



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/06070

IRAN

IAA reference: IAA18/06073

IRAN

IAA reference: IAA18/06072

IRAN

IAA reference: IAA18/06071

Date and time of decision: 3 January 2019 12:48:00

C Wilson, Reviewer

Decision

In respect of the referred applicant (IAA18/06070) the IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

In respect of the other referred applicants (IAA18/06071, IAA18/06072, IAA18/06073), the IAA remits the decision for reconsideration with the direction that:

- the other referred applicants are members of the same family unit as the above-named applicant and satisfy the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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 applicants (the applicants) are a family group of four who claim to be Ahwazi Arabs from Iran. They arrived in Australia on [date] February 2013 as unauthorised maritime arrivals. On 30 September 2016 they lodged applications for Safe Haven Enterprise Visas (SHEV). The applicant husband (IAA18/6070) and applicant wife (IAA18/06073) both made claims for protection. The applicant children (IAA18/06071, IAA18/06072) made no claims for protection but relied on their membership of the same family unit as their parents.
2. A delegate of the Minister for Home Affairs (the delegate) refused the application on 30 November 2018. The delegate accepted the applicants were Ahwazi Arabs but did not accept any discrimination they might suffer on account of their ethnicity would amount to serious harm. The delegate did not accept the husband had left Iran on a false passport or had a political profile that would bring him or his family to the attention of the authorities in Iran.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicants' claims for protection

5. The applicants' claims can be summarised as follows:
 - They are Ahwazi Arabs from [Town 1], Khuzestan province, Iran. They came from Shia Muslim families but now identify as Sunni Muslims. The main applicant converted from Shia to Sunni before they left Iran, and his wife converted in Australia.
 - They suffered discrimination in Iran because of their ethnicity. This included restrictions on their language and their ability to give their children Arabic names, and discrimination in accessing employment and education.
 - The main applicant's brother died in suspicious circumstances in 2006. He went missing and later the authorities told them he had died from heart failure.
 - In the two years before he left Iran the main applicant met frequently with a group of friends to discuss the plight of Ahwazi Arabs. As a group they sometimes produced and distributed political pamphlets. A member of his group was captured by the authorities and the main applicant decided to flee because he feared his friend would give up all their names. Since he left Iran other members of his group have been detained. Some members of his group have been sentenced to prison terms whilst others were released on bail after being tortured.
 - The main applicant was detained once before leaving Iran. He was questioned and assaulted by intelligence officers, and then released because they had no information on him. This was before one of the members of his group was detained.
 - Intelligence officers have visited the main applicant's brother and asked questions about him.

- In Australia the main applicant has been active in the local Ahwazi Arab community. Even though he does not have any social media accounts there are photographs of him on [an Australian community social media page].
- The main applicant left Iran on a fake passport, and the other applicants left on their own passports.
- The main applicant and his wife fear they will be detained on return for the main applicant's political activities in Iran and Australia.

Refugee assessment

6. Under s.36(2)(a) of the Act a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee. 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

7. 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.
8. I accept the main applicant, his wife and oldest child are citizens of Iran, based on the identity documents they provided to the Department. His youngest child was born in Australia, but there is nothing to indicate she would not be an Iranian citizen. I find Iran is their receiving country, and [Town 1] in Khuzestan province is their home area and the area to which they would return.
9. I accept the applicants are of Arabic ethnicity. I base this finding on their use of Arabic interpreters, their identity documents, the consistency of their claim to be Ahwazi Arabs, and the letter from [a community group in Australia] in Australia stating the main applicant is recognised by them as an Ahwazian from birth.

10. Arabs make up about 2 per cent of the Iranian population, and Ahwazi Arabs are the largest Arab community in Iran. The Iranian Constitution states all people of Iran enjoy equal rights, but in practice ethnic minorities such as Arabs do experience official and societal discrimination. The Department of Foreign Affairs and Trade (DFAT) reports that the Arab community has long expressed concerns about economic marginalisation, and discrimination in education, employment, politics, and culture. Whilst the applicants' home area of Khuzestan province is rich in gas and oil reserves, Arabs are excluded from employment in the associated industries. Violent protests occurred in Ahwaz, the capital of Khuzestan, in 2005 because of reports the government was planning to implement policies to reduce the number of Arabs in Khuzestan. The protests resulted in the deaths of at least 50 Ahwazi Arabs and the detention of hundreds more. According to DFAT as of June 2018 at least 37 Ahwazi Arabs had been executed since 2005. Large numbers of Ahwazi Arabs were arrested in the lead up to the 10th anniversary of the 2005 protests. Whilst some of those arrested were prominent activists, it was also reported many were targeted for perceived political opinions, for peacefully expressing dissent, or for openly exhibiting Arab identity and culture.¹
11. In the 2016 report on Iran, DFAT assessed that the treatment of Arabs was unpredictable and that, depending on the political environment, Arabs could unexpectedly face increased adverse attention. DFAT assessed that most Arabs were not of adverse interest to the authorities, but the risk increased dramatically for those publicly asserting cultural or political rights. Adverse attention included monitoring, being summonsed for questioning, or arrest.² Amnesty International report members of minorities in Iran, including Arabs, faced arbitrary arrest, torture and grossly unfair trials for speaking out against violations of their political, cultural and linguistic rights.³ A number of sources reported the arrest and imprisonment of Ahwazi Arab activists in 2017.⁴
12. The main applicant claims to have become politically active in Iran when he started meeting regularly with a group of 5 or 6 friends to discuss the situation for Ahwazi Arabs in Iran. He says some members of the group were [professionals] and they had a lot more information about political matters than him. But he was knowledgeable about the Koran and he would lead the teachings from the Koran at these meetings. The group sometimes made up pamphlets to educate other people and while [certain] members of the group wrote most of the content, he contributed ideas for the layout. They did not distribute the pamphlets personally, as this would be too dangerous, but they did leave them in strategic places around town for people to find and read.
13. The main applicant has consistently claimed to have belonged to such a group. He spoke of the group when he was first interviewed 9 days after arriving in Australia. His wife also gave corroborative evidence in her entry interview. She said she did not know her husband's business, but she did know he had been meeting regularly with friends. She said in the last period before leaving Iran he had been acting strange, was uncomfortable, and did not want to stay in Iran. I note that after interviewing the applicants the delegate accepted the main applicant had been a member of such a group and had made and distributed pamphlets with his friends. Taking into account the consistency of the claim, and that it was made at the

¹ DFAT Country Information Report Iran, 7 June 2018, CIS7B839411226 (DFAT report).

² DFAT Country Information Report Iran, 21 April 2016, CIS38A8012677.

³ Amnesty International Report 2016-2017, NG2A465F54.

⁴ 'Dozens Arrested and Summoned in Ahwaz', Human Rights Activists News Agency, 1 November 2017, CXC90406616790; 'Detention of a cultural activist by Iran Regime's Ministry of Intelligence in south-western Iran', Iran Human Rights Monitor, 6 November 2017, CXC90406617111; 'AHRO Calls for the Release of 4 Ahwazi Arab Cultural Activists', Ahwaz Human Rights Organisation, CXC90406618400; 'An Arab Activist Sentenced to 10 Years in Ahwaz', Human Rights Activists News Agency, 11 October 2017; 'Iran: Activists Prosecuted in Khuzestan', Iran Human Rights Monitor, 29 August 2017, CXC90406612998.

earliest opportunity, I accept the applicant was politically active in Iran in meeting with a like-minded group of friends to discuss issues affecting the Ahwazi Arabs and to produce information to educate others. I rely on country information referred to above to find such activity, if known by the authorities, would not be tolerated, and could result in the members of the group being monitored, questioned, arrested and/or imprisoned.

14. I have considered whether the main applicant's ability to depart Iran indicated he was not of interest to the Iranian authorities. The main applicant claimed he departed Iran from [Airport 1] on a fake passport or a genuine passport in another name with his photo substituted. He said he held a genuine passport but did not use it for this journey. His wife however admitted to travelling on her own passport, and their daughter had her own passport as well.
15. I find it unlikely the main applicant travelled under a false name when his wife and daughter travelled on their own passports. Married women and minors require the permission of their husband/father to travel, and I find it would have caused the family difficulty at the airport if they were travelling with the husband/father holding a passport under a different name. DFAT advises Iranian passports have been biometric since 2011 and their security features make them difficult to manufacture for fraudulent use. Country information indicates it would be almost impossible to pass through [airports] with a fraudulent passport, due to the sophisticated security features in the passports and the computerised cross-checking.⁵ Given the concession by the main applicant's wife that she travelled on her own passport, and the main applicant's concession that he did hold a genuine Iranian passport, I find they all left Iran legally under their own passports. I find this indicates that at the time the main applicant left Iran he was not known to the authorities as a person of interest for political activities as an Ahwazi Arab.
16. The main applicant claims that only one member of the group had been detained when he fled. He claims that since he left Iran other members have been detained and tortured, and some have been given prison sentences whilst some have been released on bail. Taking into account the country information on the treatment of Ahwazi Arabs who express political views in opposition to the government, I consider this claim is plausible. I accept the main applicant's claim that he has been identified by his friends as a member of their group under questioning from the authorities in Iran.
17. In addition to the main applicant's past political activities, the applicants claim to have converted from being Shia to Sunni Muslims. The delegate did not believe this claim to be genuine for either applicant, as they found their oral evidence on why they converted was not commensurate with someone who had genuinely converted. I note from the earliest interview with the Department (the entry interview) the main applicant identified as a Sunni Muslim and I give this some weight. I note also one of the reasons given by the main applicant for converting is consistent with country information. That is, he claimed to have wanted to change because he was against the Iranian government and if they were Shia, he no longer wanted to be. The Danish Immigration Service reported that sources said some young Shia Ahwazis were becoming Sunni and getting closer to the Saudi-Wahhabism. Some younger Arabs do this as they do not associate themselves with Iran and do not feel represented in Iran. The Iranian authorities are reportedly concerned by this development.⁶ Sunni Muslims are a minority in Iran, and have been assessed by DFAT to face a moderate risk of official

⁵ DFAT report; "Entry procedures and passport control at Dubai International Airport", *Australia: Department of Immigration and Citizenship (DIAC)*, 13 April 2012, CX286895.

⁶ 'Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs', *Danish Immigration Service and Danish Refugee Council*, February 2018, CIS7B83941872.

discrimination.⁷ They are also viewed by the authorities as an opposition group to the government⁸, and I consider the combination of his ethnicity and religion would be of adverse interest to the authorities if known.

18. I accept the main applicant had converted from being a Shia to a Sunni Muslim whilst still in Iran. I accept he has been regularly attending mosque in Australia where he has openly practiced his religion as a Sunni Muslim. I accept he would wish to continue to do so in Iran. Whilst he may be able to avoid adverse attention by modifying his behaviour to practice his religion discreetly, or even publicly claim to be Shia, I find this would involve a modification that cannot be required under s.5J(3)(c)(i).
19. The applicant was not a prominent activist in Khuzestan. His conversion to being a Sunni Muslim appears also to have been low key. I accept however his claim that the activities of his group have become known to the authorities, and that other members of the group have suffered serious harm. I rely on country information to find that Ahwazi Arabs who assert themselves politically, even in these low key acts, face a real chance of harm from the authorities should they come to their attention. I consider his conversion from Shia to Sunni heightens his risk when considered in conjunction with his political activities. I accept the chance of the main applicant being detained or arrested upon return to Iran is not remote. I accept that the detention would involve harm because it is known that torture and other physical mistreatment is practiced in detention in Iran.⁹ I am satisfied the nature of the harm he may face amounts to serious harm because it includes significant physical harassment and ill-treatment. I accept the essential and significant reasons for the persecution would be his ethnicity, political opinion and religion, and that it would involve systematic and discriminatory conduct.
20. I have considered whether the main applicant can access effective protection in Iran. I find the State cannot offer him protection in circumstances where the Iranian authorities are the agent of persecution. There is no evidence before me of any non-state party or organisation in Iran that could offer the applicant effective protection. As the Iranian authorities are the agents of harm, I find the real chance of persecution relates to all areas on Iran.
21. I find the main applicant's fear of persecution for reason of his ethnicity, political opinion and religion is well-founded.
22. I have considered whether the wife of the main applicant would also be of adverse interest to the authorities for reason of her ethnicity, her husband's political activities or her conversion to Sunni Islam. There is no claim that the wives or other family members of the persons in the main applicant's group have been targeted for harm by the authorities. I find the country information does not support a finding that the wife of a low level political activist would be of adverse interest. I accept the applicant wife is Ahwazi Arab but there is nothing to indicate she has attempted to assert political or cultural rights as an Arab. I rely on the DFAT report to find an ordinary Ahwazi Arab, who was not expressing dissent or engaged in promoting Arab culture or rights, would not attract adverse attention from the authorities. I note the applicant wife claims to be Sunni and to privately practice her faith. She told the delegate she only attends mosque 'sometimes'. I consider she would not openly practice as a Sunni in Iran when she has not done so in Australia, and I consider the chance of her being identified as Sunni and targeted for that reason is remote. I find the chance of her facing any harm in Khuzestan for reason of her ethnicity, political opinion, relationship to her husband, or religion, even when

⁷ DFAT report.

⁸ 'Iran's worsening treatment of religious minorities', Arab News, 5 February 2018, CXBB8A1DA21415.

⁹ DFAT report; Amnesty International Report 2016-2017, NG2A465F54.

considered cumulatively, is too remote to amount to a real chance. I find her fear of persecution is not well-founded.

Refugee: conclusion

23. The main applicant (IAA18/06070) meets the requirements of the definition of refugee in s.5H(1), and therefore meets s.36(2)(a).
24. The applicant wife (IAA18/06073) does not meet s.36(2)(a).

Complementary protection assessment

25. 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. What amounts to 'significant harm' is defined in s.36(2A).
26. I have found the applicant wife does not face a real chance of harm for reason of her ethnicity, relationship to her husband, political opinion or religion. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the reasons given above I also find the applicant wife will not face a real risk of harm for any of the reasons claimed, should she return to her home area in Khuzestan province.

Complementary protection: conclusion

27. 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 the applicant wife (IAA18/06073) will suffer significant harm. She does not meet s.36(2)(aa).

Member of same family unit

28. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include spouse and dependent children.
29. I rely on the identity documents and marriage certificate to find applicant IAA18/06073 is the spouse of the main applicant. There is nothing before me to indicate they do not continue to live as spouses as defined in s.5F of the Act. I find the applicant wife is a member of the family unit of the main applicant. I rely on the birth certificates of the two children to find they are the children of the main applicant and that they are under 18 years. I find they are his dependent children as defined in r.1.03 and are therefore members of his family unit.
30. As the main applicant (IAA18/06070) is a person mentioned in s.36(2)(a), his wife (IAA18/06073) and dependent children (IAA18/06071, IAA18/06072) meet s.36(2)(b)(i).

Decision

In respect of the referred applicant (IAA18/06070) the IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

In respect of the other referred applicants (IAA18/06071, IAA18/06072, IAA18/06073) the IAA remits the decision for reconsideration with the direction that:

- the other referred applicants are members of the same family unit as the above-named applicant and satisfy the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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.