



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA20/08327

Date and time of decision: 24 June 2020 08:38:00

G Deal, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The applicant claims to be from Tehran, Iran. [In] June 2013 he arrived by boat in Australia. On 25 September 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (visa application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 29 April 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate accepted that in an isolated incident the applicant was detained and mistreated by the Basij but did not accept he was of ongoing interest after release, noting he did not leave Iran until some years later with no further incidents with authorities in the intervening years. While accepting he was a non-practicing Muslim, for a host of reasons the delegate was unpersuaded by his claim to have converted to Christianity and did not accept he was a genuine convert. While accepting the applicant may have been interviewed by [Media] and may have made some Christian social media posts, given their nature, the delegate did not accept there was a real chance the applicant attracted or would attract the adverse attention of the authorities because of this. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

### Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. By email dated 25 May 2020 the applicant's migration agent forwarded a legal submission, a 'new information' submission and 18 annexures comprising a statement by the applicant, a number of documents related to an assault on him [in] December 2018 and a number of letters from friends, a Christian Father, reverends, a volunteer organisation helping those in need as well as a decision by the UK Upper Tribunal<sup>1</sup> and the DFAT 2020<sup>2</sup> country information report on Iran. Some of this comprises information that was before the delegate, as well as arguments and I have had regard to this. It also includes new information which I will address below.
5. The applicant's migration agents make a number of submissions as to why the new information should be considered by the IAA. They submit it is relevant to the risk of serious harm faced by the applicant and relates to his claims. As the delegate was unpersuaded by the genuineness of the applicant's claimed Christian conversion they submit that information in support of this and why his articulation in the visa interview may have been unpersuasive at that time is critically relevant to his application. It is submitted that the applicant's fragile mental state, basic English and homelessness before and after his application was lodged, demonstrates he was ill-equipped to understand the application process and what information was relevant to his case and that he has not previously sought legal assistance at any stage. I note however, the applicant was assisted by a lawyer (who was also a migration agent) with his visa application. I also note many, if not most applicants, do not have a good command of English, which is why translators are routinely used in visa interviews as was done in this matter.

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<sup>1</sup> United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 'PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC)', 20 February 2020.

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

6. In his visa application and interview the applicant said he was assaulted by the Basij in Iran, suffered from depression, sought counselling in 2014 and that finding out about his father's death in 2017 had been another trauma for him and resulted in him being hospitalised with depression and suicidal ideation in 2017. In his visa application the applicant described himself as a Christian who had attended church in 2013, during 2014-2015 when he became closer with a Christian Father who taught him and fellow refugees he lived with at that time about the bible. In his visa interview he also detailed how he had been assaulted [in] December 2018 and indicated his memory had been affected as a consequence. He indicated attending church had been difficult and it was interrupted because of his mental health issues, the 2018 assault and periods of homelessness. He also said he had travelled a lot and stayed in Melbourne, Western Australia and New South Wales in the past, sometimes for work.
7. The applicant now provides an updated statement which contains information he provided to the delegate as well as arguments. It also contains new information, including further details in relation to events before the delegate's decision was made and after this such as that the interpreter told him before the interview that he did not speak English that well and asked him to speak English, that he did not understand what the Christian Father was saying in 2014 and 2015 but recorded this, that he also helped the church with fundraising at that time, that between September 2018 and December 2018 in Western Australia he was depressed and could not go to church because he could not leave the house, after staying with a reverend after his assault he bought a tent to sleep in the park and was homeless again, he has now settled in [Suburb 1] and has found some stability, he has attended his landlord's church in [Suburb 2], and since COVID-19 has joined online prayer sessions and bible study and spent time watching YouTube videos of prayers and bible readings in Farsi. When homeless he was ashamed to go to church because of his appearance but carried his Persian Bible with him during that time. He also submits that if forced to return to Iran he will practise Christianity no matter what, he would continue to do bible study and talk to people about Christianity and he is not afraid to die. The applicant also now provides seven reference letters from friends, a Christian Father, reverends and a volunteer organisation (Annexures B – H), a referral letter for counselling sessions in 2014, a letter dated in 2017 in relation to his hospitalisation for mental health issues, as well as hospital records, a script for anti-depressants, correspondence from the Australian Government and the Director of Public Prosecutions in relation to the 2018 assault (comprising Annexures I – O). This is new information.
8. In their submission the migration agents state it is understandable that without this supporting information that the delegate found the applicant's claimed conversion was not genuine. The applicant's migration agents submit that these records also evidence the applicant's complex health vulnerabilities which were not considered by the delegate and which had a profound impact on the applicant's ability to give evidence in support of his application for a protection visa and explains omissions and any lack of specificity in the applicant's responses during his visa interview. As an example they note that the applicant's assault by the Basij was stated to be in 2010 in his visa application and that in the visa interview he said this occurred in 2008 but that this was in error, and that his visa application was correct noting that the Green Movement did not occur until 2009. They also note certain claimed translation issues and the applicant's limited English and periods of homelessness adversely affected the quality of his evidence. The submission and letters now elaborate on these challenges he faced in the lead up the visa interview and in the visa interview and are corroborative of this and the applicant's claimed conversion, which is central to his claims for protection. I also note in the visa interview the applicant sought to provide some records in relation to his claimed assault in 2018 to the interviewing delegate who declined these at that time, indicating there were not relevant. However I consider them relevant to his claims regarding his ability to provide evidence at the visa interview. The delegate does not appear to have considered the applicant's claimed mental

health and memory issues and homelessness in her decision. I am satisfied that there are exceptional circumstances to justify considering the information.

9. The applicant has also provided the IAA with photos claimed to be of him after his 2018 assault. However some of these photos are identical to those previously provided with his visa application in 2017, which he has said a nurse took of him after the Basij assaulted him in 2010 in Iran. I also note while some additional photos, not previously provided, have now been provided (and these are new) it is evident these were taken contemporaneously with those provided earlier given the striking similarity of the backgrounds and injuries depicted. I already have photos of his injuries in relation to this assault and it is not apparent to me that the photos now being provided are more illustrative of those injuries or are of any other additional assistance in relation to this claim. I am not satisfied that there are exceptional circumstances to justify considering the new information.
10. I am satisfied there are exceptional circumstances to justify considering the recent decision of the UK Upper Tribunal and the DFAT report, which both document the changing conditions in Iran, particularly in relation to Muslim born Christian converts, which is an issue that is central to the applicant's claims for protection. They were both only available after the delegate's decision was made. The delegate also relied on an earlier version of the DFAT report.

### **Applicant's claims for protection**

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

- He is an Iranian from Tehran where he still has family.
- He completed about [number] years of schooling, then his military service, opened a [shop] and when he closed that he worked as [an Occupation 1] in Tehran. He has worked in various capacities in Australia including as [an Occupation 2] and in [Occupation 3].
- He was actively involved in the Green Movement protests.
- In 2010 his [shop] was destroyed by the Basij in connection with the Green Movement.
- In about 2011 he was rounded up with a number of other suspected activists, detained, interrogated and severely mistreated by the authorities. He released he could not remain in Iran after this. After making necessary arrangements, which took some time for various reasons, he fled Iran in fear of his safety in 2013.
- He suffers from mental health issues and poor memory. He met his partner in Australia in 2015. Their relationship ended in 2017 and she threw him out. He has been homeless since then. He found out she was pregnant with his child. He is estranged from the child, which he finds very upsetting. His father passed away in 2017 and his mother became unwell. He was assaulted by a stranger [in] December 2018.
- He and his family wanted to convert to Christianity in Iran and attended church in Iran, but this was dangerous. He has converted to Christianity since being in Australia. Since being in Australia he has made social media posts about Christianity.
- His information was leaked to the Iranian authorities in a 2013 [Organisation 1] data breach.
- Since being in Australia he has participated in an interview with the [Media] and his claims and identity as a refugee have been publicly broadcast.

## Refugee assessment

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12. 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

13. 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.

14. Based on the evidence, including the documentary evidence, I accept the applicant is [an age] year old Iranian from Tehran, Iran. I accept he is a national of Iran and consider Iran the receiving country. It appears both his father (who he appears to have been estranged from for some time) and step father have both passed away since the applicant has been in Australia. However he has a mother and brother in Tehran and I consider that if he were to return, he would very likely return to there. In the visa interview he also said he had a sister who he did not previously disclose, because he did not have much to do with her. Given his spontaneous elaboration in the visa interview I accept he has a sister in Iran. Given the broad consistency in relation to his background I also accept he left school after about [number] years of schooling, completed his military service in [Year] (there is also documentary evidence in support of this) and after undertaking brief [training] opened his own [business] which he ran until he closed this and then worked as [an Occupation 1] until 2013, the year he departed.

15. At various stages the applicant has claimed a number of issues with the visa application process.

16. When variations in his arrival interview in relation to his reasons for leaving Iran were pointed out by the interviewing delegate in the visa interview, the applicant said he had been seasick on the boat journey to Australia and had taken pills and was still unwell when interviewed. The interviewing delegate noted the applicant was interviewed some three weeks after arrival and the applicant indicated he was still unwell at that time. However, I note the applicant did not indicate in the arrival interview that he was unwell and it had been some three weeks since he had been on the boat when first interviewed. I also note the applicant provided other reasons why there might be errors in his arrival interview in his visa application, but did not mention seasickness at that time. In his visa application he said he was asked to be brief and was not told

what was relevant to disclose for the purposes of assessing his claims. However in the arrival interview<sup>3</sup> the applicant was explicitly asked his reasons for leaving Iran which he answered. While he was asked to be brief, I note that after he said there were many reasons, he was asked to give three of the most important reasons. After mentioning these the applicant told the interviewer that the story was longer and asked if he wanted to hear it and the interviewer said he did want to hear it, albeit briefly. I consider the applicant was given adequate opportunity to at least mention his most important claims in the arrival interview and the interviewer did not seek to stop him when the applicant indicated he needed to talk for longer. I also note that in the visa interview the applicant indicated he had all his information previously provided to the Department, including his arrival interview records, which he could listen to and read. While I acknowledge arrival interviews are not intended as a substitute for visa interviews, I do not accept the applicant's evidence was affected by sea sicknesses (or the pills he took for this) or that he was unable to at least provide an overview of his most important claims in his arrival interview.

17. The applicant has also told the IAA that while waiting for his visa interview the interpreter confessed that his English was "not that good" and encouraged the applicant to speak English during the interview. The applicant also claims that the interpreter was paraphrasing or oversimplifying his responses. As a result the applicant claims he was simplifying his answers to make them comprehensible for the interpreter which is why they may have seemed lacking in detail, vague or incomplete, although he has not specified any instances of this. The applicant also notes the delegate who made the decision was different to the interviewing delegate and therefore that the difficulties experienced by the applicant may not have been apparent or able to be considered adequately. I have carefully listened to the visa interview. The applicant was explicitly asked if he understood the interpreter and the applicant said that he did. When asked if he had any objection to using the interpreter the applicant said that he did not. He was also advised by the interviewing delegate that the person making the decision may be different. The interviewing delegate asked the applicant to notify him if at any stage he did not think the interpreter understood him or he did not understand the interpreter or if he did not understand the interviewing delegate's questions. Translating in visa interviews is a complex task. I note that the interpreter appeared to mostly interpret what was being said verbatim, listening attentively and translating as each sentence was spoken by the applicant. He also alerted the interviewing delegate when the applicant was not able to be understood and on a number of occasions clarified what the applicant was saying before interpreting it as well as repeating questions for the applicant at times when he did not appear to understand. While the applicant sought to speak English at times, at one point claiming it was faster, and interjected a few times providing what he thought was a more accurate interpretation, throughout the three hour and forty minute visa interview the applicant did not object to using the interrupter or mention he was paraphrasing or oversimplifying what he was saying. Overall, I do not accept the claimed translation issues as an explanation for significant inconsistencies in the applicant's evidence. I also note I have carefully listened to the visa interview and taken this into account in assessing the applicant's claims.
18. In his visa application the applicant said he had suffered mental health issues since being beaten up by the Basij in Iran, that he had seen a psychologist in 2014 and that he suffered from depression but was much better now. He also said he split from his ex-partner of three and a half years in September 2017 but that she has since had a child he said was his. The applicant also told the interviewing delegate that his father died in 2017, this resulted in him suffering

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<sup>3</sup> Part 1 was conducted on 15 July 2013 and Part 2 on 19 July 2013. While some of the recording of Part 2 appears to be missing, the full recording for Part 1 contained his explanation of the reasons why he left Iran. I have also had regard to a written record of both parts of the interview.

depression and he spent one day in hospital and some additional time in another place with about 20 others, which he eventually had to leave because there was not enough space. He also said he was the victim of an assault [in December] in 2018. At times in the visa interview, when he could not recall something, the applicant attributed this to poor memory the result of past assaults and his mental health issues. The interviewing delegate asked if he had any documentary evidence, like a birth certificate for his child but he did not and none has been provided to date. Nonetheless given they are estranged I consider it plausible that this might not be easily obtained and given the consistency of the claim and the detail provided I am willing to accept his ex-partner has had a child believed to be his. He also told the IAA that at the time of his father's death his mother's health was failing which also put a strain him. The applicant also claims to have been homeless for the bulk of his time in Australia and to have thoughts of self-harm. He submits past assaults and his mental health have led him to experience confusion and memory loss which impaired his ability to recall specific events and details during the visa interview.

19. The applicant has provided a large volume of documentation in support of these past claimed events and his mental health. He has provided a letter from a doctor referring him for six counselling sessions in 2014. A letter from a doctor indicating he was in hospital in 2017 in relation to suicidal ideation and depression. He has provided hospital records and letters from the government indicating he was assaulted [in] December 2018, suffered [injuries], was treated, that the perpetrator was sentenced to 22 months in prison and that the applicant was prescribed anti-depressants at around that time, and I accept these aspects of his claim. In the visa interview he indicated he was released the next day but had to return after 10 days. Letters and the applicant's IAA submission indicate he wanted to self-harm at that time. The applicant stayed with a reverend for two weeks after the assault and in a letter that reverend states he was concerned about the applicant's psychological state at that time. I accept the applicant was badly beaten by a stranger [in December], hospitalised and treated. I accept he suffers depression, suicidal ideation and takes anti-depressant medication and attended counselling in 2014 and was hospitalised because of his mental health issues in 2017 after his father's passing. As detailed below I also accept the applicant was the victim of an assault by the Basij in about 2011.
20. The applicant claims to have been homeless for long periods since being in Australia. His evidence indicates he lived in [Suburb 3] and [Suburb 4] (with his ex-partner) in South Australia from April 2017 to October 2017 and when his ex-partner kicked him out this was the beginning of his homelessness. His visa application indicates he always had a fixed home address up until September 2017. I also note he appears to have been receiving government assistance which he confirmed in the visa interview. He also appears to have travelled to various States for work, including Melbourne, where he worked as [an Occupation 2]. A letter from a doctor in December 2017 places him in South Australia at that time and details an address different to his ex-partner's address. A letter from a friend states the applicant lived with her from September 2018 to December 2018 in Western Australia and that he worked [during] that period. He was in Western Australia when he was assaulted [in] December 2018 and he claims to have been homeless at that stage. Hospital records from around this time show a previous home address in South Australia. A letter from a reverend indicates that the applicant lived with him for two weeks commencing [January] 2019 following the 2018 assault as the applicant had nowhere to go at that time. His IAAA submission appears to indicate he was homeless after this and brought a tent and lived in a park in Western Australia at that time and visited nearby churches. A letter from a Christian volunteer organisation attests to the applicant being homeless in Western Australia in May 2019. In the visa interview the applicant said he stayed somewhere in [Suburb 5] temporarily after this. A letter from the Department of Public Prosecutions in August 2019, related to the assault, was addressed to the applicant at a backpacker's hostel in Western

Australia. In September 2018 he appears to have had a fixed address at a house in Western Australia when he received a letter regarding the sentencing of the man who assaulted him and provided an address to the interviewing delegate in [Suburb 6] Western Australia at that time in the visa interview. He subsequently told the IAA he was on the streets in Sydney in December 2019 and then stayed at [Suburb 7] in January 2020. A letter from his friend attests to him staying at [Suburb 7] at that time but says he moved out because he felt he had stayed too long. This friend then arranged for him to stay elsewhere but the person pulled out at the last minute leaving him homeless again. He returned to Sydney and a friend offered him a room for a couple of weeks. He lived at "[Town 1] region for Refugees" in [Town 2] for a few weeks and told the IAA that he had more recently moved to a house in [Suburb 1] which was where he was living in June 2020. I accept the applicant suffers mental health issues and that after 2017 he experienced difficulties resulting in periods of homelessness. He has also claimed his car was broken into at one point and a number of items, including documents, were stolen, and based on the police report provided I accept his car was broken into and items stolen. I consider that these circumstances may have made it difficult for the applicant to provide supporting information in relation to his claims. However, I note he has been ably represented by his migration agents at the review stage and has provided some 18 additional supporting documents as well as further submissions in support of his claims.

21. I note the visa interview was on 19 September 2019, some 10 months after the [December 2018] assault. Moreover, in the visa interview the applicant said that he had his health back and was "Ok". He also appears to have had a fixed home address at that time. Despite submitting he suffers memory issues as a result of past assaults I also note that with the exception of more minor inconsistencies such as with dates, the applicant appeared to have good recall of past events, even those stretching back some time ago, and his memory did not appear to be particularly impaired. For example, when asked what countries he passed through on his way to Australia the applicant recalled the name of all three and how long he was in [Country 1], he recalled that his military service went for 21 months and that he started when [Age] (which is perfectly consistent with his documentary evidence) and details in relation to a [course] he undertook while in Iran before opening his shop. I accept the applicant may have confused dates at times and I have not sought to rely on this adversely. He also made a couple of unusual comments in the visa interview, for example he appeared to indicate at one point that his memory was photographic, but given this is clearly in stark contrast to his claims and far-fetched I have not sought to rely adversely on this or similar far-fetched statements. In the visa interview he also revealed he had been working while in Australia; the day after the visa interview he was starting a new job as [an Occupation 3]. Despite providing letters from doctors none refer to ongoing memory issues. I also note the interviewing delegate clarified questions when it appeared they may not have been understood and clarified what the applicant meant when what he was saying was not clear. The interviewing delegate detailed, at the outset, how the interview would unfold and at each stage he explained what sort of questions were coming up. The interviewing delegate also followed up on each and every issue raised by the applicant. The interview ran for some three hours and forty minutes. On the evidence, I do not accept the applicant was unable to meaningfully engage in the visa interview for the reasons claimed. I also consider the applicant has been given adequate opportunity to provide his claims and supporting information and I do not consider an additional interview required in the circumstances. I have decided not to provide the applicant with a further interview.
22. Turning to the applicant's claims for protection, he claims he left Iran in 2013 in fear of his safety after being beaten and detained by the Basij in about 2011. In his arrival interview he said he left Iran for many reasons. When asked to give examples of three of the most important reasons, the applicant said it was first because of society and then religion, politics and the high cost of living and not having a job. He said he had no future in Iran. When asked if anything happened



to him personally he said that after the election in 2010 there was a protest and people came into his [shop] to hide. As a result, law enforcement entered his shop and broke everything and he had to close the shop. His uncle was [an Occupation 4] in [Country 2] and the applicant [applied] for a visa for [Country 2], but was unsuccessful. After he closed his shop he worked as [an Occupation 1] to save money. When asked if he were ever arrested by the authorities the applicant said in 2011 when going to work with a friend they saw a group of people running toward them and law enforcement were chasing them. As they were running he instinctively started to also run and he and his friend went into a supermarket. When law enforcement went into the supermarket the owner said they did not work in the shop and he and his friend were beaten, arrested and detained for a number of hours. He said they were released without charge. Based on his description it appears they were taken in a case of mistaken identity and released in the early hours of the morning when no longer of interest. He also said he participated in peaceful protests in Iran from 2010 until more recently.

23. The applicant detailed a similar story in his visa application, stating his shop was trashed by the Basij in about 2010 and that he was subsequently beaten and detained and interrogated by the Basij after getting caught up in a crowd while on his way to work. He said he was sprayed with pepper spray and beaten. They were put in a mini bus and blindfolded. They were given papers to fill out with the names of relatives. He said he had an uncle in [Country 2]. He also said he told them he had no religion. He was then interviewed and asked questions about his uncle and relatives and his religion. They called his stepfather to check the contact details he had provided were correct. A number of them had been detained and were being questioned. They transported them in five or six vans. They had to fill out more forms and were questioned again. He said he does not remember what happened after this, only that he woke up in hospital. He enclosed copies of photos he said a nurse took of him while in hospital. He was given morphine and told not to report the beating. He got a huge shock when he saw his face in the mirror and spent two or three days in hospital. The photos show him in a hospital bed with a number of deep lacerations and wounds to his face and body. He also said he was embarrassed by the scars he got from this incident. The incident made him grow up and he realised he could not continue to live in Iran. However he claims it took him a couple of years to leave because he had to wait to find out the outcome of the [Country 2] visa [application], sell his shop, he had to get a new passport, continue seeing the doctor about his injuries and save money. He said his aunt and cousins also wanted to travel to Australia so he had to wait for them to organise themselves before they could all leave together.
24. In the visa interview the applicant also said he was actively involved in the Green Movement. While there was some variation in the dates, I draw no adverse inference from this. He said he wore a green wristband. When asked how he became involved he spoke in a generalised way about how the government killed people and he did not like this. When asked how he knew about upcoming protests his response was quite generalised; he said they were informing one another about the dates and times and places. When asked how he knew about this his response was brief, particularly when compared to his response about the events that subsequently took place, and he mentioned pamphlets noting they were not able to use Facebook or YouTube. When asked by the interviewing delegate to tell him what happened at these events, the applicant detailed, at great length, his claimed arrest, assault and interrogation by the Basij in about 2011 as detailed in his arrival interview and visa application. When asked what he did in the Green Movement the applicant said he gave activists shelter in his shop and he was hiding them.
25. Based on the consistency of the claim and the applicant's spontaneous and detailed elaboration of events in the visa interview and that the claim his shop was destroyed by the Basij forcing him to subsequently work as [an Occupation 1], is consistent with the timeline of events he provided

in the arrival interview, I accept the applicant's shop was randomly destroyed during Green Movement protests in 2010 and he was forced to close the shop after this and work as [an Occupation 1]. I also accept that he was caught up in a crowd while on his way to work with a friend and erroneously detained along with a large number of suspected activists in the area at that time and badly beaten, detained and interrogated by the authorities. However I note he did not leave Iran until sometime after these events, and even delayed his departure so that his aunt and cousins could join him. In the visa interview the interviewing delegate noted this delay and that it raised concerns for him about the applicant's claim to have feared for his safety when he left years later. The applicant provided a number of reasons for the delay, including those detailed in his visa application, such as that he was young at the time (he was [Age] when assaulted), it was not that easy to leave, he had financial problems, he was getting medical treatment for his injuries, he had to research the trip, he was looking for a smuggler and it was not easy to find one, and that he had to wait for the results of the [Country 2] visa [application]. However I agree with the interviewing delegate and consider that if the applicant genuinely feared for his life at that time, these things would not have delayed his departure to the extent that they did. I also note that after his release in 2011 there is nothing to suggest he had any adverse interactions with the authorities again despite remaining in the country until June 2013. I do not accept he fled Iran in June 2013 in fear of his life. I consider that on release in 2011 after interrogation he was no longer of on-going interest to the authorities as a suspected activist or otherwise including when he left Iran in 2013. In comparison to his claimed detention and beating by the Basij in 2011 I have found the applicant's evidence in his arrival interview, visa application and visa interview about his involvement with the Green Movement vague, including in the visa interview when he was asked more probing questions about this aspect of his claims. I consider he was detained and beaten by the Basij as a suspected activist in about 2011 in a case of mistaken identity and subsequently released and experienced no further issues in this regard in the years leading up to his departure. I do not accept he was actively involved in the Green Movement or suspected of involvement by the authorities after his release, as claimed. I also note it has now been some nine years since those events. In 2020 DFAT also reports that those who had a more active organisational role in the Green Movement and a higher profile are more likely to face ongoing official attention and possible monitoring and harassment, and ordinary protestors who were arrested and released without prosecution were unlikely to be of ongoing interest to the authorities.<sup>4</sup> Based on his profile and the country information detailed above I am not satisfied the applicant faces a real chance of harm on account of his past experiences in Iran, including his assault and detention by the Basij in about 2011.

26. The applicant claims that since being in Australia he has converted to Christianity. However for the following reasons I have not found the applicant's evidence of his Christian conversion, convincing.
27. In his arrival interview the applicant said he had no faith. In his visa application the applicant said that his family wanted to be Christians and that they went to a Christian church sometimes in Iran but that this was dangerous. In the visa interview the interviewing delegate noted this evidence and the applicant said he had been interested in converting since childhood but feared going to church in Iran. I note the country information before me indicates that at that time many Christian churches for Iranians had been closed and those that remained open were subject to strict monitoring, with pastors not allowed to accept new members and having to make regular reports to the authorities, failing which they would be persecuted by the authorities.<sup>5</sup> On the evidence, while I am willing to accept the applicant and his family were not

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<sup>4</sup> DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>5</sup> Danish Immigration Service, Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', 1 June 2014, CIS28931.

that religious, as this has been consistently claimed, I do not accept his family went to a Christian church in Iran or that they wanted to be Christians.

28. While I acknowledge the applicant has been assaulted in the past, suffers from mental health issues and has experienced periods of homelessness and also that a person's faith is deeply personal and can develop over a number of years, I note that in the total time he has been in Australia his church attendance appears limited and sporadic, even during periods of relative stability prior to 2017, and his evidence, including in relation to more recent attendance and even his incorporation of religious practises into his life outside the church, has been vague, and his knowledge of the faith very limited. He has also not been baptised. While he asserts all the difficulties he suffered made it difficult for him to regularly attend church and learn about the faith and become baptised I note he has also worked at times while in Australia, sometimes for months, and that during those periods he did not attend church. All of these issues raise serious concerns for me regarding the genuineness of his personal connection and commitment with the faith.
29. Based on the documentary evidence, including letters of support, I accept the applicant attended [a] church in 2013 and "during 2014 -2015" in [Suburb 3] as well as [Church 1] in [Suburb 4], helped the church with fundraising at that time and that a Father at that time also used to visit him and fellow refugees living with him at that time and teach them about the bible and that the applicant did not understand much of what he said because of the language barrier. He wanted to be baptised but the Father indicated it was too early at that stage and they lost contact in about 2015. In his visa application (September 2017) the applicant said he had not been to church for a while because he did not have a car. The interviewing delegate said that to be honest he found this a terrible excuse and that he was concerned about this. The applicant blamed physical issues with his [body] and said he had a letter from his doctor about this. No doctor's letters in this regard has been provided to date. While I acknowledge that at the time the applicant had been assaulted by the Basij some six years prior, I do not find his explanation convincing, particularly given he had been working intermittently in Australia. I agree with the interviewing delegate and consider that at a time when his life was relatively stable his non-attendance at church raises serious concerns for me regarding the genuineness of his commitment to the faith at that time.
30. Based on a letter from a friend of the applicant's I accept he lived with that friend in Western Australia from September 2018 to December 2018 after he moved to Western Australia when his ex-partner and [child] relocated to that State. The letter states that the applicant worked [at] that time but was unable to go to their local [church] because of his compromised health and "inability to present as he needed to participate in the weekly service". Somewhat at odds with him working during this period, in his statement to the IAA he said he was unable to attend church during this period because he was depressed and had trouble leaving the house. I do not accept this explanation. In a lengthy letter from a Christian friend in New South Wales (J) who the applicant met online in mid-2018, it indicates the applicant next attended [Church 2] in Western Australia after his assault [in December] in 2018. J helped to arrange accommodation for the applicant with a reverend after the 2018 assault given the applicant was homeless at the time. A letter from that reverend attests to the applicant staying with him for two weeks at that time and I accept this. The reverend states the applicant was reluctant to engage with new people and spent a lot of time sleeping but that he encouraged him to attend services and the applicant attended one of his church services [in] January 2019 at [Church 3], [Location]. The applicant had to move because the reverend had interstate guests coming. The applicant also appears to have gone to the [Suburb 8] Church around March 2019. A letter from a reverend at that church, who he met when he went to the church, attests to the applicant's attendance at the church at around that time and I accept this. In her letter J also attests to the applicant's

attendance at a church a few times with her while in [Town 2] in January 2020. On the evidence, I consider that after some church attendance and engagement with Christianity when he first in arrived in Australia, the applicant did not actively attend church until early 2019 after his assault, despite earlier opportunities. However, I consider his connection and engagement with the Christian community after the 2018 assault was entwined and largely the result of the support, including residential support, provided by the Christian community at that time on account of the assault and his homelessness. I also note that the reference letters provided mostly relate to the period after his assault [in] 2018 and while I appreciate COVID-19 meant attendance in person was not possible after about March 2020, nothing more recent related to his church attendance in [Suburb 2] prior to this or the claim in one of the letters that he has reached out to a local church about the possibility of being baptised soon, has been provided. I also note that other than carrying around a bible there is little to no evidence to suggest the applicant has incorporated Christianity and its practises into his life outside the church since being in Australia.

31. The applicant has provided a number of support letters in relation to his Christian faith. While of some assistance I have also found these letters to suffer certain limitations. With the exception of the Christian Father he met in about 2014, the applicant only more recently met the writers of these support letters in 2018 and mostly in 2019 and his association with them, other than J and her friend, appears to have been relatively brief and not on-going. J's lengthy letter discusses problems with the visa interview and the applicant's history, although I note J did not have first-hand experience of these events. I also note J's account of these events appear exaggerated compared to the applicant's, for example, J states the applicant has "regularly" attended church wherever he has been, in Melbourne, Perth, Adelaide and New South Wales, which is not what the applicant asserts. I place no weight on J's letters in relation to the applicant's history and the visa interview. J states she believes the applicant's faith is genuine, and that he would not hide it in Iran and would suffer psychologically if he returned. Another friend, who met the applicant in mid-2019 through J, states the applicant lived with her briefly at that time, and attests to his good character and also states he suffered psychologically and had told her he self-harmed. The leader from a Christian volunteer organisation, whose services the applicant sometimes used in 2019, states they first met the applicant in May 2019 and they attest to his good character. A short letter was provided from the reverend in [Location] (who the applicant stayed with for two weeks after the 2018 assault) which states he "formed the impression" that the applicant's commitment to the faith was "genuine and sincere". The most persuasive letter in relation to the genuineness of the applicant's Christianity is from the reverend at [Suburb 8] Church which the applicant claims he attended after the 2018 assault in early 2019. He appears to have been homeless at this point and living in a tent in a park. In that letter the reverend says he often saw the applicant in the church lighting a candle and sitting at the back, and they spoke and that there appeared to be obstacles to the applicant's fuller engagement with the church, including a sense of shame about his homelessness, inability to provide for his [child], his unkempt appearance and concerns about his health after being attacked [in December] in 2018. The reverend also states he had concerns about the applicant's psychological well-being at that time. The reverend describes the applicant's Christianity at that time as "burgeoning" and says he "had no reason to doubt" it was genuine. However I place limited weight on these letters regarding the opinions they formed about the genuineness of the applicant's faith, given the limited interactions and the short period of his association with each of them.
32. I note that the applicant's doctrinal knowledge of the faith has appeared limited to vague statements such as that you have to be good and kind, despite his claim to have wanted to convert for some time and to carry the bible with him and despite opportunities for him to elaborate. When he appeared to struggle responding to the interviewing delegate's questions about what he knew about the faith, the interviewing delegate said he did not expect the

applicant to learn passages of the bible by heart; he just wanted to know if there were any stories in the bible that he liked and to talk about them. However the applicant did not provide any information in this regard and at one point said his religion was a private matter and he did not want to talk about it because it was his own personal belief and he did not want to mention it just to claim protection. At another point, when the interviewing delegate asked the applicant if he believed that converting to Christianity would make it easier to remain in Australia the applicant said he did not know this and that was why he did not make it part of his application. While I acknowledge faith can be a deeply personal and private matter the interviewing delegate pointed out at another point in the interview that if it were one of his claims they would need to discuss it and confirmed with the applicant whether he wanted to include his claimed conversion to Christianity in his claims. The applicant said that he did however he did not elaborate on what he knew about the faith. In submissions to the IAA he has said he did not understand what the Father said during bible studies at his home in 2014-2015 and that all the issues he has suffered made it difficult for him to continually attend church and undertake studies and become baptised. I do not consider that a lack of doctrinal knowledge means an applicant is not a genuine Christian, however in the seven or so years he has lived in Australia the applicant has acquired little to no knowledge in this regard and in combination with the other issues I have identified, even taking into account his mental health issues, 2018 assault and homelessness, this raises serious concerns for me regarding the genuineness of his personal connection with the faith.

33. The applicant also claims that since being in Australia he has made social media posts about Christianity. He mentioned this, for the first time, in the visa interview when he said he received messages from friends on [social media] about his posts about Jesus and Christianity. When asked how long he had been doing this he indicated it was infrequent. When asked when he started he said in 2014 or 2015. He said he tries to make friends wake up to Jesus' message. When asked what Jesus' message was, the applicant said it was to be good and not to hurt people. I am willing to accept the applicant may have made a limited number of posts sharing Christian material, particularly shortly after he arrived, on social media. However based on the country information before me which indicates the authorities are not interested in prosecuting returnees for activities conducted abroad, including social media activity and religious conversions, and that it is "very outspoken" social media activity, rather than just "liking" posts by others, that may attract adverse attention and the limited nature of his social media activity, I am not satisfied the applicant faces a real chance of harm on account of his social media activity.<sup>6</sup>
34. For all the reasons detailed above, in combination, while I accept the applicant may have found support from the Christian community since being in Australia, particularly during his more difficult times, and while I acknowledge faith can be a deeply personal and private matter and that it is not always clear at what point along a path someone becomes Christian, I have not found the applicant's evidence convincing in terms of him having developed a genuine and ongoing commitment to Christianity since he has been in Australia. As detailed above, his Christian activities in Australia, including church attendance has been limited and no evidence (other than social media posts) suggests he has proselytised since being in Australia. I do not accept he has a genuine and ongoing commitment to Christianity and it is because of this (rather than out of a fear of harm) that I do not accept he will practise the faith or proselytise on his return to Iran, now or in the reasonably foreseeable future. As it has been consistently claimed

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<sup>6</sup> United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 'PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC)', 20 February 2020; DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

since he arrived in Australia, and given I consider it plausible, I accept the applicant does not believe in Islam but does believe in God.

35. In 2020 DFAT<sup>7</sup> reports that the religiously based charges of apostasy and blasphemy may be brought against those who abandon Islam and can technically be punishable by death, although it notes this is now rare. While these charges are no longer an everyday occurrence it notes they continue to be used against a diverse group of individuals, including members of the reform movement, Muslim-born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam and others who espouse unconventional beliefs and some cases have clear political overtones, particularly when connected to proselytisation. DFAT also notes that secularism is widespread in Iran, particularly in major cities like Tehran where the applicant is from, with a significant proportion of the population not attending mosque or praying on a regular basis and alcohol consumption is common. DFAT assess that non practising Iranian Muslims face a low risk of official and society discrimination, particularly in the major cities. It also notes that the authorities have little interest on prosecuting returnees for activities conducted abroad, including religious conversions and social media activity. This is broadly consistent with other reports before me<sup>8</sup> indicating demographic and ideological change and the revival of an interest in democracy, nationalism, secularism and constitutionalism in Iran commencing as early as 2015. This report noted at that time that there were several indicators to suggest significant numbers of young Iranians did not consider themselves Muslim. A report by the Danish Refugee Council also indicated that converted returnees who do not carry out activities related to Christianity upon return will not be of interest to the authorities and that they are only likely to come to attention the authorities for their social media activities if they have been very outspoken on social media.<sup>9</sup>
36. After going through a large volume of recent country information, in a relatively recent decision, the UK Upper Tribunal<sup>10</sup> noted that the religiously based charges often had political overtones as the authorities considered Christian missionary work and proliferation of Western and secular values in Iran to be an attempt from Western countries to undermine Iran and its Islamic rule of law. It noted that apostasy charges were rarely pursued and that in the vast majority of cases where individuals are brought to court in this regard, they faced alternative lesser charges. It noted that mere Christian converts, and not just leaders, could be targeted by the authorities and if detained for a week or more would face a reasonable likelihood of ill-treatment. In the case of a returnee who had claimed conversion when making their claims for protection overseas, but was not a genuine convert, the Tribunal concluded that while they may be questioned and further questioned on their return in this regard, and asked to sign an undertaking and even possibly subject to some surveillance, this would not involve a real risk of harm given this questioning was likely to be short and monitoring would reveal they were not a genuine convert.
37. The applicant has said his family were not that religious when he was in Iran. He has not said he was targeted on account of this while in Iran. I am not satisfied the applicant faces a real chance of harm on account of past experiences in Iran. I am not satisfied the applicant faces a real chance of harm on account of his limited social media activity in Australia. I accept the applicant has an ex-partner who was Australian and that they have had a [child] however he is estranged

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<sup>7</sup> DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>8</sup> LSE Middle East Centre, Pejman Abdolmohammadi, 'The Revival of Nationalism and Secularism in Modern Iran', 1 November 2015, CISEC96CF14725.

<sup>9</sup> Danish Immigration Service and Danish Refugee Council, 'Iran: House Churches and Converts', 1 February 2018, CIS7B83941873.

<sup>10</sup> United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 'PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC)', 20 February 2020.

from them and the country information does not state this would attract the adverse attention of the Iranian authorities. I do not accept he is a genuine Christian convert and for this reason (rather than out of a fear of harm) I do not accept he will practise the faith or proselytise in Iran, now or in the reasonably foreseeable future. Based on the applicant's profile, and the country information detailed above, while I accept the applicant may be questioned at the airport about his claims for protection in Australia, may be asked to sign an undertaking and even monitored for a period, even taking into account his mental health issues and past experiences in Iran I am not satisfied he faces a real chance of harm on account of this and his experiences and activities in Australia including his relationship, child, Christian activities and social media activities.

38. In his visa application the applicant said he was a victim of a "privacy breach". When questioned about this in the visa interview he said he had received a letter from the [Organisation 1] in 2013 which said that the Islamic Republic had hacked all the information from refugee site. When asked where the letter said they hacked this information from, the applicant said he did not know and he did not follow up on this. When asked if he had a copy of the letter the applicant said he did not. The interviewing delegate noted that there was a Departmental data breach in 2014, but that this did not concern the applicant's records. After confirming with the applicant that the claimed letter was received in 2013, the interviewing delegate said he was unaware of any data breaches in 2013. The applicant said he would definitely have a copy but that it might have been stolen when documents were taken from his car when it was broken into. The interviewing delegate asked him to go to [Organisation 1] directly or through his agent to get a copy of the letter and indicated he would need to see what it said, noting it may have just been a general warning about protecting online information. The applicant said he would do this the next day. To date no [Organisation 1] letter has been provided, despite opportunities. On the evidence, I am not satisfied the applicant's information has been the subject of a data breach.
39. In his visa application the applicant said "I had an interview with [Media] soon after I arrived in Adelaide in 2013. My views and my face have been made public. I spoke to [Media] about how I travelled to Australia and the reasons I left Iran. I sent [Media] the photos of me after the Basij beat me up. So, I am more at risk than other people who oppose the regime in Iran". In the visa interview he said he had [an] interview with the [Media]. While there were some minor inconsistencies with the dates I draw no adverse inference from this. He said he was interviewed by phone. He said there was a program about refugees. He contacted the program saying he was willing to be interviewed. They contacted him by phone asking how long he had been an asylum seeker and he mentioned why he left Iran. He never saw the broadcasting and does not know if it was even used. He also said he only gave them his first name, not his surname. When the interviewing delegate asked about his claim in the visa application to have sent them photos of his injuries which were broadcast, he said that was just to prove to them he was a legitimate refugee, not to be broadcast. He said it was not true that his face was broadcast. On the evidence, I do not accept the applicant's story was broadcast on [Media] and even if it were (which I do not accept) I do not accept he would be identifiable from this. I am not satisfied the applicant faces a real chance of harm on account of his interactions with [Media].
40. I accept the applicant has suffered from depression and suicidal ideation in the past and currently takes anti-depressants. The applicant has also variously complained of ongoing pain from previous assaults and I accept this may be the case, but not that he requires ongoing treatment for this. The country information before me indicates all Iranian citizens are entitled to basic health care in Iran and that while there are some issue such as overcrowding and doctor shortages, Iran's public healthcare system is of a good standard. Measures were also reportedly taken in 1986 to improve access to mental health services. The information does not suggest the applicant would be unable to access medication and counselling for his condition in Iran. I also note he has family in Tehran, where I consider he would most likely return if returned to Iran. I

am not satisfied the applicant faces a real chance of harm on account of his mental and physical health issues now or in the reasonably foreseeable future. Nor does the country information before me indicate that even if he were unable to access treatment (although I am not satisfied there is a real chance of this occurring) that this would involve systematic and discriminatory conduct.

41. I am not satisfied the applicant has a well-founded fear of persecution.

### **Refugee: conclusion**

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

### **Complementary protection assessment**

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43. 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**

44. 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.

45. 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.

46. In considering the applicant's refugee status above, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm. Even if the applicant were unable to access adequate mental health care in Iran (which I am not satisfied there is a real risk of) I am not satisfied that these circumstances amount to 'significant harm' as defined for the purposes of s.36(2A); there is not a real risk the applicant would be arbitrarily deprived of his life or subject to the death penalty on his return or subject to torture, and the evidence before me does not support a conclusion that there is an intention to inflict severe pain or suffering, pain or suffering that is cruel or inhuman in nature or to cause extreme humiliation.



**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

***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.