



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06817

Date and time of decision: 2 September 2019 10:01:00

M Oakman, 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. He arrived in Australia [in] July 2013 and lodged an application for a Temporary Protection visa (TPV) (XD-785) on 5 July 2017. On 5 July 2019 a delegate of the Minister (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). The referred material included an email relating to the applicant's [Relative A] and not the applicant. The email is not relevant to the applicant and I have had no regard to it.
3. On 29 July 2019 the IAA received an email from the applicant's representative attaching submissions and further information.
4. Except in relation to the matters discussed below, the submissions refer to the applicant's existing claims, information that was before the delegate and the applicant's concerns about the delegate's decision. To that extent the submissions do not constitute new information and I have had regard to it.
5. The further information consists of a supporting letter from [Presbyterian Church 1] dated [in] July 2019 (supporting letter); and country information in the form of extracts from reports from 2013, contained in the submissions (new country information). The supporting letter and new country information were not before the delegate and are new information.
6. The applicant submitted there were exceptional circumstances to consider the supporting letter because of its very direct relevance to the core protection claims raised by him and it was mainly sought to respond to the delegate's negative findings.
7. The applicant claims that he is a Christian convert and would therefore be at risk if returned to Iran. The delegate did not accept, among other things, that the applicant was a genuine Christian convert. The supporting letter post-dates the delegate's decision and, although some of the information relates to matters prior to the date of the decision such as earlier church attendance, it also refers to his more recent circumstances. The supporting letter is on its face credible personal information in the s.473DD sense. It has been supplied to corroborate the genuineness of his Christian conversion, which was rejected by the delegate, and as such may have affected the consideration of the applicant's claims. The applicant has satisfied me that s.473DD(b) has been met and I am also satisfied that there are exceptional circumstances to justify considering this new information.
8. The new country information pre-dates the delegate's decision. The submissions do not address why the material was not and could not have been provided before the decision was made. The extracts from the reports do not contain what may be regarded as personal information in the s.473DD sense. The applicant was not represented at the TPV interview. That is not an unusual occurrence. He had some assistance from a registered migration agent when lodging his application. He is not uneducated, having completed tertiary studies. At the TPV interview the delegate told the applicant the purpose of the interview was for him to provide further information in support of his application, it was his responsibility to raise all his claims for protection and to provide evidence to support those claims, if the application was refused he may not have another chance to provide information to support his claims, and that

any additional information received before a decision was made would be considered. The delegate considered other country information which dealt with, among other things, the issues faced by Christian converts in Iran. That other country information is before me and I have had regard to it. I am not satisfied that there are exceptional circumstances to justify considering the new country information.

9. The submissions note that the applicant is prepared to appear before the IAA and give evidence in relation to how his life and world view have significantly changed since he found faith in Jesus Christ. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. The IAA is required, subject to Part 7AA, to review a matter without accepting or requesting new information and without interviewing the applicant (s.473DB). The IAA can obtain new information from an applicant, including at an interview, but can only consider that information in exceptional circumstances. The applicant was questioned at some length during the TPV interview about his conversion to Christianity, including his beliefs and what Christianity meant to him. He has taken the opportunity to provide submissions and further information to the IAA. I am satisfied the applicant has had a fair opportunity to put his case. I have decided not to exercise my discretion to interview the applicant.

Applicant's claims for protection

10. The applicant's claims can be summarised as follows:
 - The applicant was born a Muslim but converted to Christianity in 2012. He was fired from his job because he was a Christian. He wanted to set up a [service] business with his [Relative A], and went to [Country 1] in June 2013 to learn about [this industry]. A few days after arriving in [Country 1] [Relative A] received an email from his wife telling him not to return to Iran because Etalaat had raided the house of [Relative B], taking all the books and CDs relating to Christianity and detained and questioned her, her father and [Relative B] and asked about the applicant and [Relative A];
 - He cannot return to Iran. If he is forced to return, he is certain he will be detained for a long period and interrogated or killed. He thinks that after he went to [Country 1], the raid on [Relative B's] property was aimed at [Relative A] and him. He thinks they were trying to frighten them not to return to Iran. Christianity involves advocating the religion to others and helping others and if he is forced to return to Iran he fears he will not be able to do this. If he does it he will be detained or killed;
 - The applicant fears persecution as a Christian and particularly a former Muslim who has converted to Christianity at the hands of the Iranian authorities owing to his conversion to Christianity in Iran and his further Christian activities in Australia;
 - The applicant has a genuine fear of returning to Iran on the basis of his departure from Islam and official declaration of his Christian faith; and
 - He fears he would continue to attract the adverse attention of the authorities in his area as someone who does not adhere to the strict Islamic moral codes currently being enforced and as a potential opponent to these same authorities. His conversion to Christianity would further heighten his risk of being viewed as holding such a profile.

Factual findings

Receiving country

11. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Iran. I find that the applicant's receiving country is Iran.

Background

12. The applicant was born in Tehran in [year] and has lived in Tehran, at different addresses, throughout his life in Iran. He is not married. His parents live in Tehran. He has [specified family members], who also live in Tehran. He attended school [between specified years], and then completed studies at university obtaining a [qualification] in [year]. He worked in Iran as an [occupation] in the [specified] industry in [year] and as [a professional role] on [a specified project] from January 2012 to May 2013. In Australia he completed a month of English lessons in 2013 and he has worked in [a different industry].

Problems in Iran

13. In summary, the applicant says that he was born a Shia Muslim; his siblings are not practicing Muslims and are open minded; and he was never forced to practice that religion at home as his family are moderates. He long held concerns about the Muslim faith because growing up he heard about nothing but misery and war, with his father serving in the Iraq-Iran war while he was a young child.
14. Around the middle of 2012 he told [Relative A] he no longer wanted to be Muslim and [Relative A] told him he felt the same way and he could become Christian. His [Relative A] taught him about Christianity; gradually he realised he wanted to convert and day by day he became more confident it was what he wanted and he shared these feelings with family and friends. His [Relative A] kept texts and CDs about Christianity as his [Relative B's] place in [Town 1]. He would go to [Relative B's] house about once a month to read and study those documents. He kept his Bible at [Relative B's] house. There were numerous Bibles at [Relative B's] house that the applicant used when advocating Christianity to people. He spoke to family, friends and some colleagues about Christianity. He told anyone he spoke to about Christianity to keep it confidential.
15. Some of his work colleagues became suspicious of him. One day he was called into his boss' office. He denied advocating and teaching others at work about Christianity, but then his boss played a recording that one of his colleagues had made of the applicant advocating Christianity. He was fired because his boss knew it was not safe to employ a Christian convert. He looked for another job but could not find one and he would go to [Relative B's] house once a month to teach Christianity out of [Relative B's] house to friends and relatives. Because [Relative A] had completed a [qualification in his service industry], they decided to set up a [service] business with him and [Relative A] as [service suppliers from] [Country 1]. He and [Relative A] planned to go to [Country 1] to gain knowledge of [their industry] there.
16. He left Iran [in] June 2013 using his own passport and got a visa in [Country 1] that allowed him to stay for three months. He and [Relative A] planned to stay in their hotel in [Country 1] for a week, but after three days [Relative A] got an email from his wife saying Etalaat had raided [Relative B's] house and taken all the books and CDs relating to Christianity. She said they detained her, her father and [Relative B] for one night and questioned them about the

applicant and [Relative A]. She said they wanted to know why they were advocating Christianity, why they had all the CDs and book on Christianity, and where he and [Relative A] were. She told them not to return to Iran. He was afraid to return to Iran. His [Relative A] arranged for them to come to Australia, departing about three weeks later. The applicant is proud to be a Christian and attended a Presbyterian Church in [Town 2] every Sunday since he moved there (October 2013). He asked on the first day if he needed to be baptised and the minister said it was enough if he believed Christ was the saviour of the world.

17. The applicant has maintained since his arrival interview with the Department (29 July 2013) that he was a Christian convert and his [Relative A] received an email from his wife while they were in [Country 1] warning that Etalaat was interested in them and not to return to Iran. However, there are a number of problems with the applicant's claims.
18. The applicant acknowledged in his evidence there were dangers in what he was doing, including being considered an apostate for owning a Bible and that he feared being detained or killed for advocating Christianity. However, he took few precautions other than asking those he spoke to about Christianity to keep it confidential; speaking to colleagues about Christianity after they had expressed frustration about Islam; and keeping his Bible at [Relative B] house in [Town 1] where [Relative A] stored other Christian material. I do not consider it credible that, if it were true that he was speaking to people about Christianity, that he would only take such limited precautions. I do not consider it credible that he would take the risk of also choosing [Relative B's] house, where [Relative A] stored Christian materials and the applicant kept his Bible, as a suitable place to speak to his family and friends in [Town 1] about Christianity, thereby placing him at risk. At the TPV interview he said [Relative B] lived with his wife and children. I do not consider it credible that, given the dangers involved to [Relative B] and his family, that [Relative B] would allow the applicant and [Relative A] to store Christian material including Bibles in his house or allow the applicant to use his house to talk about Christianity. I also do not consider it credible that his boss, if it was true that he possessed a recording of the applicant advocating Christianity that was obtained because another worker recorded it and complained about it, would not protect his own interests by reporting the applicant rather than (besides sacking him) telling him he would report him if he heard about him talking about Christianity again.
19. His said in his TPV statement that after he was fired (besides looking unsuccessfully for a job) he would go to [Relative B's] place once a month to teach Christianity out of his house. However, he left Iran [in] June 2013 and gave his termination date in the TPV application as [late] May 2013, and confirmed on a couple of occasions in the TPV interview that he left Iran about ten days or two weeks after he lost his job. As such, his claim that he also taught Christianity on a monthly basis in [Town 1] after losing his job lacks credibility. It is an incredible coincidence that the applicant, having started advocating Christianity in mid-2012, was only exposed and reported to his boss after the main [phase] of the [work project] was completed and within two weeks of a trip to look at setting up a new business based in [Country 1]. To my mind, there are also credibility issues with the claimed Etalaat raid on [Relative B's] house in June 2013. I do not consider it credible that Etalaat would raid [Relative B's] house, seize the Christian material, detain [Relative B], [Relative A's] wife and father-in-law, and ask about the applicant and [Relative A], but not conduct further enquiries, including questioning [family] members, searching his, [Relative A's] and other family members' houses, or conducting any follow up search of [Relative B's] house looking for further Christian material. It is also an incredible coincidence that the raid by Etalaat was only a couple of days after the two people they asked about, [Relative A] and the applicant, left Iran.

20. At the TPV interview the applicant and delegate discussed at some length his Christian beliefs, how his conversion made him feel, his knowledge of Christianity and his activities in Australia. The applicant's level of knowledge of Christianity, while not deep, was consistent with someone who had been attending church over several years. However, when asked a range of questions about his emotional engagement to Christianity his responses were repetitive and unpersuasive. For example, his translated responses were words to the effect of his heart was very comfortable / relaxed, when asked variously what it meant to him to convert; how his life had changed since he became a Christian; and what his relationship with Jesus Christ was like. The delegate accessed the applicant's social media account and noted that there were numerous Ismaili Shia related posts and no Christian related posts. The applicant said these were posts from Ismaili friends and [relative] in [another specified country] that he had liked and it would upset them if he had not done so. Given the applicant's claims in his TPV statement about advocating Christianity in Iran, that advocating the religion is part of Christianity and that he fears he would not be able to do so if returned to Iraq, I do not consider his lack of any Christian related material, together with the presence of Ismaili related material, on his social media to be credible. The delegate also raised the applicant's profile on a website called "[website name]". The applicant said it was because he had an Ismaili friend who spoke no English, didn't understand things and had no ID, so the applicant had registered for him. Notwithstanding his explanations, I do not consider it credible that he would register in his own name, for a friend, on an Ismaili [website].
21. The applicant provided a support letter from the minister at [Presbyterian Church 1]. The support letter confirms that the applicant started attending the church at [Town 2] in the second half of 2014; he was recognised as a regular attendee and added to the pastoral care roll in the first half of 2015; and he continues to attend the church. The minister has spoken to him about his Christian faith and he has told him about first hearing the gospel through his [relative] while living in Iran. Although the Minister gives his opinion that the applicant understands the gospel and has professed his belief, the minister does not express any opinion as the genuineness of the applicant's Christian faith.
22. The applicant has never been baptised. His evidence was that when he first attended [Presbyterian Church 1] he asked if he needed to be baptised and the minister said it was enough to believe that Christ was the saviour of the world. The delegate accessed information from the Presbyterian Church of Australia that confirms baptism is one of the Church's two sacraments; it is only administered to those who become Christians as adults (and some children); and it is not a social or community ritual and will almost always be administered as part of a regular worship service.¹ In the support letter the minister also states that for their church baptism is the normal way in which someone is received into the visible church and serves to clarify someone's status as a Christian from the human standpoint. The minister says that although baptism itself does not save us it is still a necessary part of Christian discipleship and that as the applicant has stated that 'belief in Jesus is enough', he thinks the applicant may not have grasped the nuances of this teaching. The information about baptism in the Presbyterian Church suggests that adult baptism is a significant and necessary event in entering into the Christian community of the church. I do not consider it credible, if he has genuinely converted to Christianity and been involved to the extent he claims, that the applicant has not been baptised or has otherwise failed to grasp the significance of baptism given he has regularly attended the church since 2015. The support letter says that recent events have led them to further discuss the issue of baptism and that the applicant is 'now moving towards baptism'. In light of the foregoing, and as the delegate's decision was made in

¹ Protection visa decision record, 5 July 2019, page 7 and footnote 5.

early July 2019, I do not consider the applicant's timing in now moving towards baptism to be coincidental.

23. In assessing the applicant's evidence I have taken into account the difficulties often faced by applicants for protection, particularly those who some period has passed since they departed their country of origin. However, the issues identified above go beyond minor errors and discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, or a lack of cohesive narration due to trauma, and show significant credibility problems in the applicant's evidence. I do not consider the applicant to be a credible or reliable witness. I am satisfied he has exaggerated and fabricated his evidence in order to boost his claim to protection. I reject his claim that he converted to Christianity or otherwise renounced Islam and I find that, even though he may be non-practising, he is a Shia Muslim like his family in Iran. I reject his claims that he developed an interest in Christianity; that he had a Bible and it, along with Christian texts, CDs and other Bibles, were stored at [Relative A's] house; that he spoke to people about Christianity in Iran; that he was fired from his job because his boss had a recording of him advocating Christianity; that Etalaat raided [Relative B's] house; and that [Relative B] and [Relative A's] wife and father-in-law were detained and questioned by Etalaat. It follows from rejecting these claims that I am not satisfied that the applicant was of any adverse interest to the Iranian authorities, or anyone else, at the time he left Iran. Having regard to the support letter I accept that the applicant has been attending church in Australia. However, I am not satisfied that his attendance at the church was otherwise than for the purpose of strengthening his claims to be a refugee.

Asylum Seeker

24. The applicant claims, and I accept, that he left Iran in June 2013 to travel by plane, via [another country], to [Country 1]. He subsequently left [Country 1] to travel to Australia in a boat organised by smugglers. I find that, if he were to return to Iran, he may be considered a returned asylum seeker by the Iranian authorities. The applicant lost his passport coming to Australia.

Refugee assessment

25. 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

26. 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.
27. As discussed above, I am not satisfied that the applicant was of any adverse interest to the Iranian authorities, or anyone else, at the time he left Iran in June 2013. I accept that the applicant has attended church, including regularly from early 2015 and has recently decided to move towards baptism, in Australia. However, as I am not satisfied that he has attended church otherwise than for the purpose of strengthening his claims to be a refugee, I disregard this conduct in accordance with s.5J(6) of the Act.
28. Country information indicates that Muslims in Iran who leave their faith or convert to another religion may face apostasy charges.² However the Department of Foreign Affairs and Trade (DFAT) has indicated in its recent reports that it considers it highly unlikely that the government would monitor religious observance by Iranians (for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram), that apostasy charges are no longer an everyday occurrence in Iran, and when used, religiously based charges often have clear political overtones or where proselytising is involved.³ Based on the country information I am not satisfied that there is more than a remote chance that the applicant's status as a non-practicing Shia would come to the attention of the Iranian authorities or be of concern for that reason, or that he would otherwise suffer any harm as a result.
29. I accept that, if returned to Iran, the applicant may be considered a returning asylum seeker from Australia, where he has resided for over six years.
30. Country information indicates there have been occasions when failed asylum seekers have been arrested on their return to Iran.⁴ However, those cases generally appear to involve people with pre-existing profiles in Iran or who have a profile involving anti-Iranian regime activities while living abroad. For a number of years DFAT reports have not suggested that returnees are harmed for reason only of having sought asylum in another country.⁵ The applicant was not of adverse interest when he left Iran, and he has not been involved in any anti-Iranian regime activities since he left Iran.

² UK Home Office (UKHO), "Country Policy and Information Note Iran - Christians and Christian converts", 31 May 2019, 20190531161542; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; and DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

³ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; and DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

⁴ Including Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610; "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran", Human Rights Activists News Agency (United States), 30 May 2017, CXC9040668619; "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway", Iran Human Rights (Norway), 20 September 2017, CXC90406614387; National Council of Resistance of Iran, "6 Years of Imprisonment for a Refugee, After Returning to Iran From the Netherlands", 4 March 2017, CXC9040668613; and "Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran", Center for Human Rights in Iran (United States), 18 October 2017, CXC90406615858.

⁵ DFAT, "Response to CIS Request No. IRN11072; Return of failed asylum seekers", 22 December 2010, CX255525; DFAT, "Response to CIS Request No. IRN11738: Iran – Article on returned asylum seekers and people exiting Iran with false documents", 19 April 2011, CX263145; DFAT, "DFAT Country Information Report—Iran", 29 November 2013, CIS26780; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; and DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

31. DFAT reports⁶ indicates that Iran did not permit the involuntary return of its citizens from Australia, but after the signing of memorandum of understanding with Australia on 19 March 2018 Iran agreed to facilitate the return of Iranians who have no legal right to remain in Australia and who arrived after that date. The applicant arrived in Australia in July 2013 and I am satisfied that if he was to return to Iran it would only be on a voluntary basis. As the applicant's passport was lost while travelling to Australia, the DFAT 2018 report indicates that he will require a temporary travel document issued by Iranian overseas diplomatic representatives to return to Iran. DFAT also indicates that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of their sophisticated systems.
32. The DFAT 2018 report states that the Iranian authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as committing a crime before departing. The applicant is not such a person. DFAT is not aware of any barriers to voluntary returnees finding work or shelter in Iran, or returning to their home region. The Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including critical social media posts, converting to Christianity, and LGBTI activities.⁷
33. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker from Australia, now or in the reasonably foreseeable future.
34. Considering the applicant's circumstances and profile as a whole, in the context of the country conditions in Iran I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

35. 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

36. 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

37. 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

⁶ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; and DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

⁷ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

38. I accept the applicant has attended church in Australia, including regularly from 2015 and was now moving towards baptism, although I am not satisfied that he has any genuine interest in Christianity or in engaging in Christianity in the foreseeable future. The applicant has not claimed anyone in Iran is aware of his attending church in Australia. In any event, country information indicates that the Iranian authorities take little interest in the activities of failed asylum seekers outside of Iran, including Christian activities and conversion.⁸ I am not satisfied that the applicant's Christian activities in Australia, even if it became known, would place him at real risk of significant harm, if he returned to Iran.

39. I have found that the applicant does not otherwise face a real chance of harm in relation to his claims or profile. As 'real risk' and 'real chance' involve the application of the same standard,⁹ he also does not face a real risk of any harm in Iran. I am not satisfied that the applicant faces a real risk of significant harm in Iran.

Complementary protection: conclusion

40. 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.

⁸ Ibid.

⁹ *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.