



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08160

IRAN

IAA reference: IAA20/08163

IRAN

IAA reference: IAA20/08164

IRAN

IAA reference: IAA20/08162

IRAN

IAA reference: IAA20/08161

Date and time of decision: 19 May 2020 14:29:00

M Simmons, Reviewer

Decision

In respect of the referred applicant (IAA20/08160) the IAA remits the decision for reconsideration with the direction that:

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

In respect of the other referred applicants (IAA20/08161; IAA20/08162; IAA20/08163; IAA20/08164), the IAA remits the decision for reconsideration with the direction that:

- the other referred applicants are members of the same family unit as the above-named applicant and satisfy the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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

Background to the review

Visa application

1. The referred applicants (the applicants) claim to be Iranian citizens of Arab ethnicity. They claim to be a family unit comprising a husband and wife (the first and second applicants, respectively) and their three [children]. The first, second, third, and fourth applicants entered Australia [in] October 2012. The fifth applicant was born in Australia.
2. They lodged a combined application for safe haven enterprise visas on 11 August 2017. A delegate of the Minister for Immigration refused to grant those visas on 9 April 2020.

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 27 April 2020 the applicant's representative provided submissions to the IAA. To the extent these submissions contain legal argument or comment on the delegate's findings, they do not convey new information and I have had regard to them.
5. These submissions also contain new information. The applicant's legal representative fails to clearly identify any of the new information in his submissions as required by the IAA's Practice Direction. Moreover, he does not include any submissions explaining how the new information meets the requirements of s.473DD, as the Practice Direction requires. Some of the sources referred to in the submissions are identified only by a hyperlink, which per the Practice Direction is not acceptable. Pursuant to s.473FB(5) I have decided not to accept any information only identified by a hyperlink, given the numerous instances of non-compliance with the Practice Direction and that as a legal practitioner and registered migration agent the representative ought to be aware of those requirements.
6. The extracts from the Immigration and Refugee Board of Canada, The Ahwaz Monitor, and The Algemeiner are all new information. All significantly predate the delegate's decision. The legal representative does not include any submissions explaining how the new information meets the requirements of s.473DD. On its face it is not apparent to me why this information was not able to be provided to the delegate and I am not satisfied it in fact could not have been. Moreover it does not appear that any of the information extracted from these sources is credible personal information, and nor has this been suggested. The applicant has not satisfied me that either s.473DD(b)(i) or (ii) is met and I have not had regard to this information. For completeness I am also not satisfied that there are exceptional circumstances justifying my consideration of this material.
7. The submission refers to an April 2020 report from Iran News Update on recent protests at a prison in Ahwaz related to COVID 19. I accept that this could not have been provided prior to the delegate's decision. The representative has not sought to explain the relevance of this information to the applicant's protection claims nor has he explained what exceptional circumstances would justify my consideration of this material. On its face it appears to be of only quite indirect relevance to this applicant, noting the prison referred to is located in the region of Ahwaz he originates from. He has raised a general claim to fear imprisonment on return to Iran, but has not made claims relating to prison protests or COVID 19. On the information presented

I am not satisfied that there are exceptional circumstances justifying my consideration of this new information and I have not had regard to it.

8. The legal representative's submissions also claims that the family would be unable to subsist in Iran because the first applicant lacks education and skills, and there would be no prospect of the family securing housing to accommodate the five of them. These claims were not made to the delegate and did not clearly arise on the material before the delegate and are new information. The submissions do not comment on how this new information satisfies s.473DD. The applicant has not satisfied me that this claim could not have been presented prior to the delegate's decision, noting he confirmed at interview more than once that he had provided all of his protection claims. The submissions do not explain why he now fears an inability to subsist in Iran given his previously provided evidence does not indicate he struggled in this respect while resident there. I also note that in his visa application the applicant indicated he undertook some schooling and has either been employed or self-employed from 1999 until he left Iran. I am not satisfied there are exceptional circumstances justifying my consideration of these new claims.
9. The applicant's representative submits that the delegate also did not take into consideration the fact that there are cameras mounted on the Iranian Embassy building in Canberra which films protests, and that this was known to the delegate because he mentioned this to her in an email sent on 10 February 2020 related to another client. It appears the representative is referring to new information yet not actually seeking to adduce it as he has offered no source, extract or a copy of the email he refers to. Any information he provided to this delegate in relation to an unrelated protection visa application would be new information for the purpose of this review. That information was not before the delegate for her consideration when assessing the applicant's application. That it may have possibly otherwise been submitted to her in an unrelated protection visa application does not mean it was before the Minister when the Minister (or his delegate) made the decision under section 65.
10. The representative also contends that the President of an Ahwazi organisation in [City 1] confirmed to him during a telephone conversation that the organisation's [Social media] page was hacked and he had to create a new page. These assertions are uncorroborated and the representative has not sought to explain how they meet the requirements of s.473DD. He has offered no further details regarding the claimed hacking, such as when it occurred, nor has he sought to provide evidence to back up these assertions such as screenshot evidencing the hack or a statement from the president. The relevance of the alleged hacking to the applicant was not clearly explained. On the evidence before me the applicant has not satisfied me either that this information could not have been provided before the delegate's decision or that had it been known it may have affected the consideration of his claims. I am not satisfied that there are exceptional circumstances justifying my consideration of this information.
11. Also provided with the submissions were a photograph and 6 social media screenshots. The photo described as Attachment A was before the delegate and is not new information. Contrary to the representative's assertion, the information in the review material indicates the delegate retained a copy of this image at the interview, and it is included in the review material. The 6 screenshots seem to depict [Social media] posts containing images of protests and social gatherings, some of which seemingly show men wearing Arab style attire and displaying the Al Ahwaz flag. The text in those posts seems to be in Arabic and no English translation has been provided. The date of publication of the posts ranges from 2016 to 2018. The legal representative describes these images as photos published on Ahwazi activists' [Social media] pages, suggests the applicant was not requested by the delegate to provide photos published by the Ahwazi activists on [Social media], and that had this information been known to the Department it may have affected the Department's decision. Given the absence of English

translation it is difficult to ascertain whether the [Social media] posts depicted belong to profiles from Ahwazi activists. The posts clearly predate the delegate's decision and as such the applicant has not satisfied me that they could not have been provided before that decision. The applicant was assisted at the interview by a migration agent and both were advised that it is for the applicant to present evidence in support of his claims, and that any information received after the delegate's decision may not be considered. I do not consider the fact that the delegate may not have specifically requested this material a compelling circumstance, or that it satisfactorily explains why these images were not provided. The images seemingly depict a person with a likeness to the applicant; in some images he is circled. As such I accept that they contain credible personal information. However, given the lack of English translation or explanation of what is depicted in the screenshots, beyond the contention they are from Ahwazi activists' [Social media] pages, the significance of these screenshots is not apparent to me and the legal submissions do not elaborate upon this. I am not satisfied that there are exceptional circumstances justifying my consideration of these screenshots.

12. I have obtained the Australian Department of Foreign Affairs and Trade (DFAT) updated Country Information Report on Iran, released on 14 April 2020.¹ This report postdates the delegate's decision and contains more recent details on the situation for Arab minorities and persons who have resided and sought asylum abroad. It is a report prepared specifically for the purposes of protection determination in Australia and updates the report relied upon by the delegate. I am satisfied that there are exceptional circumstances which justify consideration of this information.
13. On 6 May 2020 I invited the first and second applicants to comment on aspects of the April 2020 DFAT report that relate to some of the claims they raised, including that Arabs in Iran enjoy greater cultural and linguistic freedoms; are not specifically targeted for official discrimination on the basis of ethnicity, and that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran. Their legal representative provided a response for both applicants on 12 May 2020. In that response the representative referred to evidence from the applicants and reports on Iran that were before the delegate and are not new information; these have been considered. Some of the new information in the response was only identified by a hyperlink. Pursuant to s.473FB(5) and consistent with my above approach I have decided not to accept any information only identified by a hyperlink. Also provided were various pieces of new information from sources including government agencies, international organisations and media outlets. These address the issues I raised in my invitation to comment. They were provided in response to my invitation to comment on the DFAT report, which postdates the delegate's decision. Given this I am satisfied the applicant's comments on these matters and the new information in those comments could not have been provided prior to the delegate's decision. In the circumstances, I am also satisfied that there are exceptional circumstances justifying my consideration of this new information..

Applicants' claims for protection

14. The first and second applicants have made protection claims. No claims have been advanced in respect of the third, fourth and fifth applicants.
15. The first applicant's claims can be summarised as follows:

¹ DFAT,'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

- He was born in [City 2], Khuzestan, Iran, in 1977. His ancestors originate from [Iraq] and his grandfather migrated to [City 2]. [City 2] was predominantly Arab.
- The first applicant's father was a teacher. He was also opposed to the Iranian regime. He was deployed to Ahwaz and taught in Farsi language school. He taught his students Arabic which the authorities did not like. His father was exiled [for] three years, after which he returned to [City 2]. A few years after he returned the Iran Iraq war broke out, Iraqi's occupied [City 2] and the family fled to Ahwaz.
- [City 2] was an Arab dominated community where they spoke Arabic and followed their own customs. However in Ahwaz it was more diverse and locals mostly spoke Farsi. The applicant was humiliated at school by teachers and students for his weak Farsi abilities and his strong Arab accent. In high school he was called derogatory names simply because of his Arab ethnicity. Sometimes he would retaliate and once he was expelled for fighting after being provoked. During his teens he lacked confidence and tried to avoid the public because he was treated poorly due to his accent and the way he dressed.
- After high school the applicant worked for an Iranian [employer] who often humiliated him and called him names based on his Arab ethnicity. He undertook military service in 1997. He was sent to a non-Arab area. He was mistreated and given harder tasks during this service because he was Arab. Following military service he open a small [store] with the help of his father.
- A few years later he got a job at a [company]. At this company he experienced severe mistreatment. Supervisors gave him all the dirty and dangerous jobs but he did not complain because he knew he would be sacked immediately. On one occasion he was sent to fix a leak while the machine was still running. As a result he experienced an acid burn [which] left him with scars. Due to the burns he could not work so his employment was terminated.
- The first and second applicants lost a [baby] in a miscarriage as the second applicant did not receive proper care because she is Arab. After the miscarriage the first applicant begged for his job back and he was reemployed. He was still paid less than other non-Arabs and made to work harder.
- Discrimination and mistreatment by the authorities and the public went on for a long period. He was denied entry to places such as banks for wearing Arab attire. He was subjected to attempted arrest between 10 to 20 times by the Sepah or Basij. He was required to pay bribes to be released. They stopped him because he speaks Arabic and sometime he was stopped while wearing traditional Arab dress.
- Resources in Arab regions are taken by the authorities without compensation, not only oil but agricultural land and crops. The authorities engage in unfair practices to try to force Arabs from their lands. They want to force all Arabs to leave Iran and go to another country.
- Two of his [cousins] have been missing for more than one and a half years (as at February 2020). They objected to the government flooding the family's ancestral lands when they released water from a large dam. The family do not know where these cousins are.
- Due to the ongoing harassment and discrimination the first applicant and his family decided to leave Iran.
- In Australia he became politically active because he wants to defend his people and their rights and help to recover the land that was taken from them. He is a member of [an Ahwazi community] in [City 1] group that seeks to bring awareness of the persecution of Arabs in Iran. As part of that group he attended protests and has commemorated

significant events such as the passing of a sheik. Some of their protests focussed on the mistreatment and execution of Arabs by the Iranian authorities.

- Should he return to Iran he will be arrested at the airport. He would be returning as a failed asylum seeker of Arab ethnicity and punishment is harsher for Arabs. He will be accused of spying for other countries.

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

- She describes herself as not very educated and never having worked outside of the home. The second applicant was subjected to ill treatment in Iran by the authorities and by Iranians. She was often mistreated and taunted for wearing Arabic garments. On occasion while travelling by car with her husband they were stopped and questioned rudely by the Basij and she was ordered to get out of the vehicle.
- The problems experienced by men in her life have affected her greatly. When her husband was injured at work and his employment was terminated she experienced a miscarriage due to the stress and lost her [baby]. At the hospital she was neglected because she is an Arab.
- Her brother was once attacked and accused of being a relative of "Sadam". He subsequently lost his hearing in one ear. Her father lost his finger in a workplace accident because his employer did not care about his safety. At a wedding celebration, her first cousin wore traditional Arabic attire and travelled to the ceremony on horse in accordance with custom. He was stopped by the authorities on the way; they then followed him to the ceremony and arrested his father (the second applicant's uncle).
- She decided to leave Iran with her family because the harassment and persecution became too much to handle.
- As failed asylum seekers they would be singled out and her husband would be punished. She fears being left alone with three children and no support. Having no protection from her husband would leave her vulnerable.
- She fears she will be arbitrarily deprived of life, punished, incarcerated and separated from her children. As an Arab woman she will be subjected to degrading treatment by the Iranian authorities and cannot complain to anyone. She would like to raise her children in the safety of Australia where they will not be discriminated against due to their ethnicity.

Factual findings

Identity and background

17. Identity documents issued by the Iranian authorities including the first four applicants' birth certificates, the first and second applicants' marriage certificate, and the first applicant's military service completion card have been provided. A copy of the fifth applicant's Australian birth certificate, indicating the first and second applicants are [the] parents, was also provided. The details in these documents generally align with the information in the visa application and provided by the first and second applicant at interview. I am satisfied that their identities are as claimed. I find that all applicants are Iranian nationals of Arab ethnicity. Iran is the receiving country for the purpose of this assessment.

Events in Iran

18. Generally I found the first applicant's evidence regarding certain hardships he and his family experienced in Iran, which he attributes to their Arab ethnicity, to be persuasive. Asked about his experiences as an Arab in Iran he replied it was hard as Arabs are denied basic life requirements, cannot talk their language or do simple things to express their identity. He gave a number of personal examples of mistreatment ranging from bullying at school to workplace harassment and being stopped by the authorities while out in public wearing Arab attire. His testimony was reasonably detailed and he provided spontaneous responses to questions by the delegate. His answers at the interview with the delegate also generally aligned with the information previously given in his visa application and in his arrival interview. For the most part it was not my impression that he was seeking to exaggerate or embellish. His claims regarding ethnically based harassment, restrictions on employment and access to education, the confiscation of ancestral lands, and the denial of adequate services such as clean drinking water, are all corroborated by various country information reports before me which consider the situation for Arabs in Khuzestan.²
19. At the interview with the delegate the first applicant briefly mentioned being stopped or arrested by the authorities between 10 to 20 times and paying bribes to be released. Little detail was offered about these events, for instance he did not indicate over what period of time this occurred. He has not suggested he was ever imprisoned or charged with any offence or that he was physically harmed. His account of intermittent harassment by the authorities for spurious reasons, which he attributes to his ethnicity, accords with the narrative in the second applicant's evidence that both she and the first applicant were stopped by the Basij or Sepah from time to time and subjected to taunts about their ethnicity. International sources report that Basij units often intimidate civilians including those perceived to be violating Iran's strict moral code without formal guidance or supervision from their superiors, and that local sources told DFAT that some law enforcement officials procure bribes.³ I note that DFAT has previously described the treatment of Arabs in Iran by authorities as unpredictable.⁴ I consider the applicant's account of being stopped by the authorities and required to pay bribes from time to time to be plausible, and I accept that this occurred on occasion and accept their Arab ethnicity may have exacerbated this treatment.
20. I have some difficulties with certain aspects of the applicant's claims however. While I find his account of harassment and discrimination at the workplace plausible, and accept he was called names, denied advancement opportunities, and required to undertake less desirable tasks, I have some difficulty accepting that the workplace accident whereby he was burned by acid was attributable to his ethnicity rather than, for instance, lax workplace health and safety standards, faulty machinery, or a failure to follow appropriate protocols; all of which may expose any employee to risk irrespective of ethnicity. On the limited information presented I am not satisfied that was the result of an intentional act targeted against the applicant because he is Arab.
21. The second applicant claims around the time the first applicant lost his employment due to the workplace incident she experienced a miscarriage due to the stress and also due to the negligent care she received at the hospital because she is Arab. I can accept that the events described

² United Kingdom (UK) Home Office, 'Iran: Ahwazis and Ahwazi Political groups', 11 January 2019, 20190117152034; DFAT, 'Country Information Report Iran' 21 April 2016, CIS38A8012677; Amnesty International, "Amnesty International Report 2016-2017", 23 February 2017, NG2A465F54; Amnesty International, "Amnesty International Annual Report 2014/15 – Iran", NG5A1E6BC57.

³ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

⁴ DFAT, 'Country Information Report Iran', 21 April 2016, CIS38A8012677

would have been stressful for the family and it is plausible that this may have contributed to the second applicant's miscarriage. While this is an unfortunate event, on the information presented I am not satisfied there is a connection between the second applicant's miscarriage and her Arab ethnicity. The applicants have not referred to any supporting country information to suggest a differential access to healthcare in Iran based on ethnicity. DFAT assessed in 2019 that the quality of healthcare in the public sector is of a good standard, and that health care is a major government priority, and noted that all citizens are entitled to basic health care coverage provided by the government.⁵ The material before me does not suggest healthcare is discriminatorily denied or practised on the basis of ethnicity in Iran.

22. The first applicant mentioned that some of his family's land was flooded by a government dam, which he considered part of an effort by the authorities to drive Arabs from their land. He stated that they want Arabs to leave their lands and leave the whole country so they damage Arab lands, hurt their crops and take their resources. This event was not discussed in great detail at the interview and there is little information about it before me. The applicant did not provide corroborative evidence in support of his contention that his family's land was flooded, nor did he refer to any reports regarding Arab protestors opposed to the flooding of the land being detained or mistreated. DFAT notes that generally ethnic minorities report political and socioeconomic discrimination including in relation to land rights.⁶ In January 2019 the United Kingdom Home Office cited reports from the Iran Human Rights Documentation Center, the United States State Department and the UN Special Rapporteur on the situation of human rights in Iran which noted that the Ahwazis experienced state discrimination including in the form of the confiscation of land, and not being compensated for loss of land and the destruction of property.⁷ A United Nations General Assembly report from August 2017 refers to about 45 cases of arrest and detention of Ahwazi Arabs between January and June 2017, noting most of the cases seem to have taken place after participation in cultural events or protests against environmental degradation, and that there were arrests in February 2017 for participation in a protest against a policy aimed at diverting water from Ahwaz to other provinces.⁸ This offers general corroboration to the applicant's claim that Arab and environmental issues may at times overlap.
23. However, DFAT reports that flash floods in March and April 2019 caused widespread damage and Khuzestan province was amongst the hardest hit with floods leaving nearly 80 people dead and 2 million people in need of assistance.⁹ These floods would have occurred at around the same time the applicant suggests his family's land was flooded, and the material before me does not suggest that they were the result of intentional government actions. Accordingly while I am satisfied that some of his family's land was subjected to flooding as claimed, and though material before me suggest that Arab rights issues including land rights may be intertwined with environmental issues, I am not satisfied that the flooding was due to any intentional act of the Iranian authorities targeted against the applicant's family because they are Arab. Nor am I satisfied two of his cousins have gone missing as a result of protesting against that flooding. Based on reports I have referred to above, I do accept that Ahwazi Arabs experience land disputes, dispossession and the destruction of property by state actors in Khuzestan.
24. The first applicant explained to the delegate that he did not engage in any political activities in Iran because he feared he would have been arrested or jailed for doing so. He was politically

⁵ DFAT,'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

⁶ DFAT,'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

⁷ UK Home Office, "Iran: Ahwazis and Ahwazi Political groups", 11 January 2019, 20190117152034.

⁸ UK Home Office, "Iran: Ahwazis and Ahwazi Political groups", 11 January 2019, 20190117152034.

⁹ DFAT,'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

interested whilst in Iran and concerned about the Arab cause. He described the Ahwazi Arab homelands, or Arabistan, as having been subjected to Persian occupation since 1925 when an Ahwazi Sheik was jailed and then killed and Arab lands were seized. While in Iran he discussed Arab issues with family and some close friends but could not take any political action for fear of adverse consequences. Reports before me indicate ethnic minorities such as Arabs have been arbitrarily arrested and detained in connection with a range of peaceful activities such as advocating for linguistic freedom; organizing or taking part in protests; or simply participating in religious or cultural activities; and that the simplest forms of ethnic rights activism have been construed by the authorities as a threat to national security or conflated with separatism.¹⁰ The applicant gave evidence that there were no appropriate channels to complain about or challenge the treatment he endured as an Arab, because the authorities do not assist Arabs and often punish them, and that state sanctioned violence may be used against Arabs for spurious or tenuous reasons. The delegate noted the applicant claimed he was not politically active in Iran due to fear of the Iranian authorities, but did not indicate whether she accepted this claim. On the evidence presented I accept that the applicant was not politically active while resident in Iran and that he was disinclined to be active in that country for fear of adverse consequences by the state.

Events in Australia

25. The first applicant has provided photographic evidence of having participated in various pro-Ahwazi demonstrations at the Iranian embassy in Canberra and at different locations in [City 1] including at parliament house. The photos of the applicant at these events relevantly include images of him posing with groups of men seemingly wearing traditional Arab attire and displaying the Al Ahwaz flag. For the most part I consider he provided reasonable detail about his attendance at these events and was able to answer the delegate's questions. He was seemingly confused about some dates of the protests he claimed to have taken part in but subsequently sought to clarify this with the delegate later in the interview. The delegate was concerned that when she asked the applicant what the protest in Canberra was about he could not explain. The legal representative submits that the applicant was confused by the delegate's question and notes that earlier in the interview he had already explained that he attended a protest in Canberra concerns the execution of 15 Ahwazi Arabs in Iran. Having listened the interview recording I accept that he did previously state that was the purpose of a protest he attended in Canberra. The applicant has also provided a letter from the President of the Ahwazian Community in [City 1], confirming the first applicant's involvement with the community movement and his attendance at ceremonies and meetings. This letter offers little detail as to the nature and extent of his involvement with the group, but it does offer some corroboration of his claimed participation in their activities.
26. Asked why he became politically active in Australia, the first applicant replied because he wanted to defend his country, his rights and the rights of his people and to recover all the lands that were taken from the Arab people. He explained that during his first few years in Australia he did not partake in protests because he was yet to form connections within the Ahwazi community in [City 1]. Over time he formed friendships via people he met at mosque and eventually became part of the Ahwazian Community in [City 1] group. He described this process as requiring mutual

¹⁰ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441; Global Voices, "Iran's Ahwazis Continue to Suffer as Two More Disappeared Activists are Executed", 3 March 2018, CXBB8A1DA23541; Iran Human Rights Monitor, "Detention of a cultural activist by Iran Regime's Ministry of Intelligence in south-western Iran, 6 November 2017, CXC90406617111.

trust which took time to build. He also described how on occasion he would host meetings for the group at his house and has provided a photo of one of these meetings.

27. I consider that the applicant's experience of ethnic harassment and discrimination throughout his time in Iran, which I have found to be credible, provides a clear motivation for him to exercise political and cultural freedoms in Australia now that he is in an environment where he is not restricted from doing so. The applicant made a number of allusions to the greater freedoms he enjoys in Australia when giving evidence to the delegate. He also informed the delegate that he and his family feel safe and secure in Australia, and that they enjoy the freedom and peace. He indicated his political engagement in Australia was motivated by a desire to advocate for improved rights for Arabs and the return of Arab lands, which given the experiences I accept he had in Iran I find plausible. He commented on the Iranian authorities' willingness to resort to violence to suppress Arabs. On the material before me, I accept the first applicant's claim that he felt it was not safe to exercise his political and cultural rights in Iran, in the manner he is now able to do in Australia. The applicant has provided photographs evidencing his attendance at protests in Canberra and [City 1] and I accept he attended these events. I consider the applicant's preparedness to travel interstate twice to attend protests, despite also having a young family to care for, supports a conclusion that his political convictions are sincere. Like the delegate, I found his claims to have developed his political opinions further through interactions with the diaspora community in [City 1] to be credible. I similarly agree with her assessment that his motivations for developing political beliefs are genuine and his explanation was consistent with that of someone who has engaged in political activism over a number of years.
28. I am satisfied that the first applicant's political and Ahwazi community activities in Australia were carried out for reasons other than to solely enhance a claim to be a refugee, and reach that conclusion for the following reasons. I accept that he holds sincere pro-Ahwazi Arab political opinions and that his political actions in Australia were in furtherance of genuinely held views. Based on his evidence and the photographs he has provided I am satisfied that his involvement with an Ahwazi group in Australia is also for social reasons, noting his evidence about developing friendships and that the groups commemorate significant events communally such as funerals of dignitaries. I am persuaded that his political and Ahwazi community actions since entering Australia were not solely undertaken to enhance his claims to be a refugee. Even if enhancing his claim to be a refugee was a consideration for the first applicant, I am satisfied on the information before me that his political conduct in Australia was not engaged in solely for that purpose and that s.5J(6) is not enlivened.

Returning asylum seekers

29. I accept that were the applicants to return to Iran they would do so after having requested asylum in Australia. Country information indicates that Iranian overseas missions will not issue travel documents to Iranian nationals whom a foreign government wishes to return involuntarily to Iran. The Australian government has reached an agreement with the Iranian authorities to facilitate the return of Iranians who arrived in Australia after 19 March 2018.¹¹ As the applicants arrived in Australia in 2013 those arrangements do not apply to them. I am not satisfied the applicants will be involuntarily returned to Iran from Australia and find that any return to that country would be on a voluntary basis.

¹¹ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

Refugee assessment

30. Under s.36(2)(a) of the Act a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee.] 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

31. 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.

32. There are between 1.5 and three million Arabs in Iran, who predominantly live in Khuzestan. Arabs tend to reside in Khuzestan’s rural areas, whereas the urban population is mixed, with Persians predominating. Country information from a variety of sources indicates that Ahwazi Arabs face official and societal discrimination on various fronts. The Ahwazi Arab community has long expressed concerns about economic marginalisation and discrimination in education, employment, politics, displacement from ancestral lands, a denial of cultural rights; as well as difficulty accessing adequate housing, water and sanitation. Despite Khuzestan having rich gas and oil reserves and significant agricultural, ship-building, manufacturing, and petrochemical industries, the Arab community complains they are systematically excluded from employment opportunities in these industries and from work in government roles. The region also suffers from high levels of air and water pollution.¹²

33. In Iran ethnic and religious minorities have been arbitrarily arrested and detained in connection with a range of peaceful activities such as advocating for linguistic freedom; organizing or taking part in protests; or simply participating in religious or cultural activities. The simplest forms of

¹² DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; DFAT, “DFAT Country Information Report Iran” 21 April 2016, CIS38A8012677; Amnesty International, “Amnesty International Report 2016-2017”, 23 February 2017, NG2A465F54; United States Department of State, “2016 Country Reports on Human Rights Practices – Iran”, 3 March 2017, OGD95BE926964; Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, “Rights Denied: Violations against ethnic and religious minorities in Iran”, 13 March 2018, CIS7B83941441.

ethnic rights activism are often deliberately construed by the authorities as a threat to national security, and Arabs have been targeted for expressing their ethnic identity through Arabic-language poetry and traditional clothing.¹³ Ahwazi Arabs might face adverse attention for political activism, demonstrations, flying their own flag or wearing traditional Arab garments as a form of protest.¹⁴ Sources report that in Iran minorities are disproportionately represented among political and national security-related charges.¹⁵

34. The security situation in Ahwaz has remained tense over a number of years and reports before me indicate violence and unrest commonly arises. In April 2015, authorities arrested large numbers of Ahwazi Arabs in the lead-up to the tenth anniversary of the 2005 ‘intifazeh’ protests. While most of those arrested were prominent activists, DFAT notes that human rights organisations have expressed concern that many were targeted for their perceived political opinions, for peacefully expressing dissent, or for openly exhibiting their Arab identity and culture.¹⁶ There have been a range of other protests in Ahwaz in subsequent years arising for varied issues. Major protests in February 2017 began in response to an electricity failure but soon evolved into broader protests over the environment and Arab rights.¹⁷ Ahwazi Arabs participated in the nation-wide December 2017–January 2018 protests initially triggered by an economic downturn, and Khuzestan recorded the second largest number of protesters arrested after Tehran.¹⁸ DFAT reported that the majority of deaths from those protests occurred in the northwest and southwest, mostly in majority Kurdish and Arab areas, and those demonstrators made ethno-nationalist demands while chanting slogan in minority languages.¹⁹ In late March 2018, protests again erupted in Khuzestan over the perceived derision of Arabic culture on a children’s television program. These protests lasted over a week and activists claim that at least 400 people were arrested.²⁰ In September 2018, gunmen attacked a military parade in Ahvaz killing 25 people, including members of the IRGC and civilians. The Ahwaz National Resistance, an Arab separatist umbrella group, and ISIL both claimed responsibility for the attack.²¹ In response in October 2018 the authorities launched a major security sweep during which to 800 people were arrested in relation to the attack, some of whom were reportedly executed.²² The material before me supports a conclusion that enduring ethnic tensions in Khuzestan will persist in the foreseeable future.

¹³ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, “‘Rights Denied: Violations against ethnic and religious minorities in Iran”, 13 March 2018, CIS7B83941441.

¹⁴ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, “‘Rights Denied: Violations against ethnic and religious minorities in Iran”, 13 March 2018, CIS7B83941441; Global Voices, “Iran’s Ahwazis Continue to Suffer as Two More Disappeared Activists are Executed”, 3 March 2018, CXBB8A1DA23541; Iran Human Rights Monitor, “Detention of a cultural activist by Iran Regime’s Ministry of Intelligence in south-western Iran”, 6 November 2017, CXC90406617111.

¹⁵ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, “‘Rights Denied: Violations against ethnic and religious minorities in Iran”, 13 March 2018, CIS7B83941441.

¹⁶ DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; UK Home Office, “Iran: Ahwazis and Ahwazi Political groups”, 11 January 2019, 20190117152034.

¹⁷ Iran Human Rights Monitor, “Air Pollution in Khozestan Province Leads to Vast Immigration”, 3 May 2018, CXBB8A1DA26544; Middle East Eye, “Protests over pollution in Iran’s Khuzestan province ‘a national threat’”, 17 February 2017, CXC9040666965.

¹⁸ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, “‘Rights Denied: Violations against ethnic and religious minorities in Iran”, 13 March 2018, CIS7B83941441.

¹⁹ DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226.

²⁰ Al Arabiya, “Arab Ahwazis protest against Iranian regime for eighth consecutive night”, 4 April 2018, CXBB8A1DA24950; Center for Human Rights in Iran, “Growing Demands For Apology From Iranian State-Run TV Over Discriminatory Kids Show”, 17 April 2018, CXBB8A1DA25693.

²¹ DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, #20200414083132.

²² DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, #20200414083132.

35. In the 2016 DFAT described the treatment of Arabs in Iran as unpredictable and that depending on the political environment Arabs could unexpectedly face increased adverse attention. It assessed that most Arabs were not of adverse interest to the authorities, however the risk increased dramatically for those who publicly assert cultural or political rights. Adverse attention included monitoring, being summonsed for questioning, or arrest.²³ DFAT's 2018 report on Iran does not offer an overall assessment of the situation for Ahwazi Arabs in particular, but does include a general observation that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside.²⁴ In April 2020, DFAT's assessment shifted somewhat, expressing the view that certain Arab cultural activities are tolerated, and Arabs can freely wear traditional Arabic dress and the Arabic language.²⁵ DFAT heard anecdotally that Arabs in Khuzestan Province are afforded considerable space to express their ethnic identity.²⁶ It was concluded that Arabs are not specifically targeted for discrimination on the basis of their ethnicity, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities.²⁷
36. I sought comment from the applicant's in relation to DFAT's April 2020 assessment and they provided a response via their legal representative on 12 May 2020, contending the situation in Ahwaz has not changed since DFAT's last report but rather worsened. Those submissions refer to numerous sources discussing the exercise of Arab cultural rights in Iran including from the Danish Immigration Service and the Danish Refugee Council, Iran Human Rights Documentation Center, Minority Rights Group International, US Department of State, UN Special Rapporteur on the situation of human rights in Iran amongst others. Relevantly, they note that just prior to the DFAT 2020 report, the US Congressional Research Service in February 2020 offered a conflicting opinion, observing that Arabs in Iran encounter systematic oppression and discrimination including a prohibition on speaking or studying Arabic.²⁸
37. The basis for DFAT's April 2020 assessment that there is greater tolerance of the practice of Arab culture and that that Arabs are not specifically targeted for discrimination on the basis of their ethnicity is not clearly explained in their report. I consider that the wealth of information before me from a variety of sources over a number of years, including those provided in the applicants comments, supports a conclusion that on occasion the exercise of certain Arab cultural rights may be perceived as a political expression and may attract adverse attention from the Iranian authorities. Given the limited detail in respect of DFAT's conclusions in its April 2020 report, I am not satisfied that assessment displaces the prevailing view on the material before me. Moreover, I note that DFAT 2020 report notes that 'red lines' or prohibited issues defined by the authorities include human rights violations against ethnic and religious minorities, and that those who publicise such matters face a high risk of arrest, prosecution and imprisonment, including on national security grounds.²⁹ On balance the material before me supports a conclusion that certain instances of Arab expression may be conflated with politically sensitive issues regarding Arab rights and separatism, and attract adverse interest from authorities.
38. DFAT's assessment is clear that Arabs, more so than other ethnic minorities, who are active politically are likely to attract adverse attention from the authorities, particularly those in border

²³ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

²⁴ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

²⁵ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

²⁶ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

²⁷ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

²⁸ US Congressional Research Service, 'Iran: Internal Politics and U.S. Policy and Options', 6 February 2020, #20190826131306.

²⁹ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

provinces.³⁰ As set out above I have accepted that this applicant holds sincere pro-Ahwazi Arab political opinions. The type of activities in which the applicant has engaged in while in Australia are fairly low-level, and I consider he has not sought to overstate or embellish this. He has not indicated he is a key figure or that he organised or led any protests. However, the information before me indicates he has engaged in public assertions and displays of Arabic culture and political rights, and the voicing of views that Ahwaz is an occupied territory which has been taken over, and publicly indicating support for greater Arab rights and the separatist cause. There appears to be an extreme sensitivity on the part of the Iranian government to any perceived assertion of Arab rights and Arab separatism. Reports I have referred to above note that Arabs in Ahwaz have recently been targeted by the authorities for their perceived political opinions.³¹ And as recently as April 2020 DFAT observed that Arabs who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.³²

39. I am satisfied that if the applicant were to engage in such activities asserting Ahwazi rights on return to Iran, as he has in Australia, there is a real chance of him being questioned, imprisoned and mistreated; noting credible reports that Iranian authorities use torture to extract confessions from political prisoners including ethnic minorities.³³ I find that this amounts to serious harm. I am satisfied that the harm would be for the essential and significant reasons of his political opinion and Arab ethnicity. It constitutes systematic and discriminatory conduct towards Ahwazi Arabs as part of the Iranian government's ongoing suppression of any perceived Ahwazi Arab uprising. The harm amounts to persecution. I am satisfied the real chance of persecution relates to all areas of the receiving country, given the perpetrator would be Iranian government agencies.
40. Relevantly the delegate, like me, found that the applicant holds genuine pro-Ahwazi Arab political beliefs. She found that the applicant's motivations for developing political beliefs are genuine and that his explanation was consistent with that of someone who has engaged in political activism over a five year period. However she was not satisfied the applicant would continue to engage in political activity, including any attempt to assert his cultural or political rights upon return to Iran. Crucially she does not explain why she believes he would not his behaviour in this way on return to Iran. I have considered these issues. I consider it most likely that on return to Iran the applicant would modify his behaviour, as he did previously while in Iran, so as to avoid potential adverse interest from the authorities. I find he would conceal his true opinions on Ahwazi rights and his desire for a separate Ahwazi homeland. However, because he would be doing so because of a fear of persecution which I have accepted is well-founded, in order to avoid the real chance of serious harm, s.5J(1)(b) is nevertheless satisfied.
41. I am satisfied that s.5J(2) does not apply in this instance, given the perpetrator of the persecution would be agencies of the relevant State itself.
42. I am also satisfied that s.5J(3) does not apply in this instance. Although the applicant could, and on my findings would, take steps to modify his behaviour so as to avoid a real chance of persecution, this would involve concealing his true, pro-Ahwazi political beliefs, a modification specifically excluded by s.5J(3)(c)(iii).

³⁰ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

³¹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; UK Home Office, "Iran: Ahwazis and Ahwazi Political groups", 11 January 2019, 20190117152034.

³² DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

³³ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

43. As such, I am satisfied the first applicant has a well-founded fear of persecution.
44. Given my positive finding in relation to the first applicant's political opinion and ethnicity, I have not considered the other claims raised by him or relating to the second, third, fourth or fifth applicants.

Refugee: conclusion

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

Member of same family unit

46. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a spouse of the family head and children of the family head or their spouse or de facto partner.
47. The first and second applicant have consistently represented themselves as being each other's spouse in various dealings with authorities since their arrival in Australia and have set out a residential history indicating they have cohabited for a number of years. They assert they were married in 2001 and have provided a certified copy of an Iranian marriage certificate evidencing this. I am satisfied that they are validly married, that they are mutually committed to a shared life, that their relationship is genuine and continuing, and that they live together. The requirements of s.5F are met, they are each other's spouse.
48. I have before me Iranian birth certificates for the third and fourth applicants and [an Australian] birth certificate for the fifth applicant. These documents indicate that the first and second applicants are the third, fourth and fifth applicant's father and mother respectively. I am satisfied that the third, fourth and fifth applicants are children of the second and first applicants per s.5CA. The information before me indicates that the third, fourth and fifth applicants have not turned 18.
49. I am satisfied that the first applicant is the spouse of the second applicant, and that the third, fourth and fifth applicants are children of the first applicant. The second, third, fourth and fifth applicants are members of the same family unit of the first applicant per r.1.12.
50. As the first applicant is a person mentioned in s.36(2)(a), the second, third, fourth and fifth applicants meet s.36(2)(b)(i).

Decision

In respect of the referred applicant (IAA20/08160) the IAA remits the decision for reconsideration with the direction that:

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

In respect of the other referred applicants (IAA20/08161; IAA20/08162; IAA20/08163; IAA20/08164), the IAA remits the decision for reconsideration with the direction that:

- the other referred applicants are members of the same family unit as the above-named applicant and satisfy the criteria in s.36(2)(b)(i) of the Migration Act 1958.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission;
- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

- (1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:
 - (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
 - (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - 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
 - 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:
- conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - conceal an innate or immutable characteristic of the person; or
 - without limiting paragraph (a) or (b), require the person to do any of the following:
 - 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;
 - conceal his or her true race, ethnicity, nationality or country of origin;
 - alter his or her political beliefs or conceal his or her true political beliefs;
 - conceal a physical, psychological or intellectual disability;
 - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - 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):
- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - the persecution must involve serious harm to the person; and
 - 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 threat to the person's life or liberty;
 - significant physical harassment of the person;
 - significant physical ill-treatment of the person;
 - significant economic hardship that threatens the person's capacity to subsist;
 - denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - 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:

- 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
- disregard any fear of persecution, or any persecution, that:
 - 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.