



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08701

Date and time of decision: 22 October 2020 15:13:00

K Juttner, 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 national. On 11 April 2017 he lodged an application for a Temporary Protection Visa (TPV).
2. On 25 September 2020, a delegate for the Department of Immigration (the delegate) refused to grant the visa on the grounds that the applicant was not a person in respect of whom Australia owed protection obligations.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He had no equal rights in Iran. Iran is not a free country and he cannot return to Iran because it is dangerous and he will be killed.
 - In July 2012, he had a personal issue with a person who was a government official or member of the Basij. He was stopped by this person when he was going home from work late at night and asked for his National Identification Card, which he did not have with him. He was asked for a bribe and when he would not pay it, he was taken and detained for six days. He was assaulted and burnt with cigarettes every day and told he had to confess to [a crime]. After a few days he paid and left. They threatened him that they would harm his family if he did anything.
 - He left Iran in early September 2012 on a lawful Iranian passport.
 - After he left Iran, his parents received some letters from the Basij, asking him to report to answer questions.
 - He has no religion. He was in trouble for his religion in Iran and in the end he had to escape from Iran so he could survive.
6. At his entry interview on 2 December 2012, he stated that the year before, he and his girlfriend were arrested when the Sepah and Basij invaded their house. He was detained for one month to do tests to prove he had sexual relations with the girl.
7. The delegate also considered whether the applicant would be harmed as a failed asylum seeker who had sought protection in Australia, although the applicant did not raise this claim himself.

Refugee assessment

8. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection

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

Well-founded fear of persecution

9. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
10. The applicant claimed to be an Iranian citizen. He provided copies of his Iranian birth certificate (*shenasnameh*) and National Identification card (with translations). I am satisfied that the applicant is an Iranian national and find that Iran is his receiving country.
11. When asked about his reasons for leaving Iran at an arrival and biodata interview on 26 September 2012, [number of] days after he arrived in Australia, he said he had no equal human rights in Iran and someone from the government was after him and interrupting his private life. He was arrested once and someone was threatening him. He further stated that a government agent from [the] police station sealed off his shop. In late July 2012, he was going from his shop to his home and talking on the public phone. A police/security patrol who were in the area at 2am to 3am asked was he was doing in the street and to see his National Identification Card (NID). He did not have his NID and the government official asked him for a bribe. When he insisted he should not pay it, he was taken to the police station and detained for six days. He told them he would make a complaint and was assaulted and told he had to confess to [a crime]. They burnt him with cigarettes every day. He told them he would pay whatever money they wanted to get out of there, and after a few days he paid and left. They threatened to harm his family if he did anything. He did not have a problem after that but was scared and stressed and mentally not able to cope. He started making arrangements to come to Australia and left Iran in early September 2012.
12. I note that he was not asked about his reasons for leaving Iran at his Irregular Maritime Arrival Entry interview on 2 December 2012. Instead, the arrival interviewer referred to the applicant having provided information about being detained for six days at a police station in a previous interview. The applicant clarified that he was arrested by Basij and then transferred to a police station but did not otherwise refer to this incident. The information from the September 2012 arrival and biodata interview was transcribed as the answer to the question in the entry interview about the applicant’s reasons for leaving Iran.

13. As noted by the delegate, the applicant did not talk about this incident in his brief handwritten responses about his reasons for leaving Iran in his TPV application. He stated only that an officer of the army had an issue with him and was causing trouble for him. He also said he was in trouble for his religion, it was not a free country and he could not go back because it was dangerous and he would be killed. At his TPV interview on 8 September 2020, the delegate commented that the applicant had provided very limited and vague information in TPV application about why he could not return to Iran. The applicant responded that he was not saying that he could not return to Iran. He thought that he could for sure but did not know what would happen. He told the delegate he did not have any legal action or any problem with the police or government, and that it was more of a personal problem with a certain individual. Later in his interview, he claimed that a file was created against him and said he had no idea if it is getting updated and did not know the direction in which it had gone. He also referred to letters being sent to his parents' house but that his family had not heard anything for the last few years. He told the delegate that he really missed his family and would like to go back to Iran to see them. He said that it could be that nothing would happen if he returned to Iran; he did not know and could not say if "they" were going to kill him. The delegate queried why the applicant thought that someone would then want to harm him if he returned. The applicant claimed that he would be harmed because of the case that he had, and the person who had used his power to detain and harm him.
14. Notwithstanding that the applicant has consistently claimed that he had problems with a person in Iran, I have real concerns about the credibility of this claim. In particular, when invited to give more information about this incident at his TPV interview, the applicant provided little in the way of meaningful information about his experiences involving this person. He referred initially to matters which the delegate pointed out were not mentioned in his TPV application, such as it happening was he was living with parents and there being a station close to their house, and to having a boy and girlfriend relationship. After this, the delegate specifically referred the applicant to the incident in July 2012 when he said he was going home from his shop and talking on his phone, to which the applicant responded that there was a backstory and "that person" was married to the husband and he had a good position, and also that there are a lot of police and army in Iran.
15. The applicant did agree that information in his arrival interview about an incident in 2012 where he said he was detained, burnt with cigarettes, paid a bribe and was released was correct, although it was only after the delegate specifically directed the applicant to this information from that interview. When asked if there was anything extra that he wanted to add, the applicant claimed that he was very young and less than [age]. I note that he was aged [age] in July 2012. The evidence he did provide was also limited. He referred to there being just one person who used his power to take him and create a personal matter, and that the person wrote something with pen and paper (but the applicant did not know what it was), and to paying the money to come out. He said he did not know what had happened with that case, although he agreed later in the interview that the matter had not been escalated to the police or a court. It struck me that the applicant required considerable assistance from the delegate to provide evidence about his experiences with this person in Iran, and that the information he did provide can be best described as superficial.
16. Furthermore, the applicant was unable to provide information about the person's name. When asked to give the person's name, the applicant said he did not know his family name. He then said "*I can't find it, I can't find it*", but went on to provide a single name. When he spelt the name (noting that the applicant was speaking in English as he did for much of the interview), it was a name that was different from the earlier name he had given. I did not find the applicant's evidence about the person's name at all convincing. There were also variations in the

applicant's evidence about this person's role. When he first referred to this person at his TPV interview, he said he had a power into the army or was in the Sepah or Basij. Later, when asked directly if the person was a policeman or worked for the Basij, the applicant emphatically answered "no" and said he was working for the government. However, when again later asked if the person was a member of the Basij (after explaining how Iran, unlike Australia, has an organised Basij force), he said the person was the leader of the Basij, and worked in their suburb. I note that the applicant also referred to him at other times as a government agent (September 2012 arrival interview), member of the Basij (December 2012 entry interview) and army officer (TPV application).

17. I also did not find the applicant's evidence about where he was taken compelling. In his arrival and biodata and entry interview he described it as a police station. Later at the TPV interview he told the delegate that the person took him to a place that was not a gaol but "like an area" and that he seriously did not know where he was. It is difficult to believe that the applicant did not have clearer knowledge, and was unable to provide any meaningful description, of where he was held given he claimed he was held there for six days and was able to leave from the place after he paid the bribe. The applicant also claimed to the delegate that he may have a photo of his arm and backside to show the things that the person had done to his body. According to his arrival interview, he was burnt with cigarettes every day that he was detained. The applicant was told that the Department would consider any additional information that was provided before a decision was made. He did not provide any photographic or medical evidence of these injuries.
18. Moreover, the applicant's claim that he was in trouble for not having his National Identity card with him when he was stopped, and that this was the excuse for the subsequent bribe and detention, was not to my mind plausible. DFAT¹ has reported that all Iranian nationals of the age of 18 (which included the applicant) were required to hold a valid National Identity card (NID) or obtain a National Identification Number, and that from mid-2008 the NID became compulsory for obtaining a passport, driver's licence and opening bank accounts. According to DFAT, the Iranian police and security forces exerted tight and effective security control over the vast majority of the country and could take a heavy-handed approach to enforcing security, such as through morality campaigns to enforce standards of Islamic conduct, for instance to ensure compliance with dress codes and monitoring relationships in public with non-family members. However, the country information does not indicate that Iranians were required to carry NID, or that they are subject to checks and penalised if they fail to have it on their person. While the delegate was willing to accept the applicant was detained for a short period of time and released after paying bribe, I am not. I find it very difficult to believe the applicant's claim that he was in trouble for not carrying his NID, or that suffered consequences as a result, particularly when considered together with my other concerns about his evidence.
19. According to information in his arrival and biodata interview, the applicant did not have a problem after this incident but was scared, and was stressed and mentally unable to cope. In his TPV application, he claimed that he lived in a small [town] for two months but it was still not safe for him to live in Iran so he came to Australia. The applicant did not specify at his TPV interview that he encountered any issues in the period between this incident and his departure. In early September 2012, he left Iran from the International airport on a lawful Iranian passport in his own name which he had applied for around a year before his departure. DFAT² reported that passport control checks are sophisticated in Iran and if there was an outstanding warrant for a person's arrest it would not go undetected at the main airports. The

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 29 November 2013, CIS26780.

² DFAT, "Country Information Report – Iran", 29 November 2013, CIS26780.

applicant stated that he did not have any problems when he left through the International airport in Tehran, which indicates there was no arrest warrant at the time of his departure.

20. Nevertheless, at his TPV interview, the applicant claimed that some letters were sent to his parents' house after he left Iran. He told the delegate that the letters arrived a few months after he left and when he arrived in [Country 1] on his way to Australia. He initially said the letters were from the court but later told the delegate they were from the Basij. He thinks that his parents still have a letter. The applicant claimed that after the logo and top letterhead, the letter contained his name and said he was required to "come here" and answer a few questions. The applicant did not go because he was not in Iran, after which his parents received a second letter asking where the applicant was. There were a few letters "like this one" sent in the applicant's first year in Australia. When asked how many letters were sent from the Basij to his parents' place, he said it was a hard question, and he did not know other than that they were sent every three months. He was not sure if there were four or five or maybe six. One day they took his parents and asked them some questions. He did not claim there were any further repercussions. His parents have not received any letters since 2013. No copies of any of these letters were provided to the Department. Nor has the applicant sought to provide any such evidence to the IAA following the delegate's rejection of this claim.
21. Overall, I do not find the applicant's evidence about his problems with this individual in July 2012 at all credible. Although the applicant provided some details about this alleged incident when he first arrived in Australia, the information he did provide was scant, superficial and unconvincing. The applicant himself provided very little evidence of substance of his claimed persecutor, the harm he may face on return or the claimed events leading to his departure and following. He has not provided any documentary evidence regarding his injuries or of the letters his parents received from the Basij. Furthermore, the applicant was able to leave Iran on his own passport without any difficulty. I am not satisfied that the incident in 2012 occurred at all. I do not accept that the applicant was stopped by a government official or member of the Basij, or that he was detained or required to pay a bribe or injured during this period. I also do not accept the matters raised at his arrival and biodata interview that his shop was sealed or he was told to confess to a [crime]. I am not satisfied that the applicant had any problems with this person in July 2012 or that he is of any interest to the authorities as a result. I am not satisfied that the applicant would face a real chance of harm in relation to this claim.
22. The applicant also claimed that he had no religion and no equal human rights in Iran which was not a free country, and that if you break Muslim law, they whip, jail and assault you. He also claimed that if he drank alcohol, they whip you. He said he had scars on his arms and back if proof was needed, although he did not specify what these were, noting also that he claimed to the delegate that he had marks on his arm and backside from the person who had harmed him in 2012. He did not provide any photographic evidence of these scars. I note that the applicant indicated he was a Shia Muslim when he arrived in Australia. He did not provide any information in his TPV application or interview about when he stopped having a religion and became a non-believer, or about any experiences in Iran in relation to his beliefs or problems he may have encountered in relation to his beliefs. He also did not provide any details about drinking alcohol in Iran or coming to the attention of the authorities for doing so. He did not raise any claims relating to having no religion or about drinking alcohol in Iran at his TPV interview, or when asked at the end of the interview if there were any other reasons that he feared harm on return to Iran. Unlike the delegate, I am not satisfied on the evidence before me that the applicant has no religion. Nor am I satisfied he has faced harm in connection with these matters. The applicant's statement about the punishments that may be carried out if you break Muslim law or drink alcohol appeared to me to relate to Iranian people in general, rather than specifically to him. While I accept that some people in Iran may be punished for breaking

Muslim law or drinking alcohol, I am not satisfied on the evidence before me that the applicant drank alcohol in Iran or broke Muslim law, or that he was punished for doing so. I am also not satisfied that the applicant has any interest in drinking alcohol or breaching religious or Muslim laws in the future. I am not satisfied that the applicant would face a real chance of harm for these reasons.

23. At his December 2012 entry interview, the applicant stated that the police and security organisations invade everyone's privacy. The year before (i.e. in 2011), he and his girlfriend were inside their house which was invaded by the Sepah and Basij who arrested them. He was detained for one month to do all kinds of tests to prove he had sexual relations with the girl. I note that the applicant did not pursue this claim in his TPV application. The applicant did refer in general terms to being in a boy/girl relationship when asked to provide more information his TPV interview about the July 2012 incident, but he did not claim that he was arrested or detained for having a relationship with a girl either in 2012 or the year before that. His evidence about this matter was scant, and his claims about spending a month in detention to do tests on whether he had had sexual relations was in my view far-fetched. He did not say that he was charged with any offences in relation to this incident or there were any further repercussions. I am not satisfied that the applicant's house was invaded or he was arrested or detained for being with his girlfriend.
24. The delegate also considered whether the applicant would be harmed as a failed asylum seeker returning from a western country. The applicant has not raised any claims to fear harm as a returning asylum seeker. When giving evidence to the delegate about what may happen on his return to Iran, he said that the authorities might catch him at the airport, but that they also may say that they "would see him later", and let him enter the country without incident. This evidence arose in the context of whether the authorities would be interested in the applicant because of his personal problem with the member of the Basij, rather than because he was returning as a person who had sought protection in Australia. Nevertheless, I accept that he would be a returning asylum seeker from a western country and may be perceived as such. DFAT³ reports that the authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting them for activities conducted outside Iran. The treatment of returnees depends on their profile before departing Iran and actions on return, and it is those people with an existing high profile who face a higher risk of coming to official attention on return. DFAT also indicates that persons travelling on a temporary travel document with a suspected criminal history may face more questioning at the airport. While the applicant may be travelling on a such a document (as it appears that he no longer has his Iranian passport), I do not accept that the applicant has a criminal history. I also do not accept that the applicant had any problems with a person in Iran in 2012 or that he had a profile in Iran. I am not satisfied that the applicant was or is a person of any interest to the Iranian authorities or anyone else. I am not satisfied that the applicant would face a real chance of harm as a returning asylum seeker from a western country.
25. I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

26. 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).

³ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132.

Complementary protection assessment

27. 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

28. 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.
29. 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.
30. I have found that there is not a real chance of the applicant experiencing any harm if he were to return to Iran. The Federal Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment⁴. Having regard to the country information and reasoning above, I find that there is no real risk that the applicant will suffer significant harm in relation connection with any of the matters raised.

Complementary protection: conclusion

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

Decision

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

⁴ *MIAC v SZQRB* (2013) 201 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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