



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/07139

Date and time of decision: 3 October 2019 14:53:00

M Anderton, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The applicant is a Shia Muslim Arab from Ahwaz, Iran who arrived in Australia by boat [in] July 2013.
2. On 27 April 2017 the applicant applied for a safe haven enterprise visa.
3. His claims revolved around discrimination for his Arab ethnicity and membership and activity in an Arab political group. He fears he will be accused as an Arab political activist, Al Ahvazi separatist and acting against a national security and be persecuted.
4. On 4 September 2019 the delegate refused to grant the visa because he was not satisfied that the applicant was a refugee or that there was a real risk of significant harm if returned to Iran.

Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
6. On 30 September the applicant's representative provided submissions to the IAA which I have considered as I do not consider it is new information but argument and reasons why the applicant disagrees with the delegate's decision.
7. It was submitted the applicant provided exhaustive information about the Al Ahvazi group, its purpose and his role and demonstrated acceptable knowledge of the group given was a member for a short time and it was six years ago. It was submitted he could obtain a passport and depart Iran because authorities did not know his identity and not travel banned him because he acted quickly. It was submitted at the entry interview he was exhausted, not mentally or physically fit due to the trauma of the journey, the interviewer was aggressive and conducted it like an interrogation and in response to question 74 he said 'among other things' because of his Arab ethnicity. He could not focus on the questions. It was submitted at the protection interview the applicant did not state his main reasons for departure straight way because he was instructed by the delegate to tell his life story from the beginning. It was submitted the summons and visit to his parents' home were sent to make warnings look more official.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He is a Shia Muslim Arab from Ahwaz.
 - According to his arrival interview the applicant left Iran for a better future, education and freedom and to find a good job, live with his brother and have a peaceful life. He stated because of his Arab ethnicity he did not have equal rights to other Iranian citizens and could not have a fair education or get a fair job.
 - According to his April 2017 application statement he has always been a victim of discrimination because of his ethnicity. The regime does not let Arabs practise

traditional customs such not allows wearing of traditional cloth, disdasha in public and they accuse Arabs of being traitors, supporting Iraq during the war and so have imposed significant discriminations.

- He was deprived of continuing his higher education. He quit study of his [Qualification 1] because students and professors had humiliated him on various occasions because of his Arab ethnicity. He also had a tough time during military service as officers made fun of him.
- He was unable to find a proper job after military service because of racial discrimination as positions were always filled by non-Arabs. Almost a year after his military service he found a casual [Job 1] at a friend's agency.
- The applicant's [brother], told him about his activities in an Arab group that was active against discriminations in Ahvaz and invited him to the meetings. People who attended were supporters of Khuzestan separation movement and wanted to reclaim Khuzestan as a dependent state of Al-Ahvaz. They discussed discriminations imposed on the Arab community of Khusetan. They talked to friends and relatives about the group and he helped his brother hand out pamphlets in Arab suburbs.
- In March 2013, the applicant, his brother and a few other members gathered in [Location 1] and raised the Al Ahvaz flag on a water tank at midnight as a sign to protest. The next morning authorities bashed up the local people.
- Three weeks later they heard that one of the active members was arrested following the incident in [Location 1]. The group stopped its activities. They were frightened. Two other group members fled to Turkey. Their group was targeted and they were worried they would be caught as separatists.
- His [cousin], was an active member of Al-Ahvaz party and authorities assassinated him in 2009. They decided not to stay at their parents' home and kept a low profile and stayed at a relatives' house in [a location] near Ahvaz. They decided to leave Iran. His brother had his passport so he left first and the applicant left later after he received his passport.
- Three or four months after his departure, the authorities came to the parents' home and asked his mother about his whereabouts. She told them he was in Australia.
- He cannot return to Iran as his life will be at risk as the authorities have targeted their group and arrested one of the leaders. He is certain they are aware of their activities and will be detained on arrival and treated as a political activist.
- Even if not a senior member of the group, the authorities will allege he is an Al Ahvazi separatist, political activist and torture and kill him. They will accuse him of acting against national security. They will allege he is an Araba political activist who acted against the State. They will accuse him of being a traitor who fled Iran to seek asylum in Australia.

Refugee assessment

9. 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

10. 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.

11. The applicant provided national ID card, driver licence and military service documents. I accept the applicant is a Shia Muslim Iranian citizen of Arab ethnicity from Ahwaz, Iran. I find Iran is the receiving country.

12. The applicant's claims have changed substantially since his arrival interview. The applicant at that time made no claims in relation to membership of a political group, fear of arrest, raising an Arab flag or handing out pamphlets or that members of the group had been arrested. His initial statements revolved around wanting a better life, education, job and wanting equal rights. Further, when asked what would happen if he returned to Iran, he said nothing would happen. I have considered the submissions and explanations about why he did not provide that information. I am also mindful of the obiter in *MZZJO v MIBP* [2014] FCAFC 80 about reliance on omissions in entry interviews and those in *DWA17 v MIBP* [2019] FCAFC 160. However, I do not accept the applicant was not mentally or physically fit for the interview. The arrival interview was not a few days after his arrival by boat. The applicant was reminded of the importance of providing true and accurate information. He arrived [in] July 2013 and the arrival interview was not until 22 July 2013. He was also informed that the interview was his opportunity to provide reasons why he should not be removed from Australia. He was also informed that if he later gave different information that would lead to doubts about the reliability of his information.

13. Further, having listened to the interview I do not accept that the interviewer was aggressive, interrupted or conducted it like an interrogation or that the applicant was intimidated. The interview was one and half hours. I note the interviewer expressed some frustration later in the interview when the applicant was not answering the questions asked about his journey and what he did after exiting the airport in [a city]. However, I consider the relevant part about the interview about his claims was conducted calmly and slowly. There were lengthy pauses between questions, particularly in the part about his reasons for leaving Iran. The applicant had plenty of opportunity to add anything further. At the end of the interview the applicant also had another opportunity to add anything further that he wanted or had not been asked. The applicant had nothing further to say. I am mindful that applicants may be nervous and fearful at the interviews. However, I do not accept that explains the applicant's failure to mention his main claim and trigger for his departure.

14. Further, the applicant was specifically asked if he or any in his family had been associated or involved with any political group. The applicant said no. When asked whether he or any of his family were involved in activities or protests against the government, he said no. When asked if the police had any impact on his life, he said no. I find it difficult to believe that if he had left Iran because he feared arrest or harm from authorities due to his activities in a political group and Arab flag raising event that he would not mention that at all and also respond to those questions in the negative.
15. I accept that late in the arrival interview the applicant said he left Iran and came to Australia because his brother, uncle were here and he came because of his Arab ethnicity as he did not have equal rights with other Iranian citizens. He couldn't get a fair job or education so moved to Australia to find a peaceful life and find these things. It is difficult to believe that he would not mention anything about political group and fear of arrest, if that were true. Even if he said "among other things", I do not accept that he would not have mentioned the claimed trigger for his departure, if true.
16. Further, if he had been in hiding prior to his departure because he feared harm from the authorities, it is difficult to believe that he would not have said so. I note at the arrival interview the applicant was very clear a number of times about his address history and did not mention that he was in hiding or living at a different address prior to his departure. The interviewer confirmed that the applicant had not lived anywhere else for (even for a month). The applicant confirmed he departed Iran from his home address (where he had lived for 16 to 18 years previously).
17. Further, having listened to the protection interview, I do not accept the applicant provided exhaustive information about the political group, its purpose and his role. Other than a few rehearsed statements, the applicant's evidence was vague and lacked details. He named the individuals who were arrested but provided no meaningful information about the circumstances, how they found out, what happened afterwards, his relationship with them. He called the group the Arab brothers and said the purpose of the group was to unite Arabs. He attended meetings and delivered pamphlets in mailboxes or threw in them their yard if there was no mailbox. He provided little information about what happened at meetings, what was in the pamphlets or details of the organisation itself and its members.
18. I consider on one account the applicant claimed the group was a separatist group, but on another account claimed it was not. In his statement he claimed the group were supporters of Khuzestan separation movement and wanted to reclaim Khuzestan as dependant of Al Ahvaz. However, this is difficult to reconcile with his interview claims it was a group to unite Arabs, was peaceful and not a group in which there was any danger. Further, his belief that the group (or activities) was not one in which they would be in danger is at odds with his claim it was group that raised an Arab flag, given such activity was likely to create danger for the group given government treatment of Arab protesters.
19. The applicant also provided no meaningful detail about the claimed flag raising incident, other than it was at night and there were 7 or 8 of them. Given this was the main reason for his claimed fear of harm, I find it difficult to believe that he had so little information about this event.
20. The applicant claimed at interview that authorities visited his parents in 2013 and 2014 and summons was issued in 2013. However, he did not have a copy of it. I find it difficult to believe, even if it was a few years ago that he or his brother would not have kept a copy of the summons given their protection claims and its significance. Further, I note the applicant

had not mentioned that a summons had been issued until near the end of his protection interview. Given he had mentioned the visits to his mother in his 2017 statement, it is difficult to believe that he would not have mentioned a summons had been also issued. I consider this is an example of the applicant making up his account as he went along.

21. I have considered the submissions about the delegate's decision and use of the word "identified". It was submitted that the applicant was able to depart Iran without difficulty because he had not yet been identified or placed on the travel ban list. However, if a member of the group had been arrested three weeks after the flag raising (ie. April 2013) it is not credible that the authorities would not have found out the names of the rest of the group from that person given it was a small group prior to his departure in July 2013. I consider the much more likely explanation of why he could leave Iran with no difficulty is because the applicant was not of interest to authorities.
22. The applicant claimed his cousin was a member of Al Ahwaz group and killed by authorities in 2009 but he provided little information about this. Further, he provided a different account of his death. Initially he indicated that his cousin was one of the people who was thrown in a bag in the ocean by authorities. Later he claimed his cousin was arrested and after three days his body was thrown at his home.
23. I have carefully considered the submissions about not having regard to the arrival interview. However, I do not accept the applicant would not have at least mentioned fear of arrest or harm due to political activities or that he was in hiding prior to his departure. I do not accept the explanations. I have no doubt that the applicant has developed and fabricated a new political claim and account to enhance his protection claims. Further, the applicant's poor account at protection interview with such limited information reinforces my view that the applicant has fabricated his account and is not a credible witness.
24. I do not accept that the applicant was a member of any political or other group, distributed pamphlets, raised an Arab flag or was involved in any meetings or political activity or has any political interest. I do not accept that authorities visited his parents looking for him or that the applicant was or will be of any interest upon return. I do not accept he will be accused or perceived as a traitor, political activist, or separatist or acting against national security or political activity.
25. The applicant claimed he was discriminated against all his life because of his race, including in military service and at university and in finding jobs. He showed a photo of himself in Arab dress taken in Australia and said he could not dress like that in Iran as they would be bashed.
26. He claimed he had quit university as a result of treatment (teased) by students and teachers and not letting him speak Arabic. However at the arrival interview the applicant said he was at university for two and half years and got [Qualification 1] in [Course 1]. He was asked if he finished study at university and said he studied for two and half years and received his [Qualification 1]. He made no claims that he quit. Further, he said he had his military service time reduced to only eight months because of his father's prior war service. He also said while he started [in a rank], they moved him to [a different department] as they found out he was good [in a subject]. Further, at the arrival interview initially he said he was employed for one year and then said it was three years [in Job 1] (including while studying) and also worked in [Occupation 1]. The interviewer clarified and confirmed his account of three years. He said he worked there until a month before his departure from Iran. While I accept that the applicant may have been made fun of from time to time, I consider the applicant has embellished his discrimination claims.

27. I have considered the country information in the referred material. There are one and half to three million Arabs in Iran, based predominantly in the south western provinces. DFAT assessed that members of ethnic minority groups face moderate risk of official and societal discrimination in the form of denial of access to employment and housing but is unlikely in most cases to include violence. The risk to members of ethnic minority groups who are involved or perceived to be involved in activism is higher. The Arab community has expressed concerns about economic marginalisation and discrimination and complain they are systematically excluded from employment in gas and oil reserves industries.
28. I accept that he may have been teased at university about his ethnicity and they may not have let him speak Arabic language. I accept that he may not be able to wear the traditional Arab dress. It is not unusual that official study would be conducted in the official language, which is Farsi (DFAT report). Further, the applicant did not claim he could not speak Arabic in other settings or upon return and I am not satisfied that he could not speak his language upon return. Further and in any event, I note the applicant stated at interview that his preferred language was Farsi, rather than Arabic. I have considered the applicant's claims about wanting a fair job and education and his past treatment in Iran. I do not accept his past treatment amounted to serious harm. Further, upon return, I do not accept the applicant faces a real chance of serious harm. I note the applicant has been employed [in Job 1] and has completed high school and [Qualification 1] in [Course 1]. His parents live in Khuzestan. He has also found employment in Australia as shop worker in [a business]. I am not satisfied that he faces a real chance of serious harm upon return in the foreseeable future in employment, capacity to subsist or treatment from others.
29. On the evidence I am not satisfied that the applicant faces a real chance of serious harm on the basis of his ethnicity, Ahwazi Arab, background or as a minority or for the claimed reasons. I do not accept that he faces any chance of not being able to subsist.

Returnee

30. The applicant departed Iran legally on his own passport and I accept the applicant may be identified as a failed asylum seeker upon return to Iran.
31. I note from the DFAT 2018 report that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. However, in March 2018 Iran and Australia signed a Memorandum of Understanding that included an agreement by Iran to facilitate the return of Iranians who arrived after this date and have no legal right to stay in Australia. I note the applicant arrived before this date, and would as such not be forcibly returned. I am satisfied that if he returned to Iran in the reasonably foreseeable future, it would be on a voluntary basis only.
32. The DFAT 2018 report notes authorities will usually question voluntary returnees only if they have already come to official attention, such as committing a crime in Iran before departing Iran, which I am satisfied, the applicant has not. The 2018 report also notes according to international observers, Iranian authorities pay little attention to failed asylum seekers on return and they have little interest in prosecution failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, which includes social media comments critical of the government. I note the applicant confirmed at interview that he rarely used [social media] and was not concerned and made no protection claims in that regard. However and in any event, I have not accepted that the applicant has been (or will be) involved in political activities or will be perceived as such. In such cases the risk profile for the individual will be the same as for any other person in Iran within that category.

33. Given the applicant's lack of profile and the country information, I do not accept the applicant faces a real chance of any questioning by authorities or harm from authorities upon return. I do not accept that people like him (even considering his ethnicity or his brother's departure) seeking asylum face any chance of imprisonment or harm.
34. In the event that the applicant did return to Iran voluntarily, given the country information that authorities pay little attention to failed asylum seekers and his lack of profile, I do not accept the applicant faces a real chance of any serious harm if he is returned to Iran. Further, the country information before me does not support a finding that person who sought asylum in Western countries are imputed to hold an anti-Iran political opinion. I find that the applicant does not and will not have a profile of interest to the authorities. Based on the DFAT information, I find he will not be questioned upon return. I do not accept there is a real chance he will be detained on arrival and treated as a political activist, traitor, Arab or Al-Ahvazi or Khuzestan activist, acting against national security or political activity as claimed. I find that the chance that he will face harm on account of being a failed asylum seeker returning from residence in a western country to be remote and not real.
35. I do not accept the applicant faces a real chance of harm on return to Iran on the basis of his ethnicity, background, experiences, personal circumstances, race, or political opinion (or imputed) or as a returnee or failed asylum seeker having lived in a western country (or his brother).
36. I have considered each of the applicant's personal characteristics against the country information before me. However, even considered together I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future for any of the reasons claimed.

Refugee: conclusion

37. 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

38. 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

39. 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.

40. I accept the applicant may face situations where he is made fun of due to his ethnicity and cannot wear traditional Arab dress. While the applicant may not have been able to use Arabic at university, I do not accept that amounted to significant harm as he completed [Qualification 1]. He also speaks Farsi, which was his preferred language of communication before immigration. Nor am I satisfied that he could not speak Arabic upon return. Further and in any event, I do not accept such treatment (wear traditional dress, made fun of, not being able to speak Arabic) amounts to significant harm. I note the applicant also found employment [in Job 1] and [Occupation 1] in Iran and I am not satisfied that he could not find employment upon return. I am not satisfied there is a real risk that the applicant would be subject to the death penalty, arbitrarily deprived of his life or be tortured. Nor am I satisfied these difficulties constitute severe pain or suffering, pain or suffering that can reasonably be regarded as cruel or inhuman in nature or extreme humiliation.
41. I am not satisfied that the applicant faces real risk of significant harm upon return in the foreseeable future in employment, capacity to subsist, language, study, dress or treatment from others.
42. In respect of his other claims, I have found there is no real chance of harm to the applicant. I note that the 'real risk' test imposes the same standard as the 'real chance' test. On that basis, I am similarly not satisfied that any of the applicant's claims would give rise to a real risk of significant harm for the purpose of s.36(2)(aa) of the Act.
43. In considering the applicant's claims cumulatively, I have taken into consideration his personal circumstances together with the country information before me. Considering the treatment I accept he is likely to experience as a whole, I am not satisfied that there is a real risk of significant harm to the applicant now or in the reasonably foreseeable future if he returns to Iran.

Complementary protection: conclusion

44. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

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.