



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08325

Date and time of decision: 11 June 2020 10:05:00
S Kamandi, 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 a Sunni Muslim of Pashtun ethnicity from Pakistan. On 11 July 2017, he lodged an application for a Safe Haven Enterprise Visa (SHEV). On 29 April 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the applicant a visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 25 May 2020, the Immigration Assessment Authority (IAA) received an email from the applicant's representative with an attachment. The attachment includes a submission indicating that the applicant's wife gave birth to their first child on [date] and that the applicant will be looking after his wife and their daughter. The attachment also includes the applicant's daughter's Australian birth certificate and two medical certificates from their family medical practitioner Dr [A].
4. At the SHEV interview on 24 January 2020, the applicant confirmed that he married his Australian wife in 2019 and that they were expecting their first child. He did not make any claims to fear harm with reference to his marriage or unborn child at the SHEV interview. The medical certificates indicate that the applicant's wife likely suffers from [a medical condition] which she is being assessed for by their psychologist and that the applicant is unable to work as he is required to be at home to provide care for his newborn daughter. Apart from stating that the applicant will be looking after his wife and daughter, no submission has been put forward as to the impact or relevance of the birth of the applicant's daughter or his wife's possible [medical condition] on the assessment of his claims for protection and it is not apparent to me how the information may be relevant in assessing the applicant's claimed fear of harm if returned to Pakistan. I do not consider this information relevant in assessing the applicant's claims and have not considered it in undertaking this review.
5. The submission in referring to the applicant's mother's Shia religion, indicates that as a relative of a Shia Muslim, the applicant "is completely in the list of Taliban and other religious extremists groups in Pakistan to be targeted and killed and they would be after him everywhere". This is a newly raised claim which was not made before the delegate and is new information. There is no explanation as to why this claim was not made before the delegate. At the SHEV interview, the applicant referred to the general security situation in Pakistan as the reason why he feared returning to Pakistan. He confirmed that he was not targeted, attacked or pursued by anyone or for any reason while in Pakistan and at no point did he mention fearing any harm on account of his mother's Shia religion. The applicant also confirmed that he had raised all claims and discussed all he wanted to discuss during the interview. He was informed that any further information he provides prior to the delegate's decision would be considered and I note that in the three month period between the applicant's SHEV interview and the delegate's decision, the applicant did not present any further claims or information for the delegate's consideration. In addition, no details or evidence to support the assertion that due to his mother's Shia religion the applicant will be targeted and killed by the Taliban and other religious extremists has been provided. Given

these matters, I am not satisfied that there are exceptional circumstances to justify considering the new information.

6. Apart from the above, the submission refers to information and claims that were before the delegate which have had regard to in assessing the applicant's claims for protection.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - The applicant is a Sunni Muslim and of Pashtun ethnicity. He was born and resided in Quetta in Pakistan.
 - The applicant's father was [an occupation] and worked at [a workplace] for 45 years. He had great difficulty going to work because of the constant danger in the area. The applicant's father passed away in 2017 and the family are surviving on the applicant's father's savings and pension.
 - There was a bomb blast at Quetta Civil Hospital in August 2016, killing more than 70 people. Pashtuns were targeted, including Shia and Sunni Muslims.
 - In October 2016, there was an attack on the Police Training College killing more than 60 police cadets. In November 2016, another terrorist attack took place in the Khuzdar District of Balochistan at the Sufi Shrine of Shah Norani. ISIS claimed credit for both of these attacks.
 - Qawal, a religious singer was shot in Karachi. He did not engage in any fighting and was killed because there is no peace in the country.
 - There were strikes on the daily basis and bomb blasts happening all the time. The applicant could not leave his house and had to stay indoors at all times. Leaving the house meant that there was a chance that he would be killed.
 - In January 2013, there was a blast next to the [School 1] where the applicant previously attended. Lasjkar-e-Jhangvi (LeJ) claimed responsibility for the attack which killed 106 people and injured at least 120 people. A second blast occurred while people were helping the victims of the first attack. That day the applicant was lucky that he took a different route and was not harmed due to these attacks. The applicant was shaken up and his family advised him to leave the country. Due to the bad situation, the applicant was also not able to find a job.
 - The applicant fears harm at the hands of the Taliban, the LeJ or Sipah-e-Sahaba and other militant groups in the country. These groups have a lot of power and are causing all the violence and are responsible for killings and attacks throughout Pakistan. The Pakistani authorities are unable to help its citizens and are corrupt and ineffective.
 - Even though the applicant has an education, he will not be able to find a job in Pakistan. He has no connections or work experience and only the rich and those with authority and power are able to find work. There is no hope for him to find a job to survive or support his family.

Refugee assessment

8. 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

9. 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.

10. The applicant has consistently claimed that he was born and resided in Quetta in Pakistan. He provided the delegate with evidence supporting his identity and nationality. I accept that the applicant is a national of Pakistan and that Pakistan is the receiving country for the purposes of this review.

11. The applicant has consistently claimed, and I accept, that he is of Pashtun ethnicity. At his arrival interview the applicant indicated that he was a Shia Muslim. In his SHEV statement, the applicant states that his entry interview incorrectly lists his religion as Shia Muslim. He states that his father is a Sunni Muslim and his mother is a Shia Muslim and that the reason he said that he was a Shia Muslim was because he was advised by his friends that this would make his case stronger. At the SHEV interview, the applicant confirmed that he is a Sunni Muslim and re-iterated that he was advised to say that he was a Shia Muslim to be granted protection, but he wants to be truthful and correct that information. He also stated that he practised his religion in Pakistan and that he sometimes attends Mosque in Australia. I found the applicant’s evidence in this regard convincing and accept that he is a practising Sunni Muslim.

12. As indicated in his SHEV application and confirmed at the SHEV interview, I accept that the applicant’s father who was [an occupation] passed away in December 2017. I accept that his mother, [siblings] have all remained in their family home in Quetta and that his family receives his father’s government pension. At the SHEV interview the applicant gave evidence that one of his brothers is [working] and the other is still studying. He also stated that one of his sisters completed her studies and that his younger sister is still studying and travelling to other cities for study. Given the applicant’s evidence that he was born and resided in Quetta and the current location of his family, including his extended family, I find that on return to Pakistan he will very likely re-join his family in Quetta.

13. The applicant’s SHEV application provides details of his education and employment history. The information indicates that the applicant completed secondary school in 2005 in Quetta.

He commenced a [Degree 1] in 2005, but after completing two years, transferred to [Degree 2] in 2007 and completed his degree in 2009. He then commenced attending [School 1] in 2009 and completed qualification [in]2011, following which he enrolled in [another degree] at [a] [University], but withdrew in October 2011. His SHEV application indicates that he did not work in Pakistan and was financially supported by his father as he was a student. Although he claims that due to the situation in Pakistan he was unable to find a job, he has not provided details about what steps he took to secure employment, the types of roles he applied for or how the security situation impacted his ability to secure employment. In Australia, the applicant worked at [various workplaces]. At the SHEV interview, the applicant confirmed that he was working as an [occupation]. I accept the applicant's evidence in this regard.

14. The applicant's SHEV statement refers to a number of incidents in 2016, including a bomb blast at Quetta Civil Hospital, an attack on the Police Training College, a terrorist attack on Sufi Shrine of Shah Norani, for which militant groups claimed responsibility. The applicant also made reference to the death of a religious singer in Karachi to illustrate the danger faced by people in Pakistan. He also referred to two bomb blasts next to the [School 1] in January 2013. His evidence is that he normally drove past the [School 1] but on the day of the attack in January 2013, he was driving his mother and he took a different route and stopped at a petrol station to buy fuel, which was lucky, as he escaped being caught up and harmed by these attacks. However, given the security situation and constant attacks by militants, the applicant felt unsafe and his family advised him to leave the country, which he did in March 2013.
15. At the SHEV interview, the delegate in referring to the applicant's SHEV statement asked why the applicant felt that he would be targeted as a Pashtun. The applicant stated that he did not say that only Pashtuns are targeted, but that everyone is targeted. When asked if he had ever been targeted by anyone, the applicant responded in the negative and referred to the general security situation in Pakistan. The delegate observed that from reading the applicant's SHEV statement, it appeared that he was concerned about the violence and bombings in his area and that he would be caught up in violence, like passing an area that may be the subject of an attack. The applicant referred to the January 2013 incident and stated that he listened to his mother and took a different route and that saved them. When asked what the reason for the attack was, the applicant stated that he was not sure. When asked for the reason he did not want to return to Pakistan, the applicant stated that it was because of the general security situation in Pakistan. When asked to be specific, he stated that one cannot go anywhere and that there is always the fear of something happening. He confirmed that he was not specifically targeted, no one was after him, and that he fears being caught up in attacks that are occurring in the country.
16. In referring to his SHEV statement that he also fears harm from the government, the delegate asked the applicant why he feared the authorities. The applicant stated that he did not fear the authorities and that it was the general security situation that deters him from returning to Pakistan.
17. Country information reports¹ describe that security situation in Pakistan as complex, volatile and affected by domestic politics, politically motivated violence, ethnic conflicts and sectarian violence. Balochistan has been noted to historically have suffered from ethno-sectarian tension and politically motivated violence, including violence from an active separatist movement. There has been high level of generalised violence in Balochistan and low level of general law

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2018", 6 January 2019, 20190121110758.

and order resulting in frequent terrorist attacks by militants. Due to a large Hazara Shia Population in Quetta, the provincial capital, there have been incidents of ethnic, sectarian and politically-motivated violence against Shias by anti-Shia and militant groups, including LeJ and Sipah-e-Sahaba.

18. Given the security situation prior to and at the time of the applicant's departure in 2013, I accept that the applicant was aware of incidents and attacks by militants that took place across Pakistan and that he feared for his safety and was concerned about being caught up in attacks in his area. However, the applicant's evidence indicates that he was not personally known to nor targeted by militants or any other person for any reason while in he resided and studied in Quetta. While, the applicant's SHEV statement indicates that due to the security situation in his area, it was difficult for his father to go to work and that he and his family stayed at home most of the time, his evidence is that his father worked as a [an occupation] for 45 years and there is no suggestion that he was the subject of any attacks or that his family encountered any issues due to his father's employment or otherwise. Further, the applicant's evidence is that he and his siblings were all able to attend educational institutions and continue with their studies. The applicant's evidence does not suggest that either he or any members of his family were the subject of any attacks or that they were personally known to nor had any adverse profile with militant groups operating in the area or any other person for any reason.
19. While, I accept that the applicant was concerned about the general security and feared for his safety due to militant attacks at the time, it is clear that the applicant was not personally targeted nor had any adverse profile with the militants that claimed responsibility for the attacks that took place in Quetta and other areas in Pakistan. Furthermore, since the applicant's departure from Pakistan in 2013, there have been reports of significant improvements in the country's security situation and downward trend in militant activity and deaths. The improvement in the security situation has been attributed to the Pakistan federal government's establishment and deployment of counter terrorism operations across Pakistan since 2014. In June 2014, operation Zarb-e-Azb, targeting terrorist groups, was launched. After an attack by the Taliban on the Army School in Peshawar in December 2014, the Pakistani authorities also introduced a National Action Plan (NAP), which together with military operations formed a civil-military effort to combat terrorism. In 2017, further military operations, the Radd-ul-Fassd (succeeding operation Zarb-e-Azd) and Operation Khyber-IV, were launched. It is reported that the NAP and military operations led to significant reductions in the number of criminal and sectarian violence and terrorism related attacks.² In line with general security improvements in all areas in Pakistan and government action to curb militant activity, DFAT³ reports that there has been a decrease in the number of casualties from sectarian violence and a reduction in politically motivated violence in Balochistan. The 2019 PIPS report⁴ also indicates that there has been a decline in terrorist attacks in Pakistan, and while Balochistan appeared to be the most critical area in 2018 in terms of security challenges, where both religious and nationalist non-state actors are making security landscape complex, a decline in attacks by Balochi insurgents is noted for 2018 and sectarian-related attacks are reported to have been against religious minorities and not against Sunni Muslims.
20. DFAT⁵ reports that Pakistan is a Muslim majority country with 85 to 90 percent of the population adhering to the Sunni religion. With exception of the Ahmadi and Hazara

² DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2018", 6 January 2019, 20190121110758.

³ DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409.

⁴ PIPS, "Pakistan Security Report 2018", 06 January 2019, 20190121110758.

⁵ DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409.

communities, DFAT assesses that Pakistanis are generally able to practice their religion without official interference or discrimination and that violence and societal discrimination disproportionately affect religious minorities. Pashtuns are the second largest ethnic group in the country and are represented at all levels of society in Pakistan and have dominated employment in transport in Pakistan. DFAT also assesses that although Pashtun-majority areas have historically experienced high level of tribal, intra-communal and politically motivated violence, the overall security for Pashtun have improved in line with increased security across Pakistan. It is noted that Pashtuns in Pashtun majority areas or locations where individuals have family or societal connections face a low risk of official discrimination. The applicant's immediate and extended family remain in Quetta. As indicated above, the applicant's siblings are either working or studying in Quetta and the applicant's evidence does not suggest that they have been the subject of any attacks or incidents due to their religion, ethnicity or violence due to the security situation in Pakistan prior to or after the applicant's departure in 2013.

21. I accept that the security situation in Balochistan has not been stable and that despite government operations, the security situation in Balochistan remains challenging and that Quetta continues to suffer incidents of sectarian and separatist violence. However, there has been a reduction in the militant attacks and separatist activity in the area and violence in the area appears to target religious minorities, which the applicant is not a member.
22. Considering the improvements in the security situation since the applicant's departure in 2013 and having regard to the applicant's lack of any religious, political or other profile, I consider the chances of the applicant facing any harm in the foreseeable future for reasons of his religion, ethnicity or harmed or targeted by militants, terrorists or involved in sectarian or politically motivated violence in Quetta to be no more than remote.
23. The applicant's SHEV statement indicates that even though the applicant has an education, he will not be able to find a job in Pakistan. He has no connections or work experience and only the rich and those with authority and power are able to find work. At the SHEV interview, the applicant stated if you have qualifications or experience you find a job easily. When the delegate put to him that there would be jobs that he could do if returned to Pakistan, for example labouring jobs, the applicant stated that such jobs do not pay much money and indicated that he probably could get a job if he continued his studies. When asked what he was studying, he referred to studying a [degree] and stated that his brother advised him to study this so he could easily get a job as [an occupation]. While, I accept that the applicant did not work in Pakistan, his SHEV application indicates that he completed a [Degree 2] and [a] program in [a specified field]. He also enrolled in a [degree] but withdrew and did not complete the degree. The applicant can speak, read and write in Urdu. He can speak and read Pashto and Dari and can mostly conversed in English with the delegate at the SHEV interview. He has also worked in various roles in Australia. Given the applicant's educational background, language abilities and his work experience in Australia, I am not satisfied that he would not be able to secure employment or will only secure low paying employment if returned to Pakistan.
24. In light of the above, I am not satisfied that the applicant faces a real chance of any harm for any of the claimed reasons in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J) of the Act.

Refugee: conclusion

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

Complementary protection assessment

26. 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

27. 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.
28. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
29. I have found above that the applicant does not face a real chance of harm for any of the claimed reasons. The Federal Court⁶ has held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm.
30. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Pakistan.

Complementary protection: conclusion

31. 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.