



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07003

Date and time of decision: 17 September 2019 17:42:00

L Hill, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He arrived in Australia in December 2012 and applied for a Safe Haven Enterprise Visa (protection visa) on 6 April 2017. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 15 August 2019.

### 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).
3. On 12 September 2019, the applicant emailed the IAA. A “post interview submission” was attached. This document was contained in the review materials provided by the Secretary. It is not new information and I have a regard to it.
4. On 12 September 2019, an email was also received from the applicant’s representative. The email stated that while he was aware that the time for submissions had passed the applicant had only given him “the authority to act on his behalf just today, so [he] would like to request extension of time to provide a submission to IAA”. Information before me indicates that this representative assisted the applicant throughout the protection visa process with the Department and received notification of the Department’s decision on 15 August 2019. That notice also informed the applicant and his representative that this case would be referred to the IAA. The applicant’s representative is a registered migration agent. The applicant was advised by email on 21 August 2019 that his case had been referred to the IAA. That advice also contained a fact sheet, in the applicant’s own language, advising him of the strict requirements for making submissions. The applicant did not contact the IAA until the day after submissions were due. He expressed dissatisfaction with his lawyer (who I note he has subsequently appointed) but also made clear he did not intend to submit anything further. The following day he contacted the IAA again asking when information had to be submitted and was advised accordingly. I have considered the reasons for the request, and the applicant’s circumstances and that he and his representative were advised on 15 August 2019 that this case would be referred to the IAA however I am not satisfied an extension of time was warranted in this case. The request was not granted. No further correspondence has been received.

### Applicant’s claims for protection

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5. The applicant’s claims can be summarised as follows:
  - He was born in Dezful in Iran, and is a citizen of Iran.
  - His father and relatives had faced a variety of problems and their lives had been put in danger because of their perceived involvement in political activities. An execution order was issued for his father but was later nullified (invalidated).
  - He had to flee Iran because he had come to the attention of the Iranian authorities and its forces because he had transported [number] passengers who were involved in anti-Iranian government political activities to the Iran-[Country] border in his [vehicle].

- After his departure from Iran his family has told him that the Iranian authorities had twice visited his home and asked for him.
  - Since his arrival in Australia he has converted to Christianity.
6. On return he fears he will be harmed including being arrested, interrogated or tortured by the Iranian government and its forces because of his perceived political opinion arising from his familial relationship to his father and relatives and the perception they have been involved in political activities, his own activities in his transportation of anti-Iranian government political passengers, his conversion to Christianity, his having sought asylum in a western country, Australia and the Department of Immigration's release of his personal information in 2014.

### **Refugee assessment**

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7. 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**

8. 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.
9. The applicant has provided copies of his Iranian National Identity Card, Birth Certificate and Certificate of Compulsory Military Service. I accept he was born in Dezful in Iran, and is an Iranian citizen. I am satisfied Iran is the receiving country for the purpose of this assessment.
10. In the protection visa statement, the applicant claimed that while he was not involved in politics or political activities his father and relatives had faced a variety of problems and he had witnessed that that their lives had been put in danger because of their political activities. After the Islamic revolution, Ayatollah Khomeini sentenced people to death, long imprisonment or exile and other forms of persecution and his father was not excluded. His father was considered anti-revolutionary and a lot of threatening letters were thrown into their house. The content of these letters were unpleasant and his family felt intimidated.

11. At the protection visa interview, the applicant was asked what political activities he and his relatives had been involved in. He stated that when the revolution happened his father was a royalist and a big landowner and because of this the Iranian authorities created problems for his father and issued letters. An execution order was also issued for his father but was later nullified (invalidated). He was asked on what grounds they ordered his father to be executed. He stated he couldn't say what grounds but believes it was because his father been with the Shah (King). He stated the execution order existed. It was at his home but his family would not allow him to bring it with him.
12. It was put to the applicant that at his entry interview in 2013, he had indicated that no one in his family had been associated or involved in any political groups or organisations or activities or protests against the government and that this raised concerns about the credibility of the evidence he was now providing regarding his family and their involvement in political activities. He stated that his family were not political nor did they have anything to do with the Shah or the government however because his father was a big landowner and had belief in his authority (Shah) the execution order was issued. The execution order only related to his father, no one else.
13. At the protection visa interview the applicant stated that the written record of the entry interview was not an accurate reflection of the recording and that at the time he felt under duress and was unable to talk freely. These explanations were expounded on in the post interview submission. In relation to these aspects of the claims, it was contended that the applicant had not talked about the issues faced by his father at the entry interview because of the conduct of the interpreter. It was noted that:
  - several times the interpreter intervened and added unnecessary comments to the question posed and this made the applicant believe he should give very short and brief answers;
  - throughout the interview the interpreter would not allow the applicant to finish his sentence and spoke over the top of the applicant making it hard for him to concentrate and state his points clearly;
  - when the applicant was asked for the reasons why he had left Iran the interpreter told the applicant to be "short, sufficient and brief" in his answers; and
  - the unprofessional conduct, adding of personal comments and unnecessary distractions implied to the applicant he could only speak briefly and felt pressured and confused and led him to have limited opportunities to explain all his details at the entry interview.
14. I have considered the various explanations provided for the variations in this aspect of the applicant's evidence however I am unpersuaded by them. The various contentions made about the conduct of the interpreter do not address the specific concern raised that the applicant stated "no" when asked directly whether anyone in his family had been associated or involved in any political groups or organisations or activities or protests against the government. I have listened to the entry interview and it is not apparent that the interpreter at this point did anything other than interpret the two questions posed and I am satisfied that the applicant responded no. The entry interview went for approximately one hour and twenty minutes and throughout the interview the applicant appeared to be cooperative, open and forthcoming, and this is despite the fact that he now claims to have been at that time confused, under duress and pressure and could not speak freely and that this impacted on his ability to concentrate and answer, and I am not satisfied that he was. I am satisfied that even taking into account the limited scope and purpose of the entry interview, the applicant had an opportunity to provide his claims regarding his father and relatives

involvement in political activities and had these claims had any credible basis he would have provided them when asked, he did not. Furthermore, the applicant's claims regarding the issuance of an execution order against his father whether this order was nullified or not is significant and the absence of any mention of this claim at the entry interview along with the absence of any corroborating documents further undermines these aspects of the applicant's evidence.

15. The applicant's evidence regarding the level of involvement in political activities by his father and his relatives has vacillated. He indicated at the entry interview that his family had not been associated or involved in any political groups or organisations or activities or protests against the government. In his protection visa statement he then referred to an unspecified level of involvement in political activities that led to them having problems and endangering their lives. Then in his protection visa interview and post-interview submission he said his father and relatives had no involvement in any political activities.
16. In the post-interview submission it was further contended that the evidence regarding the applicant's father and relatives was not provided at the entry interview because "it is not adverse information and are (sic) directly related to his claims for protection made in 2013". I have considered this explanation however I refer to my concerns noted above. The applicant was specifically asked questions regarding his and his family's involvement in political groups or organisations or activities at the entry interview. These questions were asked after he had provided his reasons for leaving Iran. I find it difficult to accept even if this evidence was not directly related to his reasons for leaving that he did not indicate that they had been involved in political activities when directly asked at the entry interview. Furthermore, I find the contention that the preamble of the protection visa interview, in which the applicant was advised that the interview was his opportunity to provide further details justifies the addition of the claims regarding his father's execution order to be no more than a contrived explanation for the absence of this detail from the protection visa application, which the representative who made this contention assisted him to prepare.
17. Finally, I found this aspect of the applicant's evidence at the protection visa interview was unconvincing. In response to being asked what political activities his father and his relatives had been involved in he only spoke about his father and the execution order. He made no mention of other relatives' activities. Furthermore, other than the applicant's assertions, he has not provided any corroborating evidence in support of these aspects of his claims. At the protection visa interview, the applicant appeared to address this concern and stated that while the execution order existed his family would not allow him to bring it. I have considered this explanation and while he may not have been able to bring the original document with him, this explanation does not address why a scanned copy could not have been provided and it remains that there is an absence of corroborating evidence in relation to these aspects of his claims.
18. I am not satisfied that the applicant has been a truthful witness regarding these aspects of his claims. I am not satisfied that the applicant's father or relatives have been associated with or involved in any political groups or organisations or activities. I am not satisfied that an execution order has ever been issued against his father for any reason. Nor am I satisfied that any of the subsequent claims including that his father or relatives have suffered any problems, harm or their lives put in danger are credible.
19. In the protection visa statement the applicant claimed that he fled Iran because he had come to the attention of the Iranian authorities and its forces because he had transported

[number] passengers who were involved in anti-Iranian government political activities to the Iran-[Country] border.

20. The applicant raised this claim at his entry interview with the Department, which was conducted approximately three weeks after his arrival in Australia. However, I agree with the delegate that there a number of issues with his description of this event which raises significant doubts about the credibility of these aspects of his claims.
21. The applicant's description of this event between the entry interview and protection visa statement and interview varied noticeably.
  - At the entry interview, the applicant stated that he was first advised that he was being sought by the Iranian authorities when he received a phone call from Etalaat (Iranian Intelligence Agency) when returning to Dezful. In the protection visa statement he stated that he was first advised that he was being sought by the Intelligence Agencies by the [managers] on his return to the [Transport] Terminal, the day prior to his return to Dezful.
  - At the entry interview, the applicant stated that the phone call he received was from Etalaat and he was told take his [vehicle] the next day to the Etalaat office. In the protection visa statement, he stated the phone call he received was from "someone who did not introduced (sic) himself" and he was to go to [location] as soon as he arrived in Dezful.
  - At the entry interview, the applicant indicated that the Iranian authorities had come to know he had taken the passengers [in] his [vehicle] because the passengers had been arrested and confessed his involvement. His relative at the City Council had found out this information. At the protection visa interview, when the applicant was asked how the Iranian authorities had come to know he was the [vehicle] driver, he stated that he went through many police checkpoints in which he told them he was in charge of the [vehicle] and it was also on the documentation he had lodged for the journey.
22. In addressing the variations between the entry interview and his protection visa statement and interview the applicant indicated that he was under duress and that there had been issues with the interpreter including that she was in a hurry and would not allow him to speak freely. He stated there were many mistakes made at his entry interview. In the post-interview submissions, it was contended that in relation to the applicant's evidence at entry interview:
  - the applicant was under pressure to be "quick and "brief" and was made to summarise his answers and had less concentration on the response;
  - it was an official interview situation but he had been requested to be "fast and sufficient" in making his statements; and
  - he had no intention of concealing such information from the Department.
23. I have considered the various explanations provided however I am unconvinced that they sufficiently explain why these particular aspects of the applicant's claims have varied. I have listened to the recording of the entry interview. The statements noted above emanate from the applicant's own evidence and I am not satisfied that they are mistakes that can be attributed to any of the factors claims including the conduct of the interpreter or Department officer. As discussed above, the applicant appeared to be cooperative, open and forthcoming at the entry interview and I am not satisfied that the various reasons he now claims to have impacted on his ability to participate in this interview and which he now claims as being the basis for the variations in these aspects of his claims are true.

24. The applicant's evidence that he was of interest by the Iranian authorities because of his perceived political opinion yet he was able to leave Iran legally using his own Iranian passport without attracting interest and/or stopped at Iran's international airport by the Iranian authorities is problematic.
25. In the protection visa statement and interview, the applicant explained that he was able to leave Iran without any issues because his relative, who worked at the Tehran City Council, was able to access information and had advised him he had no travel restrictions. In the post-interview submission it was further contended "that based on his [relative's] advice [the applicant] was still able to exit the country, however he was likely to be banned from exiting the country soon, as the people who he was taken to a location near Iran-[Country]'s border were arrested and it was found they were involved in anti-government activities. [The applicant] organised his travel shortly after he became aware of the situation and only two days after the incident he managed to leave Iran".
26. I consider this explanation highly improbable when considered against the independent count information in the review materials.
27. In 2012, the year prior to the applicant's departure, DFAT reported that the passport office in Iran compiled a blacklist of names submitted to them by a number of agencies. The blacklist was a register of people who are not allowed to leave the country. The judiciary, intelligence and interior ministries contributed information and that other security forces such as the Revolutionary Guard and Iran's irregular forces were also rumoured to have input on it. Reasons which could lead to a person being included, among others, serious crimes and anti-regime political activities.
28. In light of the information before me, even taking into account his claim that he left quickly, I find it difficult to accept that had the applicant been of interest to the Iranian authorities and sought in the manner and for the reasons claimed that his name would not have been added to the blacklist and stopped at the airport. Furthermore, I agree with the delegate that the applicant's evidence that his relative who worked at the Tehran City Council would have access to the blacklist at the passport office or the agencies that are reported as contributing information to the list such as the judiciary, intelligence and interior ministries and that other security forces such as the Revolutionary Guard and Iran's irregular forces to be implausible.
29. I am not satisfied that the applicant has been a truthful witness regarding these aspects of his claims. I am not satisfied that the applicant's claims regarding his past experiences which led to him making his decision to leave Iran are true. I am not satisfied that he came to the attention of the Iranian authorities and its forces because he had transported [number] passengers who were involved in anti-Iranian government political activities to the Iran-[Country] border. Nor am I satisfied that any of his subsequent claims including that the Iranian authorities have attended his home and asked for him are credible. I am satisfied that these aspects of the applicant's claims have been contrived to enhance his claims for protection.
30. The applicant departed Iran using his own Iranian passport. As discussed above, I have rejected the applicant's past experiences which he claimed lead to him leaving Iran. There is no other credible evidence before me to indicate why the Iranian authorities or its forces would have an interest in him at the time of his departure, and I am not satisfied that they were. I am satisfied the applicant left Iran legally using his own Iranian passport and was not of interest to the Iranian authorities at the time of his departure through the international airport in Tehran in 2012.

31. At the protection visa interview the applicant claimed that since his arrival in Australia he has converted to Christianity. He provided a copy of [Church], Certificate of Water Baptism dated [July] 2013 in support.
32. He was asked whether he feared returning to Iran as a Christian convert. Initially he stated no but then stated he did. He was then asked when he had converted. He stated “[July] 2013 (baptism) but don’t worry about my Christian conversion let’s put it to one side”. The applicant was advised that as he had raised this as a reason he feared returning questions needed to be asked about this aspect of his claims. He was asked whether he had been attending or undertaking Christian activities since his baptism in 2013. He stated “no, I am always at work, busy”. He was asked if he attended church, he stated no. He was asked whether he prayed. He stated then even when he was a Muslim in Iran he didn’t really practise his religion. He was asked why if he had converted in July 2013 this information had not been included in his protection visa application, which had been lodged in 2017. He indicated that it was his own feelings and that he feared returning to Iran because of his “own case”.
33. In the post-interview submission it was submitted that as stated by the applicant at the protection visa interview, “the applicant confirmed that Christianity is not part of his protection claim”. The [Church], Certificate of Water Baptism was only presented to inform the Department of his conversion and change of religion and “he has no intention to make Christianity as part of his protection claim”.
34. The applicant’s own evidence is that he has not attended church or engaged in any Christian activities since 2013. At least five years has passed between his Baptism and his protection visa interview. I do not accept that had he genuinely converted to Christianity factors such as working and being busy would have prevented him from engaging in Christian activities.
35. I am prepared to accept that on one occasion in 2013, the applicant attended a [Church] and participated in a Water Baptism, as evidenced by the Certificate; however the applicant’s own evidence that he has not attended church or engaged in any Christian activities since this date, at least five years ago. I am not satisfied that he has genuinely converted or has ongoing interest in Christianity. It follows that I am not satisfied that he will engage in or have any interest in Christianity or Christian activities including proselytising should he return to Iran.
36. Furthermore, having regard to the information before me and which I have outlined above, I am also not satisfied that the applicant’s engagement with the church in Australia, including his baptism was for any purpose otherwise than to strengthen his claims for protection. Therefore, in determining whether he has a well-founded fear of persecution these activities must be disregarded: s.5J(6) of the Act.
37. I am not satisfied that the applicant has abandoned his religion as a Shia Muslim. In his protection visa application, his religion is recorded as “Shia Muslim”. At the protection visa interview, the applicant stated that even when he was a Muslim in Iran he didn’t really practise his religion.
38. DFAT have stated that is highly unlikely that the government would monitor religious observations by Iranians –for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Country information indicates that there is a significant level of non-attendance at mosques in Iran. A senior research fellow in Iranian studies at a university in Germany’ advised the



Austrian Centre for Country of Origin and Asylum Research and Documentation in August 2015 that non-practising Muslims form a large part of the population of Iran's cities. They lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts.

39. I accept that the applicant may be viewed as a non-practising Shia Muslim should he return to Iran. However, he has not claimed to have experienced any harm in the past due for this reason. Nor is there any evidence indicating that he has attempted to publicise his non-practise in Iran or in Australia and I do not accept that he would or would wish to should he return. In light of the information before me, I am not satisfied the applicant with his history and profile would face a real chance of harm on this basis should he return to Iran.
40. The applicant claims that he fears he will be harmed including being arrested, interrogated or tortured by the Iranian government and its forces on return because he would be returning after he had sought asylum in a western country and because of the Department of Immigration's release of his personal information in 2014 (data breach) and other matters which I have not found to be credible above.
41. The information disclosed about persons subject to the data breach included: their name; date of birth; nationality; gender; the reason for and location of their detention; and whether they had any family members in detention. No protection claims were disclosed and in this case the data breach occurred several years before the applicant had made his protection visa application. I do not accept that the Iranian authorities will be aware of his asylum seeker case because of the data breach.
42. I have found that the applicant departed Iran legally using his own Iranian passport, but I accept he no longer has this passport. According to DFAT, Iran has historically refused to issue travel documents (laissez passers) to allow the involuntary return of its citizens from abroad. On 19 March 2018, however, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. In light of this information, I am satisfied that if the applicant was to return to Iran it would be on a voluntary basis, on a temporary travel document (laissez passer), after his residence in a western country, Australia and after his asylum applications have been unsuccessful.
43. DFAT reported that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran, with the authorities accepting that many will seek to live and work overseas for economic reasons. It was also commented that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims and it was those with an existing high profile who may face a higher risk of coming to official attention on return to Iran, particularly political activists. DFAT also noted that it not aware of any legislative or social barriers for returnees finding work or accommodation in Iran or any specific barriers to prevent return to a returnee's home region.
44. The applicant was not of interest to the Iranian authorities when he departed Iran, and I am not satisfied he committed a crime before leaving Iran or has otherwise come to the official attention of the authorities since leaving Iran. There is also no independent information before me to suggest that absent any other concerns, Iranians who have spent time outside of Iran in a western country such as Australia, who sought asylum unsuccessfully and were subject to the data breach are imputed with an adverse opinion or profile and harmed.

45. In light of the information before me, I am not satisfied the applicant, with his history and profile, faces a real chance of any harm should he return to Iran because he might be identified at the airport as a person travelling on temporary travel documents, who was subject to the data breach and after having sought asylum sought, or asylum unsuccessfully and resided in a western country, Australia.
46. I am not satisfied the applicant has a well-founded fear of persecution.

#### **Refugee: conclusion**

47. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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48. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

#### **Real risk of significant harm**

49. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
50. I have considered whether there is a real risk of significant harm as a result of the applicant's activities in Australia, that being on one occasion in 2013, the applicant attended a [Church] and participated in a Water Baptism. As discussed above, I have found that the applicant has not genuinely converted or has ongoing interest in Christianity and that he will engage in or have any interest in Christianity or Christian activities including proselytising on return. I have also found that the applicant was not of interest to the Iranian authorities when he left Iran. DFAT has reported that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, this includes converting to Christianity. There is nothing before me to indicate that the Iranian authorities would be aware of his attendance at a [Church] and participated in a Water Baptism on one occasion and nor am I satisfied that in light of the information before me that these activities would be of concern to them or that he would be of adverse interest to them on this basis. I do not accept that he will become a person of interest to the Iranian authorities on the basis of his attendance at a [Church] and participation in a Water Baptism on one occasion in 2013, and I am not satisfied he will pursue the Christian faith on return to Iran. I am not satisfied he faces a real risk of significant harm on return to Iran on this basis.

51. I have otherwise found the applicant does not face a real chance of harm on any or the bases claimed now or in the reasonably foreseeable future. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm on these bases.

**Complementary protection: conclusion**

52. 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**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

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***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.