked why we need to take the Sabbath off, he said because he had read and seen a film that the Sabbath is a day for humans and cattle. He also knew about the "pool of fire" that God had dedicated for people who do not confess their sins. When asked why he started practice Christianity almost five years after he stopped practising Islam he said for a long time he had a belief in Christianity which he had heard about in Egypt but only recently got baptised and started going to church. When asked whether he could tell the delegate anything else about what he had read in the Bible he said, "the Lord said that on the Sabbath if you have an animal you have to take it to drink and have mercy on it".
32. The letter provided to the IAA by [Pastor A] on 23 September 2018 states that the applicant occasionally attends Sunday services and that he attends the [Church 1] Basic Bible Certificate class from 1pm till 4pm and that he has attended 16 subjects in this class. I do not consider that this level of Bible study was reflected in the applicant's responses at interview. [Pastor A] noted that the applicant's English and Farsi are not very good so this hinders his Bible understanding and growth. The applicant has not explained whether he has attempted to find an Arabic speaking Christian community. I consider that if he was genuinely interested in Bible study that he would seek to do that in a language he can understand. The letter goes on to state that the applicant visited [Church 1] on [date] February 2018 and was baptised by immersion on Sunday 30th, 2018. The month was not specified. I note that the applicant's representative claims that the applicant was baptised at [Church 1] on Wednesday, 30 March 2018. I note that the 30 March was actually a Friday and the Baptism Certificate notes that it was Good Friday. This is less than six weeks after the applicant's church attendance when he started learning about Christianity in a language where he has limited comprehension.
33. I accept the applicant is no longer practising Islam. I accept that he has occasionally attended [Church 1] and was baptised on 30 March 2018. I do not accept that the applicant attends a church weekly in his street as claimed in his SHEV interview. He does not know the name of the church, he has not provided the address of the church, he has not provided a letter of support from the pastor or any members of the congregation despite providing a letter from [Church 1]. The delegate conducted a Google search and was unable to find a Protestant

church in the applicant's suburb. The applicant was provided with the opportunity to provide more information to the delegate after the SHEV interview but he did not do so. His representative did not provide this information in her submissions to the IAA.

34. The applicant's knowledge of Christianity appears to be very limited. I do not accept that the applicant reads the Bible given his limited understanding of any Christian teachings or stories. I can accept that the applicant does not like the way Islam is practised and may have an interest in other religions but I do not accept this means he has genuinely converted to Christianity or that he has any real understanding of the Christian faith. Considering the applicant's evidence as a whole I am not satisfied the applicant has converted from Sunni Islam to Christianity and is a committed Christian. I have also had regard to the applicant's evidence he had not told his father about becoming a Christian or even about his interest in the Christian faith. In the circumstances, I do not accept that the applicant is a genuine Christian convert or that he would seek to practice Christianity in Egypt or that anyone in Egypt, including members of the Muslim Brotherhood, would be aware of his 2018 baptism. Given these factors and the timing of this claim, I consider that it was made to enhance his claim for protection.

Fear of harm from girlfriend's family

35. At his SHEV interview the applicant raised a new claim that he fears harm from the family of a former girlfriend. He claimed that he loved a girl in Egypt and lived with her for some time after he got back from [Country 2]. He said they were in a sexual relationship and as a consequence he fears harm on return to Egypt at the hands of the girl's family members. He said that they lived together in secret and when asked how they managed this he amended his claim to they met in secret. He claimed that her family knew of the relationship apart from the sexual aspect but after he moved to Australia they found out. The applicant was asked how they would find out. He responded that she is a girl and she wants to get married and doctors can tell. It will be known. He said that he was no longer in a relationship with this girl but he did not have her phone number to end it because he threw away everything including his passport and phone. He explained that her family went to his family and asked where he was as he has to marry the girl. He said that if he did not they will kill him or something. He did not claim that his family members had been harassed or harmed from any members of the girl's family as a result of his relationship with her. I consider that the applicant's account of this claim was vague, as if it was made up on the fly in response to the questions he was asked at interview. He did not provide the name of the girl or explain how they managed to meet. He had no corroborating evidence about their relationship. It was not apparent how her family would have found out about their sexual relationship and why this became an issue five years after he had left Egypt. He has not indicated whether the girl has in fact married someone since his departure.
36. As noted previously, I accept the applicant has difficulties with memory, particularly timeframes, however, he did state at his SHEV interview that it is possible to fall in love even when you have problems. In those circumstances I would expect him to be able to provide some further details about such a significant relationship and be clear about whether he and his girlfriend actually lived together or not. Country information² indicates that, for Muslims in Egypt sex before marriage is prohibited both socially and from a religious perspective. It may have extremely negative consequences especially for the woman who is considered to

² Voices of Africa, "Wed for bed: Underground marriages in Egypt", 9 February 2013, CXC28129415485; Al Arabiya (TV), "Egyptian virginity documentary stirs controversy", 22 October 2008, CX213001; DFAT "DFAT Country Information Report Egypt", 17 June 2019, 20190617130817

dishonour her family if she loses her virginity prior to marriage. Violence against women is also common. It does not seem plausible that an Islamic girl in these circumstances would tell her family that she had been having an illicit sexual relationship with someone who had since left the country and risk being abused herself as a consequence. The applicant's family continues to reside at the same residence the applicant resided at prior to his departure from Egypt. There is no evidence to indicate the applicant's family members have encountered any form of harm or harassment in Egypt from members of the girl's family, on account of the applicant's actions. Overall, I do not accept the applicant has had sexual relationship with a woman in Egypt or that he has been threatened with harm by members of the woman's family as claimed and I find that the applicant's claims in this regard have been fabricated for the purpose of enhancing his protection claims.

Failed asylum seeker

37. The applicant claims that he departed Egypt legally on his own passport and did not face any problems. I accept as plausible the applicant's claim that he disposed of his passport en route to Australia. I consider that on his return to Egypt it will be apparent, due to the manner of his return including his return on any temporary travel documents, that he is returning after unsuccessfully seeking asylum in Australia.

Mental health

38. With his SHEV application, the applicant provided a letter dated 6 November 2015 from [Ms C], a social worker at the [named] Mental Health Service. The letter states that the applicant was referred to them in 2015 when he was showing evidence of psychosis. The treating psychiatrist was of the view that he had PTSD and he was treated with medication and underwent counselling. The letter concluded that he had shown consistent improvement after his social situation improved. The applicant's representative provided an updated letter dated 26 September 2018 from his social worker [Ms B]. The letter states that the applicant has a diagnosis of PTSD, Schizophrenia and a previous history of self-harm. It confirmed that the applicant was initially referred to mental health services in 2015 where he was case managed for 18 months and later discharged into the care of his GP and Settlement Services International. He had deteriorated in the following months and was referred again to community mental health services by his private psychiatrist due to concerns of psychosis in 2017. He was admitted to [Hospital 1] where he was seen by the inpatient psychiatrists and nurses who had commenced him on treatment. Following discharge on October 2017, he has been case managed by [the named] Mental Health team and reviewed regularly by the psychiatrist and the case manager. The letter concludes that the applicant's mental state remains highly changeable due to Schizophrenia and he continues to experience paranoid beliefs, great difficulty regulating his emotions and trusting others. The social worker supported his application for a refugee visa, as she believes that if the applicant is "not offered safety and stability, it will likely cause him great distress and a great deterioration in ... mental state." The applicant's representative made submissions in relation to complementary protection that Australia is more equipped to provide the applicant with the best mental health care for his psychosis and mental health condition than if he was returned back to Egypt. I accept that the applicant has been diagnosed with PTSD and Schizophrenia for which he has received treatment in Australia between 2015 and 2018 and for which he will likely need treatment in the future.

Refugee assessment

39. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

40. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
41. I accept that the applicant is an Egyptian national from [Village 1] in the north of Egypt and that his parents and brothers continue to live in that town in the family home. I accept that on his return to Egypt the applicant will likely return to live with his family and he has not indicated otherwise. I accept that the applicant fears harm from the Muslim Brotherhood on his return to Egypt and I accept that the applicant will be returning as a person who refused to join the Muslim Brotherhood and as a person with a mental illness, a failed asylum seeker and a person who undertook some Christian activity in Australia.
42. The applicant claims to fear harm on his return to Egypt from the Muslim Brotherhood as he did not want to join them prior to his departure for Australia. His representative has submitted that he fears harm from them on the basis of an imputed political opinion of being against the Muslim Brotherhood and what they stand for and his refusal to engage in bad conduct with them. It is submitted that he fears serious harm amounting to persecution. I have accepted that between 2012 and 2013 there was considerable unrest in Egypt and I accept that the applicant may have been caught up in this unrest. DFAT reports that a June 2012 election resulted in the election of Mohammed Morsi of the Freedom and Justice Party, the political wing of the formerly outlawed Muslim Brotherhood. As President, Morsi drew criticism for his perceived inability to improve Egypt’s economic situation, and for his increasingly authoritarian tendencies. Sporadic, large-scale protests and violent clashes took place between Morsi’s opponents and supporters, and led quickly to crippling political polarisation and anti-government protests.
43. However, there has been a significant change in the political and security situation in Egypt since the applicant departed the country in June 2013 so the circumstances that the applicant

would be returning to would not be the same as they were when he left. DFAT reports that in July 2013 a military intervention removed Morsi from power and re-installed an interim military regime. Security forces violently suppressed pro-Morsi demonstrators protesting the military intervention. The military regime subsequently re-designated the Muslim Brotherhood a terrorist organisation and Egypt's security apparatus and courts have carried out a significant crackdown on the Brotherhood's members and activities. Tens of thousands of Brotherhood members have been arrested and detained since July 2013. Key members of the Brotherhood senior leadership have been in detention since the July 2013 military intervention, and much of the leadership has fragmented. According to his family, Morsi has been held in solitary confinement since being overthrown in 2013. He is currently serving a number of lengthy prison sentences, and has had at least one death sentence overturned. Courts throughout the country have handed down a series of harsh sentences (including the death penalty) in mass trials of those charged with participating in violent protests or riots following the military takeover. DFAT understands that most, if not all, NGOs affiliated to the Brotherhood have either been shut down, had their assets seized, and/or had their board replaced with government appointees. DFAT goes on to state that in-country sources report that the government and state media consistently blame the Brotherhood (and terrorism) for all manner of domestic woes. While there is a degree of (unexpressed) public cynicism about this practice, it has reportedly created a social environment whereby any affiliation or connection with the Brotherhood – or any attempt to express political dissent – is considered evidence of supporting terrorism.

44. Based on developments, I am satisfied that the Muslim Brotherhood in Egypt has been significantly weakened and driven underground. The evidence before me does not support that they are engaged in any public recruitment as they may have done when Morsi was in power. DFAT assesses that Muslim Brotherhood leadership figures and members who continue to pursue political activities actively either within or outside the party structure are highly likely to be arrested and prosecuted. Ordinary inactive members, party supporters and those with family links to members are less likely to be personally targeted, but still face a risk of arrest, prosecution, or dismissal from state employment should their affiliations become known to authorities. All persons with Muslim Brotherhood links are likely to be subjected to surveillance and monitoring of their activities.
45. The applicant advised at his SHEV interview that he is not involved in politics and is not a member of a political party in Egypt. He has not indicated that there have been any ramifications for his family as a result of his refusal to join the Muslim Brotherhood in 2013. Given his lack of political profile and the crackdown on the Muslim Brotherhood, its leaders, members and activities ten years ago, I do not find that there is a real chance that the applicant would face any harm from the Muslim Brotherhood either because he does not want to join them; or previously refused to join them; or for not sharing their ideology. I do not accept that the applicant is a Christian convert or see any basis on which the Muslim Brotherhood would be aware that he has attended some Christian church services and was baptised in Australia. I do not consider that the applicant is a political person who has publicised any political views. I am not satisfied there is any real chance the applicant will suffer any harm, for reasons of his actual or imputed political opinion, or previous refusal to join the Muslim Brotherhood if he returns to Egypt now or in the reasonably foreseeable future.
46. I have not accepted that the applicant is a genuine Christian convert but I do accept that he attended some church services and was baptised to enhance his claims for protection. DFAT reports that converts from Islam to other religions are not generally subject to officially sanctioned violence, detention or surveillance in Egypt. They however face significant societal

discrimination in the form of rejection, ostracism and sometimes violence from their families or communities. The level of discrimination is greater if the convert undertakes activities, such as proselytising, in relation to their conversion. As noted above, despite him having attended some church services, there is no indication that the applicant would tell people about that on his return; or that he would seek to practise the Christian faith on his return; or that he would proselytize to others. I have found that the applicant is not a genuine Christian, and will not pursue any interest in Christianity on return and I am not satisfied that there is a real chance of the applicant being harmed on account of his religious activity in Australia.

47. The applicant has not explicitly made a claim for protection on the basis of his membership of a particular social group of people with mental illness in Egypt, however, the previous IAA Reviewer did consider that such a claim arose on the material and in particular noted the supporting evidence provided by the applicant in relation to his diagnoses. The previous Reviewer had regard to country information from a range of sources including the WHO and newspapers and was satisfied that there is no real chance he would suffer serious harm because of his mental health and noted that he would not be prevented from accessing mental health services for any of the reasons in s.5J of the Act.
48. I have considered that information and I have obtained recent information to assess whether there had been any reduction in services or significant change in the treatment of people with mental illness since the previous decision. The 2017 DFAT report considered by the IAA assessed that the provision of healthcare in Egypt was highly fragmented. Many Egyptians lacked access to affordable public health care, particularly in rural areas and the standard of public hospitals was very low. The 2019 report similarly states that many Egyptians lack access to affordable public health care, particularly in rural areas, and the standard of public hospitals is very low. Quality in the private sector is better, but limited to those few who can afford it. The availability of mental health care is limited. Most mental health resources are allocated to a small number of centralised psychiatric hospitals rather than being integrated into primary health care; the number of beds available for psychiatric patients requiring acute inpatient care is insufficient to meet demand; and medical schools and health institutions do not devote a significant number of hours given to covering mental health issues. The 2019 report did go on to state that since the election of President Sisi there has been a renewed commitment to health as a key priority. The government is in the process of introducing a compulsory universal health insurance scheme that will provide basic healthcare coverage to around 30 per cent of the population who could not previously afford any. Fees are set based on income level, with the state covering participation by the poorest. The government launched the first stage of the scheme in July 2018. Nothing in the DFAT report suggests that people with mental health are denied access to services for any s.5J reason, rather any lack of access appears to be due to limited resources.
49. Given the most recent DFAT report is five years old, I have also had regard to recent news reports and updates from the WHO. The WHO 2023 report on Egypt confirmed that there remain a number of challenges in the area of mental health and psychiatric services in Egypt. Most resources are allocated to a few large centralized psychiatric hospitals. The WHO country office supports the Ministry of Health and Population in integrating mental health services into primary health care and raising awareness in schools and universities to reduce the stigma of mental health illnesses. The WHO also report that Egypt officially launched a freely accessible mental health and addiction treatment electronic platform on 16 March 2022. Development of the platform was the result of collaboration between the Egyptian Ministry of Health and Population, the General Secretariat of Mental Health and Addiction Treatment, the WHO country office in Egypt and the Canada-based British Columbia University. The electronic platform offers free online counselling and psychoeducational

virtual services for mental health and addiction treatment for everyone living in Egypt, including refugees and migrants. The platform aims to make mental health services provided by a health team of experts, accessible and available to everyone without discrimination and to bridge the gap between available human and financial resources for mental health care in Egypt and the growing demand for those services.

50. Recent news report also note the challenges in mental health care in Egypt but outline that in recent years the availability of services has increased. In 2023 Daily News Egypt reported that the number of mental health facilities in Egypt has increased to 192 from the beginning of June until the end of August 2023, according to the National Council for Mental Health. The increase in the number of mental health facilities is part of a broader effort by the Egyptian government to improve mental health care in the country. In recent years, the government has also increased funding for mental health programs and initiatives and has launched a number of awareness-raising campaigns about mental health issues. This is echoed in reporting by Egyptian Streets which notes that in an effort to promote the importance of mental health among Egyptians, the WHO Egypt and Egypt's Ministry of Health and Population launched a video campaign to prioritize mental health in Egyptians daily lives. The video explains that if someone is struggling with their mental health, they must visit a mental health professional or therapist. Egyptians and foreigners residing in Egypt can have free consultations with therapists. They can also visit Egypt's first digital mental health platform where they can book sessions with mental health professionals. Egypt Independent reported on plans by the Egyptian Minister of Health and Population to establish psychiatric clinics in emergency departments in general hospitals to intensify training for medical teams specializing in mental health.
51. Overall I accept that mental health services, in particular psychiatric services, are not as widely available in Egypt as they are in Australia and that in the past people may have been reluctant to access services due to feelings of stigma. However, I am satisfied that mental health services are available in Egypt and that the government has a commitment to improving these services and removing the stigma associated with accessing these services. On the evidence before me, I do not accept that the applicant would be denied medical treatment or face any level of discrimination in the provision of such treatment for any of the attributes described in s.5J the Act. I am not satisfied that the applicant would face a real chance of harm in the foreseeable future because he has mental health conditions.
52. The applicant has not claimed to fear harm on his return to Egypt on the basis of unsuccessfully seeking asylum in Australia. The previous IAA Reviewer considered that such a claim arose on the material and I have therefore also considered whether the applicant would face a real chance of harm on that basis on his return to Egypt. DFAT assesses that people who return to Egypt after several years of absence will not face any adverse attention on their return due to their absence. Likewise, DFAT assesses that failed asylum seekers will not face adverse attention because of their failed application for asylum when they return to Egypt. Egypt accepts involuntary returnees. Egyptian officials generally pay little regard to failed asylum seekers upon their return to the country, although it is possible that some individuals will be questioned upon entry, or will have their entry delayed. Reporting does not indicate that they are subject to any harm as a result of that process. Many thousands of Egyptians enter and leave the country every day. Egyptians who out-stay their work or tourist visas in other countries are regularly returned to Egypt with no attention paid to them by authorities. DFAT is not aware of failed asylum seekers being reported by airport authorities to the Ministry of the Interior or any of the security services beyond the normal processes for returning Egyptian nationals.

53. DFAT assesses that Egyptian embassies or other officials usually take note of political activities conducted by Egyptians abroad. However, only particularly high-profile cases (i.e. those that gain media notoriety in Egypt) are generally of interest to Egyptian authorities. Lower profile political activists may be questioned on return to Egypt, but are unlikely to be detained or otherwise mistreated. I am not satisfied that the applicant has any kind of adverse profile in Egypt. He previously travelled to and from [Country 2] legally without incident and he departed the country on his own passport in 2013 without incident. At his SHEV interview the applicant confirmed that he is not involved in politics. I am not satisfied there is a real chance the applicant will suffer any harm from the Egyptian authorities or indeed the Muslim Brotherhood if he is returned to Egypt now or in the reasonably foreseeable future. I am satisfied that, the applicant will likely return to his family home. I accept that he may face some difficulties accessing mental health services as readily as he has done in Australia but I do not accept that he will be denied treatment for reasons of his mental health condition or for any other combination of his claims.
54. I have considered all of the applicant's claims cumulatively, including the problems he may have had with the Muslim Brotherhood in the past, any imputed political opinion, his Christian activity in Australia, his mental health and his return after seeking asylum. Given the political changes in Egypt since his departure, the unlikelihood of his disclosing his religious activity and the lack of discrimination in terms of access to mental health, I am not satisfied that any of his protection claims, either individually or cumulatively would raise his chance of harm on his return to Egypt to the level of a real chance.
55. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

56. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

57. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
58. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

59. I accept that, on his return to Egypt, the applicant may face challenges accessing mental health services. I also accept that he will need to re-establish himself after having lived outside of the country for a long time but I consider that he will likely return to the family home where he previously lived and worked on the family vegetable farm. Given the fact that the applicant's family have lived in the same home for such a long time and the applicant remains in close contact with his family, it would appear that this is a stable home where the applicant can likely expect social support. The applicant has not indicated otherwise. I am not satisfied that the challenges the applicant will face in terms of getting re-established combined with the limited availability of mental health services would amount to significant harm as defined. I am not satisfied that it would amount to the arbitrary deprivation of life or the death penalty. I am also not satisfied that it would amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment as set out in the Act. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt there is a real risk he will suffer significant harm.
60. In relation to the remainder of the applicant's claims, I have found that there is not a real chance that the applicant will face any harm on his return to Egypt. Real chance and real risk involve the same standard. On the same factual findings, I am similarly not satisfied that the applicant faces a real risk of suffering any harm, including significant harm on those grounds, should he be returned to Egypt.

Complementary protection: conclusion

61. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.