



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08611

Date and time of decision: 4 September 2020 11:47:00

N Micallef, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen from Tehran in Iran. He arrived in Australia [in] May 2013 as an unauthorised maritime arrival. On 15 September 2017 he applied for a sub-class XE-790 Safe Haven Enterprise Visa (SHEV), claiming to fear harm in Iran on outstanding legal proceedings against him and on the basis of religion.
2. The applicant was interviewed about his protection claims on 18 June 2020 (the SHEV interview). The delegate accepted that the applicant was now an atheist but assessed that the applicant did not have a well-founded fear of persecution in Iran on grounds of religion and otherwise did not accept that the applicant had any profile of adverse concern to Iranian authorities for outstanding legal proceedings. The delegate was not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm in Iran and refused to grant this visa on 20 July 2020.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. On 23 August 2020, the applicant provided written submissions to the IAA - his own statement and a "new information submission" from his legal practitioner migration agent. The applicant's statement submission addressed the delegate's decision to refuse the protection visa. To the extent that the submission responded to and raised argument with the delegate's reasoning and findings on the evidence and assessment of country information of the chance or risk of harm to the applicant in Iran, and reiterated claims and information previously raised, I have had regard to the submission in this review.
5. The new information submission asserted that the applicant's submissions addressed information already before the delegate, that no new information was provided to the IAA and no new claim raised, and did not identify any new information. Contrarily, the submissions then addressed s.473DD, in the event there was any new information, and made generic submissions that "the information in question ... could not have been provided ..(earlier) ...as the applicant was not aware of the delegate's findings in relation to this case", and that exceptional circumstances under s.473DD(a) included that any new information ascertained was material to the decision outcome and not considering it would expose the applicant to real risk of serious human rights abuses; that the fast track procedures disadvantage applicants; and that the applicant had not had ongoing immigration assistance.
6. The applicant raised new claims concerning his family unit. Although the information in the applicant's submission of being in a defacto relationship with an Australian citizen, with their baby due in July 2020, and that his partner was atheist (non-Muslim) is not new information, I consider to be new information the applicant's claims of the birth of the baby and that his partner and child would return to Iran with him and that his partner would refuse to convert to Islam for Muslim marriage such that their unmarried lifestyle with a child would attract the attention of the Basij to them, and evidence his rejection of Islam, for which he will be arrested and harassed. None of these claimed return intentions or feared implications in Iran of their family situation were raised at all before the delegate's decision to refuse the visa. Noting this claimed family relationship was already ongoing and the birth imminently pending at the time

of the SHEV interview and decision, I have some doubt that the implications of this to the applicant's claimed fears of return to Iran, if genuinely feared, would not have been apprehended by the applicant and raised before the refusal decision. This raises some doubt that the applicant could not have raised this new claim before the decision and also about its credibility. Nevertheless, for the purposes of this exercise under s.473DD I am satisfied that at a prima facie level it is credible personal information which was not previously known and, had it been known may have affected the consideration of the applicant's claims. They relate to matters that he says will give rise to persecution or significant harm in Iran. Considering these matters, I am satisfied there are exceptional circumstances to justify consideration of this new information

7. The applicant requested that he be given opportunity to explain in person to the IAA what he had said in his written statement submission, before a review decision was made. The submissions argued that this was warranted in the "particular compelling circumstances of the applicant". I do not accept and am not satisfied that the possibility of making different factual findings than did the delegate on the review material before me amounts to such a circumstance, and no other compelling circumstances are apparent to me. The IAA is not bound by the delegate's reasoning, findings or assessment in their refusal decision but conducts a review de novo in accordance with the fast-track procedures in the Act, on the review material provided by the Secretary and any new information that has satisfied s.473DD, and taking submissions and argument into consideration. The fast track review process contemplates that in general the review will be undertaken without accepting or requesting new information, and without interviewing the referred applicant. Although there is discretion to interview an applicant, I am not persuaded that it is warranted in this case. I am satisfied that proper assessment of the applicant's claims and evidence, can be made from the material properly before me. The applicant was advised and assisted by his former migration agent in the preparation of his SHEV application and its Statutory Declaration (SHEV statement). He was further represented by a migration agent at the SHEV interview, and then again before the IAA in providing submissions. The applicant has been previously notified of his responsibility to provide all evidence and information in support of his claims and has been represented at all relevant stages of the proceedings. I am satisfied that the applicant has had full opportunity to provide all his evidence and information and to respond to the delegate's decision and to address the dispositive issues in this review, including to the IAA. The applicant does not otherwise articulate what explanation or elaboration he further seeks to make or provide that he has not already had the opportunity to do, or why an interview would be the only, or preferable, manner in which to do so. Having regard to the information already before me, my observations above and the statutory scheme governing this review, I have decided not to invite or obtain further information or comment from the applicant, whether by interview or otherwise.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He is an Iranian citizen from Tehran in Iran, where he was born in [year] and raised with his parents and [specified family members]. His family are Shi'a Muslim and he was raised in this faith and grew up as a practising Muslim.
 - In 2009 he and two friends were caught with alcohol by the police and prosecuted and convicted for drinking alcohol. As a first-time offender, after a few days' detention and sentence of flogging of 80 lashes in prison, the applicant was released with a six-months suspended imprisonment sentence. His friend, [Friend A], who had a similar prior

conviction, was sentenced to 12 months imprisonment and service of his prior suspended sentence.

- In June 2012 he was arrested again for similar alcohol offences and charged. His father secured his bail release pending court hearing on surety by providing land deeds. Afraid of begin sentenced to imprisonment as [Friend A] had been the applicant never went to court - he destroyed the subsequent court summons and then later arrest warrant that were issued to him, and over the next four months or so he paid bribes to the Basij officers who came to the house on about three occasions, so they would not arrest him. He applied for and obtained his passport and made arrangements with a people smuggler in order to get to Australia via Indonesia. He departed Iran [in] May 2013.
 - He has been harmed in Iran from his lashing and harassment by the authorities because of the secular lifestyle he lived and will be arrested and imprisoned in Iran because of his profile there, his pending court case and the circumstances of his leaving Iran with outstanding summons and arrest warrants. As he fears this harm from the authorities there is nowhere in Iran, he could be safe.
 - In Iran in his 20's he began to question his Muslim religion and became non-practising. Since arriving in Australia, he has renounced Islam and is now an atheist. He hates religion, believes in no god and views organised religion as a tool to control people and make money. He is passionate about speaking about atheism to set people free from religion. He fears returning to Iran because of his apostasy and religious beliefs. He would not be protected by the authorities or be safe anywhere in Iran as it is the authorities who will persecute him.
9. Subsequent to the SHEV application the applicant claimed that he is in a defacto relationship with an Australian citizen who is a non-Muslim atheist. They have a new-born child together. His partner and child would return to Iran with him but he and his partner would refuse to convert to Islam for Islamic marriage and their unmarried family life would attract attention of the Basij which would be evidence of his obvious contravention of and rejection of Islam for which he would be arrested and harassed

Factual findings

10. The applicant's claims concerning his identity and origins are not in issue and are supported by his evidence and copies of Iranian identification documents and their translations including his shenasnameh, driving license and military service exemption card. I accept his identity as claimed and that the applicant is [an age]-year-old Iranian national and citizen from Tehran, where he was born in [born]. I accept he is of Persian Fars ethnicity. I accept that Iran is the receiving country for the purpose of this review.
11. On the evidence before me the applicant's parents and sister remain living in the family home in Tehran. Tehran is the only city the applicant has lived in in Iran, where he grew up and was employed, primarily in his father's [business], and I find that it is to Tehran that the applicant would return.

Outstanding Legal Proceedings in Iran

12. The applicant claims to be in danger of arrest in Iran on outstanding warrants and court process awaiting him for alcohol-related charges and that he will be imprisoned for this because he has a prior record and suspended sentence and left whilst on bail.

13. The applicant described in his written claims that he used to regularly meet friends in his car on Thursdays two or three times every month at a vacant block of land where they could quietly talk and drink alcohol and smoke and listen to music. They did it in this way to avoid being seen or getting into trouble, as his friend [Friend A] had previously been in trouble with police for drinking alcohol and who could not drink at home because of his parents. Yet they were discovered and arrested by police and detained and charged for drinking alcohol. The applicant's father refused to bail him out of jail, angry and disappointed at his behaviour and, after appearing in court he was sentenced, as a first-time offender, to flogging of 80 lashes and six months imprisonment suspended. He had to wait in prison for 12 days before the flogging occurred. However, [Friend A], the prior offender, was still under his six-month suspended sentence from his first offence and was sentenced to serve that six months plus a further 12 months in prison. The applicant's SHEV interview evidence reiterated that he was caught for drinking alcohol and sentenced to lashes and the six months imprisonment, suspended on condition to not offend again. His SHEV statement and interviews evidence was that this occurred in 2009.¹
14. The delegate accepted that this 2009 event occurred. However, I have substantial doubts. I accept from the county information before me that use and consumption of alcohol in Iran is widespread, in private gatherings and homes, even though drinking alcohol is illegal in Iran and carries a penalty of flogging with 80 lashes.² I do not consider any information before me supports that drinking alcohol would carry a six-month or 12-month imprisonment sentence for the applicant. DFAT's 2016 report noted that prior to amendment of the Penal Code (in May 2013 according to DFAT's 2013 report) a repeat offender with a second lashing sentence for alcohol consumption was liable, if arrested a third time, to the death penalty.³ I am not satisfied on any information before me that a six months imprisonment sentence, even suspended, would have been given to a first time offender for alcohol consumption, in addition to the flogging sentence, as claimed. Even if [Friend A] had himself had such a suspended sentence hanging over him (which for similar reasons I find difficult to accept) I also consider it implausible, improbable and difficult to believe that with the prospect of imprisonment, and potentially of a future death sentence for third time offending, that his friend, having already had one conviction, would risk being caught drinking alcohol again whilst on a claimed suspended imprisonment sentence, let alone by doing his drinking regularly in the same public location on regular Thursdays, even if there was some screening from the street by an embankment, noting that the authorities periodically enforced standards of Islamic conduct in the community and it was common for youth to be subjected to low-level harassment by authorities about behaviour, including being subjected to searches and car-checks.⁴
15. Other than his assertions, the applicant provided no other corroborative evidence of this claimed conviction or sentence or flogging; not even any evidence of scars or injuries, despite claims of much bleeding after purportedly having been flogged with 80 lashes (which DFAT reported is generally on the bare skin for men) and claiming to have needed weeks of bed-

¹ Although he stated "88" in the SHEV interview, that would make him only [age] years old in the Western calendar and I am willing to accept that this denoted the Persian calendar equivalent of 2009.

² Including: Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; Iran Human Rights (IRH)(Norway), "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway", 20 September 2017, CXC90406614387; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran COI Compilation", 1 July 2018, 20190326122102; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226

³ DFAT, "DFAT Country Information Report -Iran", 29 November 2013, CIS26780; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

⁴ DFAT, "DFAT Country Information Report -Iran", 29 November 2013, CIS26780; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

ridden recovery.⁵ Although the applicant has consistently maintained this claim since arriving in Australia, and expressed frustration that such lifestyle behaviour was illegal, this does not overcome my concerns with the credibility of his claims and I am not satisfied by his evidence and I do not accept these claims.

16. I also have concern about the applicant's evidence of being arrested a second time on similar charges of drinking alcohol. The applicant claimed in the SHEV statement that he was arrested in June 2012 and that after being bailed out of police detention by his father putting up security of land deeds, a week later he was served a court attendance notice to attend court in four weeks' time. He destroyed it. Roughly two months after failing to attend court, he received an arrest warrant which was hand delivered to his house, and which he also destroyed, so his parents would not know he had to attend court. Roughly two months again after that, two Basij officers came to arrest him but he bribed them not to, by giving them some of his mother's jewellery. Over the next four months officers came twice more to the family home to arrest him but he paid them bribes. In the meantime, he obtained his passport and contacted a people smuggling agent. He did this knowing it was wrong but did not want to face 18 months imprisonment.
17. In contrast, his SHEV interview evidence was that a month after release on bail he received his court summons for approximately two to three weeks' time to go to court, and that sometime after not appearing there two people came to arrest him but he bribed them not to, and stated that people came to the house to try to arrest him on about two or three occasions. On one occasion he called his paternal uncle over to the house to pay them bribe money and the other time the applicant was not home, but he found out later they had been there and so did not return home and tried to escape Iran. He did not know which authorities or what organisation the officers were from, as they were in plain clothes.
18. I consider the differences in the accounts of these events are in material and significant aspects of those claims and raise doubt about their credibility, including in particular that :
 - his SHEV interview evidence that he did not know what officials came to arrest him, contrasted with the written claims they were Basij;
 - his SHEV interview evidence that the first bribe was paid when the arrest warrant was served on him contradicted the written claim that the first bribe was on the subsequent occasion, when officers came to actually arrest him after the occasion of service of the warrant;
 - his SHEV interview evidence that it was his paternal uncle, who lived down the road, who bribed officers on the second bribe occasion, was contrary to the written claims that it was the applicant who bribed officers;
 - his SHEV interview evidence that on the last occasion of attempted arrest he was told of the attempt to arrest him at home while he had been out and so did not return home and tried to escape, contradicted his written claims that he had bribed officers on all the occasions. It was also contrary to his evidence in the SHEV application form that he had remained living at his family home until leaving Iran, with no claim previously that he had gone to live anywhere else to avoid arrest before leaving. Moreover, I consider this account to be at odds and incompatible with his claims that he had kept secret that he had been summonsed to court and I find difficult to accept that any of the rest of his family would jeopardise the family land deed secured at court by conspiring with him against his parents to breach his bail.

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

19. In assessing the applicant's evidence I have taken into account issues such as the impact of interpretation and cross cultural communication and the difficulties of recall over time, acknowledging that recount of an incident may vary to some degree in different accounts over time and there may be some inexact recall of dates or time periods of long ago and I do not place great or determinative weight on inconsistency between whether the court attendance summons was served approximately a week or a month after release on bail.
20. Nevertheless, considering the not-everyday nature of these claimed events, and their claimed then-significance to his life and now to his protection claims, I am not satisfied that the greater claimed sequence and details of those events, noted as discrepant, would be so easily forgotten or confused as the applicant submitted as explanation for the inconsistent evidence. Moreover, considering the level of attention to detail in the written claims and that the SHEV Application and statement were translated back to him by a NAATI interpreter, I am not satisfied that the inconsistent and incompatible evidence is explainable by submitted vagueness or misinterpretation - that by his claim that "*I again bribed the officers*" he really meant his uncle bribed them, or that when preparing his SHEV statement he had stated that he did not know who the plain-clothed officers were and they "may have been Basij" but that his agent recorded they were Basij.
21. The applicant's SHEV statement claim that the arrest warrant had been hand delivered, but with no arrest, was put to him in the SHEV interview. He explained that was because that was when he first bribed the officials, to say they had not seen him, and so they merely delivered the warrant and left. This contradicted his written claim. Moreover, I consider these claims overall to be inconsistent with the country evidence before me.⁶ These reports indicate that arrest of an accused must be by warrant, which must be served on the accused (at arrest). A Ministry of Justice official unable to properly effect an arrest warrant, because the accused was not at their address or unable to be found, would publish details of the arrest warrant in widely circulated or local newspapers to notify the proper service details and also pass on the arrest warrant to law enforcement officers to make arrest whenever and wherever the accused is found. I am not satisfied these procedural requirements are compatible with a bailiff or other officer leaving the arrest warrant with the applicant but also being bribed to tell supervisors, when left with no or an incomplete warrant, that the applicant was not found or served.
22. The applicant's SHEV interview evidence about the court he was summoned to was only that it was "*some sort of Islamic court*", on a (named) street, which they knew as "[name]" Court. Given the legal proceedings and serious consequences claimed faced by the applicant and the official documentation claimed served upon him, I consider it very surprising that he would not know the official title or type of the court he was summonsed to and I find his evidence unpersuasive of someone who had been subject of the legal proceedings claimed. Moreover, it does not accord with country information that, unlike specialised Revolutionary Courts and Special Clerical Courts, ordinary criminal offences are dealt with in public criminal courts

⁶ ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102; Immigration and Refugee Board of Canada (Canadian IRB), UNHCR-Refworld, "IRN102981.E: Iran: The circumstances under which court summons and forfeiture documents are issued by courts; information in bail; the circumstances under which notices of conviction are issued by the Islamic Revolutionary Court; the prevalence of forged court documents" (IRN102981.E: Court summons and forfeiture report), 6 May 2009, CIS22683; Canadian IRB, "IRN101299.E: Iran: Arrest warrants and other court documents; trial in absentia in criminal cases; punishment for persons charged with helping anti-revolutionaries; procedures when someone acts as surety" (IRN101299.E: Arrest warrants and other court documents report), 20 June 2006, CISBE8E6BE629

(Criminal Courts I and Criminal Courts II), with less serious penalty offences heard in Criminal Courts Level II.⁷

23. The applicant provided no evidence other than his assertions of these claimed 2012 charges or proceedings. I acknowledge he claimed to have destroyed the summons and arrest warrant. Nevertheless, I note his claims that he was granted bail for release from detention, and that bail guarantee arrangements were made over family land, which he stated was now the subject of defended legal proceedings and negotiations concerning a fight over forfeiture, which I note proceeds from a court forfeiture order; and that his SHEV interview evidence that his punishment for the second offence was lashes plus 12 months imprisonment and having to serve the suspended sentence, but that he left before the sentencing, inferring that he has been tried and convicted and sentenced in absentium, which judgment would be required to be served on his family at his last residential address.⁸ I am not satisfied that there would not be available any documentary evidence at all of these claimed legal proceedings concerning him in Iran if any of his claims were in fact true.
24. I note the applicant was able to obtain a genuine Iranian passport and later pass through the Imam Khomeini international airport unobstructed to depart Iran despite the claimed breached bail on ongoing charges and long-outstanding arrest warrant against him. I note DFAT's information that citizens with ongoing court proceedings and outstanding arrest warrants would not pass undetected through a main airport.⁹ Although he had claimed in the SHEV statement that the agent who organised his travel to Australia often helped people with outstanding warrants and he had a contact at the airport, which implied the agent bribed or made arrangements with a corrupt official, and this was reiterated in the IAA submission after the decision, I note that the applicant's SHEV interview evidence did not accord with this and asserted no bribery of or secret arrangements made with airport officials to allow him to pass through the airport without arrest. Rather, when asked how he had been able to depart unobstructed from the airport, he explained that maybe this was because he had not been sentenced in court yet and had the bail guarantee lodged, which I am not persuaded would overcome the legal problem of an outstanding arrest warrant for having for months avoided court in breach of the bail guarantee. He reiterated this explanation again at the end of the interview when claiming he would be arrested at the airport on return to Iran because of the arrest warrant, but had not been when he departed because it had not been outstanding then for very long, as it has now (although I note by then it had been outstanding for several months on his claims). I do not consider this the evidence that would have been given if indeed he had really left the airport fearing arrest on a warrant but trusting that his agent had bribed or made arrangements with a corrupted contact at the airport. Whilst I take into consideration that corruption exists in Iran, and DFAT indicated in 2013 that corruption was theoretically possible to allow wanted people to cross borders, nevertheless, I find the applicant's evidence overall about these claimed legal proceedings and events to lack credibility and I find it difficult to accept that continually, every single official he claimed to have dealt with in the months of attempts to arrest him on formal court-issued orders and then again leaving through the airport was corrupt or accepted bribes. I am not satisfied that any aspect or means of the applicant's departure from Iran was unlawful.

⁷ ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132

⁸ Canadian IRB, UNHCR-Refworld, "IRN102981.E: Court summons and forfeiture report" 6 May 2009, CIS22683; Canadian IRB, "IRN101299.E: Arrest warrants and other court documents report", 20 June 2006, CISBE8E6BE629

⁹ DFAT, "DFAT Country Information Report -Iran", 29 November 2013, CIS26780; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132 .

25. Overall, I am not satisfied that the applicant has given a credible account of his circumstances in Iran or his reasons for leaving Iran. I do not accept his claims of his profile in Iran or of having suffered harm there under prosecution for alcohol-related offending and I find these claims were fabricated. I do not accept that he was ever arrested and charged and flogged or sentenced to suspended imprisonment for alcohol offences. I do not accept that when he left Iran the applicant was of any adverse interest or concern to any Basij, Iranian police or any authorities for outstanding alcohol-related charges or arrest warrants, or that he was subject to any bail conditions or any suspended imprisonment sentence or good behaviour conditions, or for any other reason. I do not accept that the applicant faced being arrested or flogged or imprisoned or harmed in Iran as claimed. I also do not accept that his family face losing any land, money or property over forfeited bail or that he has a fractured relationship with his parents concerning breached bail conditions or for any other reason.

Atheism

26. The applicant claimed for the first time in his SHEV statement that he was an atheist and had renounced Islam. He claimed he became so since arriving in Australia. The applicant's SHEV statement and interview evidence were to the effect that he grew up following Shi'a faith until his early twenties when he began questioning his faith, which did not resonate with him and he could not believe. He often drank with and talked with his friends in Iran about how they did not believe in the traditions and rituals; he explored atheist literature and he ceased his Shi'a religious practice when he was about 21 or 22, stopped going to mosque and just did not do it or practise it. As discussed earlier I have concerns about the applicant's credibility in and that he fabricated claims in his SHEV Statement. I find that compared to the detailed discussion of his religious views in that statement that his SHEV interview evidence was more vague and muted; and in contrast to his written claims that he is "passionate about speaking about atheism" he stated he finds it "hard to talk about" his beliefs of religion and atheism. Nevertheless, he clearly described in the SHEV interview that he considers religions to be fairy tales, with no god or being sitting above in heaven, judging good or bad people or writing any Book, which is all silly and ridiculous to him, and that Mohammad was a businessman trying to control people by saying these things and that Islam is just for controlling people. I note indications in the country information that secularism is widespread in Iran and there is a growing trend of young Iranians turning away from the politicised and Arabic-centric Shi'a Islam as formally practised in Iran, with many increasingly becoming either non-practising Muslims or renouncing Islam or turning to other faiths altogether.¹⁰ I consider it plausible that the applicant does not adhere to Islam. I am willing to accept the applicant does not believe in religion or in the faith of Islam and considers himself atheist.
27. On his evidence I find that he already held these views against belief in god and Islam and religion for some years in Iran by the time he left there, aged [age]. I find this notwithstanding that the applicant had stated in his Irregular Maritime Arrival and Entry Interview of 22 June 2013 (Entry interview) that his religion was Shi'a Muslim. This statement was put to him in the SHEV interview. His explanation was that at an earlier time of providing personal details to the Department, having had difficulty trying to explain his doubts about his faith in Islam and it being suggested he record the religion of his birth, he was later afraid to change his word lest

¹⁰ LSE Middle East Centre (LSE MEC), "The Revival of Nationalism and Secularism in Modern Iran", November 2015, CISEC96CF14725; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132; Ali Sadrzadeh, "Turning away from Shia in Iran – 'A Tsunami of Atheism'", Qantara, 7 February 2013, CXC28129415432

it expose him to transfer to Nauru or Manus Island. I consider this plausible. I accept the applicant identifies as atheist and would continue to do so in Iran.

28. The applicant provided no corroborating evidence of his claimed defacto family relationship; however, I note that he had earlier, on 17 March 2020, notified a change of his personal circumstances - that he had been in a relationship for the previous two years with an Australian citizen with whom he was now living and expecting a baby due to be born in July 2020. He now claims that the child has since been born and any return to Iran would be with his partner and child; and that their unconventional living as an unmarried family in Iran would attract attention to the fact that he and his partner are atheist. I note that in the SHEV interview, when discussing his views on religion, the applicant mentioned that "*my partner is atheist as well*" and that he talks about it with her and his friends. I am willing to accept that the applicant is in a relationship with an Australian woman with whom he lives, who is atheist and that they recently had a baby born in Australia.
29. However, beyond the applicant's asserted claim that they would return to Iran with him, there is no evidence before me to support that his partner, a non-Muslim, Australian citizen herself desires to or intends to or is willing to leave Australia to live in Iran with the applicant, or take the child to be raised there. There is no indication before me to support that she would be able or permitted to enter and or reside in Iran in these circumstances. Moreover, I have significant concern about the credibility of this claim given that the applicant raised no claim at any stage before he was notified of the visa refusal that his partner would return to Iran with him with the consequential risk of attention and harm claimed. Considering his claims that he had been in this relationship for over two years, living together since August 2019, with a baby imminently due to be born at the time of and after the SHEV interview, I find it difficult to believe that the implications of their family life in Iran would not have been considered by the applicant at all before the decision, and I am not satisfied that if these claimed intentions and fears were in fact true that the applicant would not have mentioned them at all to the delegate at any time before the refusal decision. This is particularly given that he was directly asked in the SHEV interview, shortly after discussing his claims of atheism, about what would bring him to attention of the Iranian authorities if he returned to Iran, and he raised no mention of this claim or family situation in any way at all. I note that the applicant was represented by a migration agent at the SHEV interview. I do not accept and am not satisfied that the applicant's partner or baby intend to or would accompany the applicant to live with him in Iran if he was returned there. As discussed earlier, I have determined not to invite or obtain any further information or comment regarding the applicant's claims.

Refugee assessment

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

Well-founded fear of persecution

31. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
32. For reasons discussed above, I do not accept that when he left Iran the applicant was of any adverse interest or concern to any Basij, Iranian police or any other Iranian authorities for outstanding alcohol-related charges or arrest warrants or for any other reason, or that he was subject to any bail conditions or any suspended imprisonment sentence or good behaviour conditions. I do not accept that the applicant faced or would face being arrested or flogged or imprisoned or harmed in Iran on return as claimed and am not satisfied that there is any real chance that the applicant would be arrested, or face any sentence of imprisonment or flogging or any other harm on any of these claimed circumstances.
33. I accept that the applicant will continue to hold atheist views on return to Iran. He claimed to fear harm in Iran for his atheist views and apostasy, fearing imprisonment and persecution by the authorities.
34. I accept that Iran is a theocracy, with Shi'a Islam the official state religion and Islamic belief and custom enshrined in law.¹¹ Adherents of non-recognised religions are considered Muslim and are prohibited from expressing their faiths publicly. This country information indicates that Muslims in Iran are prohibited by law from changing or renouncing their religious beliefs, and those who do can be charged with apostasy, which, although not a prescribed offence is interpreted by many Islamic judges in Iran under fatwas and sharia law to be punishable as a capital offence, as is the offence of blasphemy.
35. As previously noted, the country information reports before me indicate that secularism is increasingly widespread in Iran, with many and increasing numbers of Iranian rejecting all religions, Islam included and reports indicating that Iran has become "one of the least religious countries in the Middle East", with a decreasing role of Islam in public life, and a waning of the power of the clerics.¹² DFAT reported that a significant proportion of the population in Iran does not attend mosque or pray on a regular basis, and alcohol consumption is common, and that many Iranians do not observe Ramadan strictly, especially in private. Reports in country information indicate that from surveys conducted in Iran in 2015 that 50 per cent of those surveyed identified themselves as Non-Muslim, with about 65 per cent of those Non-Muslims

¹¹ DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 2020041408313 2; United States (US) Department of State (USDOS), "Iran 2018 International Religious Freedom Report", 21 June 2019, 20190627091702; ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

¹² DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132; Ali Sadrzadeh, "Turning away from Shia in Iran – 'A Tsunami of Atheism'", Qantara, 7 February 2013, CXC28129415432; The Economist, "Religion: Take it or leave it", 1 November 2014, CX1B9ECAB7499; ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

describing themselves as either agnostic or atheist and of the identified Muslims, 70 per cent described themselves as non-practising; and that many Iranians have a secular attitude; and that non-practising Muslims form a large part of the population of Iran's cities and lead normal, unchallenged daily lives.¹³

36. However, despite this increasing turning away from Islamic faith and practise, DFAT reported in 2020 that apostasy and blasphemy cases are no longer an every day occurrence in Iran and the country information indicates that final death sentences in such cases are rare - the isolated instances carried out include a Christian pastor (1990) and a self-styled religious cult leader who claimed that he was God (2011), according to ACCORD and USDOS. The recent death sentences upheld concern posting of anti-Islamic material on social media, namely a man who posted multiple Facebook insults against the Prophet (2014) and a man who posted social media posts critical of Islam and the Quran whilst he was on military service (upheld 2017), with no indication before me that the sentences have been carried out.¹⁴ The country information before me indicates that the authorities pursue other religiously-based charges against diverse groups of individuals, often tied up with other charges including against national security or with political reasons in the background, attracting penalties ranging from fine, flogging, imprisonment or death sentences; and that these prosecutions are predominantly against practitioners of minority religions, many of which instances have aspects of ethnic minority overtones of dissidence and rights activism, such as Sunnis and Bahai's and Sufis, and also include Muslim-born converts to Christianity and Shi'a members of the reform movement and others who espouse unconventional religious beliefs.¹⁵
37. I am satisfied from the country information that it is predominantly the leaders and high-profile proponents of minority or unorthodox faith groups, as well as those who publicly proselytise, or publicly practice their unrecognised religion, or publish and broadcast offending views, or widely publicise their non-belief who attract the attention and law enforcement consequences of the authorities. DFAT noted that it was unaware of individuals being prosecuted in Iran for atheism, which is consistent with the country information before me. Official sources have told DFAT that religion is a private matter and, beyond the expectation that people not eat in public or hold parties during Ramadan, how one wished to observe Islam was an individual choice.¹⁶ Information cited by the delegate¹⁷ refers to examples of persons in Iran being punished for eating, drinking or smoking in public during Ramadan, which can attract imprisonment or lashes. DFAT states that anecdotally, many Iranians do not observe Ramadan strictly although those caught eating in public run the risk of arrest and prosecution. The evidence before me does not indicate that the applicant has in the past or intends in the future to breach Iranian laws regarding conduct during Ramadan and he has not expressly claimed to fear any harm in this regard. DFAT assesses that non-practising Muslims face a low risk of official and societal discrimination, particularly in major cities; and overall, DFAT

¹³ LSE MEC, "The Revival of Nationalism and Secularism in Modern Iran", November 2015, CISEC96CF14725; ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

¹⁴ LSE MEC, "The Revival of Nationalism and Secularism in Modern Iran", November 2015, CISEC96CF14725; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132; Finnish Immigration Service (FIS), "Christian Converts in Iran", 21 August 2015, CISEC96CF14127

¹⁵ including: ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132; USDOS, "Iran 2018 International Religious Freedom Report", 21 June 2019, 20190627091702; Danish Immigration Service and Danish Refugee Council, "Iran: House Churches and Converts", February 2018, CIS7B83941873; FIS, "Christian Converts in Iran", 21 August 2015, CISEC96CF14127

¹⁶ See also FIS, "Christian Converts in Iran", 21 August 2015, CISEC96CF14127

¹⁷ including: ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102; Iran Human Rights Monitor (United States), "The Story Of Treatment Of People Accused Of Eating In Public In Ramadan", 26 June 2017, CXC90406620606

assesses that unless they widely publicise their non-belief, atheists are unlikely to come to the attention of the authorities. It observed that atheists from conservative families who reveal their non-belief might face familial pressure and potential ostracism, and assessed that atheists who were open about their non-belief may face a moderate level of official and societal discrimination. ACCORD observed that generally ordinary Iranian citizens appear fairly tolerant of digressing religious belief and practice and more curious than condemning.

38. On the applicant's evidence he had stopped practising Islam at around 21 or 22 years of age, did not attend mosque or rituals and spoke openly with his friends about their disdain for Islamic rituals and beliefs, and continued not to practice the faith for the several years up to his departure in 2013 at the age of [age]. The applicant claimed he was lashed and harassed by the authorities in Iran because of the secular life he lived. The only harassment or lashing he gave any evidence of was related to the claimed alcohol-related charges. I have not accepted the applicant's claims of any circumstances of being caught or charged for any alcohol-related offences, and there is otherwise no claim or evidence before me that his lack of observance of the Muslim faith or lack of practice or attendance at mosque and rituals, and his views against and doubting Shi'a Muslim faith ever brought him to any adverse attention of the local Basij or any other authorities or other persons in Iran as an apostate, atheist, blasphemer or non-believer or that he was subjected to any religiously-based charges or suspicion or harassment or harm of any kind. I accept that living in Iran not practising any Islam the applicant lived a secular life in Iran. I do not accept that this brought him to any attention of any authorities or other persons or that he was harassed, lashed or harmed in any way as a consequence. Whilst I accept that his parents and sister remain religious, on the applicant's evidence his father was tolerant of his investigations into atheist literature and discussions whilst he was non-practising and there is no credible evidence before me that any members of his family or friends have tried to force him to continue or revert back to his Islamic practice or faith, or ostracised him or threatened him or changed any attitude towards him during his years of not believing in or practising Islam in Iran or in Australia. There is no indication that they have done so because of his partner or child in Australia.
39. The applicant's SHEV interview evidence indicated that his religious discussions in Australia have also been only amongst friends and with his partner. I am not satisfied on any evidence before me that the applicant sought to or has widely broadcast his views on atheism, or criticism of Islam, the Prophet and religion whilst in Australia, or that he does or has sought to proselytise or convert any people from their own-held faith to atheism. I am not satisfied that his behaviour in Iran on return would be any different than it had been before his departure, namely that he did not follow or practice Islam or its prayers or rituals for many years and any religious discussion he had or expression of his views on Islam or religion was with his like-minded friends, and with family. I consider that is no different than his behaviour in Australia, despite the greater freedoms here. I do not accept that the applicant is passionate about speaking out about atheism and setting people free from religion, and I do not accept that he would seek to do so or would proselytise or widely broadcast his religious views in Iran on return as I am not satisfied that he in fact holds any interest in doing so. I find these claims to be exaggeration and embellishment.
40. Whilst I have not accepted the applicant's claims of being caught or charged for alcohol-related offences or the claimed circumstances of this, I do not discount that the applicant may have occasionally drunk alcohol in Iran, noting its widespread private use and availability. There is no claim or evidence before me that the applicant continues to drink alcohol in Australia or that he would do so in Iran. However, I accept that he lives a secular life in Australia, in terms of not practising or believing in and living according to the precepts of Islam and accept he may continue to do so on return to Iran. I note that although by law contraventions of Islamic laws

and mores are illegal and can be subject to heavy penalties in Iran, as noted earlier in the country information, in general terms Iran is becoming increasingly secular in some respects. DFAT reports that despite the widespread use of alcohol, prosecution for alcohol consumption is not common – the government in recent years is more focussed on treatment and rehabilitation than law and order.¹⁸ Police do not actively investigate or entrap people drinking alcohol privately at home and generally only act if the activity comes to public attention or if specifically instructed to do so. Where enforced, punishment is normally an on the spot fine. Floggings may be imposed periodically but are rare. DFAT further reports that mixed-gender parties are common, particularly in major cities, and among wealthier Iranians, and invariably involve alcohol. Attendance at such parties can attract a fine or flogging; however, DFAT reports that police raids are not common notwithstanding some high-profile sting operations in 2019 - attention is attracted, if at all, usually by neighbour tip-offs due to loud music. Avoidance of police attention or action for drinking or attending parties can commonly be by bribe. If not accepted, party attendees may be required to sign an undertaking at the police station not to attend future such parties or be given a fine, which is more common than flogging. DFAT further reported that unmarried couples socialising in public is generally tolerated by authorities, particularly in larger cities, and does not meet societal resistance in Tehran, where, moreover, unmarried couples living together long-term in a “white marriage” are common. DFAT reports that in the event of arrest an unmarried couple would be taken to a police station where their parents or guardians would be summoned, and the couple typically sign a statement and are then released. A fine may be imposed occasionally. There is no credible evidence before me to indicate that the applicant is currently or would be in Iran a regular or heavy drinker of alcohol, or that he regularly attends loud parties in Australia or regularly publicly socialises with female friends. In the event that the applicant might participate in any such of these behaviours in Iran, I am not satisfied on any information before me that it would be any more than occasional. I do not accept that the applicant’s partner and child would return to Iran with him.

41. The applicant is a mature adult male, and a Fars, the ethnic Persian majority in Iran, who was born and raised as a Shi’a Muslim until he stopped practising and believing in his early 20’s. He is from the major city of Tehran. I find that he was not of any adverse interest or concern to any authorities or other persons in Iran when he left, and I am not satisfied on any information before me that he has since become of any adverse interest or concern to any Iranian authorities or other persons for any reason. On the evidence and country information before me I am not satisfied that the applicant’s non-practise of Islam and his religious views or atheism and/ or living accordingly a somewhat more secular-style life would cause or result in any more than a very remote chance of drawing any adverse attention to him of any authorities or any other persons. Overall on all the information before me I am not satisfied that there is a real chance that upon return to Iran or in the reasonably foreseeable future, the applicant would face a real chance of coming to adverse attention as an apostate or being charged with apostasy or any other charges, or otherwise detained, arrested, imprisoned, flogged or otherwise harassed, or persecuted or subjected to any harm of any kind by any authorities in Iran or any other persons on the basis of his real or imputed religious views or living a more secular life not practising Islam.
42. The applicant’s partner and child are not parties to this SHEV application. I anticipate that the separation entailed by any return of the applicant to Iran without them might occasion real distress for them, including the applicant. However, I am not satisfied that this involves systematic and discriminatory conduct as required by s.5J(4)(c).

¹⁸ DFAT, “DFAT Country Information Report: Iran”, 14 April 2020, 20200414083132

43. Although pursuant to a recent Memorandum of Understanding between Australia and Iran (MOU), Iran will now facilitate the return of Iranians who have no legal right to stay in Australia, this only applies to such Iranians who arrived here after March 2018.¹⁹ Iran continues to cooperate with the International Organization for Migration (IOM) to assist voluntary returnees. As the applicant arrived in Australia in 2013, if the applicant were to return to Iran, I find that it would only be as a voluntary returnee.
44. The applicant has not raised any fear of harm as a result of his having lived in and applied for asylum in Australia. DFAT reports that Iranian authorities pay little attention to failed asylum seekers on their return to Iran, although returnees with an existing high profile of concern to Iranian authorities, particularly regarding political activism in Iran or overseas, may face a higher risk of coming to official attention on return. I note my findings that the applicant has no criminal history or outstanding criminal matters in Iran and I am not satisfied that he has or would have on return any adverse profile of any kind with any authorities. I am not satisfied on any material before me that there is a real chance of the applicant facing or experiencing any harm on return to Iran or in the reasonably foreseeable future as a returnee who applied for asylum in Australia.
45. I am satisfied that the applicant does not have a well-founded fear of persecution within the meaning of s.5(J)(1) of the Act.

Refugee: conclusion

46. 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

47. 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

48. 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.

¹⁹ DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132

49. 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.
50. I am not satisfied that separation from his partner and child and its impact on the applicant involves the necessary intention to inflict or cause pain, suffering or extreme humiliation required under the definitions of torture, cruel or inhuman treatment or punishment and degrading treatment or punishment. It is not arbitrary deprivation of life or the death penalty. Further, it arises as a result of the applicant's removal from Australia rather than as a necessary and foreseeable consequence of his being returned to Iran.²⁰
51. I have otherwise found that the applicant would not face a real chance of any harm in Iran on any basis of his real or imputed religious views or living a more secular life not practising Islam or as a returnee who applied for asylum in Australia. As the 'real risk' test for complementary protection has been found to be the same standard as the 'real chance' test, it follows that based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that the applicant would face significant harm in Iran for any or any combination of those reasons.

Complementary protection: conclusion

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

Decision

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

²⁰ *SZRSN v MIAC* [2013] FCA 751

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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