



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/07666

Date and time of decision: 4 February 2020 15:37:00

K Juttner, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national of Bahktiari ethnicity. He came to Australia in July 2013 and on 7 March 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 12 December 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the grounds that the applicant was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 19 December 2019, the applicant provided brief submissions to the IAA that the delegate's decision was unfair, to which I have had regard. No new information has been provided or obtained.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born and lived in Ahwaz, Iran and his family moved to Masjed Soleiman when he was still in primary school.
 - He fears harm on account of his older brother's political activities with an Ahwazi group in [Country 1] after he went there to study in June 2009. His brother attended gatherings for the Ahwazi group and posted material on [social media] about the Ahwazi cause. His brother received a threatening message on [social media].
 - After his brother left Iran, security agents came to their house asking about his brother's whereabouts. His father was arrested, detained and interrogated for two weeks.
 - His brother returned to Iran for a short visit in August 2009. His father asked his brother to return to [Country 1] for his family's safety, and his father was pressured by the security agents after his brother left Iran. They would also intimidate and threaten the whole family. Security agents went to his family's house on a few occasions and conducted searches.
 - He was attacked and assaulted by plain clothed officers on three occasions on the way to school when he was aged [age]. On the last occasion, they [inflicted an injury]. He left Iran a few days before [a specified] birthday.
 - Since he has been in Australia, Sepah officers have gone to his parents' house and father's work asking about his and his brother's whereabouts. His parents are concerned their telephone conversations are being monitored.
 - He will be punished for what his father and brother 'may have done' if he returns to Iran. His family's name is recorded in the authorities' records because of his brother's activities with the Ahwazi movement, and he will be targeted if he returns to Iran.

- He will be in trouble and may be arrested and punished after living in Australia for so many years, especially because of the political animosity between the Iranian authorities and the United States, and that he may be regarded as a spy if he returns to Iran.
6. The delegate also considered whether the applicant would be harmed as a person who sought protection in Australia and because he had not done his compulsory military service in Iran.

Factual findings

7. The applicant has provided copies of his Iranian passport, birth certificate and national identity card (with translations). I am satisfied that he is an Iranian national and that Iran is his receiving country.
8. Since his arrival in Australia, the applicant has said that he is of Bahktiari ethnicity, and I accept that he is. He has not raised any claims to be fear harm in relation to his ethnicity.
9. He claimed that his brother was involved in an Ahwazi group in [Country 1] and that he and his family experienced problems with the Iranian authorities on account of his brother's political activities. If he returns to Iran, he fears he will be punished for what his father and brother may have done. His family's name is recorded in the authorities' records and he will be targeted. He claimed that his father was arrested, detained and interrogated for two weeks after his brother went to [Country 1] in 2009, and that he was assaulted by the authorities on his way to school when he was [age].
10. At his arrival interview, which took place nearly four weeks after his arrival in Australia, the applicant did not mention any of these matters. Instead he said that he left Iran for financial reasons, because his brother had been studying in [Country 1] for four to five years and the exchange rate between the USD and Iranian toman had gotten worse and his father's business was not going so well. When asked what he thought would happen to him if he returned to Iran, he said that he did not know, and that anything might happen. He was unable to expand on that when asked to do so by the arrival interviewer. When asked if he or his family had been associated or involved with any political group, or taken part in any activities or protests against the government, he said "no".
11. The applicant first raised claims about his and his father's problems in Iran in his 2017 SHEV application and accompanying statement of claims. In that statement, he referred to being asked at his arrival interview about his reasons for coming to Australia. He stated that he was not made fully aware before or during the interview that the information he provided during the arrival interview would be used for the purposes of assessing his claims for protection. However, at his 2019 SHEV interview he provided different reasons for not raising those incidents at his arrival interview. He said that he was too young when he left Iran and his family members had not told him anything about political matters or issues with the government. He also said that while he understood about the exchange rate and employment matters (which was a reason given by his older brother for coming to Australia), he did not understand anything else, and that it was only when they came to Australia and he felt safe that his brother started to tell him things. He also said that there was a rumour in the camps that if you tell the truth, you will have problems because it will be known by the Iranian authorities. In addition, he said that his father was [an occupation 1] in a [business] and is now [in a different position], and that his family do not have financial troubles and he did not leave Iran for financial reasons.

12. I note that at the start of his arrival interview, the interviewer told the applicant that it was being conducted to obtain information about himself and his arrival in Australia and was an opportunity to provide reasons why he should not be removed from Australia. He also explained that the Department of Immigration was careful to protect the privacy of all the information he provided and that it would not be made available to the Iranian authorities. The applicant was expressly asked about the reasons why he left Iran, what he believed would happen to him if he returned to Iran, and a number of questions about whether he or his family were involved with political or religious groups or in protests, or had ever been arrested or detained by the police, security or intelligence organisations in Iran. I consider the applicant would have been well aware of the need to divulge any reasons as to why he could not return to Iran, or why he was at risk in Iran. The applicant was aged [age] at the time of his arrival interview, and no longer a child. Even if he was not told about his brother's activities until he got to Australia, he was aged [age] at the time he claimed he was harassed and assaulted by the Iranian authorities and was aged [age] in 2009 when his father being taken away by the authorities, and I am not satisfied that he was of an age when he could not recount things that had happened to him personally. In these circumstances, I do not find the applicant's explanation about not being about to provide information at his arrival interview because he was too young convincing. While I note the applicant was told that the privacy of his information would be protected and not disclosed to the Iranian authorities, I accept that it may be possible that an asylum seeker who has recently arrived may genuinely have concerns about disclosing information to persons in position. I am not convinced that is the situation in this case. I have not insignificant concerns about the applicant's reliability as a witness and his later evidence about his claims for protection. In addition, the fact that the applicant now says that his family does not have financial troubles, does not in my view explain the applicant's statements in his arrival interview that he came to Australia for financial reasons and because the exchange rate between the USD and the toman had become worse. I am not satisfied that the applicant's reasons explain the inconsistencies between his evidence at his arrival interview and in his later statement and interview.
13. As well as the delay in raising his claims, I have concerns about other aspects of the applicant's evidence.
14. The applicant claimed that his family's problems with the security agents began after his elder brother went to [Country 1] to study [in] June 2009. He has provided the specific date that his brother went to [Country 1] in June 2009, and the dates that his brother returned to Iran for a visit in August 2009. However, he stated that he is unable to provide evidence about many other aspects of his claims because he was too young. For example, he says he was too young to know much about his father's arrest and detention in 2009, or whether he was involved in any political groups. The applicant gave his young age as the reason why he could not provide information a number of matters that were central to his claim. The applicant was born in [year] and turned aged [age] shortly after his brother went to [Country 1], and was aged [age] when he says he was assaulted on the way to school. He has been an adult since he has been in Australia and is now aged [age]. Both his parents are still alive and according to evidence at his SHEV interview, he speaks to them every three to four days. He also lives and works with his brother in Australia. While I accept that the applicant was [age range] when the claimed incidents occurred, he has had the opportunity to obtain information about these matters when providing information in his SHEV application and at his SHEV interview. In these circumstances, I am not satisfied that his age at the time of the incidents explains his limited and superficial knowledge about matters which are central to his claims.

15. He provided some information about his brother's political activities at his SHEV interview. He said that his brother only told him about his activities in [Country 1] after they came to Australia. He claimed that his brother came to know a family called "A" who were members of what he referred to as "an Ahwazi group" who were engaged in political activities regarding the succession of Ahwaz from Iran. DFAT¹ refers to the 1.5 to three million Arabs based predominantly in the south-western provinces of Khuzestan, Bushehr, and Hormozgan who, like other ethnic minorities, have long expressed concerns about economic marginalisation, and discrimination in education, employment, politics, and culture. He further claimed that his brother lived with the A family and was exposed to their gatherings and influenced by their discussions, and that his brother posted material about the Ahwazi cause and the oppression imposed on Ahwazis by the authorities on [social media]. He claimed that his brother received a threatening message through social media. He provided quite detailed evidence about the content of the threatening message, namely that after his brother's name it said "*We know you and your family. If you do not stop what you are doing you will be dealt with accordingly, and it will have consequences for you*". He could not provide the date of when it happened, saying only that it was during his brother's initial period of support for the Ahwazi movement, which he then agreed with the delegate was during his brother's first couple of years in [Country 1]. He has not provided any documentary evidence about his brother's involvement in the Ahwazi group, his [social media] activity or the threatening message. He did not say who the threatening message was from or otherwise claim that his brother had any particular problems with the Iranian authorities for his involvement in this group. While he was able to provide a fairly detailed description of the contents of the message and about why as a Bakhtiari his brother was interested in the Ahwazi cause, his evidence about his brother's political involvement was otherwise superficial and general in nature. He also told the delegate that since he and his brother have been living together in Australia, his brother has not been a member of any political groups.
16. The applicant's evidence about his father's arrest and detention was also fairly cursory, and he claimed again that he was too young to know anything about it. He claimed that security agents came to his family's home in Iran asking about his brother's whereabouts after his brother went to [Country 1], and that his father left home one morning and did not return for two weeks. He said that he later realised his father had been arrested, jailed and interrogated by the security agents. He said his father was arrested and detained, after his brother went to [Country 1] in June 2009, "at some stage. At his SHEV interview, the delegate asked the applicant to tell her more about the harassment of his family by security agents, and then asked a number of specific questions about his father's arrest. His first response was that he was too young and didn't know what was happening. He told the delegate he was aged [age range] when his father was arrested, although according to information in his identification documents he was born in [year], and turned [age] shortly after his brother went to [Country 1]. He claimed that he never asked his father why he was arrested because he was too young and no one told him anything. He also said that he had never asked his father subsequently about his arrest, but that when he asked his mother, she also did not have any clue about why his father was arrested. I find it very difficult to believe that his mother would have no sense of the reasons for his father's arrest, or that he had not sought information from his father since, particularly given the impact he now claims that it has had on him. When asked by the delegate what his father was arrested for, he said they did not say it was for any particular reason, but they interrogated him. He initially told the delegate that he did not know who arrested or interrogated his father, but then said he was arrested by plain clothed

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

officers, and also that when anyone has a beard and are in plain clothes, they were either from the Basij or the Sepah. He did not claim that his father was charged with any offences.

17. In his statutory declaration, he claimed that his father was still being pressured by the security agents after his brother returned to [Country 1] after a visit to Iran in August 2009. He also said that they would intimidate and threaten the whole family. At his SHEV interview, he claimed that plain clothed officers searched his house on a few occasions because of his father's and brother's activities when his [specified family members] were home, and his father was at work and he was at school. However, I note he told the delegate that he was [age range] when these searches occurred, which is younger than he was when his brother left Iran.
18. At his SHEV interview, when asked whether his father was involved in anything political, he initially said he was too young to know but on occasions would hear him talking about political matters with his mother and the father of the "A" family. He said they talked about objections he had to the policies of the government which related to the fact that as [an occupation 1], he was concerned with mixing religion and law, and religion and politics. When asked whether his father was part of any political group, he said he did not know. His evidence about his father's political interest and activities was general at best. I am not satisfied his father was actively involved in any political activities.
19. The applicant claimed that he was harassed, attacked and assaulted by plain clothed officers on his way to school and that the last assault was so brutal that they [inflicted an injury]. He has not provided any [medical] evidence about the [injury]. He claimed that he was aged [age] when the assaults occurred, which is four years after his brother left for [Country 1] and the security agents last interest in his family. There are discrepancies in his evidence about how often it occurred, as in his statutory declaration he said that it happened three times, but at his SHEV interview, he claimed it was a continuous experience. He gave further details about the incident where [he suffered the injury] at his SHEV interview, saying that he was stopped by a few officers on motorbikes on his way home from school, who asked why he was taking that route. He told them that it was his route home, and they started fighting with him, hitting him, and [inflicting the injury]. There is no evidence that the officers mentioned the applicant's brother or father, or knew that the applicant was related to them. He told the delegate that he had not been involved in politics because he was too young.
20. The applicant claimed that after assault, he was scared to leave home and was anxious and panicked, and had no idea what would happen to him. He stated that his parents were worried about his safety and not being able to study, that his father was under pressure from the government, and that they were worried about his brother because they were not able to afford to send money for his university fees and living expenses. He claimed that his father asked him to leave Iran and join his brother, and to hurry up and get a passport before he turned 18, because if he turned 18, he would have to do his military service before he could obtain a travel document. However, information in his Iranian passport provided with his SHEV application indicates that it was issued in [2010], when the applicant was aged [age], and nearly three years before the applicant left Iran. According to information in his SHEV application about his travel history, he went to [two countries] for [events] in November 2011 and January 2012. As such, I do not accept that he obtained a passport as a consequence of these claimed incidents.
21. The applicant claimed that his brother was unable to remain in [Country 1] and was unable to return to Iran. It was decided that the applicant and his brother would meet in [Country 1]

and come to Australia together. He has consistently stated that he left Iran [in] June 2013, which was a few days before his [specified] birthday.

22. In his SHEV application, the applicant indicated that he had not undertaken military service and still had compulsory military service obligations in Iran. According to country information before me², the call up procedure for military service is that all men, on reaching the age of 18, must report to the military authorities within one month after the start of the Iranian calendar year in which they turn 18. The applicant left Iran before he turned 18, I am satisfied that he never reported to the military authorities or registered for military service. He has not encountered any issues since he has turned 18 abroad. The applicant has not made any claims in relation to military service. As noted by the delegate, he has not said that he objects to, or would refuse to do his military service if he returns to Iran. I accept that the applicant has not commenced his military service and that he may be required to complete his military service at some stage if he returns to Iran.
23. At his SHEV interview, the applicant claimed that since he has been in Australia, officers from the Sepah and other organisations had gone to his father's work and his family's house and asked about the whereabouts of him and his brother. He also claimed that his parents were concerned that their conversations were being monitored, but when asked how he knew this, he said that when he asked his father certain questions, he seemed to try to avoid giving frank answers, and that his mother hinted at certain things but was again unclear. The applicant's responses to the delegate on these matters were in my view evasive and unconvincing.
24. After considering the applicant's evidence about his and his family's experiences in Iran and [Country 1], I do not find it credible. Despite claiming to have fled Iran because of recent assaults and harassment, he made no mention of these when questioned initially about his reasons for leaving Iran. More telling, his evidence about his brother's political activities and his father's arrest and detention was superficial, and extremely limited and for the reasons explained above I do not accept the applicant's age explains the explanation for the deficiencies in his evidence. Moreover, he provided no convincing evidence of the claimed threats or [social media] activity of his brother. I also consider it implausible that the authorities would have had any interest in the applicant four years after his brother went to [Country 1]. In summary, I do not accept that the applicant's brother was involved in an Ahwazi group in [Country 1] through his connection with the A family or that he posted material about the Ahwazi cause on [social media]. I do not accept that his brother came to the adverse attention of the Iranian authorities, or that the applicant or his family had problems with the Iranian authorities on account of his brother. I do not accept that the applicant was harassed or assaulted by plain clothed officers, and I am not satisfied that his father has done anything in Iran or had come to the adverse attention of the authorities for his political views or that his brother has been politically active in Australia. I do not accept that his family's name is recorded in the authorities' records, or that his parents have been searched or their calls monitored since he has been in Australia. For all of these reasons, I do not accept that he or his family have come to the adverse attention of the authorities as claimed.

² UK Home Office, 'Country Policy and Information Note: Iran: Military service', 25 October 2016, OGD7C848D84.

Refugee assessment

25. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

26. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
27. I do not accept that the applicant’s brother was involved with an Ahwazi group in [Country 1], or that the applicant or his family experienced problems in Iran as a result of his brother’s activities, his father or their connection to the A family. Accordingly, I am not satisfied that the applicant would face a real chance of harm as a result.
28. I accept that the applicant has not undertaken his military service and that he will very likely be required to complete it if he returns to Iran. However, I am not satisfied that he has had any difficulties to date in relation to his military service since turning 18 or that the information before me indicates he would be regarded as a draft evader.
29. DFAT and the Home Office³ state that military service is compulsory for Iranian men above the age of 18, and that most people complete between 18 and 24 months of service. Both reports state that conditions for conscripts are often poor, with low pay, poor living conditions, malnutrition, and abuse by senior officers all contributing to low morale. However, DFAT also says that military service conditions can vary considerably depending on individual placements and circumstances, which suggests that they are not necessarily widespread. The 2016 Home Office report⁴ (which contains information about conditions for conscripts referred to in the DFAT report) also refers to reports of harassment and abuse of conscripts due to their faith (which I do not consider is relevant in the applicant’s case), which have led in some cases to suicide or self-harm. It also states that in general, the conditions

³ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226; UK Home Office, 'Country Policy and Information Note: Iran: Military service', 25 October 2016, OGD7C848D84.

⁴ UK Home Office, 'Country Policy and Information Note: Iran: Military service', 25 October 2016, OGD7C848D84.

and/or treatment likely to be faced by a person required to undertake compulsory military service would not in its opinion, be so harsh as to amount to a real risk of serious harm. Looking at these reports together, while I am satisfied conscripts can face adverse treatment, conditions vary widely and in this context, I am not satisfied that the chance that the applicant would face treatment amounting to serious harm rises to a real one.

30. The applicant claimed that he will may be arrested and punished after living in Australia for so many years, especially because of the political animosity between the Iranian authorities and the United States, and that he may be regarded as a spy if he returns to Iran. The delegate also considered whether the applicant will be harmed as a person who sought protection in Australia.
31. I accept that if the applicant returns to Iran he may be identified as a person who sought protection in a western country. The applicant left Iran lawfully on an Iranian passport. The applicant claims that his passport was taken by the people smugglers in [Country 1] and he no longer has it, which I am willing to accept. DFAT reports⁵ that Iran does not permit the involuntary return of its citizens from Australia except for those who arrived in Australia after the signing of a memorandum of understanding in 2018. As the applicant arrived in Australia in 2013, I am satisfied that if he was to return to Iran it would be on the basis it was voluntary. DFAT reports that persons (like the applicant) who do not have a passport require a travel document to be issued by Iranian diplomatic representatives overseas in order to return to Iran. DFAT also indicates that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of Iran's sophisticated government systems, and in these circumstances, it is possible that the Iranian authorities may infer that the applicant has sought asylum in Australia.
32. According to DFAT, the Iranian authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as committing a crime (which I am not satisfied the applicant has). 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. For the reasons set out above, I do not accept that the applicant's brother was involved in an Ahwazi group or that he has ever been politically active, or that he or his family have come to the adverse attention of the Iranian authorities in relation to his brother's political activities. While the 2018 DFAT report indicates that the US announced in May 2018 that it would reintroduce sanctions with the US, the evidence in the review materials does not support that a person in the applicant's position would be regarded as a spy because of international relations between Iran and the US, or because of having spent time in Australia. I am not satisfied that he has any profile with the Iranian authorities. I am not satisfied that there is a real chance that the applicant will suffer any harm in the reasonably foreseeable future on those bases.
33. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

34. 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).

⁵ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

Complementary protection assessment

35. 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

36. 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.
37. I accept that the applicant may be required to complete military service sometime in the foreseeable future. Having regard to the country information discussed earlier, I am not satisfied there is a real risk that his military service obligations will involve or result in treatment that rises to the level of significant harm. I am not satisfied there is a real risk of the death penalty being carried out, of him being arbitrarily deprived of life or tortured or suffering severe pain or suffering, pain or suffering that could reasonably be regarded as cruel or inhuman in nature or extreme humiliation so as to amount to cruel or inhuman treatment or punishment, or degrading treatment or punishment.
38. I have otherwise found that there is not a real chance of the applicant experiencing any harm in Iran. The Federal Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment⁶. Having regard to the country information and reasoning above, I am not satisfied that the applicant will suffer significant harm in connection with any of the matters he has claimed.

Complementary protection: conclusion

39. 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.

⁶ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.