



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/06340

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IAA reference: IAA19/06341

Date and time of decision: 2 May 2019 20:06:00

R Arends, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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

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### Visa application

1. The referred applicants claim to be a mother and [child] from Iran. [In] October 2012 the applicant mother arrived in Australia. The applicant [child] was born on [date]. They lodged a combined application for Safe Haven Enterprise Visas on 12 December 2016.
2. On 5 February 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visas on the basis that there was no real chance of serious harm or real risk of significant harm to the applicant or her [child] should they return to 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. On 4 March 2019 the applicants' representative provided a submission to the IAA setting out why the applicants do not agree with the delegate's decision and to that extent it can be described as argument rather than new information, and I have considered it. The submission also contains information and claims that were not before the delegate. This is new information and I am not permitted to consider it unless it satisfies s.473DD of the Act.
5. The submission asserts, by way of new information, that the applicant mother has renounced Islam and she will be harmed as an apostate, and she will be persecuted because she is an asylum seeker from a western country with western beliefs and lifestyle.
6. The applicant mother put forward reasons for leaving Iran and/or fearing harm in Iran in her Entry Interview, her SHEV application and her SHEV interview in which she was repeatedly asked why she feared returning to Iran and if there was anything else she needed to add. She did not, at any stage, claim to fear harm because of her religious beliefs, or because she would be returning as a person who sought asylum in a western country who lived a western lifestyle and there is no suggestion that these are fears that have arisen since the decision was made. Nor has she previously claimed to have renounced Islam or made any reference to her lifestyle. The submission to the IAA does not include an explanation of her religious beliefs or indicate which aspects of her western lifestyle she would retain if she were to return to Iran. It is not apparent to me why these claims, if genuine, were not made earlier, and the fact that they were not seriously undermines their credibility as does the lack of detail provided. Moreover, the general information included in the submission in support of the claim that she will be harmed as an asylum seeker from a western country is dated and inconsistent with more recent country information.
7. The submission also says the applicant mother's ex-husband [estranged husband] suffered mental problems and that he assaulted her and her father on a few occasions. He left Australia suddenly in June 2018, abandoning his [child] without accepting any responsibility towards [his/her] future. In her SHEV interview the applicant claimed to fear harm from her estranged husband's family in Iran and said he had threatened her. She did not say he had mental problems or that he had assaulted her or her father. It is not suggested that she became aware of the alleged assault on her father and her estranged husband's mental health problems in the three months between the interview and his departure from Australia and no explanation is given for the delay in providing this information.

8. The new information is of very questionable reliability and I am not satisfied it is credible. The applicants have not pointed to any exceptional circumstances that justify considering the new information and none are apparent to me. I am unable to consider it.
9. There is evidence in the review material of financial transactions involving the applicant mother, during the time she has lived in Australia. These transactions were not put to the applicant mother in her SHEV interview and the delegate did not refer to them in the decision. I do not consider the transactions to be relevant to my assessment the applicants' claims for protection. I have not had regard to this evidence.

### **Applicants' claims for protection**

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10. The applicant mother makes claims in her own right, and during the SHEV interview she made a claim that also related to a risk of harm to her [child], being that her estranged husband's family would kidnap [him/her] if they returned to Iran.
11. The applicants' claims can be summarised as follows:
  - The applicant mother's father came to Australia by boat around September 2011 and sought protection. He is homosexual. He has a permanent protection visa.
  - The applicant mother left Iran for Australia with her own mother around August 2012.
  - Before they left, they were interrogated and beaten by the Iranian authorities who were looking for her father because he is homosexual, and she will be harmed by the authorities for the same reason if she returns to Iran.
  - The applicant mother was subsequently beaten, interrogated and raped by the Iranian authorities who were still looking for her father.
  - The applicant mother is dependent on her father for emotional support because she is a single mother.
  - The applicant mother will be harmed by her estranged husband and his family if she returns to Iran because she is no longer with him. They will make a false report about her to the authorities. They will take the applicant [child] away.
  - The applicant mother will be harmed by the Iranian authorities because of her political activity in Iran.

### **Factual findings**

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12. On the basis of documents provided by the applicants, I accept their identities and nationality as claimed. Iran is the receiving country for the purpose of this review
13. Departmental records show that the applicant mother's father was granted a protection visa in May 2012. The applicant mother left Iran for Australia with her own mother around August 2012.
14. The applicant mother's central claim for protection is that, after her father left Iran for Australia, the authorities harassed and brutalised her and her mother in their efforts to find her father because he is homosexual. She fears she will be attacked and executed if she returns. In Australia the applicants live together and the applicant mother is separated, but not

divorced, from her husband who is her [child's] father. Her estranged husband returned to Iran in June 2018.

15. In the applicant mother's Entry interview she says he father came to Australia by boat around a year before she and her mother came.
16. In her written statement of claims, she says she was persecuted by the government and fired from [her workplace] after completing only two terms of a Bachelor [degree]. The security forces attacked her home and tortured her and her mother in their efforts to locate her father who was in Australia. From that day onwards they were always watching and putting her under pressure to reveal her father's address. They threatened to beat and kill her if she did not tell them. One day when she was leaving [her workplace] two men approached her, said they wanted to ask questions about her father and family, and forced her to sit in a car. They took her to an unknown place, kicked and beat her and while they were beating her to death. She fell unconscious out of fear and when she regained consciousness they tortured her again. She told them her father was not in Iran but they did not believe her. They said they would be back soon, and next time they would kill her. They beat her and her mother and threatened to kill them "very soon". She and her mother went to stay with her grandmother to be safe, and then fled to Australia.
17. The applicant did not disclose any of this alleged persecution in her Entry Interview. I am mindful that the purpose of the Entry interview is not directed solely to a person's reasons for coming to Australia and wanting to stay, and that many other questions are asked, including about the journey itself. To that end caution should be exercised when relying on statements made immediately after a person arrives in Australia. In the present case, the applicant was interviewed three weeks after she arrived in Australia. The interview was conducted over approximately one and half hours and the applicant mother gave calm and articulate answers. The applicant mother was asked specifically why she left Iran and what would happen if she were to return. She said she left Iran because her father was in Australia and because of her and her mother's psychological and financial needs. When asked if anything happened to make her leave she said no, her father was the only reason. When asked if she had any political involvement she said she and her father participated in the Green movement protests and he was hit with a baton. When asked if the authorities impacted her daily life she said she was harassed by the moral police when she went out because of the way she dressed and her make-up. When asked what would happen if she returned to Iran she said it would hurt herself and her parents psychologically because they needed to be together and her father has [medical conditions].
18. In her SHEV application she stated that she had not realised that the information she gave in her Entry Interview would be used to assess her protection claims. The audio recording does not indicate that she was told that the information would be used in that way although she was told that the Entry interview was her opportunity to provide information about her circumstances and what she thought may happen to her on return and that she was expected to be as honest and accurate as possible when providing information.
19. In her SHEV interview she was asked why she did not put forward her claims to do with her father's homosexuality in her Entry interview. She said because she was ashamed, embarrassed and scared; she thought Australia was the same as Iran but after six years here she feels she can trust Australia. I do not accept that she fled Iran to come to Australia believing Australia to be the same as Iran, especially as her father had been granted a protection visa by then. Further, I find it entirely implausible that it took her six years to feel that she could reveal that information. I do not accept that feelings about her father's

homosexuality explain her failure to mention being brutally attacked by the Basij, being harassed and fired from [her workplace] or fearing for her life. I note that in her SHEV application she put forward claims of persecution by the Iranian authorities without disclosing her father's homosexuality. She did not take that approach in her Entry interview. Her representative submits to the IAA that there is no inconsistency between the applicant mother's brief comments in the Entry interview and the information she gave in the SHEV interview. However, she gave different reasons for leaving Iran, and omitted matters that are central to her claims, without a satisfactory explanation.

20. I have additional concerns about the applicant's evidence. She did not give complete and coherent information about her father's homosexuality. When asked what sort of problems he had in Iran, she said just the homosexuality and that the government has something against homosexuality, but she did not identify any action taken or threats made against her father. Given her claimed closeness to, and emotional dependence on, her father, and the fact that his homosexuality is central to her claim, it is difficult to reconcile her having such little knowledge of the difficulties that his homosexuality caused him in Iran and which led him to leave Iran. She was also uncertain and inconsistent about when she found out about her father's homosexuality. She said her mother told her in the last days before they decided to come to Australia. She had earlier said they decided to come to Australia days before they left Iran. On this basis she learned of her father's homosexuality shortly before leaving Iran. She also said she knew her father was homosexual when the Basij raided her home which on her account happened a few months after her father left, which places the attack around 9 months before she left Iran. The interviewer pointed out that she had said she found out a few days before leaving Iran. The applicant mother then said she did not know if she said a few days or a few months. The interviewer said there was over six months between when her home was raided and the days before she left. The applicant mother insisted that she found out just before the Basij raided her home. The events that the applicant mother referred to – her father's departure, the attack by the Basij, finding out about her father's homosexuality, and leaving Iran – are all very significant to her own claims for protection and connected. If they did happen, it is surprising that the applicant was unable to provide a more coherent rendition of them, including the order in which they occurred, even allowing for the six years that had passed between those events and the SHEV interview.
21. Another concern I have is that the applicant mother's claim to have been targeted by the Basij after her father left Iran is not supported by country information and aspects of it do not appear plausible. She claims that the authorities wanted to find her father and put him in gaol. Country information indicates that while homosexuality is illegal in Iran and homosexual acts can be punishable by death, homosexual persons who do not openly reveal their sexual orientation and keep a low profile are able to move freely within society, particularly in larger cities that offer greater anonymity.<sup>1</sup> The applicant's family lived in Iran's largest city, Tehran, and she claims she did not know her father was homosexual until her mother told her, which strongly suggests that he was discreet. Moreover, the country information does not suggest that the authorities pursue homosexuals by targeting family members.<sup>2</sup>
22. In the SHEV interview the applicant mother was told that the attack in her home was an important incident and asked to state everything that happened from the moment the Basij came. She was then asked several more questions about the attack including what she was doing before it, what time of day it was and how long the attack took. The information she

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report - Iran", June 2018, CIS7B839411226; UK Home Office, "Country Information and Guidance Iran: Sexual orientation and gender identity", September 2016, OGD7C848D78; Amnesty International, "Amnesty International Annual Report 2017-18", NGED867A612.

<sup>2</sup> Ibid.

gave was that she and her mother were watching TV in the afternoon when two men knocked at the door, she opened it and they pushed her out of the way, they searched everywhere, then they verbally abused, threatened and attacked her and her mother. They were in her home for around thirty minutes. They punched and kicked her and pulled her hair, and they asked her where her father was and she said he was not in Iran. To my mind this information is so general and lacking in specifics it seems inauthentic. Further, the applicant mother said she and her mother did not go to hospital afterwards because they were afraid to do anything. I do not accept that after suffering a prolonged and brutal attack she did not seek medical treatment.

23. The interviewer asked the applicant mother about the claimed rape. She said it happened at around noon when she was leaving the [workplace]. She said a man approached her and dragged her into a car with tinted windows. I note that in her application she said two men approached her. She said she was made to sit in the back seat with a blindfold on, with one man driving and another sitting next to her with his hand on her mouth while a third man raped her. She was beaten by both men in the back and raped by one of them while the car was being driven fast. I note that in her application she said she was driven to an unknown place and beaten and raped, yet in this account she was beaten and raped while the car was moving then dropped off in an unknown place. She said the incident occurred in the days before she and her mother came to Australia. In her application she claimed to have been fired from [the workplace] as part of the authorities' harassment of her yet according to this account of the rape she was still attending [the workplace] in the days before leaving Iran. She said that she lost consciousness and then regained consciousness and that this happened while she was in the car. She did not know where she was dropped off. A man in a car, who she did not know, happened by and drove her home. She clarified that there were not any other incidents with the authorities afterwards despite her application suggesting that there was. She and her mother then moved to her grandmother's house for a short time before leaving Iran.
24. Her description of the beating and rape – blindfolded in the back seat of a fast moving car with a man sitting beside her – seems physically difficult and likely to involve serious injuries from having clothing forcibly removed, being manhandled in a confined space and being flung into doors or seat backs from the car cornering or braking. The applicant mother was asked how they raped her when the car was driving, and rather than answering the question, she repeated that it happened. On the whole her account is unconvincing.
25. While she claimed she was watched and pressured constantly she did not describe how or give any examples, and I am not satisfied that she was.
26. In her SHEV interview, the applicant mother claimed to have protested at [the workplace] and said that was why she was dismissed from [the workplace]. When she was asked how many protests she participated in she said almost every protest. When pressed for a number she said three or four. When asked when the first and last protests occurred, she said they both occurred at the beginning of her first semester and her father attended one with her. When asked what that was about she said it was against the Iranian government without identifying an issue. When asked to confirm that protesting was the reason she was dismissed from [the workplace] she said she did not know the exact reason, that it could have been that or her father. The applicant mother has not given meaningful detail about her claimed attendance at protests and she expressed uncertainty as to whether that was the reason she was dismissed from [the workplace]. Nor has she provided convincing evidence that she, in fact, was dismissed from [the workplace]. She did not refer to these things in her Entry interview but she did claim to have attended a Green Movement protest with her father although she did not

indicate she suffered any adverse consequences as a result. I am willing to accept that she attended a Green Movement protest with her father. Those protests occurred in 2009 and early 2010. I am not satisfied that the applicant mother protested multiple times at [the workplace] or that she was dismissed from [the workplace]. Nor am I satisfied that she received any adverse attention from the Iranian authorities with respect to her protesting activity.

27. The applicant mother's SHEV application included a letter from her treating psychologist that stated that she had been seeing her for depression and anxiety treatment, that she is under the care of her GP for pharmacological treatment and that her mental health problems are due to her being kidnapped, raped and threatened by the Iranian authorities in their efforts to get information about her father. In the SHEV interview the applicant mother confirmed that she did not know her psychologist when she was in Iran. The psychologist does not have any direct knowledge of the applicant mother's life in Iran and has relied on what the applicant mother told her about those matters. I do not consider the psychologist's letter to independently corroborate the applicant's mother's claims. I accept that the applicant mother is being treated for depression and anxiety.
28. Given all of my concerns with the applicant mother's evidence, I am not satisfied that she or her mother were ever attacked or threatened, or that she was abducted and raped or fired from [her workplace]. Nor am I satisfied that she was otherwise targeted by the authorities because of her father's sexual orientation. I find that she came to Australia to reunite with her father for the reasons she gave in her Entry interview.
29. The applicant mother claims to have left Iran on her genuine passport. I am not satisfied that she was of any interest to the Iranian authorities at the time she left Iran.
30. Towards the end of the SHEV interview the applicant mother claimed that her estranged husband had told her he would let his family in Iran kill her if she returned. She said his family are Arab and tribal and that they told her they would kill her and take her [child] because she is not together with her husband anymore. She was asked how her husband would organise to kill her, and she said he is from an Arab tribe. She was asked how her husband's family would know she had returned to Iran, and she said they consider divorce is bad. I consider it significant that, when asked about important aspects of her claim, she avoided the questions. Her claims lacked any level of detail: she did not state when the threats were made or by what means of communication, or state how the family would know she had returned to Iran despite being asked a direct question. I consider that this claim was contrived at the last minute in the SHEV interview.
31. The applicant claims to have completed a tertiary qualification similar to [a course] before going on to university and she has provided an English translation of a letter from [a government department] in support of this. She claims that during university she worked part-time for [a company] doing [work]. She claims that now she runs her own [business]. These matters are not in dispute and I accept them.
32. I accept, as claimed, that the applicant mother has a grandmother and aunt in Iran with whom she is in monthly contact.

### **Refugee assessment**

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33. 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**

34. 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.

35. I have not accepted that the applicant mother was beaten, raped or otherwise targeted by the Iranian authorities because of her father’s sexuality. Nor have I accepted that she attended multiple protests or that the Iranian government had any interest in her arising from her participation in the Green Movement protests. I am not satisfied that the Iranian government has any interest in the applicant or that there is a real chance the she will suffer harm in Iran because of her father or her actual or imputed political opinion.

36. I have not accepted that the applicant mother’s estranged husband or his family have made threats against her. There is no credible evidence before me, and I am not satisfied that, they pose a threat to either of the applicants. I am not satisfied that there is a real chance that either of the applicants will suffer harm because of the estranged husband or his family.

37. The applicant mother is being treated for depression and anxiety. She does not claim that she will not be able to access adequate treatment in Iran and no such claim arises on the information before me.

38. The applicant mother claims that as a single mother, a lone woman, life will be difficult in Iran. She did not point to any specific challenges that she expects to face. In 2016 DFAT reported that according to the news organisation Iran Wire, the number of single-person households in Iran was growing greatly due to the increasing number of unmarried people and a rising divorce rate, and that figures from Iran’s National Organisation for Civil Registration stated that one fifth of marriages in Iran ended in divorce, with the divorce rate nearly tripling in the last 15 years. Despite this trend, single or divorced women who lived on their own in Iran could face discrimination. While there were no official legal barriers to a divorced woman renting accommodation alone, DFAT assessed as credible reports indicating that Iranian society frowns upon people living on their own, regardless of gender and women living on their own could



face stigma and unwanted attention by neighbours.<sup>3</sup> The applicant mother lives alone with her [child] in Australia, although I note she has a grandmother and an aunt in Iran with whom she is in regular contact, and she stayed with her grandmother for a period before leaving Iran. She has a tertiary qualification, experience doing [work] and experience running a small business. I accept that as a single parent who suffers from anxiety and depression, the applicant mother may find life somewhat onerous, and that she could face some social stigma and unwanted attention if she chooses to live on her own (with her [child]). However, I am not satisfied this would amount to serious harm. Nor am satisfied that she will be unable to financially support herself and her [child] or that she will be without suitable accommodation or family support. I am not satisfied that there is a real chance that either of the applicants will suffer serious harm in Iran because the applicant mother is a single parent with anxiety and depression.

39. I am not satisfied that the applicants have a well-founded fear of persecution now or in the reasonably foreseeable future.

### **Refugee: conclusion**

40. The applicants do not have a well-founded fear of persecution within the meaning of s.5J. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

### **Complementary protection assessment**

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41. Under s.36(2)(aa) of the Act, 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**

42. 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.

43. I accept that the applicant mother, being a single parent with a psychological condition, may find life somewhat onerous and will may face some social stigma and unwanted attention if she chooses to live on her own with her [child], but I am not satisfied that such treatment amounts to significant harm. I am not satisfied that it amounts to the pain, suffering or extreme humiliation described in the definitions of torture, cruel or inhuman treatment or

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<sup>3</sup> DFAT, "DFAT Country Information Report Iran", April 2016, CIS38A8012677

punishment or degrading treatment or punishment, or that it otherwise amount to significant harm within the meaning of the Act.

44. Beyond that, I have found that there not a real chance that the applicants will suffer harm in the reasonably foreseeable future if they return to Iran because of the applicant mother's father's actual or imputed sexual orientation, the applicant mother's political opinion or the applicant mother's estranged husband or his family. 'Real chance' and 'real risk' involve the same standard. Therefore, I am not satisfied that there is a real risk of any harm, including significant harm, for these reasons.

#### **Complementary protection: conclusion**

45. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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46. 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.
47. As neither of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).
48. Neither of the applicants claim to be members of the same family unit as the applicant mother's mother, who has also applied for a SHEV. Nor do they base their claim for protection on membership of the same family unit the applicant mother's father, who has a permanent protection visa, and in any event as he has been granted a visa of a different class and as his claim was determined before they made their application, s.36(2) and s.91WB(2) of the Act would prevent them from succeeding in such a claim.

#### **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

## Applicable law

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### ***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.