



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06851

Date and time of decision: 30 August 2019 14:42:00

J McLeod, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

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

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 he will be harmed on return to Iran for expressing his opposition to Islam and the Iranian regime through activities such as [writing] and his involvement in the National Council of Iran (NCI).
2. He arrived in Australia on April 2013 and applied for a Safe Haven Enterprise Visa (SHEV) in January 2017. He was interviewed in relation to his application on 21 March 2019 and on 17 July 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa, reasoning that the applicant does not have a significant political profile and would not face a real chance or real risk of serious or significant harm on return.

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) ('the review material').
4. On 14 August, 21 August and 26 August 2019 the IAA received further information on behalf of the applicant including a submission from the applicant's representative to the IAA, a letter from the NCI, photographic evidence of the applicant's participation in political activities in Australia and examples of his [writing] and postings on [Social media].
5. In part, the submission reiterates claims and re-submits information already provided to the delegate and raises arguments in response to the delegate's decision. To that extent, I am satisfied that this does not constitute new information and have had regard to it.
6. However, with the exception of two reports that were considered by the delegate,¹ the country information referred to in the submission is new information. The submission does not engage with s.473DD(b) and given the reports cover general country information only and appear to have been publicly available between 2010 and 2018, I am not satisfied they could not have been provided before the delegate made her decision. Additionally, the delegate considered a wide range of more recent reports from credible sources and I cannot see any apparent exceptional circumstances to justify considering this new information.
7. Provided with the submission was a letter dated 12 August 2019 purportedly from the Chair of the NCI in [Country] evidencing the applicant's continuous participation and dedication with the NCI. I accept it is credible personal information in the relevant sense. I accept the letter is corroborative of the applicant's membership. However it states only that the applicant signed the NCI's charter and has been collaborating with the NCI in Sydney "since then" and provides no specific detail of the applicant's activities or participation. It states that "given [the applicant's] background his return to Iran under existing circumstances would subject him to great uncertainty and grave danger" and that his asylum, refugee status would be warranted but it does not elaborate on the applicant's background or the "existing circumstances" that would subject him to risk. I am not satisfied there are exceptional circumstances to justify the letter's consideration but I have nevertheless, for other reasons, accepted the applicant's claimed involvement with the organisation in Australia.

¹ Amnesty International, "We are ordered to crush you: Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610; Sonia Verma, "Shah's son seeks support for people's revolution against Iran", 6 June 2014

8. The photographs the applicant provided to the IAA are of poor quality but he is easily identifiable in some and those in which he is not easily visible are almost identical to photos he provided to the delegate and I accept he is pictured in them. With the exception of one photograph (the one screenshotted from [Social media]), all these photos constitute new information and while they are undated I am satisfied they meet s.473DD(b)(ii). Two of the five new photos are substantially similar to photos the applicant already provided but three appear to evidence the applicant's attendance at additional gatherings to those evidenced to the delegate. Given the delegate was unconvinced of the applicant's commitment to political activity from the other photographs he provided in the SHEV process and the review material does not indicate the applicant would have been on notice as to the delegate's concerns as to the veracity of these claims, and given their corroborative value, I am satisfied there are exceptional circumstances to justify considering these new photographs.
9. The applicant has also provided [Social media] screenshots with translations showing [writings] insulting Iran's Supreme Leader posted in July and October 2013 and an announcement from the applicant to his [Social media] friends in June 2014 explaining his [Social media] name change. The [writings] and translations are not new information. They were provided to the delegate in the SHEV interview and the interpreter conducted a sight translation. The announcement of name change is new information and I am satisfied it is credible personal information in the relevant sense. It has been provided to counter the delegate's finding that [Social media] evidence the applicant provided was not based on his own [Social media] account, and again, I am not satisfied the applicant had actual or constructive notice as to this concern. I am satisfied these amount to exceptional circumstances to justify taking this into account.

Applicant's claims for protection

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

- He was born and raised in Yazd, Iran. With the exception of his father, his family members are conservative Shi'a Muslims.
- He is non-religious like his father. They are also [writers] who belonged to the underground/secret [organisation]² and have expressed opposition to Islam and to the Iranian regime through their [writing]. The applicant was very outspoken in his [writing] and he also participated in demonstrations.
- In 2013 a [organisation] member was arrested and his belongings seized for an unknown reason. This sent a wave of fear throughout the group. He did not know what would happen to him so [in] March 2013 he fled Iran.
- Since arriving in Australia he has been able to freely show his opposition and opinions against the Islamic regime. He has joined the National Council of Iran (NCI), an internationally known opposition group and has attended protests with them in Sydney and Canberra. He has also been active showing his opposition on [social media]. Many people are aware of his opinions.
- He fears that because of his anti-religious and anti-regime opinions, his anti-regime activities in Australia and his membership of the NCI opposition group, he will be physically and mentally harmed if returned to Iran.

² Also known as the [alternative name]

Factual Findings

11. On the basis of the applicant's evidence including documentary evidence (birth certificate, National Identity Card, driver's licence), I accept the applicant is an Iranian national from Yazd, Iran. There are no concerning issues as to the applicant's identity; I accept it is as claimed. I accept too that the applicant does not have a right to enter and reside in any country other than Iran.
12. Since lodging his SHEV application in 2017 the applicant has maintained that he has no religion. He claims that he and his father were non-religious members of a conservative Muslim family and that he followed in his father's footsteps in not fully believing in Islam. After studying the history and origins of Islam he decided it was not a true religion, or something he wanted to believe in. He believes that Islam lacks compassion and Sharia law is primitive and disrespecting of women. He did not practice it in Iran - he did not engage in daily prayers, attend mosque, fast or participate in any religious festivals and would also shave his beard. He was outspoken against Islam in his [writing] and his religious friends were aware of his views on Islam. I have some concerns about the applicant indicating in his Case Assessment & Biodata interview and his Entry interviews (both in 2013) that he was Shi'a but this may be explained by that fact that he was born a Shi'a Muslim and raised in a Shi'a family and I have otherwise found the applicant to be persuasive in regards to his religious views.
13. While the delegate found the applicant was a non-practising Muslim but has not publicly denounced Islam, I respectfully disagree. The applicant has stated (and I accept) he does not only not practise the rituals of Islam, he does not believe in Islam and has a negative view of Islam which is known to his friends and family, and which has been posted on [Social media] in his derogatory [writings] about the Supreme Leader and share posts.
14. The applicant claims that in Iran he was outspoken against Islam and the Iranian Islamic Republic regime through his [writings] which he wrote in notebooks and posted on [Social media]. He and his father attended an underground [writing] group in Yazd where members would gather and share their [writings]. The group believed that the word has power and powerful words could initiate a powerful social movement and as [writers] it was their duty address the issues facing their society. Many of the group members held views opposed to the government and while generally they were not so strong as to create problems for the group, sometimes in their private gatherings they would share some problematic [writings]. Yazd is closely monitored due its population of Zoroastrians and young people as both are perceived as anti-regime and as a young person who participated in protests in Yazd and expressed his opposition through his [writings], he was monitored and could not make progress in education or employment. One of the [writing] group members was arrested and his belongings including his notebooks and computers seized. The applicant and the other group members feared their own [writing] might have been amongst that member's things and fallen into the authorities' possession.
15. I accept the applicant and his father were participating members of this [writing] group in Iran. The applicant has been consistent and convincing about this since his arrival in Australia and his recitation of a [writing] is captured in the audio recording (but not transcript) of the Entry interview.
16. I am not however, convinced that it was an underground or secret group with members opposed to the regime, or that its agenda was to initiate social movements. The applicant has provided a letter purportedly from the [organisation alternative name] dated May 2012 attesting that the applicant has been a member and has been continuously taking part in weekly [writing] meetings and I consider it implausible that he would have obtained or kept evidence of his

participation in a secret or underground group of that nature. The applicant has not provided any evidence which satisfies me that the group did anything beyond sharing work with each other or that it took any other steps to initiate social movements. On his own evidence he does not know the reason for the group member's arrest and the evidence does not suggest that the applicant, his father, any other member of their family or the [writing] group were ever questioned, detained or otherwise harmed in relation to that member's arrest, or that his work was amongst any material seized from amongst that member's belongings. I am not satisfied the Iranian authorities have, or would in the future, have an adverse interest in the applicant on account of his participation in this [writing] group, the member that was arrested or any material the authorities seized in investigating that member. I do not accept the applicant's claim that his [writing] fell into the authorities' possession or that this led to his continuous harassment and targeting, nor to any obstacles in his education or employment.

17. While the applicant claims he posted his [writing] and views on [Social media] before leaving Iran, he has not provided any evidence of this. The applicant's representative has suggested to the IAA that the delegate had mistakenly looked only under his alias [Social media] name instead of under the applicant's own name, which he used for [Social media] in Iran, and was the account to which he posted his [writing]. I see problems with this – firstly, I note the delegate had explained to the applicant in the presence of this same representative who attended the interview, that it was his responsibility to raise claims and provide evidence in support of those claims, and also specifically asked the applicant to provide the [Social media] evidence. Secondly, I consider it implausible that the applicant would post anti-Islam and anti-regime [writing] under his own name on [Social media] while in Iran, particularly when he claims the authorities were monitoring the Yazd population.
18. I do however accept that the applicant wanted more freedom in Iran. His disdain with the religious and other rules of the regime was evident in his application and SHEV interview. The audio of his Entry interview also reveals the applicant made reference to Iranian authorities controlling people's lives, "*always poking their noses in*", about his needing to be very careful and having to do things "*between the lines*". He said he couldn't talk, think or do anything outside those lines. He claims he participated in a number of protests in Iran, starting from when he was 16 and he joined with university students in protesting against tighter limits on publications and media laws. Some students were killed but their perpetrators were never punished and so he also participated in yearly protests to commemorate this incident. These protests were generally peaceful apart from in 2003. He also participated in several Green Movement demonstrations in 2009. His participation involved gathering with others in the main square, carrying placards and shouting slogans. I accept the applicant engaged in these protests/demonstrations as claimed. However he has not claimed to have had an organisational role in the protests and he confirmed at the SHEV interview that he was never arrested for anything in Iran. He also has not disputed the delegate's findings that his involvement in the protests was low-level only, that he was not politically active in the country after 2009 and that he never came to adverse attention of the authorities for his political activities. I am not satisfied on the evidence before me that the applicant's own role in any of these protests or demonstrations was anything more than low level or that the authorities took any interest in him on account of these activities.
19. Given these findings, taking into account that the applicant was able to leave Iran lawfully on his own passport and that the evidence does not indicate that the authorities have questioned the applicant's family or otherwise sought his location or information about him after he left, I am not satisfied that the applicant had an identifiable political profile or that the Iranian authorities took an adverse interest in the applicant on account of his religious or political views or any of his activities prior to his departure from Iran.

20. The applicant claims he has been politically active in Australia through his involvement in the Australian branch of the NCI, an internationally known coalition of opposition groups which was established six years ago and is headquartered in France. The applicant explained that the NCI's overarching objective is to achieve free elections in Iran, where people can freely express their views before and after the election and support their own preferred candidates and where candidacy would not be dependent on the Council of Guardians approval. But as this could not materialise with the current nature of the Islamic Republic regime, the other objective is for regime change. The NCI works towards these objectives in Australia by holding peaceful demonstrations and encouraging civil actions such as worker strikes in Iran, and establishing dialogues with senior representatives of foreign ruling elite and parties to encourage them to place pressure on the Iranian government. This information is supported in the country information before the delegate from DFAT and other sources. The applicant stated that he learned about NCI in 2016 and has formally been a member since the beginning of 2017, and his involvement has included participating in protests with them in Sydney and Canberra, attending commemoration events and attending monthly meetings where they receive communications from their French office and organise street marches and protests and prepare the flags and banners. The last NCI gathering the applicant attended before the SHEV interview (on 21 March 2019) occurred [on date] when they participated in a walk for [Day] from [Location 1] to [Location 2]. The applicant carried a banner stating [slogan] and he has provided photographs of himself at this event.

21. The applicant has also provided other documentary evidence in support of his political activity in Australia. This includes:

- receipts from his annual NCI membership fees covering 2017-18 and 2018-19;
- photographs of himself at what I accept are NCI meetings, his participation in the [Day] walk [on date] where he was wearing an NCI shirt and carrying a large banner advocating for Iranian [rights];
- a photo purportedly taken at protests outside the Iranian embassy in Canberra showing him in the foreground of police monitored demonstration with protestors bearing what appears to be the NCI flag/logo;
- photos at what appears to be a different protest at the Embassy where the applicant is pictured holding placards stating "*Democracy for Iran*" and "*I am a writer*" and others holding flags and placards stating "*Iran National Council for Free Elections*", "*Support Gender Equality in Iran*", "*Support Iranian Nurses*", "*Support the Abolition of Child Labour in Iran*", "*I am a Uni student*" and "*I am a child*";
- A selection of [Social media] screenshots showing that in 2013 he posted [writings] of a crass nature insulting Iran's Supreme Leader and the regime; in 2015 he shared a photo posted by the Iranian Atheists and Agnostics; [in] March 2019 he shared his [Social media] friend's cover photo from October 2016 showing the applicant and other NCI members protesting against the regime, and a video showing him holding the banner and participating in what appears to be the [Day] walk.

22. Apart from those of the [Day] walk, the photos are undated but I nevertheless accept, as did the delegate, that the applicant has been a member of the NCI since 2017 and has participated with them in meetings public demonstrations against the Iranian regime in Australia.

23. There has been some embellishment. I do not accept the applicant's claims from his SHEV application that he began to protest against the Iranian regime through [Social media] posting and the NCI "*from the moment*" he arrived in Australia. He has only provided evidence of his

engagement with the NCI dating back to October 2016 (not 2013 when he arrived in Australia) and while he has provided some [Social media] evidence from 2013, 2015 and 2016, his social media activities in this respect appear to have been sporadic. I do not however consider that his political activities in Australia have only been for the purpose of strengthening his refugee and protection claims. Unlike the delegate I consider the applicant provided a commensurate amount of detail when responding to questioning about the NCI and his religious views and I draw no adverse inference from the fact that the NCI meetings and protests have been open to the public, nor from the fact that he has not taken on an organisational, leadership or managerial role. I accept the applicant's submissions countering the delegate's doubts about the [Social media] evidence (which although sporadic dates back to 2013) belonging to the applicant rather than his [sibling] and I also give some weight to the smattering of other evidence as to the applicant's political and religious views given throughout the SHEV process, his statements captured in the Entry interview recording in 2013 regarding not being able to speak or behave freely, as well as to the other documentary evidence, which, when taken together, I find persuasive. I am satisfied the applicant's activities in Australia should not be disregarded through application of s.5J(6).

24. I am not satisfied that the applicant has already come to the adverse attention of the Iranian authorities, even despite his protesting outside the Embassy in Canberra and other places and his social media posts. However he said in his SHEV application that he fears harm in Iran on the basis of his continued involvement with such activities and he reiterated this in the SHEV interview. The delegate asked why he thought he would be of interest to the authorities on return to Iran given his six year absence and the applicant responded with reference to the government's ideologies and his continuing activities against the regime, and the limitations on such activities within Iran. Given these factors and taking into account the overall evidence before me, I accept he would wish to continue engaging in such activities and to openly express his views on return.
25. I accept the applicant left Iran lawfully. As current DFAT information indicates that Iran has historically refused to issue travel documents to facilitate the return of involuntary returnees, I find that if the applicant is returned to Iran it would only be on a voluntary basis. In the event of voluntary return, although the evidence indicates he left Iran lawfully using his own genuine passport, I accept he is no longer in possession of his passport and would be issued with temporary travel documents or a *laisser-passe* from an Iranian diplomatic mission to facilitate his travel and return to Iran. I accept that through this process, the authorities will be forewarned of the applicant's imminent return, and that they may surmise he is a failed asylum seeker from Australia/a western country.

Refugee assessment

26. 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

27. 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.
28. Religion and politics are inextricably linked in Iran and I find this particularly true in the applicant's circumstances having regard to the views he has expressed about the Islamic Republic regime and Iran's Supreme Leader. I have accepted the applicant does not practise or believe in Islam. He has a negative view of Islam and Sharia law and his religious views and his anti-regime views are known to his friends and family, and have been expressed on [Social media] in his derogatory [writings] about the Supreme Leader and a shared post. He is a member of the NCI and has participated in their meetings and public demonstrations against the Iranian regime in Australia, including in protests at the Iranian Embassy, and shared some related material on [Social media]. If he returns voluntarily he would be identifiable to Iranian authorities on return as a failed asylum seeker from Australia.
29. Country information in the review material indicates there is a growing trend of nationalism and secularism in Iran correlating with the children born after the 1979 Revolution coming of age. Non-practising Muslims and atheists are unlikely to come to the attention of authorities unless they make a public statement attesting to their lack of or rejection of faith. A June 2014 Danish Immigration Service fact-finding mission report included information provided by Elam Ministries, who stated that *"abstaining from Muslim rituals such as not attending mosque...would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques."* This is supported by 2015 reporting from the LSE Middle East Centre. Other information before the delegate indicates that in recent years, young people in Iran—particularly in Tehran—have incrementally but increasingly pushed the boundaries of accepted behaviour. As the delegate noted, there are however numerous examples of people arrested and prosecuted in 2016 and 2017 for eating during Ramadan and while the regime largely tolerates many small such actions, reporting from 2018 in the review material indicates it will punish those it believes are purposefully attempting to 'insult' Islamic values or undermine the Islamic Revolution.
30. = Although the review material indicates it is legally possible, there no recent evidence of individuals being prosecuted for atheism and the regime would only likely become aware if an individual's views were publicized. Amnesty International reported said that atheists *"remained at risk of persecution, including arrest, imprisonment and possible execution"* but there are no recent examples of this occurring. ACCORD noted that the Danish Immigration Service's 2014 fact-finding mission report stated that there is a growing number of atheists in Iran and that this is becoming *"more accepted among some Iranians"*. A senior research fellow in Iranian studies at a university in Germany told ACCORD in August 2015 that *"atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions."* An October 2012 article from the German weekly newspaper Die Zeit mentions that *"...while few death sentences for apostasy were carried out in the last ten years, atheists*

are forced to hide their true beliefs for fear of other consequences such as losing their social benefits or being barred from university entrance.”

31. DFAT’s 2018 report indicates that while apostasy and blasphemy cases are no longer an everyday occurrence in Iran, authorities continue to use religiously-based charges (such as ‘insulting Islam’) against a diverse group of Individuals and some religiously-based charges have clear political overtones. DFAT assesses that those accused of religiously-based charges are also likely to face charges related to national security. They are unlikely to have adequate legal defence, and are likely to be convicted.
32. In terms of political expression, DFAT (2018) states that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media – but this freedom is not unlimited. A number of well-established ‘red line’ topics are off-limits and critical commentary may lead to prosecution under national security legislation. Iranian authorities routinely suppress free speech and punish public criticism of the regime. Sources cited by the delegate report that Iranians have been subject to adverse treatment, including arrests and imprisonment, following their return to Iran for their online activities whilst abroad, particularly those involving the expression of anti-regime sentiment. As the delegate noted, ordinary citizens have been targeted for their perceived social media activism, with Article 19 (UK) commenting that the targets no longer seem to be only prominent activists or campaigners. The delegate referred to a number of arrests of [Social media] users who were ordinary people who have been arrested because of blasphemy and insulting officials on [Social media]. While [Social media] is not monitored on a systematic basis, the information considered by the delegate indicates it may occur when an agent of the authorities was friended or if a page is publicly viewable, as I accept at least one of the applicant’s pages is.
33. As for returning asylum seekers, DFAT states that according to international observers, 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 in relation to protection claims including social media comments. The authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as by committing a crime in Iran before departing. However, on the other hand, sources considered by the delegate note there have been some reports of mistreatment of returnees who were already of interest before departing Iran or were identified as having been critical of the government while abroad.
34. I take into account that the applicant’s family do not appear to have faced any problems on account of his activities and the country information does not indicate that all persons who have not previously been known to the authorities but who have engaged in the activities that the applicant has abroad will be detained and/or harmed on their initial return. Nevertheless, the country information before the delegate indicates that while there is a growing trend of non-observance of Islamic rituals and atheism, and of robust criticism of the government in Iran, engaging in such behaviour may attract adverse attention and penalties and as such, many people take steps to conceal their views or involvement. It indicates there are still limits on religious and political expression and the Iranian regime may take an adverse interest in even ordinary citizens who have been critical of the government online or while abroad. Various sources in the review material indicate that those arrested for political or religious opinions that are seen as critical of the Iranian regime, threatening national security or ‘blasphemous’ are frequently tortured, flogged or imprisoned for indefinite periods, sometimes without being charged.

35. I consider that as a returned asylum seeker the applicant will likely be questioned about the reasons he departed Iran and his activities in Australia and there is more than a remote possibility that his background and anti-regime [writing] and activities may become known as a result of this investigation, or, relevantly, in the reasonably foreseeable future given I have accepted the applicant would seek to engage in a continuation of political expression and disclosure of his religious views.
36. I am satisfied that if the applicant were to return to Iran and not modify his behaviour (by concealing his religious and political beliefs and restricting his expression), he would face more than a remote chance of being subject to monitoring, arrest and subsequent detention during which there is a real chance he will be subjected to significant physical abuse and/or a threat to his life or liberty. I am satisfied this real chance would arise for the applicant for expressing his anti-Islam and anti-regime views in Australia, or for his continuation of such activities from within Iran. I accept he faces a real chance of harm amounting to serious harm. I am satisfied that this harm would be systematic and discriminatory conduct carried out by the Iranian authorities against those to turn away from Islam, insult Islam, the Supreme Leader or the regime, or those who are otherwise critical of the regime, for the essential and significant reason of their religion and/or political opinion.
37. Country information indicates that an extensive network of police, security, and intelligence services exercises effective control over almost all areas of the country. As the harm feared by the applicant would be inflicted by the authorities, I find that effective protection measures are not available to the applicant and that the real chance of harm relates to all areas of Iran.
38. I am satisfied that modification of behaviour would be impermissible in this circumstance; the applicant cannot reasonably be expected to renounce or conceal his religious beliefs and his political opinion to avoid a real chance of persecution.
39. I am satisfied the applicant's fear of persecution on the cumulative basis of his religion and political opinion is well-founded.

Refugee: conclusion

40. The applicant meets the requirements of the definition of refugee in s.5H(1). The applicant meets s.36(2)(a).

Decision

The IAA remits the decision for reconsideration with the direction that:

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

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.