



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06645

Date and time of decision: 8 July 2019 10:21:00

G Deal, 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 applicant (the applicant) claims to be from Iran. [In] July 2013 he arrived by boat in Australia. On 7 July 2017 the applicant lodged an application for a Protection Visa (PV application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 21 May 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate did not accept the applicant's younger brother had been jailed in Iran since 2006, that the applicant had an on-going and genuine commitment to the Christian faith or a profile of on-going interest to Iranian authorities. The delegate concluded the applicant was a non-practising Muslim, had a fake military exemption card, experienced past harassment, assault and brief detention because of alcohol consumption, his wife's attire and participation in a protest. However, the delegate did not accept the applicant satisfied the definition of refugee, or faced a real risk of significant harm and did not find the applicant was a person in respect of whom Australia had protection obligations.

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). On 13 June and 20 June 2019 the IAA received written submissions from the applicant which contain new information.
4. On the 13 June 2019 the IAA received a seven page legal submission, a six page statutory declaration and a roughly two page submission detailing why there were exceptional circumstances to justify considering any new information in the submissions. Both the legal submission and statutory declaration mostly comprised statements about why the applicant disagreed with the delegate's decision and highlighted matters overlooked by the delegate in her decision. Relevantly paragraph 23 of the Practice Direction for Applicants, Representatives and Authorised Recipients (Practice Direction) states that for the purposes of the IAA review, written submissions on why the applicant disagrees with the decision of the Department and detailing any claim or matter that was overlooked, can be provided. Paragraphs 24 and 25 of the Practice Direction state that any written submission must be concise, no longer than five pages, and that longer submissions that do not comply with these requirements may be returned. Paragraph 27 of the Practice Direction states "*If you want to give us new information, you must clearly identify which parts of the material you give to us is new information, including any new information referred to in submissions*". The migration agents only revised the legal submission broadly stating that the statutory declaration was the applicant's personal testimony and not part of the submission and that they both complied with the Practice Direction. I am unpersuaded by the migration agent's submissions in this regard as the statutory declaration clearly contained statements about why the applicant disagreed with the delegate's decision and matters overlooked and formed part of the submission, neither clearly identified the new information and together they still well exceeded the five page limit. However, the revised legal submission was reduced from seven pages to five pages. I am mindful of my discretion to consider longer submissions in certain circumstances, as noted by the Full Federal Court in *DGZ16*.¹ In the circumstances I have decided not to further delay the matter and to consider all submissions.

¹ *DGZ16 v MIBP* [2018] 258 FCR 551.

5. The applicant submits that there are exceptional circumstances to justify consideration of the new information. These broadly comprise his lack of English language skills and familiarity with Australian migration law, detention and incarceration which also made it difficult for him to obtain legal assistance, the seriousness of his claims, the prolonged processing period, the IAA's limited form of review, the applicant's lack of representation at the primary stage and lack of ongoing immigration assistance and the fact that no legal submissions or country information in support of his claims were provided to the Department. It is also submitted that the information in the statutory declaration is credible as it is in a statement signed by the applicant and largely consistent with his claims before the Department and. The applicant submits the information could not have been provided to the delegate before her decision was made and may have affected consideration of the applicant's claims before the Department because it clarifies concerns raised in the delegate's decision and may make a material difference to the outcome of the IAA's decision. It is also submitted that the applicant be given an opportunity to respond should the IAA determine the requirements under s.473DD are not satisfied in relation to any new information.
6. It is not uncommon for applicants to lack English language skills and a familiarity with Australian migration law. Nor is it rare or unusual for an applicant to be in detention, incarcerated, to lodge a visa application without supporting country information or for the processing of a visa application to take some time. The same firm of migration agents assisted with and lodged the applicant's visa application, supporting documents after the PV interview, and continue to assist the applicant. While they have continually asserted that due to their limited capacity they have been unable to provide on-going assistance to the applicant I consider the applicant has been ably assisted by them with his application at both the primary and review stages. I also do not accept that information should be viewed as credible simply because it appears in a signed statutory declaration and consider the submission that the information is consistent with his claims before the department and that it reinforces an over-generalisation. While the applicant has not identified the new information in his submission, as required under the Practice Direction, the applicant has submitted more than two pages detailing why the information provided, if it is new information, satisfies the requirements of s.473DD. I consider he has had adequate opportunity to put forward these submissions, he has not alluded to what additional reasons would be provided and I do not consider a further opportunity warranted in the circumstances.
7. The applicant refers to two publications (published in 2001 and 2004, respectively) in his submissions in support of assertions regarding inconsistencies in evidence and that he may be imputed a Christian. This is new information. Only citations were provided. No copies or extracts of the parts of the information, on which reliance was placed, as required under the Practice Direction, were provided. Even if I were to accept them in spite of this non-compliance, I am not satisfied s.473DD is met. I have listened to the PV interview and during that interview the delegate was thorough in raising a large number of issues in relation to the applicant's evidence, including in relation to inconsistencies in his evidence and his claimed conversion to Christianity. I am not satisfied the information could not have been provided to the delegate before her decision was made. The new information does not appear to contain personal information. Both publications are dated. Further, other more recent information before me addresses reasons for inconsistencies in an applicant's evidence and the treatment of Christians in Iran. I am not satisfied as to the matters in s.473DD(b). I am also not satisfied exceptional circumstances exist to justify consideration of the information.
8. In his submission the applicant provides excerpts from a number of publications broadly in relation to the treatment of Christians in Iran, including Muslim converts, and protestors in Iran in 2018. This is new information. Each of these publications appears to have been published

before the delegate's decision. Neither a copy nor an extract of the part of the publication, from which each of these excerpts was taken, as required under the Practice Direction and to enable the IAA to ensure the accuracy of the excerpts, was provided. The applicant's Christianity was squarely at issue in the PV interview and I am not satisfied the information about the treatment of Christians in Iran could not have been provided to the delegate before her decision was made. Other recent country information before me addresses the treatment of Christians and political protestors in Iran. The information does not contain personal information. I am not satisfied exceptional circumstances exist to justify consideration of the information or that s.473DD(b) is met.

9. The applicant told the Department that he was of [Country 1 ethnicity] and that he had obtained a fake military exemption card in Iran. The applicant now provides new information in relation to this. He will be harmed because of his [Country 1 ethnicity]. He will be subjected to a large monetary penalty and jailed and forced to practise Islam when completing his national service. The applicant also briefly mentioned that two people returning from [Country 2] were arrested at the airport and imprisoned on charges of Christianity. Other than stating he was of [Country 1 ethnicity] the applicant did not mention any claimed incidents of harm because he was [of Country 1 ethnicity] or detail any fears of harm specifically because of his ethnicity. The new information is also brief and unsupported. I am not satisfied exceptional circumstances exist to justify its consideration.
10. The applicant has provided new minor additional detail in relation to evidence previously provided to the Department about his wife's ill health and his claimed 2007 detention including that his wife has attempted to commit suicide many times and that he was warned by the Islamic Revolutionary Guard Corps after his release in 2007. This is new information. In the PV interview the applicant's claimed detention in 2007 was squarely at issue and I am not satisfied the information could not have been provided to the delegate before her decision was made. The new information is brief. It is also not apparent to me how these details are material to the applicant's central claims for protection. I am not satisfied exceptional circumstances exist to justify consideration of the information.
11. The applicant's claimed conversion to Christianity and the events leading up to this was before the Department. However in her decision for a number of reasons, including the applicant's level of understanding of Christianity and very recent acquisition of a bible and baptism she did not accept the applicant was genuinely committed to the faith and considered the baptism opportunistic. The applicant has now provided new detail in relation to a number of matters related to when he first became involved in Christianity including his delay in obtaining a Farsi bible, his [social media] posts, harassment, how his wife was recently compelled to tell his family about his conversion and how they now want the applicant killed and that he will attend church in Iran and feels compelled to spread the gospel of Jesus Christ, he fears the authorities, the public and his family will hurt or kill him and his family because of this and his wife's family will report him. The information provided is very detailed and addresses gaps identified by the delegate in the PV interview and in her decision and relates to the applicant's central claims. While I have some issues with this new information, I am satisfied exceptional circumstances exist to justify its consideration.
12. The applicant told the Department that he drank alcohol and took drugs in the past. He has now provided new information and claims in relation to this, stating that he was addicted, has fought the sickness, attended Narcotics Anonymous and Alcoholics Anonymous while in prison and when he regained his health he promised himself he would never relapse. However, he states that with the stress of being returned to Iran and without the support he has in Australia, he worries that the "sickness of alcohol" may come back into his life and if he is

caught the punishment would be more severe given his past offence. While I have some issues with the new information, based on the evidence he provided to the Department I consider it credible. It is also somewhat detailed. I am satisfied exceptional circumstances exist to justify its consideration.

13. The applicant requests the opportunity of an interview in person to explain what he has said in his statutory declaration noting his PV interview was conducted over the phone. The applicant was in immigration detention necessitating the phone interview at that time and did not complain about this at the time or after the PV interview. Further, the delegate's findings were largely based on the applicant's responses to her questions and having listened to the audio there was nothing to suggest technical difficulties. The applicant was ably assisted by the same firm of migration agents with his visa application, with lodging supporting documentation with the Department after the PV interview and at the review stage. The applicant provided evidence at his arrival and PV interviews. He provided supporting information to the Department after his PV interview, after being given an extension of time to do so. He has only indicated he would explain the contents of his statutory declaration and has not alluded to what other information would be provided. I do not consider a further interview is required in the circumstances. I have decided not to obtain further information from the applicant at interview or otherwise.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:

- He is a [age] year old Iranian male from Tehran. His parents, some siblings and his wife and [children] (who are supported by his wife's family) live in Tehran.
- In about 2003 he stopped believing in Islam and practising this faith. His parents and his wife's family, some of whom were members of the *Sepah*, did not like this and told him to pray and act like a Muslim.
- His younger brother also stopped believing in and practising his Muslim faith and was vocal about this. A neighbour, who was in the *Sepah*, was upset by this and his younger brother was eventually arrested and put in jail and threatened with execution for being anti-Islam. He is still incarcerated. Their neighbour also alerted the authorities to the applicant at this time.
- In 2006 he was taken by the *Basij* for drinking alcohol and detained in a police station for three days and received 80 lashes for this offence. He suffered depression after this incident and was prescribed tranquilising medication by a doctor.
- In about 2007 he was taken by the *Sepah* and imprisoned for about a year and threatened with death because he did not follow the Islamic faith. The facilities were unsanitary and he was not allowed regular showers and was harassed. He was released with the assistance of [relatives] who had connections to the *Sepah*.
- In 2009 he participated in protests as part of the Green Movement and was arrested and briefly detained by the police.
- In about 2010 he was beaten by the *Basij* at a checkpoint after a dispute with them and injured.
- He was regularly harassed by the *Basij*. Toward the end he kept a low profile as he feared going out. He feared for his life and fled Iran for Australia in June 2013.

- While in Australia he fell in with the wrong crowd, abused alcohol and took drugs and eventually found himself in jail. He subsequently converted to Christianity. He has shared anti-Islamic and Christianity posts on his [social media] profile. He has been harassed in prison and immigration detention because of his Christian practices. After recently finding out about his Christian conversion his family in Iran want him dead. He will attend church in Iran and feels compelled to spread the word of Jesus Christ. He fears being subjected to the death penalty or otherwise harmed by the authorities, his and his wife's family and the public and being reported to the authorities. He also fears his family might be harmed.
- He obtained his passport using a fake military exemption card and so left by unlawful means and will be punished for this. He fears he will abuse alcohol again if returned to Iran and that the punishment for a second offence will be even more severe. His data was subject to the 2014 Departmental data breach and fears being harmed in connection with this. He has been in Australia since 2013 and will be a failed asylum seeker from Australia.

Factual findings

15. Based on the applicant's evidence, including his documentary evidence I accept he is a [age] year old male of Iranian nationality.

Christianity

16. One of the applicant's main claims centres on faith. He claims he converted from Islam to Christianity and has a deep and on-going commitment to the faith. The applicant said he was a Shia Muslim in the arrival interview although in his visa application, he indicated he was not a practising Muslim in Iran and said he did not mention this in his arrival interview because he feared his information would not be kept confidential. He was a non-practising Muslim in Iran for some 10 years before coming to Australia however given the sensitivities around faith in Iran I am willing to accept this explanation. In his PV interview the applicant said that he obtained a bible in Farsi some six to eight weeks earlier, as soon as he was placed in detention, because he was unable to obtain one while in prison, that he attended church weekly in immigration detention and bible studies and was baptised [in] March 2019 while in immigration detention (some three days prior to the PV interview). He has also said he has presented on the bible while in immigration detention. He provided a certificate of baptism and the business card for one of the pastors in detention but no other supporting documentation. I accept he only obtained a bible six to eight weeks prior to the PV interview, was baptised and attended church and bible classes, and presented in these classes as claimed. It appears he was in prison for the better part of a year and given his brief explanations about why he had not obtained a bible earlier, including that he asked the Holy Father to get him a bible, even after he was put on notice as to this issue in the delegate's decision, I do not accept he made any real attempts to obtain a bible in Farsi while in prison.
17. When the applicant was asked in the PV interview how he became interested in Christianity he said he met some Australian guys in prison and had a conversation about it and it got him interested and he started attending church with them. However the applicant has provided no detail in relation to his attendance at church while in prison, even after being put on notice about the delegate's concerns regarding his claimed Christianity in her decision, and I do not accept this aspect of his claim. In the PV interview the applicant said he had become interested in Christianity in about June or July 2018. When asked what was interesting to him about

Christianity he said it was because it was about peace, patience, love and kindness which is the exact opposite to Islam which is about killing enemies. The god in Islam is totally different to the one in Christianity and he really got interested in this opportunity. In describing Christianity to the delegate the applicant said it was important to be kind to your neighbour even if they are your enemy. Jesus was crucified for our sins. It totally changed his heart and brain. It encourages you to do good deeds, and behave well and be kind to your neighbours. It was mostly about kindness and love and peace. The delegate noted the applicant had said in his visa application that he believed Islam was nothing more than stories and asked the applicant why Christianity was different. The applicant said he actually got interested because of the difference between the two and listed at length everything he disliked about the Muslim faith. After becoming a Christian he was in peace and knew the meaning of love and it changed his life. He was a new person. He had so many friends and they were very nice and talked about love and humanity. He was very interested in this religion. The delegate asked him what he meant when he had said it had changed his thoughts. The applicant said that after having so many problems (he abused drugs and alcohol, fell into the wrong crowd and was incarcerated after being arrested in [2018])² he used to think about getting revenge and about hurting the people who had hurt him. Now he has read the bible he has learnt to forgive people and learnt to love people. It was really the bible that was interesting and impressive to him. It was all about loving people and he does not get angry anymore, he is more patient. When he reads the bible it makes him feel so much better. When asked who Jesus was to him the applicant said he was his everything, he was his peace, patience, kindness and love and his living god. When asked what his favourite bible verses were the applicant mentioned Jesus' birth and crucifixion. When asked why, the applicant said because Jesus fell on the cross and was crucified for everyone and was blessed and that it had lots of meaning but he could not talk about it in five minutes. He would need more time to talk about it and had only been reading the bible for about six weeks. In his PV interview the delegate noted that the applicant's [social media] account had been deactivated in 2014 and only recently reactivated in 2019 and that on reactivation all his posts related to Christianity. The applicant said he wanted to help others with his posts. I found the applicant's explanation, namely that he did not have much access to social media prior to 2019, brief and unconvincing and I do not accept it.

18. When the delegate asked the applicant in the PV interview what denomination he was the applicant said Catholic. His baptism certificate states he was baptised 'per the rights of the Baptist church'. He did not know what Communion was, indicating he had only attended a limited number of bible studies classes. When asked how he would practise Christianity in Iran he said he could not follow it because Muslims who converted to Christianity would be killed. When asked if he would cease practising Christianity if returned he indicated he could not practise Christianity in Iran. When asked if there were Christian churches in Iran he said he did not know, he did not know anything about it, and then said he discovered on the internet that there were a lot of underground churches, but they got arrested and had penalties. When asked if he would tell the authorities if asked about his conversion he said he could not because he would get arrested. He said he attended a Christian church several times while in immigration detention in 2014 at the recommendation of other detainees and was pushed by Iranians in the camp because he converted, was anti-Islam and refused to return with them to Iran when the suggested the idea. They threatened to tell the Iranian authorities about his Christian activities. When asked how the authorities would find out about his conversion the applicant said he was not sure if they knew or not, because he was in Australia and they were

² The delegate asked the applicant about this in the PV interview in the context of other criteria for the visa over which the IAA has no jurisdiction. I do not consider this information relevant to the review of whether the applicant is a person to whom Australia has protection obligations.

there and when the question was repeated he said he had no idea, and that they could only find out if someone told them.

19. In a submission to the IAA the applicant said, for the first time, (and after reiterating how he was initially exposed to Christianity through the Christian friends he made in prison) after being transferred from the Correctional Centre to [Prison] for a court session while in a private consultation with a doctor, the doctor had shut the door, jeopardising her career, and grabbed his hand and prayed for him and his family and a good court outcome. The doctor asked the applicant to commit himself to Jesus Christ if he obtained a good court outcome. He claims he obtained a good court outcome and that the experience with the doctor was moving and he had been committed to Jesus Christ ever since. While in prison some Muslim inmates were upset by his Christian practices given his background and he had many verbal arguments with them and they called him a Kaffir. He also said he felt guilty for having said he could not practise Christianity or attend church in Iran in the PV interview because to deny Jesus was a sin and he had prayed for forgiveness and that he would attend church and proselytise while in Iran because Christians are supposed to give the good news of the bible to the people. His wife had recently felt compelled to tell his family in Iran about his conversion and they are infuriated and his father may try to kill him because he is a Kaffir and he is certain his or his wife's family will report him to the authorities. In prison and in immigration detention he had had arguments with Muslims because of his Christian practices and Iranian background and they had called him a Kaffir and verbally attacked him. Given the late mention and lack of detail I do not accept he was harassed by Muslims recently in immigration detention or in prison because of his claimed Christian practises. He said that in addition to making Christian posts he also posted anti-Islamic material on [social media], including against the Islamic revolution, the mullahs and the flag of Iran and broadly did this so that peace would return to Iran. He has not provided evidence of any [social media] posts and given its late mention, despite having discussed his Christian [social media] posts in the PV interview, I do not accept he has made anti-Islamic posts on his [social media] profile.
20. I acknowledge many factors may adversely influence an applicant's evidence, including defects in perception and memory and communication and translation deficiencies. However, given the applicant's very recent baptism, [social media] posts, acquisition of a bible in Farsi and other Christian activities, which based on the evidence before me all occurred in 2019 and shortly prior to the PV interview and the variations in his narrative about when he became committed and what triggered this and his sometimes vague and often repetitive description of his personal connection to Christianity, I agree with the delegate and do not find the applicant's evidence convincing. I do not accept he has a genuine and on-going commitment to the Christian faith and he has not satisfied me that his recent baptism, [social media] posts and other Christian activities were engaged in otherwise than for the purpose of strengthening his claims to be a refugee. Given the consistency of the claim I accept the applicant was raised a Shia Muslim and that his parents are practising Shia Muslims. I am also willing to accept the applicant was not a practising Muslim in Iran from about 2003.

Younger brother

21. The applicant claims he has been targeted by the authorities because of his younger brother. In his visa application the applicant said his younger brother was also not religious. Their neighbour, a sergeant in the army and member of *Sepah*, found out his younger brother was not practising Islam through neighbourhood gossip and reported him to the *Sepah* who arrested him and put him in jail and threatened him with execution stating he was against God. His family spent a lot of money on legal fees trying to keep his brother alive but some 13 years

later he is still incarcerated. In contrast, when asked in the PV interview why his younger brother was arrested the applicant said his brother drank alcohol every day. He did not want to follow Islam. He had a conversation with their neighbour, who was in the *Sepah*, who told him to stop saying what he was saying but he refused and they came and arrested him and said he was anti-Islam. When asked if he had any evidence his brother was in court the applicant said he did not and then at other times said the lawyer may have some documentation and he could get it if it were important. I have found the applicant's explanation for why he could not get any documentation vast and varied, and at times implausible, and do not accept it, particularly given the lengthy period of time the applicant claims his brother has been incarcerated and the claimed involvement of lawyers. For example, in the PV interview he said only important people got these types of documents and you did not get these documents when you were arrested or put in prison. They were very expensive. His wife was mentally unwell (despite also stating he spoke her to two to three times a week) and he had not contact with his parents so could not ask them. He also asked for more time to get this documentation, which the delegate provided, but the applicant did not provide this documentation despite providing documentation in relation to other matters. Even when he was put on notice as to this issue in the delegate's decision the applicant did not provide this documentation with his IAA submission. His explanation was that his wife had felt compelled to tell his family about his Christian conversion, they now wanted him dead, and that this had frustrated any attempts to get the documentation. I note the applicant has a number of other adult siblings in Iran. On the evidence, including the variations in the narrative about how and why the applicant's younger brother was arrested and that the claim is unsupported I do not accept his younger brother has been incarcerated for some 13 years, or threatened with execution, for being anti-Islam.

2006 detention

22. The applicant has consistently claimed that in 2006 he was arrested by the *Basij* for drinking alcohol, detained for about three days and given 80 lashes. In the PV interview the applicant said the authorities smelt alcohol on his breath after he had been drinking in the street in front of his house and riding his motorbike. He indicated it was similar to the situation in Australia with "booze buses" and that the incident was not really important. Given the detail provided, consistency of the claim and based on the country information before me which indicates it is possible for people to be detained for short periods and subjected to the punishment described by the applicant, I accept this claim and that he may have felt depressed after the incident.³ The applicant has not said that he continues to suffer depression or that he has attended counselling or continues to take medication for this and I do not consider that to be the case.
23. The applicant did not mention becoming addicted to drugs and alcohol before the Department, although he did mention on a couple of occasions that he drank a lot in Iran. In his PV interview he said he started taking drugs just prior to his incarceration in Australia after falling in with the wrong crowd. In his IAA submission he said that prior to his incarceration he was addicted to drugs and alcohol, attended Narcotics Anonymous and Alcoholics Anonymous and was doing his best to fight the sickness. When he regained his health he promised himself he would never do this again. I accept the applicant drank alcohol while in Iran. Given the nature of his incarceration in Australia and his description of the events leading up to this, I also accept he was abusing alcohol and drugs at that time. I also accept he may have attended counselling

³ Iran Human Rights Monitor (United States), 'The Story Of Treatment Of People Accused Of Eating In Public In Ramadan', 26 June 2017, CXC90406620606; Trend News Agency, 'At least 20 Iranians lashed for breaking Ramadan fast', 11 June 2017, CXC90406620607; National Council of Resistance of Iran, 'IRAN: 92 arrested in restaurant during Ramadan', 27 June 2015, CXBD6A0DE21223.

and support groups for this while in prison but has since stopped abusing drugs and alcohol and has regained his health.

2007 detention

24. The applicant claims he was detained by the *Sepah* for a year in 2007 and that they threatened to kill him for not following Islam and that he has a criminal record for not following Islam. However key aspects of the applicant's evidence in relation to this claimed incident have varied considerably over time. He did not mention this detention in his arrival interview despite mentioning all other claimed incidents of detention. When the delegate raised this issue in the PV interview I did not find the applicant's explanation, that he feared the authorities would find out and harm his family, in respect of this specific claim, convincing; he has claimed it was the *Sepah* and the police who detained him and in these circumstances the authorities would already seemingly know about this incident. In his visa application he very clearly stated that because of his younger brother his neighbour targeted him too and he was arrested for not following the Islamic faith and jailed for a year only being released with the help of his eldest brother's wife's family who had connections with the *Sepah*. In contrast, in his PV interview when asked about his claim to have been imprisoned for one year in Iran he said he was arrested because of his brother and drinking alcohol. It was mostly for drinking alcohol. He went to court but was not charged or convicted because they did not have any evidence against him, and that was why they let him go. I have also found this claim lacking in detail, particularly when compared to his evidence in relation to other claimed incidents of detention. On the evidence I do not accept the applicant was detained for one year in 2007 for being anti-Islam or otherwise and consider this a late fabrication intended to strengthen his claims for protection. I do not accept the applicant has a criminal record for being anti-Islam.

2009 detention

25. The applicant has consistently claimed that in 2009 he was detained by authorities for two days and beaten, along with many others, on suspicion of involvement in a protest in Iran. While the applicant mentioned being arrested he denied actual involvement in the protest in his arrival interview. I consider this might be because he feared his information would not be kept confidential and he has said that he told the authorities he did not participate and that if they found out he had, he would be in trouble, so I do not draw an adverse inference from this. Further, in his visa application he was silent about whether he actually participated or not only stating he had told the authorities he had not. In his PV interview he provided more detail about his arrest, stating that they asked him a lot of questions including whether he was actively involved and that after two days they decided to release him. However he confirmed for the delegate that he was actually involved, but had only told the authorities he was not, so that he would be released. He said the protest was about returning freedom to Iran. He confirmed the authorities did not monitor him on his release and that he had not joined any political organisations in Australia. The country information before me⁴ indicates the Green Movement commenced in 2009 following the landslide victory by a conservative candidate but quickly morphed into a nation-wide force comprising millions of protestors peacefully demonstrating for democracy. The authorities beat thousands of protestors and hundreds were arrested. The movement's most important leaders, activists and theorists appeared in a series of show trials in late 2009 but in 2010 the authorities had largely succeeded in quashing the movement. I accept the applicant may have been one of the millions of protestors on the streets at that time and that he may have been beaten and briefly detained by authorities on

⁴ DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

suspicion but quickly released when he was no longer of interest to them in connection with the protest. There is nothing before me to indicate he had an active organisational role or was high profile within the movement.

2010 beating

26. The applicant claims he was assaulted by the *Basij* at a checkpoint in about 2010 following a dispute. His wife's hair was showing through her scarf and she was wearing make-up. When the *Basij* pointed this out the applicant essentially told them it was none of their business and then a number of men began to beat him pushing him and his bike over. A tendon in his hand was severed in the scuffle. He was allowed to go because of his injury and sought medical treatment. This was the incident that largely precipitated his departure from Iran. When the delegate pointed out he did not leave until 2013, a number of years after this incident, the applicant said lots of things happened and in the end he did not dare venture out into the streets especially given his brother's situation. They would search their cars and their phones. This occurred even when he was with his family which they were not supposed to do. While visiting his brother in prison the guards would tell him he should be in prison too. He was really scared. That was why he left Iran. The country information before me indicates that while forming part of Iran's security forces, the *Basij* receive less formal training, often act without formal guidance or supervision and are focused on repressing political dissent and intimidating civilians to ensure compliance with Iran's strict moral codes.⁵ Given the detail provided, the consistency of the claim and the country information detailed above, I accept the applicant as harassed by the *Basij* in 2010 as were and as are many in Iran today and that this confrontation escalated to the point where the applicant was injured however there is nothing before me to indicate this attack was targeted. The applicant appears to briefly state in the PV interview that he was monitored by the authorities in connection with this but I found this unconvincing and do not accept this aspect of his claim.⁶ After his release in 2009 I do not accept the applicant was personally targeted by the authorities whether because of his younger brother or otherwise. I note after the 2010 incident the applicant did not leave Iran for some three years and has not mentioned any incident of harassment by the authorities of note in that period. I do not accept he fled Iran in fear of his life.

Identity documents

27. In his visa application the applicant claimed he obtained his passport to leave Iran by using a fake military exemption card and therefore left Iran by unlawful means which is an offence. The applicant did not claim to the delegate that he would be forced to complete military service if returned to Iran because of his fake military exemption card but rather mentioned he had a fake military exemption card in the context of making his claim about his passport being fraudulent. Nonetheless in her decision the delegate considered whether the applicant would be forced to complete military service in Iran. The applicant initially only mentioned having been issued with a military exemption card in 2006 and that it was granted because he was caring for his father and he had not been involved in military service. When the delegate mentioned what he had said in the arrival interview the applicant indicated that his genuine military exemption card was issued in 2006 and his fake military exemption card was issued in 2011 but based on his 2006 exemption, although his evidence in this regard appeared somewhat confused. While copies of various Iranian identity documents have been provided no corresponding English translations have been provided. The country information before me⁷

⁵ DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

⁶ Ibid.

⁷ UK Home Office, 'Country Policy and Information Note: Iran: Military service', 25 October 2016, OGD7C848D84.

states that because military service in Iran is mandatory, Iranian men over 18 who are exempted from military service have exemption cards issued by the relevant authorities. Having elderly parents was one of the many reasons someone could be granted an exemption. The applicant's elderly parents continue to live in Iran. The evidence that the applicant obtained a fake military exemption card was inconsistent, vague and unsupported and I do not accept it. It follows that I do not accept he used a fake military exemption card to obtain his passport. I also note his passport was issued [in] 2011 and the country information before me indicates that passports issued at that time were biometric and military exemption cards are not listed in the documentary requirements for obtaining a passport.⁸ The country information before me also indicates that passport checks in Iran are sophisticated and that an outstanding warrant for arrest would not go undetected, although it is possible for an individual to convince an airport officer to allow them to proceed.⁹ The applicant has not said this was the case. I consider the applicant was able to leave Iran in 2013 legally on his own passport without any issues. I do not accept he was of genuine on-going interest to the authorities for being anti-Islam in connection with his younger brother or otherwise when he left Iran in 2013.

Refugee assessment

28. 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

29. 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.

30. I accept the applicant is a [age] year old male from Iran and Iran is the receiving country. I accept he was a non-practising Muslim in Iran and was briefly detained and punished some 13 years ago for drinking alcohol, briefly detained on suspicion of involvement in a protest some 10 years ago but no longer of interest on release and harassed and questioned (and assaulted

⁸ DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

⁹ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

in one incident in 2010) on occasion by the *Basij* in relation to compliance with Islamic codes, as were and are many youth in Iran. I do not accept he was genuinely of on-going interest to the authorities in connection with his younger brother or being anti-Islam or otherwise when he left Iran in 2013. I do not accept he has a genuine and on-going commitment to Christianity. I accept some of the applicant's details may have been released in a Departmental data breach in 2014 and accessed and that he will be identifiable as a failed asylum seeker from Australia.

31. DFAT reports that following the revolution of 1979, the Islamic Republic of Iran was established.¹⁰ Ayatollah Khamenei is the current Supreme Leader, Iran's highest political authority, head of state and commander of its armed forces. Iran is a theocracy that mixes religion and state more than any other country in the world, requiring all laws and regulations to be based on Shia Islamic principles. At around the time of the applicant's departure from Iran in June 2013, a moderate, Hassan Rouhani, won the Presidential election with moderate and reformist support. Iran is reportedly undergoing a time of demographic and ideological change.¹¹ The younger generation (50 million of Iran's total 75 million population) comprise a post-revolutionary generation tired of the repression and extensive politicisation of religion under the Islamic Republic and are fighting for secularism, democracy and freedom in Iran.¹²
32. The applicant claims he is a Christian, will attend Christian church and proselytise in Iran, however as I have not accepted he has a genuine and on-going commitment to the Christian faith, I do not accept he will attend church or proselytise in Iran. The country information before me¹³ indicates the authorities have no interest in returnees who do not engage in Christianity on their return and are not otherwise of interest to the authorities. As I have not accepted the applicant was of interest to the authorities when he left Iran in 2013 or that he will practice Christianity on his return it follows that I do not accept there is a real chance he will be harmed on his return because of this.
33. I accept the applicant was a non-practising Muslim in Iran and I consider he will not practise Islam on his return. DFAT¹⁴ notes that blasphemy is a capital offence under the Penal code and under Sharia law most judges agree that apostasy is a capital crime and that the authorities continue to use religiously-based charges against certain groups, including reformists and Muslim born converts to Christianity. However it is also noted that these types of cases are no longer an everyday occurrence in Iran and that the death sentence for these crimes is rare. The country information before me¹⁵ notes that a number of indicators suggest that a significant number of younger Iranians do not consider themselves Muslims, either opting to become atheists or converting to other faiths. While there is a lack of data because of underreporting some surveys suggest half of those aged between 20 and 40 years of age state they are not Muslim and 35 percent of those claiming to be Muslim said they were non-practising. Iran reportedly has one of the lowest mosque attendance rates compared to ten other important Muslim countries. Another report notes that atheists are able to lead normal lives in Iran as they keep low profiles only expressing their views in less formal forums and that Iran is a mixed

¹⁰ DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

¹¹ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677; The Revival of Nationalism and Secularism in Modern Iran, Pejman Abdolmohammadi, LSE Middle East Centre, 1 November 2015, CISEC96CF14725.

¹² DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677; The Revival of Nationalism and Secularism in Modern Iran, Pejman Abdolmohammadi, LSE Middle East Centre, 1 November 2015, CISEC96CF14725.

¹³ Danish Immigration Service and Danish Refugee Council, 'Iran: House Churches and Converts', 1 February 2018, CIS7B83941873; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

¹⁴ DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

¹⁵ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677; The Revival of Nationalism and Secularism in Modern Iran, Pejman Abdolmohammadi, LSE Middle East Centre, 1 November 2015, CISEC96CF14725.

society with more and more atheists and this is accepted in less conservative circles in Iran.¹⁶ Other country information suggests that the authorities, particularly the *Basij*, are known to harass civilians when policing compliance with the strict moral codes.¹⁷ I accept the applicant was a non-practising Muslim in Iran for some 10 years prior to his departure and there is no credible evidence before me to indicate he was detained or punished by the authorities because of this. I accept he and his wife's family pressured him to practise his Muslim faith. Based on his profile and the country information detailed above I accept the applicant may suffer generalised harassment by the authorities and his and his wife's families may pressure him to practise Islam but I am not satisfied this amounts to serious harm.

34. The applicant fears that due to the stress of being returned and without the support he has in Australia he will recommence abusing alcohol if returned to Iran and that this will lead to him being harmed by the authorities, which will be more severe given his past punishment. I accept the applicant was briefly detained and lashed for drinking alcohol in Iran some 10 years ago. I also accept that he was abusing alcohol and taking drugs prior to his incarceration in Australia. The country information before me¹⁸ indicates that punishment for alcohol consumption in Iran is 80 lashes. However the use of alcohol still remains relatively widespread in Iran. In 2014 and 2015 the Health Ministry launched a number of treatment and rehabilitation centres throughout the country. The evidence before me indicates the programs in prison helped the applicant to stop taking drugs and abusing alcohol and that he has not done this since and that he does not want to. I consider the claim he may relapse and be punished a second time for alcohol consumption somewhat speculative. I am not satisfied there is a real chance the applicant will suffer harm on account of this.

35. I accept the applicant may be identifiable as someone who has attempted to seek asylum in Australia. The applicant has been in Australia since 2013. He fears being interrogated at the airport or otherwise harmed by the authorities. The country information before me¹⁹ indicates many millions of Iranians travel to and from Iran each year without difficulty. DFAT notes Iran has historically refused to accept involuntary returnees although under a more recent Memorandum of Understanding with Australia Iran has agreed to facilitate the return of Iranians who arrived after 19 March 2018 and have no legal right to remain in Australia. Voluntary returnees re-entering on their passport or temporary travel documents issued by Iranian diplomatic representatives overseas do not attract much interest from authorities and will generally only be questioned if they have done something to attract their attention, such as committing a crime before departing Iran. It is also reported that the Iranian authorities pay little attention to failed asylum seekers and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran. DFAT states it is not aware of any barriers for returnees in terms of finding work, shelter or returning home. The applicant's family continue to reside in Tehran, Iran. The applicant has not said he would not return to Iran voluntarily. He left Iran legally on his own genuine passport without issue. His passport has now expired and I accept he will have to re-enter Iran on a temporary travel document. However based on his profile and the country information detailed above I am not satisfied there is a real chance he

¹⁶ Iran: Treatment of atheists by State and non-State actors, Austrian Centre for Country of Origin and Asylum Research and Documentation, 12 June 2017, CISED50AD4616.

¹⁷ Iran Human Rights Monitor (United States), 'The Story Of Treatment Of People Accused Of Eating In Public In Ramadan', 26 June 2017, CXC90406620606; Trend News Agency, 'At least 20 Iranians lashed for breaking Ramadan fast', 11 June 2017, CXC90406620607; National Council of Resistance of Iran, 'IRAN: 92 arrested in restaurant during Ramadan', 27 June 2015, CXBD6A0DE21223.

¹⁸ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

¹⁹ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

will suffer harm on account of being a returning asylum seeker who has spent the last six years in Australia.

36. I accept the applicant's data may have been the subject of the 2014 Departmental data breach and may have been accessed. The applicant submits that in light of his profile the data breach would place him at a heightened risk of harm, including because it will confirm he has attempted to seek asylum in Australia, and that when he found out about the breach he was very distressed. While I accept the applicant's data may have been inadvertently released and accessed, no information in relation to his claims was released; only his stated name, date of birth, nationality, gender and detention details were released. In light of the limited nature of the breach, that I have not accepted the applicant was wanted by the authorities when he left Iran, that there is nothing before me to indicate the authorities have since become interested in him and I am not satisfied there is a real chance he will suffer harm on account of being a returning asylum seeker who has been in Australia since 2013, I am not satisfied the applicant faces a real chance of harm on account of the data breach.
37. I am not satisfied the applicant has a well-founded fear of persecution on account of being a [age] year old male failed asylum seeker from Tehran and his time in Australia, data breach, or his and his family's past experiences in Iran.

Refugee: conclusion

38. 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

39. 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

40. 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.
41. For the reasons already discussed, I accept the applicant may suffer generalised harassment from the authorities and his and his wife's families may pressure him to practise Islam. However, I am not satisfied that these circumstances amount to 'significant harm' as defined for the purposes of s.36(2A). I am not satisfied the applicant will be arbitrarily deprived of his life, subject to the death penalty or torture. Nor am I satisfied he will be subject to severe pain

or suffering or pain or suffering that could reasonably be regarded as cruel or inhuman in nature or extreme humiliation.

42. I accept the applicant was baptised a Christian, shared Christian posts on his [social media] profile and engaged in other Christian activities while in Australia. I have not accepted the applicant has a genuine and on-going commitment to Christianity and consider his baptism and other recent Christian activities opportunistic. I have also not accepted he would attend church or proselytise in Iran. Based on the country information detailed above, including the reports by the Danish Refugee Council and DFAT²⁰, if a returnee is not otherwise of interest to the Iranian authorities and did not engage in activities related to Christianity on their return they would be of no interest to the Iranian authorities. The country information also reports that Iranian authorities have little desire to prosecute returnees for activities (including social media posts and religious conversions) outside Iran. Based on the country information and the applicant's profile I am not satisfied there is a real risk the applicant will suffer harm in relation to his activities in Australia.

43. In considering the applicant's refugee status, I have otherwise concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard.²¹ For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

44. 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.

²⁰ Danish Immigration Service and Danish Refugee Council, 'Iran: House Churches and Converts', 1 February 2018, CIS7B83941873; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

²¹ *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.