



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10124

Date and time of decision: 22 February 2022 11:49:00

R Mathlin, 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

1. The referred applicant (the applicant) claims to be an Iranian male who arrived in Australia by boat [in] July 2013, having left Iran [in] June 2013. On 18 July 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. On 29 October 2021 a delegate of the Minister for Home Affairs refused the grant of the visa, finding that the applicant was not owed protection obligations.
3. In considering the application I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). New information was given to, and obtained by the IAA; this is discussed below.

Applicant's claims for protection

4. The applicant was born in Tehran in [year]. He left Iran via Imam Khomeini airport [in] June 2013 using his own passport which was issued in [2012]. He has [specified family members] who remain in Iran, along with his parents. In Iran he worked for his father, [in his business]. He completed [Grade] of [School]. He was married in April 2007.
5. The applicant was interviewed on 29 July 2013, shortly after arriving in Australia ("the arrival interview"). He stated that he had left Iran because he couldn't pay the *mehryeh*, the "bride price",¹ therefore he would go to gaol and would be lashed. He claimed that he had been gaoled from [January] 2010 until [June] 2011, and from [April] (this is what is recorded, although the interpreter actually said May) 2012 until [January] 2013. He said that he was charged with failure to pay a debt. He said that he had paid some money two months previously, and the amount owing was [amount 1] gold coins. When asked whether he had children he explained that he did not, because he and his wife had never lived together. He said that they loved each other, but the family had caused problems. He said that he hoped he could bring his wife to Australia to live, and does not want the family interfering in the marriage. He said that he will be imprisoned if he returns to Iran because there is a current order for the police to detain him.
6. In the SHEV application the applicant stated that he was separated and going through the process of divorce. He stated that his marriage was arranged. He and his wife had little contact before the marriage, and they never lived together. Their fathers were [related]. For the first twelve months they were not on bad terms and the applicant wanted to progress the marriage, but his wife was very dependent on her family and resisted "taking the next step"; her family "disturbed" the applicant a lot.
7. At the end of 2009 he received a subpoena for payment of the *mahr*, or dowry, equivalent to approximately USD[amount 2]. [In] January 2010 he was sent to prison because he had not paid. He was imprisoned on and off until [a day in] May 2012. He said that thirteen days after the first imprisonment he was released on bail for one month. He was then returned to prison for periods of one month, three months, five months, and six months. After the six month term, he was freed for eleven months before returning to prison. He was freed for the last time [in] May 2012. He decided to go to Australia at the beginning of May 2013. He claims that he will not be able to pay the *mahr* if he returns so he will be imprisoned again. This will cause him significant distress, as he was suicidal during his previous imprisonment. He saw a number of people in a similar situation who had committed suicide.

¹ Also referred to as the "*mehr*" and the "*mahr*" in Persian, and the marriage portion or dowry in English.

8. He claims that one and a half years ago (which would have been around early 2016, as the SHEV application was lodged in July 2017) he received a threat from his wife's [uncle] "via [a named app]". He claims that his wife's [aunt] is a [official 1] of the court where he was previously convicted. He was told that after his departure, his wife's family reported him to the authorities for being a Christian, and "political". He denied the allegations "but it won't persuade them". When he discovered what they had done he used foul language, which they said would be tendered to the court. He is afraid that if he returns to Iran he will be wrongfully accused of offences that he did not commit. He claims that there are many people in prison in Iran who have been wrongfully labelled as Christians.
9. He claims that before his imprisonment he was harassed by the *basij* because he has tattoos. He was beaten, but was released when he paid a bribe.
10. At the SHEV interview, held on 29 July 2021, the applicant repeated his main claim that he was imprisoned and subjected to a lashing for failing to pay the *mahr* owed when his marriage broke down.
11. He said that he is not sure whether the divorce is finalised; he thinks it has been, but he has received no papers.
12. He was asked why his wife's family made problems in the marriage, given that they had arranged it. He said that some families deliberately create problems in order to collect the *mahr*. He said that normally the man is not imprisoned for very long, but because his wife's family had connections he was imprisoned for a long time and was also subjected to a lashing.
13. It was put to him that he had given different dates for the imprisonment at the arrival interview, where he had said he was in prison for two longish periods, and in the SHEV application, where he indicated that he was imprisoned for several periods and released for months at a time. He said that the court orders he had did not reflect the actual time that he was in prison, and that he was given leave on several occasions. He said that at the time he left for Australia he was on leave, having paid some money. The interpreter indicated that it was not clear what was meant by this, but it was not followed up. The applicant indicated that he was not banned from leaving at the time, but said that a departure ban was put in place afterwards. He said that his mother sold her gold jewellery to pay the money for his release. Asked how he knew about the departure ban, he said that his wife's relatives had said at a family gathering that they had him banned so he would be arrested on return.
14. Asked about his experience in prison he said that there were lots of fights with knives, and he was really depressed. He was held in [Prison 1] and also in [Prison 2].
15. He said that his wife's [uncle] threatened him in 2015 or 2016, saying that he was going to make the applicant's life hell, and accusing him of having become a Christian, and political. The applicant said that he became so angry that he insulted the government and the leader, and the uncle said that they would use his words against him. He clarified that it was [another relative] of his mother-in-law who was a [official 1], not his wife's [aunt] as stated in the SHEV application.
16. The applicant indicated that he and his wife loved each other, and it was her family that was causing the problems. He repeated that he would like to bring her to Australia.
17. Asked why he had not left Iran in [2012], when his passport was issued, he said that he did not have the money at that time, and then he was imprisoned again.

18. The applicant was asked whether he is a Shia and said that he is an atheist, he no longer has a religion, he just does not want it any more and does not practise in Australia. Asked about his tattoos, he apparently indicated that they are on his upper arm or shoulder. He indicated that he was not formally arrested by the *basij* in relation to his tattoos, but he was beaten.
19. He said that he had no difficulty on departure. However, if he returns he could be imprisoned again; he still owes the money, it is a huge amount and he will never be able to pay it all and the family will not let this amount of money go. There are also the threats he has received and the derogatory things he said in response.
20. After the SHEV interview the applicant provided documents, as requested by the delegate. These were:
- A notice dated [in] May 2011 addressed to the Director of [Prison 1] in relation to bail of [amount 3] rials for a specified case number ([number] of [December] 2010)
 - “Prisoner’s Status Announcement” issued by [Prison 1] stating that the applicant was detained [in] May 2012, was handed over to the prison [in] May 2012, and “kept in” on [that day in] May 2012. It stated that his first sentence by the Family Court commenced on [that day], and that he was convicted for “financial conviction (alimony)”. It also stated that on [that day] May 2012 he was convicted for a second sentence for “financial conviction (mahr)”.
 - “Prisoner’s Status Announcement” issued by [Prison 1] “reported on” [a day in] July 2012, stating that the applicant was “present in cell” with last status dated [a day in] May 2012. It referred to his first sentence for “financial conviction (alimony)” and stated, “Date of beginning sentence, ending sentence and ending penalty [on that day in] May 2012”; and his second sentence for “financial conviction (mahr)” also “Date of beginning sentence, ending sentence and ending penalty [that day in] May 2012”. The document states “Recapitulation: Imprisonment set from [that day in] May 2012 to [the same day in] May 2012”.
 - A notice issued by the Family Court [in] May 2013, ordering the applicant to pay [amount 4] tomans for alimony, plus additional legal costs and a sum payable to the public purse.
21. The applicant had expressed concern at the interview that the dates in the documents might be wrong or incorrectly converted and the delegate told him not to worry as she would work it out. He also stated that the court documents stated the total period of imprisonment and did not include the periods when he was released on leave.

Delegate’s decision

22. The delegate refused to grant the visa. She accepted that the applicant had been imprisoned for failure to pay the *mahr* but found that he had overstated the amount of money he owed. Referring to the most recent document submitted by the applicant, the order issued by the Family Court [in] May 2013, she found that he owed the sum of [amount 4] toumans, the equivalent of [amount 5]USD, not the sum of [amount 2]USD that he had claimed. She found that this was not an excessive amount, which he could easily pay and thereby avoid imprisonment. The delegate noted that the applicant was released on bail of [amount 3] rial and queried why he could not have used this money to pay the money he owed to his wife. She also noted that he is working and earning an income in Australia.

23. She noted that he was able to depart Iran using his own passport without issues, indicating that he was not of interest to the authorities at the time.
24. The delegate stated that there was no reason to doubt that the translations provided by the applicant were done from original Iranian documents, and she did not question the authenticity of the documents. The delegate noted that although the applicant claimed the marriage broke down sometime in 2008, it was not until 2010 that he received a subpoena requiring him to pay the sum of [amount 2]USD. He stated at the SHEV interview that he was last released from prison in January 2013, but the documents he submitted showed that he was imprisoned from May 2011 to May 2012.
25. She did not accept that threats to make political and religious accusations against the applicant had been made by his wife's relative, because there was no evidence to support the claim that such threats had been made. The applicant had stated that he was not a Christian and not political, and the delegate found that there was no evidence to support the allegations made against him. The delegate did not accept that the applicant would be at risk of harm because someone had alleged that he was a Christian and politically active in Australia.
26. The delegate noted that the applicant indicated at the SHEV interview that his tattoos were at the top of his arm near his shoulder, and stated in the Decision Record that the tattoos were not visible at the SHEV interview. She found that it was possible for him to cover the tattoos and did not accept that he would come to the attention of the authorities for this reason.
27. In her assessment under the Complementary Protection criterion the delegate referred to a previous finding, said to have been "discussed above" (presumably in relation to the refugee criterion) that the applicant did not face harm as a failed asylum seeker, but in fact no such finding was made. The applicant has not claimed at any stage, including to the IAA, that he faces harm on return to Iran as a failed asylum seeker. I consider that the reference in the Decision Record to a finding that the applicant did not face harm as a failed asylum seeker is an error, given that the applicant himself has not claimed to fear harm on this basis. In the circumstances I have not considered whether the applicant is at risk of harm on return to Iran because he would be returning as a failed asylum seeker as I do not consider such a claim was made or arises on the material before me.

Information before the IAA

28. As noted above, I have had regard to the review material.
29. On 1 December 2021 the applicant's legal representative provided the IAA with a submission and a number of documents. The submission primarily addresses the delegate's findings and decision, and sets out arguments as to why the new information comprised of the documents should be considered. To this extent, I am of the view that the submission itself is not new information, and I have considered it.
30. The submission argues that the delegate confused the legal obligations to pay *mahr*, and alimony or spousal maintenance. After the SHEV interview the applicant had provided the delegate with the court order requiring that he pay [amount 4] toumans alimony, and a document from [Prison 1] confirming his convictions for failure to pay alimony and *mahr*. However he inadvertently failed to provide the marriage deed requiring him to pay [amount 1] gold coins *mahr*. It was noted that the applicant had only recently obtained the copy of the marriage deed from his family, which confirms what he had said at the entry interview - that he owes *mahr* in the amount of [amount 1] gold coins.

31. It was submitted that the amount that the delegate found was owed by the applicant- [amount 4] toumans ([amount 5]USD) - was in fact the amount of spousal maintenance. It is the *mahr* which the applicant is unable to repay; as at the date of the submission, the current price of one Bahar Azadi gold coin was 502.60 USD, so the total unpaid *mahr* is USD[amount 6]. The monthly instalment payable is one quarter gold coin, value USD191.60. The delegate found that in 2013 the minimum monthly wage in Iran was the equivalent of USD303.
32. It was submitted that the new information comprised of a media report and internet legal advice confirms that according to new Iranian laws a husband must pay at least 110 gold coins to avoid gaol. This means that if the applicant does not pay, he will be subject to an indefinite gaol term. The submission reiterates a claim already made by the applicant, that by leaving Iran eight years ago he breached the court order and failed to pay monthly instalments, so his ex-wife has the right to seek an order for his arrest.
33. It was submitted that the delegate failed to afford the applicant the benefit of the doubt because she was not satisfied of his general credibility, mainly because she found that the money he owed was not the excessive amount that he claimed; however, it was submitted that the applicant had in fact stated the correct amount, as demonstrated by the documents now provided.
34. It was submitted that the new information should be considered because the applicant was not represented at the SHEV interview. He was confused about the documents he had to provide. He did not refer to his obligation to pay alimony because it was not a significant amount, however he inadvertently provided documents about the alimony rather than the *mahr*. He also inadvertently failed to provide his marriage certificate and the translation of his *shenasnameh* which records the marriage. This was inadvertent and due to his lack of legal representation. It is submitted that this new information is credible and if known to the delegate could have affected the decision. It is submitted that there are exceptional circumstances to justify consideration of the new information.
35. It is submitted that the “open-source material” is provided in response to the delegate’s confusion about *mahr* and spousal maintenance, and that these documents could not have been given to the delegate before she made the decision because she did not raise her concerns about this.
36. The documents provided are:
- Translation of the applicant’s *shenasnameh* showing that he was married [in] April 2007
 - Copy of original and translation of the applicant’s Marriage Deed stating that the marriage portion is a Holy Quran and [amount 1] full Bahar-e-Azadi gold coins
 - Copy of original and translation of a subpoena dated [in] October 2012 issued by the Tehran Family Court stating that the applicant is sentenced to pay the marriage portion of [amount 1]
 - Media report “Iran pre-nups land thousands of men in jail”
 - An internet legal advice on “Penalty for non-payment of dowry instalments”
 - “Bullion by Post” advice as to value of the Iranian Bahar Azadi (500USD) as on 30 November 2021 –
 - “Bullion by Post” advice as to value of a one quarter Iranian Bahar Azadi (192USD)
 - XE currency exchange conversion USD to AUD for the amount of \$[amount 6]

37. An untranslated copy of the *shenasnameh* was provided with the SHEV application, and I do not consider it to be new information. If I were wrong in this, and the translation is new information, the applicant has satisfied me that it is credible personal information which was not previously known, and had it been known, may have affected consideration of the applicant's claims: s.473DD(b)(ii). Because it is an important identity document and contains information relevant to a key claim and a key finding of the delegate, having regard to my finding that s.473DD(b)(ii) is satisfied and even though I am not satisfied that the information could not have been provided to the delegate before the decision was made, I am satisfied that there are exceptional circumstances to justify considering the translation, and s.473DD(a) is satisfied. On either view, I have considered the translation.
38. The Marriage Deed and the Family Court subpoena dated [in] October 2012 are new information that was not before the delegate. Both documents were in existence long before the delegate made her decision and it appears that the applicant could have obtained them from his family, but it is argued that he "inadvertently" failed to provide them to the delegate with the documents that were discussed during the SHEV interview and which he did provide after the interview. In these circumstances, and notwithstanding that the applicant was not legally represented at the time, I am not satisfied that the documents could not have been provided before the decision was made, so s.473DD(b)(i) is not satisfied. The applicant has satisfied me, however, that both documents comprise credible personal information that was not previously known to the delegate and which, if known, could have affected consideration of the applicant's claims: s.473DD(b)(ii). Having regard to these findings, I am also satisfied that there are exceptional circumstances to justify considering the information. The delegate gave the impression at the SHEV interview that there was no issue as to the credibility of the applicant's claim that he owed a large sum of money as *mahr*, and when he provided a document after the SHEV interview indicating that he actually owed a smaller sum of money by way of alimony rather than *mahr*, she formed an adverse view of his credibility, even though other documents provided by the applicant at the same time indicated that there were two separate amounts owed. I am satisfied that, as the representative's submission argues, the delegate was confused about the nature of *mahr* and alimony, and what financial obligation the applicant owed to his wife. I am satisfied that there are exceptional circumstances to justify considering this information because the delegate's apparent confusion about this issue was the main reason for her refusal of the application and also led to a generally adverse credibility finding about issues that were not explored fully at the SHEV interview.
39. The media report and the internet advice apparently predate the delegate's decision and even though the applicant was not represented at the time, the applicant has not satisfied me that the documents could not have been provided to the delegate before she made the decision: s.473DD(b)(i). They are not credible personal information as they relate to general circumstances in Iran, and in particular the operation of laws regarding dowry obligations and the possibility that men may be imprisoned if they fail to pay *mahr*: accordingly, s.473DD(b)(ii) is not met. The delegate accepted, as do I, that men can be imprisoned in Iran for failing to meet obligations to pay *mahr*. Like the delegate (but for different reasons) I have not accepted that the applicant has outstanding obligations in relation to the *mahr*, nor that he owes an outstanding debt in this regard. The consequences of non-payment are therefore not relevant to my consideration of the application. I am therefore not satisfied that there are exceptional circumstances to justify considering this new information. None of the provisions of s.473DD are met and I have not considered this information.

40. As to the information relating to the exchange rate current at the date of the submission, the applicant has satisfied me that it post-dates the delegate's decision and could not have been provided before it was made, so s.473DD(b)(i) is satisfied. The applicant has not satisfied me that the information is credible personal information, and s.473DD(b)(ii) is not satisfied. As I have not accepted that the applicant has outstanding obligations in relation to the *mahr*, nor that he owes an outstanding debt in this regard, it is not necessary to calculate the amount owed according to an up-to-date exchange rate. I am therefore not satisfied that there are exceptional circumstances to justify considering this new information, even having regard to my finding in relation to s.473DD(b)(i).
41. I invited the applicant to attend an interview on 10 February 2022 to provide new information in relation to several critical issues that had not been explored. To the extent that the applicant provided new information at the IAA interview (discussed below), the applicant has satisfied me that the information was not, and could not have been provided to the delegate because she did not ask for it at the SHEV interview and he did not understand that it would be important to the consideration of his claims: s.473DD(b)(i) is satisfied. The applicant has satisfied me that it is personal credible information, in that it is capable of being believed; it was not previously known; and if it had been known it could have affected the consideration of the applicant's claims. Because the information is central to the applicant's claims and relates to key issues which were not explored, or were not fully explored by the delegate, I am satisfied that there are exceptional circumstances which justify consideration of the information. I am satisfied that the requirements of s.473DD(a), (b)(i) and (b)(ii) are met, and I have considered the new information.

Information given at IAA interview

42. The applicant first of all clarified his exact marital status. He said that he and his wife underwent the official, religious marriage in April 2007. The wedding and consummation were supposed to happen later. I put to the applicant country information (referred to by the delegate in the Decision Record) indicating that sometimes a portion of the *mahr* is paid at the time of the religious wedding, with the remainder payable on consummation²; the applicant said that he was led by his wife's family to believe that they would never, in fact ask for the *mahr*. However, he said that there is now "like a business in Iran", where a dowry is agreed on the basis that the husband never expects it to be requested, but the wife's family do demand it and the husband is put in gaol if he cannot pay. I asked the applicant about country information indicating that if the marriage is not consummated the wife is not entitled to the full dowry. He said that is correct, and because their marriage was not consummated his wife by law is only entitled to half the amount of *mahr*; however, she can claim the full amount and the court then has to decide whether the marriage was consummated, and how much she is entitled to.
43. The applicant said that his wife first demanded the *mahr* one year to eighteen months after their marriage. He responded by asking that they live together but she refused. He went to stay with his sister, knowing that if he did not pay the police would be looking for him. He was gaoled for the first time in January 2010, for thirteen days.
44. Asked about the circumstances in which he was released from prison, he said that his family provide a surety in the form of the title deed to a property. The same surety was used each time he was released. He said that in the end, the court ordered that he pay the *mahr* by instalments, and the alimony; he made three or four payments pursuant to the order, and then received a

² 'Family Law in Iran', University of Leiden, Sen McGlenn, 01 January 2001, CIS20919, pp 53-54

letter from the court saying that the surety was released. He does not know why this happened and thinks it might have been an error. The applicant was able to leave Iran during this time.

45. He said that he was required to pay one gold coin per month, about 1.5 million toumans, for the *mahr*, in addition to the alimony: this was reflected in the court order dated May 2012. At the time he earned five hundred thousand toumans per month, at most. When he could not keep up the monthly instalments his wife went back to court and further summonses were issued.
46. I asked the applicant why he was required to pay alimony at all, given that he and his wife had never lived together. He agreed that she was not legally entitled to it but said that due to her family's influence through his wife's mother's [relative], they were able to obtain this order.
47. He said that he thinks his family paid about five to seven million toumans over three to four instalments as *mahr*; and another five to six million in alimony, "even though she had never been to his house". He said that his mother sold her jewellery to raise the money.
48. The applicant said that he was released from prison for the last time in January 2013, not in May 2012 as he stated at the SHEV application. I noted that this evidence was supported by one of the documents he has submitted indicating that he was in [Prison 1] in September 2012, and he also stated at the arrival interview that he was last released in January 2013.
49. I asked why there was no travel ban in place when he left Iran. The applicant's explanation was that normally a person who has not done compulsory military service is not allowed to leave Iran. He had an exemption from military service, but his wife's family did not know this, so they did not seek to have a travel ban imposed on him, thinking this was not necessary as he would not be allowed to leave anyway. He said that he went to the passport office to see whether there was a travel ban in place, and when he saw that there was not, he applied for his passport and left straight away.
50. I put to the applicant that my understanding was that it was not up to his wife's family to have a travel ban imposed, but that this would be done by the court. He said that under Iranian law his wife's family would go to court and seek the travel ban. He said that a court might impose a ban if you have murdered someone, but not for a civil matter. I put to the applicant information from the DFAT report stating that travel bans may be imposed for civil debts and if there are outstanding court orders.³ I asked again when he checked to see whether there was a travel ban and he said that he checked when he got his military service exemption, and again a couple of months before he left. I put to him that DFAT stated that a person might not know that a ban is in place until they get to the airport and try to leave⁴; this appeared to contradict his evidence that he went somewhere in advance to check this. The applicant maintained that he was able to do this. He said that he is Iranian and knows best what happens there. I also noted that the applicant's passport was issued in [2012], not just before his departure, as his initial evidence about when he checked for the travel ban suggested.
51. I asked how he knows there is now a travel ban in place and he referred to the conversation at the family party, which he had mentioned at the SHEV interview.
52. I asked the applicant about the lashing. He said that it happened the second or third time he was taken to prison in 2010. It was in [Prison 2] and was done pursuant to a court order. He is not sure which court made the order, but thinks it may have been the Family Court. He was given

³ DFAT Country Information Report—Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132 para 5.24

⁴ Ibid

[number] lashes. He indicated that he cannot say whether he was lashed because of the influence of his wife's family; or because of the court itself. He said that it might have been because he was late returning to prison. I asked him to confirm, in that case, that the lashing was a punishment properly imposed by a court. He said that he thinks the law does not allow them to lash him for that reason, but his wife's family intervened and got them to use that excuse. He said that two prisoners were late back; while the other one was fined, the applicant was lashed.

53. At the SHEV interview the applicant stated that he was stabbed by two drunk men one year before he was sent to prison. At the IAA interview he raised this again, at first saying that he does not know if this was connected to his marital problems, but then suggesting that he thinks it was, because of the timing: he said that it happened one year after the marriage was registered.
54. The applicant said that his family is not that well off; they are just "ordinary". His father used to be [an occupation 1] but now the costs are too high so he does not do it any more. He does not know if his father owns properties other than the family home; the applicant does not like to ask in case his father thinks he is asking for money. He thinks if his family could afford to pay the *mahr* they would. I asked whether his wife's family was under the impression that his family was wealthier than they really are, and he said that he does not know.
55. I asked the applicant about two Family Court orders that he has submitted; the earlier one dated May 2012 indicates that he owes both *mahr* and alimony, while one dated May 2013 only refers to alimony. I asked if he knew why this was, noting that this might suggest that the *mahr* had been paid by the date of the second order, and that all he owed was alimony. The applicant first of all said that the alimony included the *mahr*, but I pointed out that the country information indicates that they are separate entitlements, and the other Court Orders referred to them separately. The applicant then said that his life has been ruined, he has depression and has been separated from his family for a long time. He said that he still owes the *mahr* and he has been unable to find the document referring to this. He said that his family have been to the courts to try to get documents and have obtained what they can, but the last time the court said that the documents have been destroyed. The applicant said that he thinks his wife's family realised that the documents would be useful to help him stay in Australia and intervened to make sure that he could not get them.
56. I put to the applicant that it was surprising that the last court document he had submitted was dated May 2013, if it was the case that the matter was still ongoing. He said that this wife's family has realised that he left the country, and also they have put obstacles in the way of his family obtaining court documents. I asked why he had not given the delegate all the court documents after the interview. He said that he did not have them all, he had to get the others from his family.
57. I asked the applicant why he had never mentioned the fact that he owes alimony as well as *mahr* until this became an issue in the delegate's decision. He said that because the "huge amount" is the *mahr* he did not bother to mention the alimony.
58. Asked about the influence of his wife's relative, he provided her name and said that she is either [an official 1], an [official 2] or she may even be [an official 3], but she is very influential. He said that the court ordered that he pay alimony, which he was not legally obliged to do, because of the corrupt influence of this relative. He said that he has met the relative; they know her because his and his wife's families are related. He said that it is not possible for him to appeal against the orders of the court because you need money to do that.

59. The applicant said that he doesn't know whether his wife has divorced him; by law she can do so because he has been away for more than five years. I put to him that the country information indicated that if she divorced him, and the marriage had not been consummated, she would only be entitled to half the *mahr*.⁵ The applicant said maybe, but because of her family's contact in the court they can do whatever they want.
60. I asked the applicant about the statement he had made several times that he hoped to bring his wife to Australia; I asked whether this indicated that they were not divorced and that the financial issues had been settled. He said that he used to love her, but after everything that has happened he doesn't think he would want to revisit the marriage.
61. I asked the applicant about the threat he claimed to have received in Australia from his wife's uncle and his angry response that he claims will be used against him. He said that the threat, and his response, were in writing on the [a named] app. He said that he no longer has the messages; he used to have a screenshot but he thinks he has lost it and he no longer has that phone or email. I put to the applicant that he must have known this would be important evidence and I was surprised that he had not submitted it. He said that he would try to find it. I gave the applicant until the following Monday, 14 February 2022 to provide the screenshot. I said that I was surprised that he would be so silly as to respond to the claimed threat with insults against the Iranian government and the supreme leader, in writing. He said that he knows he made a mistake, he said those things in anger and he thought that he would not be going back to Iran. I asked why this threat would have been made two years or more after he left Iran. He said that his wife's family was angry that he had left the country and they did not have his phone number before then.
62. Asked what he fears on return, the applicant said that he will be imprisoned because of the unpaid debt, and now his wife's family alleges he has become a Christian and a political activist, and there are the written insults against the government and the supreme leader, so he could be executed.

Refugee assessment

63. 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

64. 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

⁵ 'Family Law in Iran', University of Leiden, Sen McGlenn, 01 January 2001, CIS20919, pp 53-54;65

- 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.

Identity and nationality

65. With the SHEV application the applicant provided untranslated identity documents including a copy of his Iranian passport issued in [2012], his birth certificate, drivers licence and military conscription card. He subsequently provided a translation of the birth certificate.

66. I am satisfied that his identity is as claimed and that he is a national of Iran. Iran is the receiving country for the purposes of the application.

Unpaid dowry claims

67. I have a number of concerns about the applicant's claim that he will be imprisoned on return to Iran because of unpaid dowry or *mahr* and alimony owed to his wife. Elements of his claims have been presented consistently since his arrival, but I consider that there are a number of anomalies in his oral and documentary evidence that cast doubt on his claims to have an ongoing and outstanding liability.

68. It is not in doubt that the applicant married his wife in April 2007. The applicant has consistently stated, since his arrival, that he fears returning to Iran because he cannot pay the dowry owed to his wife, and that the value of the dowry is [amount 1] gold coins. This is consistent with the marriage contract. However, on his own evidence given at the IAA interview, which is consistent with the country information, it appears that his wife is only entitled to half the amount of *mahr* agreed on, because the marriage has not been consummated.

69. The delegate concluded that the applicant did not owe the large sum of *mahr* that he claimed, but rather the smaller amount of alimony referred to in the most recent court document, dated May 2013, which he submitted to the delegate after the SHEV interview. Prior to this, the applicant had never mentioned that he owed alimony to his wife in addition to the *mahr*. At the IAA interview he explained that he had not mentioned that he owed alimony because the amount of alimony was insignificant compared to the *mahr*. The applicant concedes that under the law he is not liable for alimony because he and his wife never lived together; but he claims that because of her family's connections in the Family Court they have been able to have the claim accepted.

70. I am of the view that the applicant has not been entirely truthful in putting forward his claims. While he has consistently stated that he owes [amount 1] gold coins as *mahr*, when pressed, his claims have shifted somewhat. For example, he conceded at the IAA interview that his wife is only entitled to [smaller amount] gold coins because the marriage was not consummated. He said that he never mentioned that his wife was also claiming alimony (and this only emerged

because of a document he gave the delegate after the SHEV interview) because the amount was small; yet the country information indicates, and the applicant agreed, that his wife is not legally entitled to alimony because they never lived together. He says that she was able to make the claim because of the influence of her relative. These omissions of important details from his account - that his wife is only entitled to half the *mahr* and that she has also claimed alimony, which forms part of the debt that the applicant claims to owe, lead me to have doubts about the reliability and credibility of his evidence overall.

71. Like the delegate, I am concerned by the fact that the last court document provided by the applicant dates from May 2013, and curiously refers only to the outstanding debt for alimony, not *mahr*. The applicant has sought to explain this on two apparently inconsistent bases – that the amount of alimony included the amount of *mahr*; and that the *mahr* and alimony comprised two separate debts, and two separate cases. However, I note that other documents submitted by the applicant clearly refer to both debts, as separate matters and as the subject of two separate legal proceedings. I do not find the applicant’s explanation persuasive, and as noted above, I do not consider that his evidence about exactly what he owes, and why, has been completely truthful.
72. I do not find the applicant’s evidence about the influence of his wife’s relative to be persuasive or credible. He has provided different versions of the exact relationship of this person to his wife, but I accept that this could be due to interpretation error. Of more concern is that while initially he stated that the person is [an official 1] of the Family Court, at the IAA interview he said that she might be [an official 1], an [official 2], or even [an official 3]. Given the extent of the influence that he says this person can exert - claiming that she has allowed his wife to claim and enter judgment for amounts to which she is not entitled under the law, namely the full amount of *mahr* and alimony; that she was instrumental in the applicant being imprisoned for longer periods than he should have been, and for him being subjected to lashes; and for preventing the applicant’s family from obtaining documents from the court - I would expect that he would be able to state precisely what this relative’s role was, especially as he also claims that he has met her. I also have some difficulty accepting that one person would have been able to exert such corrupt influence over so many aspects of the judicial process. Given all of these problems with the applicant’s evidence about this matter, I am not satisfied that his wife had a relative who worked in the Family Court system who was able to use her influence to corruptly assist the applicant’s wife in the ways claimed.
73. I do not accept the applicant’s claims about the reason why he was not subject to a travel ban and was able to depart from Iran without difficulty despite claiming to be in the midst of court proceedings, with a judgment debt owing. DFAT says that the authorities impose travel bans for reasons including financial debts and outstanding sentences awaiting enforcement, and on citizens with ongoing charges or outstanding court matters, and on those released on bail or parole.⁶ Based on this information, I am satisfied that had the applicant faced an outstanding debt at the time of his departure, and if court proceedings in relation to a debt were ongoing, it is highly likely that he would have been subject to a travel ban which would have prevented him from leaving Iran on his own passport. I do not accept the applicant’s explanation, provided at the IAA interview, that it was up to his wife’s family rather than the authorities to have a travel ban imposed, and that they did not do so because they assumed he would already be banned from travel because he had not performed his compulsory military service. The applicant’s claims in this regard appear to be purely speculation, and I formed the impression that they were made up on the spot to address my concern. Further, given that Iranian males become

⁶ DFAT Country Information Report—Iran’, Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, para 5.24

eligible to perform military service at the age of eighteen,⁷ and the applicant was [older] when he married, I do not consider it plausible that his wife's family would have believed that he had outstanding military service obligations and assumed that he would not be allowed to travel for this reason. The applicant initially said that he had checked on the existence of a travel ban when he obtained his passport, and that he had left soon afterwards; however his passport was issued in [2012] and he did not leave until June 2013. His evidence thus appears to have been misleading and indeed he subsequently made a different claim, indicating that he checked on the ban when he received his military service exemption and again a couple of months before he left. DFAT's advice that often a person does not know that they are subject to a ban appears contrary to the applicant's claim that it is possible to check; and it does appear unlikely, as a matter of common sense, that such information would be readily available for anyone to check. The applicant's evidence on this issue appeared to shift and change, and in my view is not consistent with the country information. I am not satisfied that the applicant has been truthful about the reason why there was no travel ban in place.

74. Nor do I accept that the applicant was released from his surety in error at the beginning of 2013, after he had paid three or four instalments of the outstanding debt; I consider this claim inherently implausible and consider it more likely that the surety was released, correctly, because his outstanding obligations were settled. I am satisfied, based on the country information, that the reason why no travel ban was in place was because he was not on bail, he had been released from the surety, and he had no outstanding legal liability.
75. Considering the applicant's evidence as a whole and taking into account the various problems identified above, none of which might be sufficient on its own to call into question the applicant's entire account which to some extent is supported by documentary evidence and country information, I am not satisfied as to key aspects of his claims. I am satisfied that the applicant was able to leave Iran without difficulty because he was not subject to a travel ban, and I am satisfied that this was because he did not have an outstanding debt, and did not have outstanding court proceedings. I accept, based on the applicant's consistent evidence, which is supported by country information and some documents, that at some point he owed a sum of money to his wife or former wife. I note that the applicant has now conceded that he was not legally liable either for the full amount of *mahr* or for alimony, but says that his wife could claim these amounts because of the influence of her relative, a claim I have not accepted. I accept that for some years prior to his departure the families were engaged in acrimonious legal proceedings. However, I am not satisfied that any debt remained outstanding at the time of the applicant's departure from Iran, or that he would be liable for it, or for any judicial sanction or penalty arising from it, if he returns to Iran. Accordingly, I am not satisfied that there is a real chance that he would face a further term of imprisonment, for the reasons claimed or for any other reason arising from the credible evidence before me, if he were to return to Iran.
76. While the applicant claims that he was imprisoned for longer periods than usual, and that he was subjected to a lashing imposed outside the usual operation of the law because his wife's family were able to use their influence in the Family Court, I do not accept this. I am satisfied that the applicant was released from prison when he made payments in accordance with the court order, and was re-imprisoned when he failed to do so, in accordance with the normal operation of the law.
77. As to his claim that he was lashed, his evidence at the IAA interview that this was a punishment imposed at the behest of his wife's family and due to their influence was not at all persuasive.

⁷ DFAT Country Information Report—Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, para 3.159

The applicant indicated that the lashing was done once, in 2010, by order of the court, possibly because he was late returning to prison after a period of leave. He acknowledged initially that he could not say that it was done because of the influence of his wife's family. For the reasons given above, I do not accept the applicant's claims about the influence of a relative of his wife that enabled her family to subvert many aspects of the operation of the law as it affected him. Having stated initially at the IAA interview that he did not know if his wife's family was responsible for his having been lashed, he subsequently tried to put a gloss on the evidence to say that he did not think the law allowed him to be lashed in those circumstances, and that it was done because of the intervention of his wife's family, claiming that two prisoners were late back and only he was lashed, while the other one was fined. Overall, I am not satisfied that the applicant was subjected to a lashing, in effect, extra-judicially, at the request of his wife's family. His initial response indicated that he did not, in fact, think this was the case; and his subsequent attempts to suggest otherwise appeared to me to be speculative and somewhat implausible embellishment. I do not accept that the applicant was subject to a lashing in the past other than on one occasion under the operation of law. In any case, as I am not satisfied for the reasons given above that the applicant faces a real chance of further imprisonment because he owes *mahr* to his former wife, it follows that I am not satisfied that there is a real chance that he would be subject to any further lashing or additional mistreatment because of the influence of his wife's family. I am therefore not satisfied that he would be subjected to any extra-judicial punishment or differential mistreatment on return, imposed on a discriminatory basis, that could constitute persecution.

Threat by wife's uncle

78. I do not accept that the applicant was told that his wife's family had reported him for having become a Christian and a political activist in Australia, or that the applicant was threatened and provoked by his wife's uncle into writing damning insults about the Iranian government or the supreme leader.
79. The applicant claims that this occurred about eighteen months before he lodged his SHEV application, which was in mid-2017. For the reasons given above I have not accepted that the applicant owed an outstanding debt to his wife at the time of his departure. In these circumstances I do not consider the applicant's claim that he was threatened by his wife's uncle in late 2015 or early 2016, more than two years after he left Iran, believable. Moreover, I find the applicant's claim that he responded to a provocation by someone who he regarded as his enemy by abusing the government and the supreme leader in written communication, to be inherently implausible.
80. I note further that the applicant has not provided evidence of the claimed exchange between his wife's relative and himself, and I do not find the reasons for this credible. Although the exchange occurred some time before he lodged his SHEV application, he must have known that the exchange would be useful and important evidence in support of his claims; this is indicated by the fact that he says he took a screenshot of the exchange. I find it highly implausible that the applicant would have lost the screenshot without ever submitting it to the delegate. He was invited to provide it to the IAA, if he could find it, but he has not done so. I find the absence of evidence of the claimed exchange, and the applicant's explanation for this further diminishes the credibility of this claim.
81. I do not accept that the applicant has been reported to authorities by his wife's family for being a Christian or "political"; nor do I accept that he was threatened about this and responded to the threats with written insults against the government and supreme leader that would cause him to be at any risk of harm on return.

Tattoos

82. The applicant claims that on one occasion he was apprehended and beaten by the *basij* because of his tattoos, and was released when he paid some money. There is no information before me about when this occurred, or in what circumstances, or how the *basij* saw his tattoos. The applicant has not claimed to fear future harm because of his tattoos, and did not take issue with the findings of the delegate in this regard. The delegate asked the applicant about the tattoos at the SHEV interview, and he indicated that they were on his upper arms; the tattoos were evidently not visible to her, and she concluded that they would not generally be visible.
83. DFAT states that tattoos are increasingly popular, and young men with visible tattoos are commonly seen on the street, particularly in cities such as Tehran. DFAT is unaware of people being targeted by the authorities solely for having a tattoo, and suggests that in instances where men have been targeted for violations such as this, it is most likely the result of over-zealous enforcement by individual security authorities or because the individual had come to the attention of the authorities for other reasons, particularly political activism.⁸
84. I accept that the applicant was beaten by the *basij* on one occasion in relation to his tattoos, but I consider that this was a one-off incident exemplifying an unusually heavy-handed approach to enforcement of the dress code on that occasion. The applicant has not claimed that the beating occurred in the context of his interactions with the authorities in connection with the unpaid dowry, stating that it occurred prior to his imprisonment. He did not claim to have additional problems during his terms of imprisonment on account of his tattoos. Because I have not accepted the applicant's claims about having been accused of political activities or being a Christian, and because he does not claim to be or to have ever been politically active, I am satisfied that there is not a real chance that he would come to the attention of the authorities for these reasons, and I am satisfied that there is no real chance that he would suffer harm as a result of his tattoos being noticed in this context.
85. Based on DFAT's advice, the applicant's past experience, and the observations of the delegate that the tattoos are located on the applicant's upper arm and are not ordinarily visible, I am satisfied that there is no real chance that he would be subjected to harm now or in the reasonably foreseeable future because he has tattoos.

Stabbing

86. The applicant claims that he was stabbed by two men about one year before he went to prison. He did not mention this in the SHEV application. At the SHEV interview he referred to the incident briefly, and said that he does not know who the men were; he did not suggest that the incident was connected with his problems with his wife's family. At the IAA interview he initially said that he does not know if the stabbing was related to his problems with his wife, but then suggested that it might have been, because of the timing. He has said that the men were drunk. I accept that the applicant was stabbed by unknown drunk men, but I consider that it is mere speculation to suggest that this had anything to do with his marital issues. The applicant has not at any stage explicitly claimed that he fears future harm in connection with this incident, except to the extent that he has suggested that it demonstrates the enmity of his wife's family; however, I am not satisfied on the evidence that it was connected to his wife's family. Overall, I am not satisfied that the occurrence of this incident indicates that the applicant faces a real chance of future harm should he return to Iran.

⁸ DFAT Country Information Report—Iran, Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, paras 3.136-3.137

Religion

87. Although the applicant stated at the SHEV interview that he no longer follows Islam, he did not claim either at the SHEV interview or to the IAA, that he fears harm for this reason. He claimed that he had been threatened by a relative of his wife that he would be denounced for being a Christian in Australia, but for the reasons given above, I have not accepted that this occurred. The applicant does not claim to have engaged with Christianity at all in Australia. I am not satisfied that the applicant is at risk of harm in Iran for any reason relate to his religious beliefs or lack thereof.

Refugee: conclusion

88. 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

89. 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

90. 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.

91. 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.

92. The applicant has not made claims that he is entitled to complementary protection for any reasons other than those put forward and considered in relation to the refugee criterion. For the reasons given above, I have not accepted that the applicant would be imprisoned on return to Iran because he owes an outstanding debt to his wife. As discussed above, I have found that the applicant does not face a real chance of harm for any of the other reasons claimed. Based on the same information, and for the reasons set out above, I am also not satisfied that there is a real risk that he would face significant harm for these reasons.

Complementary protection: conclusion

93. 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.

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:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - 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
 - 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:

- conflict with a characteristic that is fundamental to the person's identity or conscience; or
- conceal an innate or immutable characteristic of the person; or
- without limiting paragraph (a) or (b), require the person to do any of the following:
 - 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;
 - conceal his or her true race, ethnicity, nationality or country of origin;
 - alter his or her political beliefs or conceal his or her true political beliefs;
 - conceal a physical, psychological or intellectual disability;
 - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - 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):

- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- the persecution must involve serious harm to the person; and
- 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 threat to the person's life or liberty;
- significant physical harassment of the person;
- significant physical ill-treatment of the person;
- significant economic hardship that threatens the person's capacity to subsist;
- denial of access to basic services, where the denial threatens the person's capacity to subsist;
- 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.