



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA20/08593

IRAN

IAA reference: IAA20/08595

IRAN

IAA reference: IAA20/08597

IRAN

IAA reference: IAA20/08594

IRAN

IAA reference: IAA20/08596

Date and time of decision: 3 September 2020 10:07:00

J Jennings, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

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

## Background to the review

### Visa application

1. The referred applicants (the applicants) are a family unit comprising parent applicants, Applicant 1 (IAA20/08593) and Applicant 2 (IAA20/08596) and their three Australian born daughters, Applicant 3 (IAA20/08597), and twins Applicant 4 (IAA20/08594) and Applicant 5 (IAA20/08595).
2. Applicants 1 and 2 came to Australia from Iran in 2013.
3. On 18 July 2017 the applicants lodged a combined application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. Applicants 4 and 5 were added to that application after their birth in [year].
4. A delegate of the Minister for Immigration (the delegate) refused to grant the visas on 20 July 2020. The delegate was not satisfied Applicant 1 had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Iran.

### Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
6. The review material included information which the Department of Home Affairs (the department) has advised was before the delegate at the time of the decision. The delegate did not put the material to the applicants for comment. On 18 August 2020 the IAA wrote to Applicant 1 and invited him to comment on this information. On 30 August 2020 the applicants' representative responded with a submission addressing this information. The submission stated the applicant denies the allegations and believes these have been made by his previous employer with who he has had a dispute over various matters and to support this copies of abusive texts between the two have been provided. Other documents provided are letters of support from members of the [Church 1].
7. The new information has been provided in response to a request for comment by the IAA. As the material was not put to the applicant I am satisfied the information in response could not have been provided by the applicant to the delegate before the decision was made and has been given in support of the claim he is a genuine convert to Christianity. I am satisfied that there are exceptional circumstances to justify considering the new information.
8. On 13 August 2020 the IAA received a submission on behalf of the applicants comprising a migration agent submission and new information.
9. The migration agent submission focussed on the claims made by Applicant 1 to fear harm in Iran based on his conversion to Christianity and states why the applicant disagrees with the delegate's decision. I am satisfied this is essentially argument about matters that were before the delegate and therefore not new information and I have had regard to the sections of the submission that address the decisions and findings.
10. The new information tended is a copy and English language translation of a certificate of vocational qualifications for Applicant 1 and copies of letters written by pastor Reverend [Mr A] in support of other visa applicants.

11. The certificate of vocational qualifications was issued in 1995 and states Applicant 1 has completed training in [Field 1] and “succeeded” in the exam. It is advanced that the original Farsi language copy of this certificate was provided by the applicant to Australian authorities upon his arrival to Darwin and I note a reference to “education certificates” in the Arrival Entry interview, although this seems to refer to documents dating from 2003. It is not apparent if this certificate is new information however if this is new information for the reasons explained below I am satisfied s.473DD is met.
12. The certificate is relevant to the delegate’s discussion under the heading “Employment history”. Although the delegate ultimately accepted the applicant “worked as a [Occupation 1] in the company’s IT department” she found “aspects of his training and employment history remain unclear, which raises concern in my mind about the applicant’s general credibility”. The delegate linked concerns as to the claimed role of [Occupation 1] to the applicant’s general credibility and this information provides significant corroborative support to the applicant’s employment claims and thereby detracts from any link to concerns as to general credibility on this basis and as such I consider there are exceptional circumstances that justify the IAA having regard to this information. I am also satisfied that this is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant’s claims.
13. Further new information is four letters written by Reverend [Mr A]. The applicant’s representative stated these letters “are relevant to this review for the reasons I explained above”. In support of his protection claims Applicant 1 provided the delegate a letter of support from the pastor and the submission requests proper weight be given to the pastor’s letter.
14. The letters in the IAA submission relate to other visa applicants; this is not personal information. Three of these letters are dated 2017 and pre-date the delegate’s decision, the only discernible date on the fourth letter is 2020 and it is not apparent if this pre or post-dates the delegate’s decision. However even if this fourth letter did meet the provisions of s.473DD(b)(i) I am not satisfied that there are exceptional circumstances that justify the IAA having regard to it, or the other letters. I am not satisfied the fact the pastor has written letters of support for other applicants adds any probative value to the assessment of the claims before me. Furthermore, the representative states that he has “seen many letters provided by Pastor [Mr A] in support of other applicants” and that “Pastor [Mr A] is very conservative when it comes to providing a reference letter to asylum seekers”. That the representative has seen “many” letters of support somewhat mitigates the statement the pastor is conservative in providing letters of support.
15. The submission requests the IAA give proper weight to the pastor’s letter in assessment of the claims and in my assessment below I have had regard to the letter from Reverend [Mr A] submitted in support of the protection claims. But I am not satisfied that the letters provided as new information to the IAA add probative value in support of the protection claims. I am not satisfied that any exceptional circumstances exist that justify the IAA considering the new information. I also note that the pastor’s letter stated he is happy to answer further questions about the applicant’s faith but I have taken his support and comments into account in my assessment and I am not satisfied the circumstance warrant the IAA obtaining further information from the pastor.
16. In her SHEV application at Question 87 of Part C Applicant 2 indicated she was not making her own claims for protection; in the Part B form she was declared as the wife of Applicant 1.

17. By letter dated 11 February 2020 Applicant 2 was invited by the department, along with Applicant 1, to attend an interview to be conducted on 25 February 2020. The interview with Applicant 1 was conducted on 25 February 2020 but Applicant 2 was not interviewed. At the interview the representative acting for all applicants presented a certificate of baptism for Applicant 2 and stated she had converted a couple of years after Applicant 1. In the context of discussion as to when Applicant 1 began to attend church the representative commented regarding Applicant 2 “her story is worthwhile to be heard” but did not advance any protection claims on her behalf. Nor were any claims advanced in the representative’s email dated 2 July 2020 sent in response to the department’s letters dated 19 June 2020, rather these submissions declare “the secondary applicants have not raised their own claims”. The delegate assessed Applicant 2 as a member of the same family unit as Applicant 1 and did not assess protection obligations under s.36(2)(a) or s.36(2)(aa). No complaint is made to the IAA by the applicants regarding the delegate’s assessment.
18. The evidence before me, and which has been provided by the applicants, is that Applicant 2 has been baptised and has attended Christian church. However, she has not advanced her own protection claims, despite the claims made regarding Applicant 1 that Christian converts are harmed in Iran. I have considered whether to obtain further information from Applicant 2. However Applicant 2 has been represented throughout the application and interview process and no complaint is made to the IAA or by the current representative in regard to the processing of her application in this regard or as to the ability or opportunity for her to advance claims, should she wish to do so. There is no indication that Applicant 2 has been impeded in any way in advancing her own claims; I note Applicant 1 referred to some post-natal depression following the birth of Applicants 4 and 5 in [year] but he indicated this had since gone away. The IAA has discretion to obtain new information from an applicant, but I do not consider the circumstances in this regard warrant getting new information from Applicant 2.

### **Applicants’ claims for protection**

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19. Applicant 1 advanced claims for protection based on his experience in Iran and conversion to Christianity in Australia. The other applicants did not advance their own protection claims, although evidence was submitted informing Applicant 2 converted to the Christian religion in Australia and the child applicants have attended church.
20. The claims made by Applicant 1 can be summarised as follows:
  - The applicant is an Iranian citizen from Ahwaz, Khuzestan Province, Iran. He grew up in an educated and liberal thinking family. Although born as a Shia Muslim he did not practise Islam. He studied and concluded Islam was not a divine religion but a doctrine of violence, dominance and intolerance.
  - The applicant worked as [an] [Occupation 1] in a company affiliated with the [a government agency]; Applicant 2 worked for a subsidiary company. The company was affiliated with the government and the applicant concealed his religious beliefs to continue his employment. The company did not require him to attend prayers at work.
  - The applicant’s role as [Occupation 1] involved security access to the company’s computer systems by employees and contractors [and] thereby potential targets of the regime.
  - In 2013 the company’s security section, the [Name 1], which is the representative of the government’s intelligence service within the company, implemented a program in the

lead up to the elections and in response to concerns as to a repeat of widespread protest action following the 2009 elections.

- The applicant was instructed in February 2013 to co-operate with a secret project to [monitor] computer use. The applicant objected to the project and informed his manager he would not co-operate. His manager told him he would have to co-operate or face consequences. The applicant cautiously spread the word around and exposed the monitoring plans.
  - The applicant did not hear anything further at work but about two weeks later he and Applicant 2 were denied access when they tried to enrol in university studies. In March 2013 the employment contract for Applicant 2 was not renewed. The applicant believed he was being targeted by the regime.
  - [In] April 2013 his home was raided by officers he believes were from the Basij. They confiscated his computer equipment, books and mobile telephone. The applicant had material [stored] on his computer which may attract punishment and although this was encrypted, he believes it would only be a matter of time until the authorities accessed this.
  - The applicant was concerned for his safety and began making plans to leave Iran. He received a summons to appear before [the] Court on [Date 1] April 2013. The applicant and Applicant 2 departed Iran on [one day before Date 1] April 2013, along with other extended family members. He later heard he had been dismissed by the company.
  - He does not know anything further about the court case but fears the authorities have accessed the material on his computer and that as a result he could be executed should he return to Iran.
  - Since being in Australia the applicant has converted to Christianity. He began attending the [Church 1] in September 2016 and has provided letters from the Pastor of the Iranian Congregation attesting to his genuine commitment to the faith and involvement in church activities. The applicant was baptised on [date] September 2017 and has provided a copy of his baptism certificate.
  - Letters of support and English language translations have been received from fellow parishioners.
  - The applicant introduced Applicant 2 to the faith in [year] when she was experiencing post-natal depression following the birth of Applicants 4 and 5. Applicant 2 attends church and was baptised on [date] November 2019; a copy of the certificate has been provided.
  - The applicant has shared his Christian faith with receptive family members in Iran and he chats to them about Christianity, using an encrypted online platform.
  - Christian converts cannot practise their religion in Iran and the applicant fears he will also be harmed for his conversion should he return to Iran.
21. The review material included material which has been put to the applicant for comment and I have had regard to his response “categorically” denying the allegations which he believes have been made by his previous employer with who he has had a dispute over various matters and who is a Muslim and abused him for his conversion to Christianity. I note the submission request “not to give any weight to the adverse information” and I have significant doubts as to the probative or other value of such information in the assessment of the applicants’ claims. I do not consider this information or the unsubstantiated opinions of an anonymous person to

be of any assistance or any value in my assessment and I have had no further regard to this information.

22. The information provided by the applicants states that Applicants 2, 3, 4 and 5 have attended church and Applicant 2 has been baptised. No protection claims have been advanced by, or on behalf of these applicants.

## **Factual findings**

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### *All applicants*

23. Applicants 1 and 2 have consistently claimed to be Iranian citizens and have provided identity documents in support of their claimed identity. Applicants 3, 4 and 5 were born in Australia; copies of their birth certificates have been provided naming Applicants 1 and 2 as their parents. Applicant 3 was included in the SHEV application submitted in [year] and in the forms she is declared to be a citizen of Iran. SHEV application forms have not been completed for Applicants 4 and 5 however, there is no information before me to indicate their circumstances differ from that of their similarly Australian born sister. I also note country information confirming that children born to Iranian fathers are Iranian citizens whether born in Iran or abroad.<sup>1</sup> I accept the applicants' identities as stated, that they are Iranian citizens and that Iran is the receiving country for the purpose of this review.

### *Applicant 1*

24. I accept that Applicant 1 grew up in a liberal minded family. The applicant undertook [training] in 1995 and was studying [in] 2012/2013. When he arrived in Australia he declared a "reasonable" ability to speak English, indicating a level of education and experience commensurate with his claimed liberal upbringing.
25. I accept that the applicant did not practise Islam; country information advises that many Iranians do not actively practise Islam or attend mosque.<sup>2</sup> I accept that he studied Islam and concluded it was not a religion. While I accept the applicant undertook investigation into Islam I have concern as to claims he retained anti-Islamic material which is discussed further below.
26. The applicant was able to explain his work role in his company in some detail at the SHEV interview and noting his level of education and length of tenure at the company I accept he was the [Occupation 1] and that in this role he managed security access to the company's computers. I accept that contractors using the systems were [people of specified professions] and that the regime may have had some interest in monitoring their activities; although I find it difficult to accept that such contractors would use shared company computers for any purposes that may be controversial this does not discount the highly distrustful Iranian intelligence agencies suspecting such use and organising the stated monitoring.
27. Use of the internet and social media is highly controlled and widely monitored in Iran. Freedom House reported that the 2009 Computer Crimes Law "outlines a broad range of banned content, from insulting religious figures and government officials to distributing pornographic content and the use of illegal circumvention tools" and described the filtering system used by the authorities as centralized and capable of blocking websites "within a few hours across the

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>2</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran - COI Compilation", 1 July 2018, 20190326122102

entire network in Iran". From 2011 Iran began rolling out a state-controlled and censored form of the internet to improve internet access but also with the aim of "moving much of the content and websites visited by Iranian users to domestic servers, where traffic can be closely monitored and censored by the authorities".<sup>3</sup> DFAT and other agencies describe Iranians who use social media to be critical of the regime generally concealing their identity by using aliases. Overall, the country information points to widespread use of the internet and social media in Iran, with an estimated 50 million internet users, and open and publicly known widespread censorship of content and monitoring of usage. In this context it is difficult to reconcile the applicant's objection to the [Name 1] implementing a monitoring program in his workplace and his subsequent refusal to co-operate and actions in informing others. It is also important to note the applicant's company was involved in the sensitive [sector] and located in Khuzestan Province, and area with a volatile history and an area closely monitored by the regime, in part because of [its] proximity to Iraq and presence of Arab separatist groups.<sup>4</sup> I note he was not required to attend compulsory prayers at work and he explained that as a scientific company religious belief was not part of the employment criteria, but it remains that [Sector 1] is a sensitive sector in Iran and an area where the regime maintains strict control.

28. As a professional in the technology area and as a [Occupation 1] in a company linked to government agencies working in the sensitive [sector] and located in sometimes volatile Khuzestan I would expect the applicant would have been aware of such monitoring and the consequences of objecting to it. The country information demonstrates the widespread monitoring of online activity in Iran and that Iranians are aware of this, and that some are pro-active in taking surreptitious action to circumvent this monitoring. The applicant himself referred to using encryption in his private online usage. The applicant stated the company was a paperless workplace and that all work transactions, including for staff such as cleaners, was online. The applicant himself commented that the contractors were the sort of people the regime would want to monitor. The applicant was also clearly aware of the consequences and penalties for being linked to any subversive material; he referred to his use of encryption and noted the severe penalties for actions perceived to be against the regime.
29. Considered overall I do not accept that the applicant, being an educated man in a senior role in a company where he had worked for several years and a man who has demonstrated an awareness of the intrusive monitoring of the Iranian regime, would take the risk of objecting to the [monitoring] project at his workplace in 2013 as is claimed. Taking note of his role and experience I consider the applicant would have been aware of the adverse consequences for doing so and I have difficulty accepting he would have taken such a risk as is claimed.
30. The applicant was asked about this risk at the SHEV interview and he referred to sometimes acting without thinking and that he thought the extent of any repercussions may be some disciplinary action. It is difficult to reconcile this inference of impulsive action with the applicant's other accounts of being someone who researches and investigates and does not accept things at face value, such as his account of his claimed research of religion. It is part of his claim he spread the word around and exposed the plans. Apart from not practising Islam and the 2009 protest there is no indication the applicant was an activist either in regard to religion or politics or an active supporter of free speech/expression or a human rights advocate such that he would be motivated to act in a manner that may incur danger to himself and it is difficult to accept that in 2013 in response to the [Name 1] monitoring he acted in the manner claimed. I have already noted the prevailing widespread monitoring of online activities and

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<sup>3</sup> ACCORD, "Iran - COI Compilation", 1 July 2018, 20190326122102

<sup>4</sup> [source deleted]

despite the high likelihood of past monitoring of company staff it is not apparent he acted in any way to limit this or alert others previously.

31. Notwithstanding his past interest in investigation of religion the applicant has not presented as an activist or advocate and the claimed stance taken by him in 2013 appears to be a one-off occurrence. The only other indication of any public display of activity or action against the regime before the 2013 claims is that stated at the Arrival Entry interview that he and some family members participated in protests against the 2009 election results, although I note this is not a claim repeated in his statement of claims or at the SHEV interview. There is no indication the applicant was a strong supporter, or even a supporter, of any anti-regime groups or activists or had any objection to his company or its work and it is difficult to accept that in 2013 he was prompted to object to a project and inform others of this project thereby becoming a target for adverse attention and penalty.
32. I accept that someone with a strong motivation to act may do so in a similar manner to that claimed, but I am not satisfied the applicant was so motivated. I note he came from a liberal family, and while this allowed him to refrain from practising Islam and access a wide range of material online there is no information before me which indicate he held convictions that would have prompted him to act in a manner that would have threatened his own interests and safety. It is difficult to accept he was motivated to warn others and put himself at risk considering that Iranians would generally be aware they are monitored. There is no indication he has shown any previous concern for open speech and it is not apparent why he claims to be concerned as to this in 2013. Despite being from a liberal family it is not apparent he was previously politically active, apart from the statement made at the Arrival Entry interview that he attended the 2009 protests in Tehran. While at one point in the SHEV interview he indicated a degree of acting without thinking his other accounts of his behaviour indicate someone who, rather than being impulsive, is measured and deliberate in his actions and is not commensurate with acting without thinking of the consequences.
33. I am also concerned at the applicant's account that after being unable to continue his studies in the coming semester because, as he believed, the regime was targeting him and that there was "more to come" the applicant did not take any action to avoid being found with the incriminating material he claims to have maintained on his private system.
34. The applicant stated the dangers of being detected of conducting any anti-Islamic activities but claims to have downloaded and saved contentious material despite this. He claims to have encrypted this material but also stated it was just a matter of time for the authorities to break any password and encryption and it is difficult to accept he kept such material in these circumstances. It is particularly difficult to accept he did so in the light of the claims of the escalating consequences of his actions; the initial warning of consequences from his manager, the inability to continue his studies which he attributed to the regime targeting him and then the refusal to renew the work contract of Applicant 2. The applicant claims to have been aware of the danger of being detected with contentious material but claims he maintained such material and that he did so despite being aware of the ability of the authorities to break encryption and password security.
35. The applicant claims that he originally refused to co-operate with the [Name 1] project in February 2013, yet he continued to attend work until April 2013. There is no indication that in this time his work role changed or was curtailed, despite his refusal to co-operate with a project which via [Name 1] was linked to the Iranian security authorities and part of the regime's strategies to manage possible dissent in the 2013 elections. Noting this project was linked to what would be considered a security operation it is hard to accept the company continued to



allow him to work over an extended period of more than six weeks in a senior position and in a position where he had administrator access to the computer system in the light of his refusal in February to co-operate. Throughout this time he claims the consequences of his actions had spread to denial of further study by the affiliated university and refusal to renew the work contract for Applicant 2, but the company continued to allow him to attend work and there is no indication they sought to control his work role, even though as a [Occupation 1] he stated he had access to the sensitive facility of administration passwords.

36. I also have difficulty accepting his account of the raid on his home, the confiscation of his materials and being taken for questioning. The applicant stated he believed this was the Basij and that he was released because he did not believe they could detain a person long term. DFAT reports that Basij units often engage in repression of political opposition elements without formal guidance or supervision from superiors but that the applicant claims the matter resulted in a formal court summons indicates the involvement of one of Iran's security agencies, such as the Islamic Revolutionary Guards (IRGC) or the Ministry of Intelligence and Security, who do have powers of detention. If the applicant had refused to co-operate with a [Name 1] project at his workplace and this project was designed to manage possible dissent in the 2013 elections I have difficulty accepting he was released after questioning rather than detained until the court hearing.
37. The charges that were the subject of the claimed summons are not apparent but taking into account the claimed circumstances these would be of a security nature and it is hard to accept a summons was issued without immediate detention. By issuing a summons in this manner the authorities would be pre-warning the applicant and providing him an opportunity to evade court action, rather than him being arrested at the time of the summons. The applicant claims to have still been attending work and living at his residence and as such could have been located and detained. Country information advises that not all outstanding court matters are subject to travel bans on the accused but that in serious cases, such as security matters, accused persons and those awaiting prosecution are placed on travel ban lists and Iran's sophisticated border systems allow for banned persons to be detected and refused exit.<sup>5</sup>
38. Overall I am concerned that the applicant's account of his experience in Iran and his claims regarding refusing to cooperate with the [Name 1] project, informing others of the project, keeping contentious material, being raided and subject to a court summons contain implausibilities that bring the veracity of his claims into doubt. Considered together with country information that points to someone suspected of activity of a security nature being detained and someone awaiting prosecution on such charges being banned from travel I am not satisfied the applicant's account is genuine. I have taken into account the general consistency in his account over time and verbal submissions made by his then representative at the SHEV interview that he is truthful and honest and has been consistent regarding the work claim and that as a "genuine" person he did not want to comply with the [Name 1] project and warned his colleagues, but these do not overcome my very serious concerns as to the credibility of these claims.
39. Applicant 1 has failed to satisfy me he refused to co-operate with the [Name 1] project and informed others of the project, or that he kept contentious material/anti-Islam information, or that his home was raided and his computer and equipment confiscated, or that he was taken for questioning and mistreated or that he was subject to a court summons. I do not accept

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<sup>5</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

these claims and I find the applicant has fabricated this account in an attempt to raise protection claims.

40. It follows that I do not accept that he and Applicant 2 were denied study, or the contract for Applicant 2's employment was not renewed, or that Applicant 1 was sacked by his company after he left Iran, for reason of these claims.
41. Although he made no claims to fear harm on the basis of attending protests in 2009 as stated in the Arrival Entry interview, nor mention this in his statement of claims, I accept he attended such a protest.
42. I accept Applicant 1 and 2 left Iran in 2013 and that they no longer have their passports.
43. I have accepted that Applicant 1 did not practise Islam and after study came to the conclusion it was not a religion. It is now claimed the applicant has converted to Christianity in Australia.
44. That Applicant 1 is attending church in Australia, has been baptised and is involved in church activities is supported by the letter from Reverend [Mr A] of the [Church 1] and letters from fellow parishioners. The pastor informed he has known Applicants 1 and 2 since September 2016 when they joined the Iranian congregation and that they have been attending regularly since. The pastor's letter outlines activities Applicant 1 has been involved in with the church and that Applicant 1 had the appropriate understanding of the questions to which he must assent at baptism and attests to this growing understanding of the faith, what it is to live as a follower of Jesus and that his commitment to follow Jesus is genuine. That Applicant 1 has knowledge of the Christian religion and is able to cite biblical references is evident from his SHEV interview. Applicant 1 was baptised [in] September 2017 and a copy of his baptism certificate has been provided. A further letter from Reverend [Mr A] dated 26 August 2020 confirms Applicant 1 continues to attend the church and to be active in church activities. Letters of support from fellow parishioners attest to Applicant 1's involvement in the church and "his belief in Lord Jesus".
45. However, the High Court held that an applicant seeking to rely on conduct engaged in while in Australia, must satisfy the decision maker that the conduct was not engaged in for the sole purpose of strengthening their claim to be a refugee and places an onus on the applicant to show that their conduct was not for the sole purpose of strengthening their claim to be a refugee (that is, it was for purposes other than solely strengthening their refugee claim).<sup>6</sup> In this regard I consider the timing of the applicant's actions to be significant.
46. In the IAA submission under the heading "Why the delegate's concern about the timing of his religious conversion is irrelevant?" the representative comments that the "fact that he was baptised [in] September 2017, after he lodged the application is irrelevant because he had already started his spiritual journey in Christianity" and the representative noted "the applicant was not granted the benefit of the doubt in relation to the timing of his conversion". I accept that the applicant had been attending church at the time he lodged the SHEV application but I consider it significantly noteworthy that he commenced attending in September 2016, noting on [date] September 2016 the Department invited Applicants 1 and 2 to apply for a visa.
47. On 21 November 2016 the applicants, through their AMES case manager, requested an extension to apply based on seeking an appointment with a lawyer and an extension was granted to 31 January 2017. On 9 June 2017 the applicants were notified of a deadline to apply for a visa of 1 October 2017. The SHEV application was lodged on 18 July 2017. It is correct that

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<sup>6</sup> High Court in *Minister for Immigration and Citizenship v SZJGV; Minister for Immigration and Citizenship v SZIXO*

Applicant 1 had been attending church prior to lodging the visa application, but I am concerned as to the timing of his first attendance and the notification of the invitation to apply for a visa letter. I accept that coincidences may occur, but the applicant had been present in Australia for some three years without any indication of displaying any interest in Christianity and I am not satisfied that it is mere coincidence his first display of interest coincided with the invitation to apply.

48. It is stated the applicant was introduced to Christianity through relatives and friends however no further information has been provided as to when or how this occurred, or why the applicant was motivated to engage in introduction to Christianity. Although he had rejected Islam as a religion earlier while still in Iran there is no indication he was seeking to engage with religion and thereby sought out Christianity. The letters of support from fellow parishioners attest to his declaration of faith and baptism in the presence of the congregation. But it is not apparent to me why the applicant, a man who comes from a liberal family upbringing and did not follow a religion in Iran decided to engage in religion as an adult some three years after his arrival in Australia. It is stated he believed in a creator but is it not apparent why he was motivated to advance from this level of belief to actively embracing Christianity. That the timing of his first attendance at church coincides with the timing of the invitation to apply for a visa raises concerns that he was motivated to attend church in order to raise protection claims. I accept that Reverend [Mr A] and the parishioners who provided letters of support are genuine in their acceptance of the applicant's faith and as a member of the congregation, but the applicant has failed to satisfy me he has engaged in the Christian religion, including baptism, church activities and talking to relatives in Iran, other than for the purpose of strengthening his claim to be a refugee.
49. I accept that the applicant has been attending church and been active in church activities and been baptised but I am not satisfied that he is a genuine convert to the Christian religion. I have taken into account his knowledge of the religion as displayed at the SHEV interview but I am not satisfied that such knowledge in itself is a testament to genuine faith. I have also taken into account that his pastor and fellow parishioners have attested to their belief the applicant is a genuine Christian and member of the church's congregation but this does not negate my very serious concern that his involvement in the church and his conversion to Christianity has been contrived to strength his protection claims. I accept that the applicant has become integrated into the community of the [Church 1] but I am not satisfied that he is a genuine adherent of the Christian faith.
50. The applicant has not provided any evidence of the claimed discussion with relatives about Christianity. He claims to have established a Telegram chat group for this purpose but has not provided other evidence of the existence of this group. I note he provided copies of texts in response to the 18 August 2020 letter from the IAA indicating he is alive to the benefit of providing such communication in support of his protection claims. Considered together with my finding the applicant is not a genuine adherent of the Christian faith and I do not accept that he has spoken with relatives in Iran about Christianity and has established a chat group for doing so.

#### *Applicant 2*

51. Applicant 2 has not advanced her own protection claims. In her SHEV application form, completed in July 2017, she described herself as Muslim. This sits in stark contrast to the letter from Reverend [Mr A] which stated he met her and Applicant 1 in September 2016 when "they joined our Iranian congregation" and that "since that time they have been regularly attending the Persian church services".

52. No statement of claims was submitted by Applicant 2 as part of her SHEV application and although she was invited to the SHEV interview along with Applicant 1 she was not interviewed. The applicant was represented throughout this process and it is not apparent the representative made any request for her to be interviewed. Although this representative presented her baptism certificate at this interview and commented “her story is worthwhile to be heard” this was in the context of when Applicant 1 began to attend church and in later submissions the representative stated “the secondary applicants have not raised their own claims”. The submission to the IAA does not advance protection claims on behalf of Applicant 2.
53. While Applicant 2 has not advanced protection claims the information before me is that she has attended church and was baptised [in] November 2019. However, I am not satisfied that Applicant 2 is a genuine Christian convert. In this regard I have already noted she declared herself as a Muslim in 2017 in her SHEV application whereas from the letter written by Reverend [Mr A] she attended a Christian church from September 2016 and seemingly presented herself to him as having “joined” the Iranian congregation at that church and his letter indicated that since September 2016 she regularly attended the Persian church services. It is stated she was baptised in the [Church 2], with the permission of the [Church 1] because she had made a personal commitment to be baptised and officially declare her faith before the end of the year and this was not possible at [Church 1] as the church did not have any plans to conduct baptism ceremonies before the end of the year.
54. Applicant 1 said Applicant 2 experienced some post-natal depression after the birth of the twins in [year] and he encouraged her to convert and allow Jesus to help her. But this explanation also appears to be at odds with the letter from Reverend [Mr A] which indicates Applicant 2 had been attending church and he considered her, and the family, to be “a certain part of our Persian congregation”. I am concerned that Applicant 2 has presented herself to Reverend [Mr A] as a member of the church while declaring herself to be a Muslim in 2017. I have considered if her declaration to be Muslim in the SHEV application is a mistake or inaccuracy but I note that in the SHEV application for religion Applicant 3 was stated as “not yet chosen” indicating the adult applicants paid particular attention to detail and were quite specific in responding to the questions as to religion.
55. That Applicant 2 declared herself to be a Muslim in the SHEV application completed in 2017 after having been attending church and being considered by Reverend [Mr A] to be part of the congregation brings into doubt her genuine commitment to the Christian religion. I accept that Applicant 2 has attended Christian church and been baptised but I am not satisfied that she is a genuine convert to the Christian religion.

#### *Applicants 3, 4 and 5*

56. Noting the information before me I find that the child applicants have attended church with their parents.

#### **Refugee assessment**

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57. 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

58. 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.

### *Applicant 1*

59. Under s.5J(6) of the Act, in determining whether a person has a well-founded fear of persecution, any conduct engaged in by the person in Australia must be disregarded unless I can be satisfied that the person engaged in the conduct otherwise than for the purpose of strengthening their claim to be a refugee. As already noted, I am not satisfied that the applicant engaged in Christianity, including baptism and church activities otherwise than for the purpose of strengthening his claims to be a refugee. I have therefore not considered that conduct in assessing whether he has a well-founded fear of persecution in Iran.
60. I have accepted that the applicant did not practise Islam in Iran and that after research he decided it was a doctrine and not a religion. However, there is no indication that he came to any harm as a result of this. He was able to work in a senior position in a sensitive industry and he was not required to attend prayers at work. In his statement of claims the applicant stated he "concealed" his anti-Islam views, however when questioned about this at the SHEV interview he stated it was large firm employing many people in [specified fields] and religious belief not part of employment criteria.
61. Non-practising Muslims now form a large part of the population of urban Iranians and many Iranians do not regularly attend mosque or Friday prayers and DFAT assesses it is unlikely that the authorities would monitor religious observance, such as attendance at mosque, and that secularism is widespread, particularly in the major cities and among younger and wealthier Iranians.<sup>7</sup> In 2014 the Danish Immigration Service quoted an advocacy officer of the United Council of Iranian Churches who "assessed that there are more and more atheists in Iran and that this is more accepted among some Iranians".<sup>8</sup>
62. The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) reported a number of sources indicating a decreasing number of Iranians practising Islam and that while atheism is forbidden in Iran "it is not uncommon for people to claim that they do not believe". A 2015 academic study noted the lack of official statistics but that "several

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<sup>7</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>8</sup> Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

indicators seem to suggest that a significant number of young Iranians do not consider themselves Muslims” and in 2017 the Dutch Ministry of Foreign Affairs reported “a large part of Iran’s population have a secular lifestyle, which means that they do not practice their Islamic faith, for example by not attending meetings at the mosque or refraining from fasting during Ramadan”.<sup>9</sup> The Economist newspaper noted in an article in November 2014 that “Islam plays a smaller role in public life today than it did a decade ago” and the power of clerics has “waned” and while “Iranians remain a spiritual people who see Islam as part of their identity”, many have moved away from “institutionalised” religion.<sup>10</sup>

63. ACCORD cited Amnesty International and Landinfo as indicating those who professed atheism remained at risk of arbitrary arrest and detention, torture and other ill-treatment and the death penalty for apostasy<sup>11</sup> but while apostates can be punished under sharia law for leaving the Muslim faith prosecution of cases is rare.<sup>12</sup>; DFAT advises apostasy and blasphemy cases are no longer an everyday occurrence in Iran and that death sentences are rare. DFAT reported that in March 2017 the Supreme Court upheld the decision of a criminal court to sentence a 21 year old man to death for apostasy following his arrest for social media posts considered critical of Islam and the Koran while on military service. As at April 2020 the death sentence had not been carried out. The court also convicted two co-defendants of posting anti-Islamic material on social media, sentencing them to prison.<sup>13</sup>
64. Notwithstanding this case, overall the country information supports that apostasy and blasphemy cases are rare; DFAT “considers it unlikely that individuals will be prosecuted on charges of apostasy” and the Danish Immigration Service noted that it was not aware of recent cases.<sup>14</sup>
65. Country information indicates that apostates may come to the attention of the authorities through public manifestation of a new faith<sup>15</sup>; however, I have not accepted the applicant has genuinely adopted a new faith or would practise Christianity in Iran. Overall, the country information does not point to the applicant experiencing harm on return to Iran for reason of his religious opinions and non-observance of Islam. There is no indication he was outspoken about his views in the past or that he wished to be, and I find that if he were to return to Iran he would act in a similar manner as previously. There is no indication the applicant experienced harm for not practising Islam in Iran or his views and I do not accept he would face harm for this reason should he return to Iran.
66. I have accepted that the applicant attended an election protest in 2009 as stated at the Arrival Entry interview. The applicant did not advance claims to fear harm on this basis in his protection visa application and I am not satisfied he would face harm for this reason should he return to Iran. Apart from this protest there is no indication the applicant has been involved in other political activities or protests, or been outspoken about politics or the Iranian regime, or that he desires to be.

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<sup>9</sup> ACCORD, “Iran - COI Compilation”, 1 July 2018, 20190326122102

<sup>10</sup> LSE Middle East Centre (United Kingdom), “The Revival of Nationalism and Secularism in Modern Iran”, November 2015, CISEC96CF14725

<sup>11</sup> ACCORD, “Iran - COI Compilation”, 1 July 2018, 20190326122102

<sup>12</sup> Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

<sup>13</sup> DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>14</sup> Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>15</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677

67. The 2009 Presidential election results were disputed by the losing candidates leading to widespread protests which were violently suppressed. Thousands of demonstrators were detained and thousands beaten and harassed by security forces at the time and it is estimated that over one million people attended the protest in Tehran.<sup>16</sup> The applicant made no claims in his protection visa application to have come to harm for attending this protest and while protest organisers and journalists and other high profile activists may continue to be monitored, the country information does not indicate that ordinary demonstrators are of ongoing interest to the authorities.<sup>17</sup> The information before me is that the applicant attended only the one demonstration and has not claimed to be a member of any political groups, and there is no indication that he has been involved in any other activities that would bring him the attention of the authorities, or that he wishes to do so should he return to Iran. I am not satisfied he would be harmed on this basis should he return to Iran.

#### *Applicant 2*

68. I have found that Applicant 2 has been baptised in Australia and attended church.
69. As found above, I am not satisfied the applicant is a genuine Christian convert and I do not accept that she has any desire to practise Christianity in Iran should she return. I am satisfied that this would not be because she would be afraid to do so because of a fear of persecution, but because she is not genuinely committed to the Christian faith. Nor am I satisfied she would be perceived as such on return to Iran. I have noted above that country information indicates it is unlikely Iranians will be prosecuted on charges of apostasy and international sources are not aware of recent cases.<sup>18</sup>
70. The country information before me indicates that even genuine converts are unlikely to come to harm in Iran, and that low level harassment may be experienced by attendees of house churches.<sup>19</sup> While she has attended church services and been baptised I am not satisfied that her involvement would be known to the authorities, or that this would raise concern in Iran if known. DFAT advises international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims such as converting to Christianity.<sup>20</sup>
71. I am not satisfied that she will engage in or have any interest in Christianity or Christian activities upon return. Nor am I satisfied that she will come to the attention of the Iranian authorities on account of her baptism and church attendance. The information before me does not support a finding that engagement in Christianity in Australia would be known in Iran, or that if it was, it would be viewed as renouncing Islam or genuinely converting to Christianity. I am not satisfied that any of these factors would give the applicant any actual or perceived

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<sup>16</sup> Danish Refugee Council, Landinfo and Danish Immigration Service Iran, "On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114

<sup>17</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; ACCORD, "Iran - COI Compilation", 1 July 2018, 20190326122102

<sup>18</sup> Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>19</sup> UK Home Office, "Country Policy and Information Note - Iran: Christians and Christian converts", 27 February 2020, 20200228081848; Danish Immigration Service and Danish Refugee Council, "Iran: House Churches and Converts", 1 February 2018, CIS7B83941873; Finnish Immigration Service, "Christian Converts in Iran", 21 August 2015, CISEC96CF14127; Danish Refugee Council, Landinfo and Danish Immigration Service Iran, "On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; ACCORD, "Iran - COI Compilation", 1 July 2018, 20190326122102

<sup>20</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

profile as an apostate and I am not satisfied that there is a real chance that she would face harm for these reasons.

72. Having considered the circumstances and having regard to the country information before me as discussed above, I am not satisfied that her baptism and attendance at church would give rise to real chance of persecution in Iran. I am not satisfied the applicant faces a real chance of any harm in Iran based on religion.

#### *Applicants 3, 4 and 5*

73. I have accepted that the child applicants have attended church with their parents. Noting that they are minors and their very young age I do not consider that they have made any independent decision to engage in these activities. I am not satisfied that they will engage in or have any interest in Christianity or Christian activities upon return. Nor am I satisfied that they will come to the attention of the Iranian authorities on account of their church attendance in Australia. I am not satisfied that Applicants 3, 4 and 5 face a real chance of harm in Iran on the basis of religion.

#### *All applicants*

74. The delegate made findings regarding Applicant 1 on the basis of his being a failed asylum seeker from the west, a profile that would apply to all applicants should they return to Iran. Applicant 1 referred to fear he would be arrested on arrival in Iran however this was in the context of the claimed outstanding court summons, a claim which I have not accepted.
75. The country information does not indicate that returning asylum seekers are imputed with an anti-government political opinion or harmed because of their asylum claim, or for reason of being in a western country. Reports of asylum seekers being arrested on return relate to those involved in anti-government activities, either in Iran or during their time abroad.<sup>21</sup> With the exception of the 2009 protest there is no indication the applicants have been involved in any activities that would bring them to attention should they return to Iran, or that mere attendance at the 2009 protest would give rise to any adverse interest from the authorities. I am not satisfied that there is a real chance the applicants would be harmed on this basis.

#### **Refugee: conclusion**

76. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

#### **Complementary protection assessment**

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77. Under s.36(2)(aa) of the Act, 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

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<sup>21</sup> Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132



removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

### **Real risk of significant harm**

78. 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.
79. 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.
80. I have found that there is not a real chance that Applicant 1 faces harm based on not practising Islam or his views, or for real or imputed political opinions including his attendance at the 2009 protest or for being a failed asylum seeker. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons. On the same basis I am not satisfied Applicants 2, 3, 4 and 5 would face significant harm for reason of being failed asylum seekers.
81. I have not accepted that Applicants 2, 3, 4 and 5 face a real chance of harm in Iran for reason of their church attendance and the baptism of Applicant 2. I have not accepted that they would engage in Christianity in Iran and I am not satisfied that Applicants 2, 3, 4 and 5 face a real risk of significant harm for their attendance at church, and additionally Applicant 2 for her baptism.
82. In assessing whether Applicant 1 has a well-founded fear of persecution in Iran under the Refugee criterion, I have disregarded conduct engaged in in Australia for the sole purpose of strengthening his refugee claim, being his baptism and participation in church activities. However, I must have regard to that conduct in assessing his claims for complementary protection.
83. I have accepted Applicant 1 has been an active participant in church activities and been baptised but I am not satisfied that this involvement would be known to the authorities, or that this would raise concern in Iran if known.
84. I have noted the country information reporting it is unlikely that individuals will be prosecuted on charges of apostasy and that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from authorities upon return to Iran if they maintain a low profile and do not engage in proselytising. I am not satisfied that the applicant is a genuine convert to Christianity, or that he would be perceived as such on return to Iran or would engage in proselytising. I have noted the country information indicating that even genuine converts are unlikely to come to harm in Iran, and that low level harassment may be experienced by attendees of house churches.

85. I am satisfied the applicant would not pursue Christianity in Iran. The information before me does not support the concern that engagement in Christianity in Australia would be known in Iran, or that if it was, it would be viewed as renouncing Islam or genuinely converting to Christianity. I am not satisfied that any of these factors would give the applicant any actual or perceived profile as an apostate and I am not satisfied that there is a real risk that he would face significant harm for these reasons.

#### **Complementary protection: conclusion**

86. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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87. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1).
88. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

## 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.