



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06358

Date and time of decision: 19 March 2019 09:55:00

J Jennings, 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 Iranian citizen. On 9 May 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. He claims that he fears harm in Iran because of his conversion to Christianity.
2. On 7 February 2019 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate was not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm 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. On 13 March 2019 the applicant's representative sought an extension of time of 48 hours to "wrap up the comprehensive submission" prepared. He stated that he had requested a copy of the audio recording of the applicant's interview from the department but that this had not yet been received. The request was granted and the representative was informed by email on the same day. The IAA also sent the representative a copy of the interview recording under administrative release of documents arrangements. No further information was received from the applicant or the representative and in these circumstances and noting that the IAA had sent a copy of the recording to the representative, who was also present at the SHEV interview, I have decided to proceed on the information before me.

Applicant's claims for protection

5. The applicant completed a statement of claims dated 8 May 2017 which he submitted with his SHEV application. His statement was prefaced with the comment it was a summary of his claims for protection and was not an exhaustive statement of what had happened to him in the past or the reasons why he cannot return to Iran. The statement was prepared over the course of three hours by [Organisation 1] and the statement cautioned it may contain errors or omissions based on the limited time available for its preparation. On 21 January 2019 the applicant submitted an updated statement and advised that since he completed the May 2017 statement a lot of important events had occurred in his life that were not covered in the earlier statement. He also stated that en route to Australia he was informed by people smugglers that "I have to have a case and demonstrate that I left Iran due to an immediate threat to my life" and for this reason he "exaggerated" claims made in his statement that he fled Iran because the leader of his Narcotics Anonymous group (NA) was arrested and that he was lashed for smoking during Ramadan.
6. The applicant's claims can be summarised as follows:
 - The applicant is an Iranian citizen from Karaj, Iran.
 - His [relative A] was involved in anti-government protests and was beaten by the police on a few occasions. The applicant did not dare to participate as he was scared of repercussions from the authorities.

- He is not a follower of the Zartosht religion as reported in the Arrival Entry interview report; he believes there was confusion in the interpretation. His [relative A]'s religion is Zartosht; the applicant likes the religion very much but does not follow it.
- He was born into a traditional and conservative Muslim family and his parents required him to observe Islamic rituals and practises. As a teenager he began to question Islam and stopped attending mosque. He has renounced Islam.
- The applicant rebelled against Islamic practice and restrictions on behaviour imposed by the regime. The authorities monitor people's activities; wearing short sleeves shirts in public or being detected consuming alcohol could cause problems and the applicant preferred to stay at home rather than going out and face trouble with the authorities.
- He began taking illegal drugs and developed an addiction.
- The applicant commenced his military service [but] deserted after a few months. He stayed at the home of relatives and friends to avoid the authorities who were searching for him after his desertion. Without a military completion card he could not obtain employment or rent property. His family have been visited by authorities because of his failure to complete his military service.
- The applicant was stressed and became more dependent on drugs. He then decided to quit drugs and was introduced to NA which through its teachings of hope of life helped him communicate with god and overcome his drug addiction. Members of his NA group were not arrested as stated in his May 2017 statement.
- Although he had stopped using drugs the applicant was viewed by family and friends as an unreliable person. He began to regret his past and decided to leave Iran to make a new future.
- The applicant obtained a fake passport in the name of another person and using that he departed Iran around December 2012. He has provided a copy of the passport he used and the E Ticket itinerary receipt.
- In 2017 in Australia the applicant connected with NA and began attending a group in Sydney.
- An NA group member talked to the applicant about his own conversion to Christianity and the applicant began attending the [Church 1] in Sydney [in] 2018. The applicant was baptised [in] 2018 and has provided a copy of the baptism certificate and a letter from the church's pastor.
- Soon after his baptism the applicant spoke to a person attending the [Church 2] and he decided this was a better church and stopped attending [Church 1] and began attending [Church 2] church. He has provided a letter from the [Church 2] pastor attesting to his participation in the church.
- The applicant fears he would be harmed in Iran for reason of his conversion, and he would not be able to hide his Christianity.
- He fears if he returned to Iran he may use drugs again.
- His representative advanced that the applicant fears harm as; a Christian convert from Islam; a member of the particular social group member of Narcotic Anonymous (NA) who would be facing persecution and discrimination and degradation respectively upon returning to Iran; a person who escaped National service in Iran due to not believing the legitimacy of Islam and the Islamic government; a person who escaped from Iran on a fake passport; a person who failed asylum after leaving Iran on a fake passport.

Factual findings

7. I have had regard to the applicant's comments that the May 2017 statement contained inaccurate information because he exaggerated his situation as advised by people smugglers and I note his apology in this regard. However I have some difficulty accepting the applicant's account noting that the May 2017 statement was completed after he had been living in the community in Australia for almost four years and more than four years after his contact with the people smugglers in [Country 1].
8. While I note the caution in that statement that it was completed in a limited time frame and that because of this it may contain errors or omissions I am not persuaded that this accounts for the applicant providing inaccurate or exaggerated information in this statement. Nor am I persuaded by comments of the applicant's representative that the May 2017 statement was completed in a session where the applicant was assisted by immature or inexperienced persons as being reasons for the inaccuracies.
9. It is contended that this statement was completed by those assisting the applicant on the basis of information contained in the applicant's Arrival Entry interview and that information he gave at that interview was simply repeated in the May 2017 statement. The Arrival Entry interview was conducted in January 2013 soon after the applicant's arrival in Australia and soon after his contact with the people smugglers in [Country 1] and noting his comments of the advice he was given by those people smugglers I accept that the information in the Arrival Entry interview may not be accurate in some regards. I also accept as plausible that when the applicant was completing his SHEV application with the assistance of [Organisation 1] the Arrival Entry interview formed part of the information gathering in the process. However I am not satisfied that this accounts for inaccurate information in the Arrival Entry interview being repeated in the May 2017 statement. In this regard I place significant weight on the fact that the May 2017 statement seeks to correct some information provided in the Arrival Entry interview indicating an awareness of the need for accuracy in the information given in the SHEV application. I also place weight on the fact that the May 2017 statement was endorsed as having been read back to the applicant with an interpreter and that he agrees with its contents. I am concerned that the applicant has submitted a statement in May 2017 which contains inaccurate or exaggerated claims, and I am not satisfied that the immaturity or inexperience of those assisting the applicant to complete this statement or the limited time available in which to do so accounts for the inaccuracies or exaggerations in this statement.
10. I am further concerned that in the May 2017 statement the applicant seeks to change information he provided at the Arrival Entry interview by claiming there was a confusion in the interpretation at that earlier interview. This information relates to discussion about the religion named as Zartosht. In the May 2017 statement the applicant advised that he had never been Zartosht but that his [relative A] is Zartosht and he goes on to state "maybe there was confusion in the interpretation". I have had regard to the audio recording of the Arrival Entry interview; initially at that interview the applicant was asked his religion and he stated he had no religion. Later in the interview the applicant was asked about his reasons for leaving Iran and he referred to religious reasons and that there was a person advocating a new religion that believes just in God and he and five other friends followed this. He was asked what religion he was following and he stated Zartosht. The applicant was then asked about any political involvement and at that stage the applicant began to speak about his [relative A]'s involvement in protests during the presidential election. There is no indication in the audio recording of any confusion in either of these matters. The applicant was interpreted as stating that he and five other friends were following a religious advocate and

when he was asked the direct question of the name of the religion he was following he stated Zartosht. The information about his [relative A] was discrete from this and related very specifically to political protests. Overall the Arrival Entry interview audio recording points to a free flowing discussion and while the interpreter and delegate sought to clarify some details at times, mostly related to spelling of names/places, there were no apparent interpreting difficulties. I am satisfied that at the Arrival Entry interview the applicant claimed to be a follower of religion he called Zartosht and I am concerned that in the May 2017 statement the applicant has been disingenuous and has sought to blame interpreting for the information he gave at that interview and which may be considered inconsistent with other claims he has made, namely that he had no religion.

11. Despite my concerns as discussed above I accept that asylum seekers may be influenced by others around them and that on arrival and in initial contact with officials they may be cautious about putting forward information and I take this into account. I accept the claims made in the May 2017 statement regarding being lashed and the arrest of members of NA are not true.

Identity

12. The applicant has consistently claimed to be an Iranian citizen and has provided identity documents in support of his claimed identity. I accept the applicant's identity as stated and that Iran is the receiving country for the purpose of this review.

Drug addiction and attend NA

13. Country information advises that drug addiction is prevalent in Iran and the country has one of the highest rates of drug use in the world.¹ I accept the applicant's claim that he used drugs in Iran and became addicted.
14. I accept that the applicant attended NA in Iran to deal with his drug addiction. Country information advises that NA maintains a large network in Iran.²

Smoking during Ramadan

15. It is the applicant's claim that he was arrested and detained for three days for smoking during Ramadan, but that he was not lashed as initially stated. The enforcement of the moral code or behaviour breaches are increased during holy periods such as Ramadan and I accept as plausible that the applicant came to attention for smoking during the day in a public place. Punishments vary and can include lashing, but the applicant has stated that he was not lashed but released by the court.³ I accept that he was detained for three days.

¹ United States Central Intelligence Agency 2012, "Iran, World Factbook", <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html> - Accessed 15 October 2012, CR0DEDD73378

² Payvand, "Narcotics anonymous in Iran", 8 June 2006, CX155475

³ Iran Human Rights Monitor (United States), "The Story Of Treatment Of People Accused Of Eating In Public In Ramadan", 26 June 2017, CXC90406620606; Center for Human Rights in Iran (United States), "Article 638 of the Penal Code provides up to two months' imprisonment or up to 74 lashes for openly committing a 'haram' (i.e. sinful) act in public. 'Arresting People for Eating in Their Cars During the Ramadan Fasting Month in Iran is Illegal'", 2 June 2017, CXC90406620605

Military service

16. Military service is compulsory for all Iranian males from the age of 18 years, unless otherwise exempt.⁴ The applicant claims that he commenced military service at the age of [age] years, being around [year], but only served for three months before absconding.
17. It is the applicant's claim that after he left his service he stayed with relatives and friends to avoid the authorities who were looking for him but that after about two years the interest in military deserters generally lessened and he was then able to return to the family home. I have significant concerns about the applicant's claims in this regard. The authorities periodically crack down on draft evaders or deserters and evasion for more than one year during peace time may result in criminal prosecution. Draft evaders may lose social benefits and civic rights, the right to set up a business and may be refused driver's licences.⁵ Yet for the period after he claims to have left the military and before joining his [relative A]'s business around 2007 the applicant claims to have been self-employed and working driving heavy vehicles. I find it difficult to accept that he was actively working including driving a heavy vehicle, albeit self-employed or casually, yet he did not come to the attention of the authorities. However, while I am concerned about the applicant's claim to have evaded detection as a military deserter for an extended period, his ability to continue to work and remain living in Iran may not in itself bring the applicant's claims into doubt.
18. I am however concerned that he claims to have avoided the authorities after absconding but other accounts indicate he had some interaction with Iranian officials. At his Arrival Entry interview the applicant stated that his National Identity Card was issued about six years earlier, when he was [age]; this indicates that the applicant obtained his National Identity Card around [year deleted]. The English language translation of the National Identity Card provided by the applicant states that it is valid to [date]; as National Identity Cards are provided with a seven year validity⁶ this would indicate this card was issued in [year]. In either circumstance the indications are that the applicant obtained a National Identity Card after he claims to have absconded from his military service and to have been moving around to avoid detection. Applicants for a National Identity Card must attend the Vital Records office (ONOCR) in person and present their documentation to obtain a National Identity Card, including their shenasnameh.⁷ It is important to note that the shenasnameh is required for the issue of the National Identity Card as the shenasnameh records, amongst other details, the holder's military service details.⁸ If the applicant had not completed his military service obligations as he claims his shenasnameh would reflect this, thereby alerting officials he interacted with. Even taking into account his claim that after a period the authorities did not continue to actively pursue or search for military deserters this interaction would have highlighted and brought to attention the irregularity with his military service. I am surprised that the applicant, who claims that someone from Sepah visited his parents to follow up about his military service, and that he did not have a military completion card, and was so concerned that the authorities would take him back to complete his service that he remained in hiding for two years and took refuge in drugs obtained his National

⁴ UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84 Middle East Eye, "Iran to crack down on evaders of military service", 20 June 2016, CX6A26A6E9686

⁵ *ibid*

⁶ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

⁷ *ibid*

⁸ Iran: CI170731113710822 – Passport details and application – Shenaname details and application – National identity card details and application – possession of passport for children with non-national father, COISS, 15 September 2017, CR8DFDCEA313

Identity Card during this time, which would have necessitated visiting the ONOCR and providing his shenasnameh and the possibility of being detected as a deserter.

19. I am also concerned that his claim that he was arrested and detained during Ramadan yet did not come to attention as a deserter is not plausible and casts further doubt on his claim to have deserted his service. The applicant has stated that during the process of arrest and detention or court appearance for the smoking infraction no one looked at his identity card or shenasnameh; he further stated that when people are taken to the police station the authorities do not search their name on the systems. He claims to have been arrested and detained for three days and then presented to a court and that in this time no official asked to see any identity documents and he was merely asked his name. I do not accept the applicant's account in this regard; Iran maintains sophisticated record systems and I do not accept as plausible that a person would be arrested, detained for three days and presented to a court without an identity check against documents or official systems. A Human Rights Monitor report citing accounts of people arrested during Ramadan for behaviour breaches advises that the police "report to the Deputy Prosecutor the identity of the accused, his age" and that after sentencing offenders are "conducted to the identity recognition and fingerprint section".⁹ I do not accept that the applicant was merely asked his name in this process and that as a result he avoided being detected as a military deserter. The indications are that identity checks are conducted in the arrest, detention and court process and I am satisfied that the applicant's status as a deserter would have been identified in this process, particularly noting the various reports before me which advise that the authorities crack down on military deserters.
20. Considered overall I find that the information before me does not support the applicant's claim that he deserted from his military service and that he has not completed his service obligations and went into hiding to avoid detection as a deserter and that officials visited the family home in search of him. I note the country information that advises the authorities pursue and prosecute deserters and draft evaders. The applicant's ability to be issued a National Identity Card after the claimed desertion and his release from detention after the smoking breach without coming to attention as a deserter indicates that he completed his military service obligations. I do not accept the applicant's claim that he absconded from military service, or that he went into hiding or that officials visited the family home in search of him. I am satisfied that the applicant completed his military service obligations. It follows that I do not accept he is a member of the particular social group a person who escaped National service in Iran due to not believing the legitimacy of Islam and the Islamic government.

[Relative A]'s activities

21. In the May 2017 statement it is claimed that the applicant's [relative A] participated in anti-regime protests and is still active in this regard. In the Arrival Entry interview the applicant also recounted his [relative A]'s political activity, stating he participated in a protest during the presidential election. The results of the 2009 presidential election were contested and millions of supporters of losing candidates protested at the outcome.¹⁰ I accept as plausible that the applicant's [relative A] was involved as claimed and that he was mistreated by authorities seeking to break up the protests.

⁹ Iran Human Rights Monitor (United States), "The Story Of Treatment Of People Accused Of Eating In Public In Ramadan", 26 June 2017, CXC90406620606

¹⁰ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

22. The claim that the applicant's [relative A] follows a religion he referred to as Zartosht was advanced in the May 2017 statement. I have already discussed the matter of the information given by the applicant at the Arrival Entry interview and that in part this may not be an accurate account of events. In this regard I am willing to accept that the applicant himself is not an adherent of Zartosht as is recorded in the Arrival Entry interview report. It is important to note that the applicant has not stated that the reference to the religion of Zartosht is an exaggeration or misinformation of the type he stated he made on the advice of people smugglers to enhance his protection claims. It is his claim that the information in the Arrival Entry interview report is not an accurate reflection of his statements due to interpreter confusion. But I do not accept that he stated at that interview that his [relative A] was an adherent of Zartosht. I have already noted my concerns about his explanation regarding confusion in the interpreting at the Arrival Entry interview and I have found that he stated at that interview that he was the follower of Zartosht, not his [relative A]. In this regard I also take into account that when asked at his Arrival Entry interview about religion he stated that his family was Muslim, and while he stated he did not have a religion himself he did not differentiate any religion for his [relative A] from the Muslim beliefs of his family. I also consider it surprising, in the light of the applicant's claim to fear harm on the basis of his own religious conversion and his statement that apostates are condemned to the death penalty, that he did not advance any claims of harm to his [relative A] regarding his [relative A]'s religious conversion and there is no indication that his [relative A] has faced any problems or harm on the basis of following this religion. Overall I am not satisfied that the claim his [relative A] is an adherent of Zartosht is genuine. I do not accept this claim and I find that the applicant has fabricated this in an attempt to explain or qualify information which he provided at the Arrival Entry interview.

Fake Passport and illegal departure

23. I have not accepted that the applicant absconded from his military service and there is no indication that the applicant would otherwise be prevented from obtaining a passport and leaving Iran legally. Furthermore the country information does not support his claim that he departed Iran illegally using a false passport.
24. I have considered the copy of the passport and the E Ticket itinerary receipt provided by the applicant and his representative's oral submissions at the SHEV interview that he is aware of many cases of departure from Iran using false or fraudulently obtained documents. I have also taken into account the delegate's concerns regarding the authenticity of these documents and the difficulty in accepting scanned copies of original documents where it is not possible to check authenticity, particularly in regard to the passport and the claim that it is the applicant's photograph in this passport. Notwithstanding the representative's comment regarding the prevalence of illegal departure from Iran using false documents, as discussed below, independent and reliable country information from a range of sources reports that this would be difficult. I give these documents little weight in supporting the applicant's claims.
25. The applicant claims that he paid money to a friend who used the applicant's photograph and obtained a passport in his, the friend's name. Iran maintains sophisticated systems for issuing passports and controlling the movement of Iranians exiting and entering the country.¹¹ The

¹¹ Australia: Department of Immigration and Citizenship (DIAC), "Entry procedures and passport control at Dubai International Airport", 13 April 2012, CX286895; Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114

General Department for Passports, a part of the police department, is responsible for passport applications and applicants must present in person with their documents and in this process the identity of the passport applicant is confirmed.¹² Country information indicates that the passport issue process includes checking against official databases recording the personal details of citizens and linked to their unique identity number and that at the time the applicant obtained the claimed passport improvements in the system had curtailed the use of forged passports.¹³ Furthermore DFAT advises that even in the event of obtaining a passport in the name of another person “sophisticated border control procedures would make it difficult to use in order to leave Iran”.¹⁴

26. As noted I have not accepted that the applicant absconded from military service and there is no indication that he would otherwise have been prevented from leaving Iran I do not accept that the applicant obtained a passport in the name of another person and used this to depart Iran. I do not accept that the applicant departed Iran illegally

Religion

27. The applicant claims to have become disillusioned with Islam as a teenager and to have ceased practising and to have renounced Islam. Country information advises that many young Iranians do not follow religious practice and that non-practising Muslims now form a large part of the population of urban Iranians and many Iranians do not regularly attend mosque or Friday prayers¹⁵ and I accept the applicant’s claim to have ceased practising as a Muslim and to have renounced Islam.
28. The applicant has provided evidence to support his claim that he has attended [Church 1] and [Church 2] and been baptised. I note that there is some variation in his account of when he began to attend [Church 1] and the letter provided by the church but I accept that he commenced attending [Church 1] around May/June 2018, was baptised [in] June 2018 and began attending [Church 2] in July 2018.
29. While I accept that the applicant has engaged with Christianity in Australia s.5J(6) requires that any conduct engaged in by a person Australia is to be disregarded unless the applicant satisfies me that he engaged in the conduct otherwise than for the purpose of strengthening his claim to be a refugee. The applicant stated that he has not engaged in Christianity for the

¹² Danish Refugee Council, Landinfo and Danish Immigration Service, “On Conversion to Christianity: Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures”, February 2013, CIS25114

¹³ Immigration and Refugee Board of Canada “Iran: The passport; its features and procedures for application including whether an applicant who was refused a passport would be notified and have recourse; the use and prevalence of fraudulent or counterfeit passports to exit Iran; ease of illegal entry into and exit from Pakistan, Turkey, and Azerbaijan overland, and Oman and the United Arab Emirates by sea; whether authorities seize passports from certain individuals to prevent their departure from the country (2004 - February 2006)” 3 April 2006, OGF10222E67; Department of Immigration and Border Protection (DIBP) Country of Origin Information Services Section (COISS) “Iran: CI170731113710822 – Passport details and application – Shenaname details and application – National identity card details and application – possession of passport for children with non-national father” 15 September 2017, CR8DFDCEA313; Danish Refugee Council, Landinfo and Danish Immigration Service, “On Conversion to Christianity: Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures”, February 2013, CIS25114; UK Home Office, “Country Information and Guidance – Iran: Illegal Exit,” 20 July 2016, OGD7C848D2; UK Home Office, “Iran May 2007”, 25 May 2007, iran-250507; DFAT, “DFAT Report – Iran”, 21 April 2016 CIS38A8012677

¹⁴ DIBP COISS “Iran: CI170731113710822 – Passport details and application – Shenaname details and application – National identity card details and application – possession of passport for children with non-national father” 15 September 2017, CR8DFDCEA313

¹⁵ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

purpose of strengthening his claim and he stated that when he first began attending church he was not initially aware of the significance of his activity as a protection claim. The applicant explained that he started attending NA in 2017 and was introduced to Christianity by another NA member who encouraged him to attend church as there was a similar spirituality between the two.

30. I have some concern that the applicant did not commence to engage with Christianity until after a significant time in Australia and after lodging his SHEV application. His attendance at [Church 1] and the date of his baptism also occur in close proximity to him seeking immigration advice and his appointment of his representative later in June 2018. While I accept that coincidences may occur the timing of the applicant's interest in attending church and Christianity, coming around the same time that he sought immigration advice, brings into doubt that his conversion was for reason of religious beliefs.
31. I am also concerned that his account of his path to Christianity and baptism indicates that he adopted the religion very soon after his first introduction and does not reflect being "passionate to know more about [the] faith and custom" as he stated in his January 2019 statement. The applicant's account in that statement is that he began attending [Church 1] , spoke at length with the pastors, was given a Farsi language bible and attended bible studies. At his SHEV interview the applicant was asked more detailed questions about his engagement with [Church 1] and he stated he began attending about one month prior to his baptism and had attended two bible studies classes. The letter from the [Church 1] advises that the writer has known the applicant since [date] 2018, that a pastor spoke to him about Christianity and Islam, that he attended church services about four times after this date (no date was specified) and was baptised on [in] June 2018, no indication was given that he attended bible classes. I am concerned this does not support the claim he was passionate to learn and develop his knowledge.
32. While the applicant claimed to be "passionate" about the faith from his initial contact with the [Church 1] the letter from [Church 1] notes only a few attendances at services, him leaving the church because the church was too busy with too many people and that they "gave him papers in a folder with these lessons but he is unable to find it". I am not persuaded that this points to a passionate devotee as the applicant claims to have been at this time. Overall the two accounts point to the applicant attending church for a period of about a month, or less, and deciding to be baptised within a short period of time and at most he attended two bible classes and could not locate the religious lesson papers given to him. At his SHEV interview the applicant spoke of wanting to learn more and to be sure before committing himself to Christianity, yet his actions in becoming baptised within a short period of time bely his claims to have converted only after consideration and being sure of his faith.
33. The applicant claims to have been enlightened by his experience at [Church 1] to the extent of taking the significant step of converting to Christianity and being baptised, in part because of the people who welcomed him into the church, and because he had been isolated in Australia but found such a nice community in the church who helped him "surrender [his] life to Jesus". Yet, despite the positive experience he described, an experience that drew him to become a Christian, he left that church soon after his baptism. I take into account the evidence before me is that he then began attending another church and in that regard his departure from [Church 1] does not indicate he abandoned Christianity. But his departure from the church, the teachings and the community at [Church 1] that he states drew him to Christianity and was the reason he adopted the faith does cast doubt on his claim to have been so enlightened by his experience at [Church 1] that within a few weeks of first attending there he embraced Christianity.

34. The High Court held that an applicant seeking to rely on conduct engaged in while in Australia, must satisfy the decision maker that the conduct was not engaged in for the sole purpose of strengthening their claim to be a refugee and places an onus on the applicant to show that their conduct was not for the sole purpose of strengthening their claim to be a refugee (that is, it was for purposes other than solely strengthening their refugee claim).¹⁶ The applicant has failed to so satisfy me. Considered overall, from the information before me and taking account of my finding that the applicant has been willing to fabricate his claim of military desertion and leaving Iran illegally I am not satisfied that the applicant has engaged in Christianity, including baptism and participating in church services and other activities otherwise than for the purpose of strengthening his protection claims. I have taken into account his attendance at [Church 1] and baptism and regular attendance at services at [Church 2], but this does not negate my very serious concern that his involvement in the churches and his conversion to Christianity has been contrived to strength his protection claims. I accept that the applicant has the support of [Senior Pastor] from [Church 2] but I am not satisfied that he is a genuine adherent of the Christian faith.

Refugee assessment

35. 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

36. 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.

37. Under s.5J(6) of the Act, in determining whether a person has a well-founded fear of persecution, any conduct engaged in by the person in Australia must be disregarded unless I can be satisfied that the person engaged in the conduct otherwise than for the purpose of strengthening their claim to be a refugee. As already noted I am not satisfied that the applicant engaged in Christianity, including baptism, church services and other activities,

¹⁶ High Court in *Minister for Immigration and Citizenship v SZJGV; Minister for Immigration and Citizenship v SZJXO*

otherwise than for the purpose of strengthening his claims to be a refugee. I have therefore not considered that conduct in assessing whether he has a well-founded fear of persecution in Iran.

38. As already noted Iranians not practising Islam and non-believers now form a large part of the population of urban Iranians and many Iranians do not regularly attend mosque or Friday prayers. While apostates can be punished under sharia law for leaving the Muslim faith prosecution of cases is rare¹⁷; DFAT advises apostasy and blasphemy cases are no longer an everyday occurrence in Iran and that death sentences are rare. However, DFAT reported that in March 2017 the Supreme Court upheld the decision of a criminal court to sentence a 21 year old man to death for apostasy following his arrest for social media posts considered critical of Islam and the Koran while on military service. As at March 2018 the death sentence had not been carried out. The court also convicted two co-defendants of posting anti-Islamic material on social media, sentencing them to prison.¹⁸ Notwithstanding this case, overall the country information supports that apostasy and blasphemy cases are rare; reporting in 2016 DFAT advised that the last known application of the death penalty for apostasy occurred in 1990 and in 2011 an apostate was sentenced to death however, following international pressure, the conviction was subsequently commuted and the death penalty was dropped. The Austrian Centre for Country of Origin and Asylum Research and Documentation reported the execution in 2011 of an IRGC Commander who was convicted of apostasy but I note that this person was also claiming to be God and that he was charged with apostasy and “encouraging prostitution” and the “nature of [his] activities and religious claims are not clear”.¹⁹ DFAT “considers it unlikely that individuals will be prosecuted on charges of apostasy”²⁰ and the Danish Immigration Service reported in 2009 that it was not aware of recent cases at the time of reporting.²¹ Country information indicates that apostates may come to the attention of the authorities through public manifestation of a new faith²²; however I have not accepted the applicant has adopted a new faith. Overall the country information does not point to the applicant experiencing harm on return to Iran for reason of his religious opinions and non-observance or renunciation of Islam.
39. I have accepted that the applicant used and became addicted to illegal drugs and attended NA in Iran and also attends NA in Australia. I accept that he may continue to attend NA should he return to Iran. However I am not satisfied that he would experience harm for reason of his past or any future engagement with NA or for being a member of the particular social group espoused as a member of NA who would be facing persecution and discrimination and degradation respectively upon returning to Iran. As already noted drug abuse is widespread in Iran and the country information indicates that rehabilitation programs are available for treatment and the authorities support drug users to manage their addiction.²³ A number of agencies work in the field as do a number of non-governmental

¹⁷ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

¹⁸ DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226

¹⁹ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

²⁰ DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677

²¹ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

²² ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622; Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; LSE Middle East Centre (United Kingdom), “The Revival of Nationalism and Secularism in Modern Iran”, November 2015, CISEC96CF14725

²³ Washington Post, Vick, Karl 2005, “AIDS crisis brings radical change in Iran’s response to heroin use”, 5 July 2005, CRODEDD73378; UNAIDS, “Report on the Global AIDS Epidemic”, 23 November 2010, CRODEDD73378; New York Times, Nazila Fathi, “Iran fights scourge of addiction in plain view, stressing treatment”, 27 July 2008, CRODEDD73378; Payvand, “Narcotics anonymous in Iran”, 8 June 2006, CX155475

organisations and attending an event in 2011 to mark International Day against Drug Abuse and Illicit Trafficking then President Ahmadinejad “extended his support by promising to put the rehabilitated society in priority for housing and employment”.²⁴ I am not satisfied that there is a real chance the applicant would experience harm for attending NA.

40. The applicant fears that he may go back to using drugs should he return to Iran. While I accept that this may be distressing for him and his family I am not satisfied that he would experience harm as a result. As noted there are widespread facilities in Iran treating drug addicts and providing rehabilitation services and support and I take into account that he availed himself of such services in the past in Iran.
41. I have accepted that the applicant’s [relative A] was involved in political protests and that he was mistreated by authorities. The applicant described these at the Arrival Entry interview as the Presidential election. The 2009 Presidential election results were disputed by the losing candidates leading to widespread protests which were violently suppressed. Thousands of demonstrators were detained and thousands beaten and harassed by security forces at the time and it is estimated that over one million people attended the protest in Teheran.²⁵ While protest organisers and journalists and other high profile activists may continue to be monitored, the country information does not indicate that ordinary demonstrators are of ongoing interest to the authorities. More recent protests occurred in 2017/2018 largely based on the economic situation in Iran. Similar to the 2009 protests DFAT assesses that those identified as having played a leading role in the 2017-18 protests are likely to face official discrimination, including arrest, monitoring and continuing harassment but that it is unlikely that authorities will similarly target ordinary protesters whose motivation to demonstrate was to protest economic difficulties. Noting that in his May 2017 statement the applicant described his [relative A] as not being a member of a political group I am not satisfied that the applicant would face any harm on the basis of his [relative A]’s activities or that he would be imputed with a profile of concern on this basis.
42. I note his comment that he did not participate in protest activities with his [relative A] through fear of repercussion and I have considered whether he would do so should he return to Iran, or if he did not would it be for reason of an unreasonable modification of behaviour. I note the applicant has made statements that he does not like the restrictions of the Islamic regime and life but there is no indication of any desire to pursue political or social issues or any following of activists or activist causes. There is no indication that the applicant has been involved in any protests or activist causes during his time in Australia, despite the wider freedom to do so. While there is reference to the applicant having a social media account this was in the context of discussing identity with the delegate and having an alias name on social media and there is no indication that he uses social media to follow activist or anti-government causes or to promote the same or that he seeks or desires to do so. I am not satisfied that the applicant desires to be involved in protest or activist action and I am satisfied his behaviour is a reflection of his opinion and does not involve him taking any steps to modify his behaviour. I am not satisfied that the applicant has a well-founded fear of persecution in Iran on the basis of his actual or implied political opinion.
43. I accept that Ramadan and moral code breaches may attract attention and that the applicant was detained for smoking during Ramadan. I note the applicant’s frustration about Islamic practice and restrictions on behaviour and the monitoring of people’s activities and dress.

²⁴ Tehran Times, “Rehabilitated Drug Addicts Show Nothing is Impossible”, 27 June 2011, <http://old.tehrantimes.com/index>

²⁵ Danish Refugee Council, Landinfo and Danish Immigration Service Iran, “On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures”, February 2013, CIS25114

Country information reports that the authorities enforce the moral code, including dress and appearance, and that there have been incidents of harassment of men for violating the dress code, but that this is likely to have been the result of either over-zealous enforcement by individual security authorities outside the major cities, or because the individual has come to the attention of authorities for separate activities, particularly political activism.²⁶ I accept that the applicant would be required to adhere to the moral code and Ramadan restrictions but I am not satisfied that this amounts to serious harm. The applicant has not indicated that he would continue to breach Ramadan restrictions in the future should he return to Iran or otherwise breach the moral code. However, in the event that the applicant returned to Iran and did smoke in public during Ramadan or otherwise breached the moral code I accept that he could be arrested as in the past, but noting the country information before me I am not satisfied that there is no more than a remote chance that the applicant would face serious harm on this basis in the foreseeable future in Iran. Case law states that a generally applicable law will not ordinarily constitute persecution because the application of such a law does not amount to discrimination. In this case, the evidence does not support a conclusion that the law is selectively enforced or that it is applied in a discriminatory manner. I find that any punishment of the applicant for Ramadan or moral codes breaches would be the result of a law of general application and does not amount to persecution for the purpose of the Act.

44. I have not accepted that the applicant used a fake passport to depart Iran; however I accept that he does not have a passport and to return to Iran would require documentation to be issued to facilitate travel. However Iran has historically refused to issue travel documents to facilitate the return of involuntary returnees.²⁷ I find that if the applicant is returned to Iran it would be on a voluntary basis. The International Organization for Migration was cited by the UK Home Office as reporting “Iranians who have left the country on their passports and are returned on a Laissez-passer will be questioned by the Immigration Police at the airport. This questioning may take a few hours, but according to IOM nobody has been arrested when travelling back on a Laissez-passer”.²⁸ I accept that the applicant may be interviewed on return but I do not accept that he would be harmed in the process or that such questioning would amount to serious harm.
45. Nor do I accept that he would experience any harm as a returning asylum seeker. Since the 1979 revolution many Iranians have left the country in large numbers to live abroad and “international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.”²⁹ The country information does not indicate that returning asylum seekers are routinely imputed with an anti-government political opinion or harmed because of their asylum claim. Reports of asylum seekers being arrested on return relate to those with an existing high profile, particularly political activists.³⁰

²⁶ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

²⁷ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

²⁸ UK Home Office, "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, OGD7C848D28

²⁹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

³⁰ Center for Human Rights in Iran (United States), "Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran", 18 October 2017, CXC90406615858; Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288; Iran Human Rights (Norway), "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway" 20 September 2017, CXC90406614387; Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970; UK Home Office, "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, OGD7C848D28

46. I have considered the applicant's circumstances as whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future should he return to Iran.

Refugee: conclusion

47. 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

48. 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

49. 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.
50. In assessing whether the applicant has a well-founded fear of persecution in Iran under the Refugee criterion, I have disregarded conduct engaged in in Australia for the sole purpose of strengthening his refugee claim, being his baptism and participation in church services and activities. However, I must have regard to that conduct in assessing his claims for complementary protection.
51. As found above, I am not satisfied the applicant is a genuine Christian convert and I do not accept that he has any desire to practice Christianity in Iran should he return. As already noted the country information does not point to the applicant experiencing harm on return to Iran for reason of his religious opinions and non-observance or renunciation of Islam. I have considered country information to assess whether his engagement in Christianity in Australia, including baptism and participating in church services and activities may result in significant harm to the applicant in Iran as an apostate and Christian convert.
52. The Danish Immigration Service reported in 2009 that "asylum seekers and refugees are kept under strict surveillance by any Iranian embassy and its network of informers. Thus, conversion abroad may very likely come to the knowledge of the Iranian authorities". However the same report cited a Christian church in Tehran which "confirmed that if a convert returns to Iran from a country where he has converted, he might face difficulties. However, the source has not heard of any such cases but added that sometimes converts
-

might risk the death penalty should they return to Iran".³¹ Furthermore DFAT advises that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims and converting to Christianity.³²

53. I am not satisfied that the applicant is a genuine convert to Christianity and I do not accept that he would be perceived as such on return to Iran. The country information before me indicates that even genuine converts are unlikely to come to harm in Iran. While the applicant been a regular participant in church services and activities I am not satisfied that his involvement would be known to the authorities, or that this would raise concern in Iran if known. I am satisfied the applicant would not pursue Christianity in Iran. The information before me does not support that the applicant's engagement in Christianity in Australia would be known in Iran, or that if it was, it would be viewed as genuinely converting to Christianity. I am not satisfied that any of these factors would give the applicant any actual or perceived profile as an apostate and I am not satisfied that there is a real risk that he would experience significant harm on this basis should he return to Iran.
54. I have found being questioned on return to Iran or adhering to Ramadan restrictions or the moral code does not amount to serious harm. I also find this does not amount to significant harm as defined. The harm feared by the applicant does not include deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined.
55. I have found that there is not a real chance that the applicant faces harm on the basis of his religious opinion, political opinion, drug use and engagement with NA, or returning to Iran as an asylum seeker or should he breach the moral or Ramadan restrictions. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test,³³ and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

Complementary protection: conclusion

56. 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.

³¹ Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008", April 2009, CIS17329

³² DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

³³ *MIAC v SZQRB* (2013) 210 FCR 505

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.