



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA22/10267

IRAN

IAA reference: IAA22/10270

IRAN

IAA reference: IAA22/10269

IRAN

IAA reference: IAA22/10268

Date and time of decision: 9 May 2022 11:01:00

G Deal, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicants comprise a husband (IAA22/10267) (the applicant) his wife (IAA22/10268) and their two sons, now [age](IAA22/10270) and [age] (IAA22/10269) years of age, respectively. The applicants claim to be stateless and from Isfahan, Iran. On [date] April 2013 they arrived by boat in Australia. On 3 May 2016 they lodged an application for a protection visa (visa application) with the Department of Immigration, now the Department of Home Affairs. In the visa application the applicant's wife and sons indicated they would be relying on the applicant's claims for protection and not raising their own claims. On 13 December 2016 the applicant was interviewed by a delegate of the Minister for Immigration (the delegate).
2. On 9 February 2017 the delegate refused to grant the visas. The delegate accepted the applicant was born in Iraq and lived as a refugee in Iran for a period and may have initially suffered certain difficulties as a refugee such as with employment but found certain aspects of the applicant's evidence relating to claims he and his family continued to live as refugees until departure from Iran in 2013, implausible, fabricated and overall, unsupported. The delegate also did not accept that when the applicants flew out of Iran at Imam Khomeini airport in 2013, that it was on fake passports as claimed, noting they did not experience any issues on departure, despite the country information indicating this was difficult and that the amount paid to people smugglers did not appear sufficient to cover both the journey as well as the claimed fake travel documents. The delegate also noted it was possible for the applicants to have obtained Iranian citizenship while in Iran under Iranian law. The delegate did not accept the applicants were stateless and concluded they had departed on genuine Iranian passports. Overall, the delegate found the applicants did not meet the relevant definition of refugee, did not face a real risk of significant harm and were not persons in respect of whom Australia had protection obligations.
3. The decision was affirmed by the IAA on 22 June 2017 (2017 IAA decision).
4. [In] February 2022 the Federal Circuit and Family Court of Australia (FCFCA), by consent, remitted the matter back to the IAA for re-consideration according to the law. The Minister conceded that the Secretary of the Department had breached s.473CB of the *Migration Act 1958* (the Act) by not providing the IAA with a copy of the written summary of the applicant's wife's arrival interview.

### Information before the IAA

5. I have had regard to the review material given by the Secretary under s.473CB of the Act.
6. I have obtained the 14 April 2020 report on Iran by the Department of Foreign Affairs and Trade (DFAT). I am satisfied there are exceptional circumstances to justify considering this recently published report which documents the conditions in Iran relevantly including in relation to the treatment of returnees and failed asylum seekers. It was published after the delegate's decision was made in 2017. The delegate relied on what is now quite dated information in making his decision.
7. By email dated the 25 March 2022 the applicant's representatives forwarded a submission and copies of five publications in support. The submission raises various arguments and provides

information that was before the delegate when he made the decision, which I have had regard and to, and to this extent it does not comprise new information. The submission also provides some new information in the form of new claims, and the publications provided post-date the delegate's decision and comprise new information.

8. At the primary stage while the applicant described himself as a Shia Arab, he did not claim to have suffered past harm or to fear harm on account of this. His central claim was that he and his family were stateless and that they suffered discrimination and mistreatment because of this. Indeed, the applicant did not provide much evidence about his claimed ethnicity other than specifying his ethnicity in forms and visa application and stating he did not speak much Arabic when asked about this by the delegate in the visa interview. The applicant now claims he and his family suffered discrimination and harm and fear discrimination and harm on account of being Arabs. The applicant claims that the children of his [sisters] who are in Iran "...go to school now and they face discrimination at school every day on the basis of their ethnicity. They are abused and mistreated by their teachers and the other students who are mainly of Persian ethnicity. The Iranian Authorities do nothing about this. I am afraid that my family will be treated just as poorly if we return to Iran. In Australia if you are discriminated against the authorities will help, but not in Iran. People are mistreated and disrespected for being of Arabic ethnicity in Iran. My sisters are considered second class and are humiliated for being Arabic. They are not offered employment just due to them being of Arabic ethnicity. It is Iranian society that treats ethnic Arabs so poorly; the Persian Iranians who are the majority in Iran. The government and authorities are Persian Iranians too and do not protect ethnic Arabs from society's discrimination against us". He also states "...the harassment and mistreatment we suffered was often verbal, being called 'You Arab' in an offensive way by locals. It was difficult to get employment... My son was harassed and abused at school and many times came home crying, saying he had been beaten by local students and called names. He was once beaten with a wooden stick. When I went to the school regarding this, the officials would automatically take the side of the local Persian student". This is new information.
9. The applicant submits that the information about his sisters' families is credible personal information which was "...not previously known (because it is about their lives now in Iran) and may have affected consideration of my claims, had it been known". He also submits that the publications all post-date the delegate's decision. He submits that there are "...exceptional circumstances to justify considering this new information, as it is essential to any meaningful assessment of *refoulement* if I were forced to return to my home country. The information is essential to a meaningful assessment of my claims for protection pursuant to s36 of the Act."
10. The applicant appears to be asserting that he could not provide details now provided about his sisters and their children in Iran until now because these events are a more recent development. He appears to be asserting that as the children go to school "now" these issues have arisen. As an aside he has also erroneously said he has [sisters] in Iran although one of these sisters has lived in Australia since the early 2000s. His sisters in Iran are not young, they are in their [age range] and without more like the children's ages it is difficult to believe that his sisters' families are only now experiencing the issues claimed. I find the applicant's assertion that he could not provide these details about his sisters and their children's lives until now as it is only a recent development, unpersuasive and I do not accept it. His explanation also does not explain the late provision of the overarching claim that he and his family fear harm on account of their Arab ethnicity or the examples now provided of his own family's claimed mistreatment as Arabs in Iran which is more relevant. I cannot find any compelling reason to explain why this overarching claim and the examples in relation to his own family were not provided earlier, particularly given the applicants were represented at the primary stage, had suitable opportunity to provide all their claims and supporting information,

including an extension of time after the visa interview to provide anything further, and were warned they might not have another opportunity to do so if the application were refused. The claim of a fear of harm on account of Arab ethnicity and the claimed examples of this are only now being provided after both the delegate in his decision in 2017 and the IAA in the 2017 IAA decision did not accept the applicant's main claim that he and his family were stateless. The issue of his ethnicity was touched on in the visa interview when they spoke about whether he spoke any Arabic and he had other opportunities in that interview to mention these claims, but he did not. If they feared harm as Arabs having been mistreated in the past as they now claim, it is simply not plausible that he would not have mentioned this and at least their own claimed mistreatment earlier. In all the circumstances, I do not regard this information as credible. I am also not satisfied that this information could not have been provided to the delegate before his decision was made. The five publications provided in support of the new claim post-date the delegate's decision.<sup>1</sup> I am satisfied they could not have been provided to the delegate before his decision was made. The paper from the Journal for Interdisciplinary Middle Eastern Studies contains general country information. It is an academic paper largely examining the causes of discrimination against minorities in Iran. While published in 2019, the sources it cites are overwhelmingly dated. The publications by the Human Rights Watch, United Nations, Amnesty International and the Fair Observer identify and speak briefly about certain individuals in the context of family violence, foreign and dual nationals, human rights defenders, protestors, activists, prisoners, lawyers, leaders, or other prominent people in Iran, and to that extent are personal information; however, the applicants are not activists and do not otherwise fall into any of these categories. The Fair Observer focuses on the treatment of Arabs and activists from the underdeveloped region of Khuzestan province in Iran, however the applicants are not from the Khuzestan province and are not Arab activists. The publications otherwise do not relevantly address the other matters in issue in this review. Overall, I am not satisfied that had this information been known that it may have affected consideration of the applicant's claims, or indeed that it has any real relevance to their new claims. As noted above I have before me a current DFAT report on Iran which includes recent and detailed information on the treatment of Arabs, stateless people, and failed asylum seekers in Iran. Overall, taking all the above factors into account I am not satisfied that there are exceptional circumstances to justify considering the new information.

11. At the primary stage the applicant claimed he faced difficulties finding and keeping jobs because he was stateless and undocumented. He recounted being forced out of work because he did not have the requisite insurance. In response to a finding in the 2017 IAA decision that the evidence indicated he had regular work and did not support his claim to have no work rights he now also states that "There are a group of Afghans living in the same situation in Iran, holding a refugee card but no birth certificate, so often illegally work in construction jobs". No source has been cited for this statement and no independent evidence provided in support. Claimed issues with the applicant's employment in Iran were squarely at issue in the visa interview. I am not satisfied that this information could not have been provided to the delegate before his decision was made. I am not satisfied that this is credible personal information which had it been known may have affected consideration of the applicant's claims. I am also not satisfied exceptional circumstances exist to justify considering the information.
12. As already noted, the FCFCA remitted this matter to the IAA in 2022 after the Minister conceded the Secretary had failed to provide the written record of the wife's arrival interview. The written and audio record of that interview and written records of the applicant's and his

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<sup>1</sup> They were published between 2019 and 2021 by Human Rights Watch, United Nations, Journal for Interdisciplinary Middle Eastern Studies, Amnesty International and the Fair Observer.

wife's separate bio-data interviews and a number of other records<sup>2</sup> evidencing their exact date of arrival in Australia, that they have claimed to be stateless since prior to the bio-data and arrival interviews, and signed confirmation by them of their identity details given the lack of documentation in this regard, have now been provided by the Department to the IAA, along with the other review material. There is no clear reference to these documents in the delegate's decision. Toward the end of the visa interview the applicant's then migration agent made brief reference to an arrival interview when discussing evidence with the delegate about the cost of the journey to Australia, although it is unclear which arrival interview this was a reference to. It is not clear on the face of the material before me whether the delegate accessed the records now provided. The information relates to the applicants' central claims of statelessness and illegal departure. Given the nature of this material it may be expected that the delegate should have had regard to the information in determining whether the applicants were entitled to protection visas. In the circumstances, I am satisfied there are exceptional circumstances to justify considering the information.

13. In 2017 prior to the 2017 IAA decision being made, the IAA wrote to the Department requesting documents (from the applicant's brother's visa application made in about 2000) that appeared missing from the review material but that had been discussed and shown to the applicant by the delegate in the visa interview and mentioned in the delegate's decision. The Department subsequently provided these to the IAA. These can be classed into two groups, the first comprise "identity documents" that appear to have been provided by the applicant's brother to the Department (comprising their father's and grandfather's Iraqi identity cards, the father's work permit and the brother's Iranian driver's licence as well as some other documents in Arabic which could not be identified because no English translations were provided). The second group comprise the "visa application forms" for the applicant's brother and his family lodged with the Department at that time. The identity documents were clearly before the delegate when he made his decision having been discussed in the visa interview and the delegate's decision and provided to the applicant so that he could obtain translations. However, the same cannot be said for the second category, the visa application forms. These contain details about the applicant, his brother and family including in relation to their citizenship. In the event that they are new information, I am satisfied exceptional circumstances exist to justify considering the information. It provides context for the identity documents and is relevant to the applicant's central claim he and his family were expelled from Iraq. Like the new information provided by the Secretary in 2022, it is material that may have been expected to be before the primary decision maker in the circumstances.
14. In the submission the applicant states he "...should be afforded an opportunity to present my claims in person, and therefore that the IAA should schedule an oral hearing submitting the IAA would be in error if it made adverse credibility findings without interviewing the applicant". The applicant was represented at the primary stage, including at the visa interview, and I consider he was given a meaningful opportunity to provide his claims for protection and information in support of this. During the visa interview the delegate put adverse issues to the applicant for comment, including in relation to his claimed lack of citizenship and travel on false documentation. In the circumstances of this matter, I have decided that an interview with the applicant is not necessary and have decided not to interview the applicant.

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<sup>2</sup> The applicants' Detention Notices, Consular Access Forms and Biographic Details Confirmations.

## **Applicants' claims for protection**

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15. The applicants rely on the applicant's claims and their membership of the same family unit.<sup>3</sup>

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

- He and his family are stateless Arab Shias from Isfahan, Iran.
- While born in Iraq he and his family were expelled from Iraq into Iran at the time of the Ba'ath party. His family was refused citizenship in both Iraq and Iran. On account of this, they were discriminated against, had no right to purchase property, to work, or health services, no documentation and accessing education was difficult. There was no future for his children in Iran.
- Fed up with the mistreatment suffered as a result of being stateless, in April 2013 he and his family left Iran illegally on fake passports at Imam Khomeini airport in Tehran, Iran, ultimately bound for Australia.
- They will be arrested and otherwise harmed for leaving Iran illegally.

## **Refugee assessment**

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17. 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**

18. 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.

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<sup>3</sup> The visa application indicates that the applicant would be making his own claims for protection and that his wife and children would be relying on his claims as dependents and not making any claims of their own. When the delegate queried this in the visa interview both the applicant and his then migration agent confirmed this was correct.

19. As early as the arrival interviews in 2013, the applicant and his wife were advised that they needed to provide the reasons for why they should not be removed from Australia. They were also asked about identity documents. The visa application form filled out with the assistance of their then migration agent in 2016 advised that they should provide copies of documents and evidence in support of their claims for protection. It asks for copies of identity documents such as birth certificates and marriage certificates to be attached. It also states that documents in a language other than English should be accompanied by an English translation by an accredited translator. The form asks for specific details in relation to why they left Iran, what would happen if they returned, what harm they experienced in that country and so forth. They provided a three-page statement directed at addressing these questions at that time. There appears to have been several emails between the applicant's then migration agents and the Department when not all relevant parts of the form provided had been completed and/or signed. It appears that they subsequently forwarded parts of the forms with additional, albeit sketchy, information to the Department in an effort to address these deficiencies. In subsequent letters from the Department, the applicants were reminded to provide English translations for documents not in English. When invited to attend the visa interview in 2016 (also attended by their then migration agent) the applicant was advised to bring identity documents and any evidence in support of claims and to provide English translations where relevant. The accompanying information sheet clearly stated, among other things, that it was their responsibility to provide the particulars of their claims for protection and to provide sufficient evidence to establish those claims. At the commencement of the visa interview the delegate referred to this information sheet noting what it said in this regard and the applicant confirmed he had read and understood this sheet. The delegate said that they would have previously been asked to provide evidence of identity, nationality, or citizenship and if they had not, he was now asking for this, noting that they had not provided any documentation in support of their claimed identity to date. The applicant said he had not, because he had none.
20. The applicant's main claim is that he and his family are stateless and have no documentation and that they suffered the difficulties he claims are typically experienced by refugees in Iran such as discrimination and difficulties in relation to accessing education, housing, employment, and medical care. The applicant consistently claimed at the primary stage that his family were expelled from Iraq into Iran by the Ba'ath party, that any historical attempts to obtain citizenship in either country failed and that they have no documentation.
21. Historical country information before me<sup>4</sup> indicates that at around that time refugees from Iran would be able to present a number of documents to establish their refugee status, such as refugee registration cards (which have historically been various colours including green and were later replaced by Amayesh registration cards in 2003), registration slips issued by the Bureau for Aliens and Foreign Immigrants Affairs (BAFIA) and documents issues by refugee camps and settlements. It also indicates that hospital or birth records were issued to all children in Iran including children of refugees and that refugees were able to register their marriage on their Amayesh card.
22. During the visa interview in December 2016, the delegate asked the applicant a series of questions in an effort to uncover some documentary evidence in support of their claimed status in Iran. IN response to the delegate's questioning the applicant said he and his family all had white cards but that they were taken by the people smugglers along with their fake passports on their journey to Australia. He said his family in Iran had white cards and he could speak to them and try to obtain copies. He said he never had a driver's licence suggesting stateless people could not obtain this. When asked he said his children's hospital certificates

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<sup>4</sup> DIBP Tehran, 'Feyli Kurds - obtaining identity travel documents', 17 September 2015, CISEC96CF13392.

were taken when they issued them with white cards, and he did not keep any copies. His marriage certificate was just an unofficial agreement, they would not register it, they just wrote it on a piece of paper and gave that piece of paper to him. When asked if he could provide that, he said he could not promise anything but that he would ask his brother-in-law to send it as it was at his house. The delegate asked if they had any documents from when they were expelled from Iraq and crossed the border or while in a camp. The applicant said he had no idea as he was only young at the time. The delegate suggested the applicant might want to ask an older sibling to see if they knew anything about this (the applicant appears to have [number] siblings, many much older than him). At another point it transpired that the applicant had funded the family's journey to Australia by selling his house which he purchased with his inheritance from his father on his passing. When pressed on this he said that he sold the property to a stranger and that there was no formal deed they would just write it on a piece of paper that he had sold the house, how much land and the price. He did not provide a copy of this claimed informal agreement.

23. The applicant's brother and sister and his wife's brother also travelled from Iran to Australia in the early 2000s and appear to have applied for protection claiming they were stateless. Consistently with the applicant, his brother appears to have also claimed to have had his Iraqi citizenship stripped. They have remained in Australia since. On arrival the applicants said they were in contact with them and indicated a preference to be located near them. This request appears to have been heeded; when they lodged their visa application several years later, they were all living in Melbourne and in contact.
24. In the visa interview the delegate noted that as part of his visa application the applicant's brother had lodged several identity documents including their father's work permit, their father's and grandfather's identity cards in Iraq and the applicant's brother's Iranian driver's licence (as well as some other untranslated documents). The delegate showed copies to the applicant. The applicant acknowledged these related to his brother and said that his brother's driver's licence was fake and that he paid for it. The applicant said he had never seen these documents. The delegate said they looked like important documents and that it may be that someone in his family had kept the originals. He asked the applicant to investigate with his family to see if he could locate the originals and provide them to the Department. The delegate gave the applicant and his then migration agent copies of these documents to assist in their search. He also noted English translations would be required as they were in Arabic. At the conclusion of the visa interview the delegate gave the applicant and his then migration agent seven days to provide this additional information and said that if they needed more time to let him know and he could provide them with an extension of time. The delegate also emailed the applicant's then migration agent after the visa interview recapping what they had discussed in relation to documentation noting it would be helpful if the applicant could provide copies of any documents including his marriage agreement and any white cards or other documents including those issued to any family members as well as translations and possible originals for the documents provided to them from his brother's file.
25. Following the granting of an extension of time, in early 2017 the applicant's then migration agent advised the Department that they had provided the documents from the brother's file to an accredited translator but that "...the family have chosen, I believe principally on account of severe financial hardship, to not proceed with providing the translated copies....we will **not** be providing your office with English translations of the documents you provided us during interview....There are no further documents that the client, nor his immediate family members, wish to tender to your office in regards to their own persons by way of documentation". In direct response to the delegate's request to "If possible provide White cards or other documents issued to other family members as refugees by BAFIA - including permissions to



travel, marriage registration and most importantly the ID cards for his father and grandfather”, the agent advised “We have provided a white card document of a family member previously, (by way of appearance one of [the Applicant’s] family members) – the family is not prepared to have it translated”. It appears that toward the end of 2016 the applicant’s then migration agent had provided a poor-quality copy of an untranslated identity document claimed to be a white card. It displayed a photo of a man with a moustache. On the face of the document, it is unclear who the man is; he does not bear a striking resemblance to the applicant. He bears some resemblance to the photo of the applicant’s brother in his brother’s Iranian driver’s licence, who had a very similar looking moustache. This appears to be the document referred to by the former agent in his 2017 submission. It is clear from the context of the statements in that submission that the document has been presented as an identity document of a family member *of the applicant*. The applicant now asserts, that this white card is his own white card. This is new information. As already noted, in the visa interview when the applicant was asked if he could provide a copy of his own white card the applicant said he could not as the people smuggler had taken it. When asked if he had a copy, he said he did not. When the copy of the white card in question was subsequently provided to the delegate his then migration agent indicated it belonged to one of the applicant’s relatives. There is no explanation for why it was previously said to belong to a relative or why the applicant is only now asserting that it is his and nor is any apparent to me. I am not satisfied that this information could not have been provided to the delegate before his decision was made. Nor do I find the assertion that it is the applicant’s own white card credible in the relevant sense. I am not satisfied that the information is credible personal information which had it been known may have affected consideration of the applicant’s claims. I am also not satisfied there are exceptional circumstances to justify considering this information.

26. The applicant also submits that he did not have the white card translated as he was not asked to. I do not accept that the applicant did not think to translate the white card as correspondence from his then migration agent noted above expressly stated that the applicant was not prepared to have the white card translated. The applicant also submits that he was never given any documents from his brother’s file by the delegate. I do not accept this. These documents were clearly given to the applicant at the primary stage as confirmed in correspondence from his then migration agent at that time. The applicant now also submits he could not provide any additional documents because his brother took all of them when he travelled to Australia which he told the Department when he asked the Department to follow it up with his brother. He also appears to seek to blame his former representative for not following up on this and claims he and his brother have had a falling out so he can no longer ask him for this information. I do not find these late and unsupported assertions seeking to address the lack of supporting documentation persuasive. He has been on notice as to the importance of supporting documentation and the delegate’s concern about a lack of supporting documentation since at least the visa interview several years ago. I acknowledge the applicant has claimed he did not obtain translations because of the cost. However, he has not provided any personal documentation from Iran despite having lived in Iran with his family for some [number] years and in that time he and his wife married, they had two sons, bought a house, he worked, and they all went to school at some stage. In the visa interview he said his siblings had white cards and that he would make enquiries with them about providing copies, that his brother-in-law had his marriage paper which he would try to provide, and he mentioned a number of other documents or papers that he had at one time or another in Iran. While documents do sometimes get misplaced in all the circumstances, I find it difficult to believe that it has all be taken or lost or misplaced and that the applicant is unable to provide any sort of personal documentation from Iran.

27. The applicant claims he and his family lived as stateless refugees in Iran. However, as illustrated below his demonstrated knowledge of stateless refugees in Iran has not at times been supported by the country information before me, undermining his claim he and his family are stateless.
28. The applicant said that everyone in his family was issued with a white card (and prior to that green cards, being a reference to changes in the refugee registration system in Iran when they changed from green to white cards or the Amayesh system in 2003<sup>5</sup>) but that they were taken by the people smugglers on their journey to Australia. The delegate asked the applicant if these white cards had an expiry date and the applicant said “no”. The delegate asked the applicant how many white cards he had had since they started issuing them in 2003 when it changed from green to white and the applicant said “one”. When asked how many the kids had had, the applicant said “one”. The delegate confirmed that the applicant was saying that each of their sons had only had one card which was obtained when they were born, and the applicant said “yes”. This is unsupported by the country information before me<sup>6</sup> which states that refugee registration cards called “Amayesh” cards, introduced in 2003 are “renewed annually” requiring refugees “...to pay municipal taxes and a card renewal fee” annually when renewing.
29. The applicant claims that as stateless people in Iran they were denied legal rights and access to government services; they could not legally own a house or assert their rights when kicked out by landlords, they were denied access to public healthcare, the applicant was unable to work legally only working in the cash economy and he had to move around a lot and it was difficult for them to attend school and even when they could, they had to pay for it, unlike the Iranians. No independent information in support of these assertions regarding the conditions for stateless refugees in Iran was provided, however based on the country information before me it appears these claims are somewhat exaggerated as it indicates that stateless registered refugees (which is what the applicants claim to be) had some access to government services with some even able to access a health insurance scheme for refugees as early as 2011.<sup>7</sup>
30. The applicant’s evidence about the difficulties they experienced as stateless people in Iran has also at times varied significantly, sometimes seemingly exaggerated and at other times had little to no substance.
31. The applicants claim they faced uncertainty regarding accommodation because as stateless people they were excluded from making claims on freehold title. In his arrival interview the applicant said they had no right to purchase property which had to be done through a private and unofficial agreement. In this regard, the visa application states “...time and time again... the family...would find modest lodgings, equip them as best they could and make it into their home. At short notice the landlord, on account of either self-benefiting desires or pressure from the authorities, would demand the family remove themselves from the said dwelling and often at very short notice....they possessed neither housing rights nor rights of appeal as they were not Iranian citizens....the family lived under constant threat of being cast into the streets, of which Isfahan’s are bitterly cold during the winter months.” It also states “...they have been forced to constantly re-locate often with the ever-present threat of violence looming in the background...” The applicant’s other evidence however indicates that in the several years prior to their departure from Iran, they lived at the same address in Isfahan. The applicant and his wife have consistently detailed how they funded their journey to Australia from the proceeds

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<sup>5</sup> DIBP Tehran, 'Feyli Kurds - obtaining identity travel documents', 17 September 2015, CISEC96CF13392.

<sup>6</sup> DIBP Tehran, 'Feyli Kurds - obtaining identity travel documents', 17 September 2015, CISEC96CF13392.

<sup>7</sup> Ibid.

of sale of their house (among other things) which I acknowledge they described as early as the bio-data interviews as unregistered. In the visa interview the applicant spontaneously elaborated on this stating that after his father's death (stating it was by natural causes in 1998 in the arrival interview) he received some inheritance which he used to buy the house. When the delegate pressed him on this, he said he sold it to a stranger but that it was just recorded on a scrap of paper indicating he no longer had this or could not provide it. In the arrival interviews they each detailed three or four different addresses in Iran, all in Isfahan, showing they lived at the last address for several years before their departure in 2013. It appears these details were missing from the visa application form as originally lodged and when the Department asked for more information on this, only sketchy detail without full addresses or dates for properties in Iran were subsequently provided to the Department (while full dates were provided for Australia). Claims regarding the applicant and his family's accommodation in Iran have varied significantly and they do not appear to have always been completely forthcoming about their address history. On the evidence, I accept that they purchased a house with inheritance which they lived in, in the several years prior to their departure from Iran, and which they sold to fund their journey to Australia, and I do not accept they faced uncertainty regarding their accommodation in those years as they have claimed and consider that they have sought to exaggerate the hardship they suffered in this regard which undermines their claim to be stateless. In the visa interview when discussing the sale of his house, the delegate asked the applicant who he sold the house to and the applicant said it was a stranger. The delegate said that he would have thought that a stranger would want to know they had some formal ownership of the property they were paying for. While the applicant said it was common for the sale of a house to be done on an informal basis like this, country information before me does not support this. I agree with the delegate and in the absence of anything additional in support I do not accept that they purchased and sold the property in the manner claimed.

32. The applicant claims they did not have access to the Iranian public healthcare system as they were stateless. In the visa application it states that after the applicant and his family were evicted from a property, the applicant had to watch his mother "...die agonizingly and in abject poverty of [disease] at a relatively young age" and that she received "no support from the state in her final days" and this was psychologically distressing for the applicant. Despite opportunity, they did not elaborate on the otherwise generalised claim to not have had access to the public health system in Iran and in particular in relation to their own healthcare needs, such as in relation to the birth of their sons and during the many years that the applicant, his wife, and children lived in Iran prior to their departure in 2013. No detail demonstrating that the applicants themselves were denied public healthcare has been provided and the country information before me does not suggest that stateless people were denied all access.<sup>8</sup> On the evidence I do not accept that they were denied access to the public healthcare system in Iran. I consider that they have sought to exaggerate the difficulties they experienced in accessing medical care in Iran as stateless people and that this undermines their claim to be stateless.
33. It is claimed that the applicant was not permitted to work and was forced to enter the cash economy as a stateless person in Iran. It has been broadly consistently claimed that the applicant had issues because he could not work legally as a stateless person and had to move around and was asked for identity documents. In the visa application it states that the applicant was "...always at the mercy of unscrupulous employers as he never had a platform from which he could redress any of his terms. If that was not enough of an affront invariably a time would come when the Iranian authorities would start probing employers about his status at which point the employer would abruptly terminate any further engagement with him". In

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<sup>8</sup> DIBP Tehran, 'Feyli Kurds - obtaining identity travel documents', 17 September 2015, CISEC96CF13392.

the arrival interview the applicant indicated that on one occasion the inspector from the insurance company went to the company he was working at and said that he had to leave the company because he did not have insurance. In the visa interview the applicant again referred to this incident. He indicated it happened frequently, every two to three months, without elaborating. The applicant was asked to set out his employment history in Iran in the arrival interview. He said that from about 1987 until 2009 he worked in [an industry] on and off, from 2009 until early 2010 he [did specified work], from early 2010 until mid-2010 he worked for a [company] , from 2010 until around August 2011 he worked for a [business], from around September 2011 he worked in a workshop [for] one year and from September 2012 until around March 2013 when they left Iran he worked in [an industry] for someone. The applicant's then migration agent had to provide details about the applicant's work history to the Department upon request as it was missing from the visa application form originally lodged. However, the details subsequently provided comprised only a list of roles he claims to have performed such as "selling [products]" with no other details including locations or dates or whether he was self-employed or working for someone. When these claims were discussed in the visa interview the delegate said it appeared the applicant was able to work enough to be able to buy things and that he had always worked. The applicant agreed but said he had to move from one job to another and was not mentally settled. I am willing to accept that the applicant experienced some sort of issue because he did not have the requisite insurance for work on one occasion in the past however I do not accept his later brief assertions in the visa interview that this happened every two to three months and note that this is not supported by his employment history which indicates he often worked for stretches much longer than this. It also appears that the applicant has not been completely forthcoming at the primary stage when asked by the Department for particulars of his work history when not disclosed in his visa application, only subsequently providing sketchy details. On the evidence I consider the applicant has sought to exaggerate the extent to which he was harassed by authorities or forced to change jobs which also undermines his claim to be stateless.

34. The applicant claims that accessing education was difficult for him and his family on account of their statelessness. Evidence in the arrival interview indicates the applicant and his wife each attended school for a period as children in Iran and that many years later their sons also attended school in Iran. In the visa interview the applicant said that when they enrolled their children at school because they did not have Iranian identity cards they had to pay while the Iranians did not, however no independent information in support of this has been provided and the country information before me<sup>9</sup> does not indicate this was the case. As already highlighted information in the visa application form about their lives in Iran has been sketchy, while a school name in Iran was listed for each son nothing else was provided in relation to education histories and their accompanying submission did not further elaborate on these issues. On the evidence, I do not accept they experienced the difficulties claimed in accessing education in Iran.
35. The applicants have also briefly claimed they were "denied access to social security" from "holding licenses" and were "psychologically dehumanised by Iranian nationals and authorities within Iran" and existed in a "perpetual state of oppression and uncertainty". They have not elaborated on these claims, despite opportunities to do so; such as in the visa interview when the delegate asked what harm had come to the applicant and his family in Iran, and later whether there were any other things that they feared harm from in Iran and at another point, what they feared if they returned to Iran, and at the conclusion after returning from speaking with the then migration agent, whether there was anything else the applicant would like to

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<sup>9</sup> DIBP Tehran, 'Feyli Kurds - obtaining identity travel documents', 17 September 2015, CISEC96CF13392.

add (which the delegate asked the applicant several times). These claims have no substance and I do not accept them.

36. As was noted by the delegate in the visa interview and decision, it appears for many years prior to his departure, that under relevant laws the applicant was eligible for Iranian citizenship and to have his Iraqi citizenship reinstated. The information before me<sup>10</sup> indicates that under Article 979 of the Civil Code of Iran, persons can obtain Iranian nationality under Iranian law if they “(a) Have reached the full age of 18 (b) Have resided five years, whether continuously or intermittently, in Iran (c) Are not deserters from military service (d) Have not been convicted in any country of non-political major misdemeanours or felonies”. Under Article 976 those born in Iran or outside whose fathers are Iranian are also considered to be Iranian subjects. The applicant and his wife have been in Iran most of their lives and lived there until 2013 when they were in their [age range] and did not travel anywhere else in that time. There is nothing to indicate the applicant, or his wife were “deserters” or had been convicted of any non-political major misdemeanours or felonies. As noted above, under Iranian law, if the applicant was Iranian the applicant’s sons would have also automatically been Iranian by descent. The country information<sup>11</sup> also indicates that there has been a mechanism available for the reinstatement of Iraqi citizenship since about 2006, like some 97% of denaturalised Feyli Kurds have reportedly done. While this country information focuses on Feyli Kurds it indicates that some Shia Arabs, which the applicants claim to be, also relevantly had their Iraqi citizenship revoked and were deported from Iraq by the Ba’ath regime between the 1960s and 1980s. Reportedly in 1980 a change of law in Iraq, “Decree No.666”, allowed for the citizenship of Iraqis of foreign origin to be revoked and a large number were expelled from Iraq into Iran, stripped of Iraqi nationality, and had their property, assets and personal documents confiscated. A change in law in Iraq in 2006 repealed “Decree No.666” and allowed for those denaturalised by the former government to have their Iraqi nationality reinstated if they could show they were registered during the 1957 Iraqi national census. The country information reports that over the last 30 years the “majority” of Feyli Kurds expelled from Iraq and their children have managed to either obtain Iranian nationality through paternal lines or marriage or have had their Iraqi citizenship reinstated.
37. In the visa interview other than claiming he and his childhood family were initially Iraqi citizens, the applicant claimed to have little knowledge about his family’s history in Iraq and their claimed expulsion into Iran after being stripped of Iraqi citizenship, as he said he was only young at the time. When the delegate noted it may have been possible for the applicant to obtain Iraqi passports from the Iraqi embassy in Iran given his family’s history and whether he had thought about looking into this for his eldest son, the applicant said he did not think about doing this and that he assumed his son would be in the same position as him. When asked if anyone in his family had tried to reinstate their Iraqi citizenship, he only briefly indicated in the affirmative without elaborating. When pressed on this, he briefly said that when his parents went to Iraq, they were told they were Iranians and when they returned to Iran, they were told they were Iraqis. The delegate again pressed the applicant for more detail, asking when his parents did this. The applicant briefly replied that it was when they were alive. When asked if any of his siblings had made enquiries about having their Iraqi citizenship reinstated, he said “no”. At the conclusion of the visa interview the delegate noted some issues for the applicant’s comment including that his father’s and grandfather’s Iraqi identity documents suggested reinstatement of Iraqi citizenship was likely to have been available to the family. While the applicant was provided with an opportunity to talk with his then migration agent before responding to this (and another issue) he did not subsequently provide anything directly in

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<sup>10</sup> 'Civil Code of Iran: Book 2 - Concerning Nationality.', 1 July 1999, CX39767.

<sup>11</sup> DIBP Tehran, 'Feyli Kurds - obtaining identity travel documents', 17 September 2015, CISEC96CF13392.

response to this issue. In his decision the delegate did not find it plausible that the applicant would not be aware of the changes in relation to Iraqi citizenship and found the applicant's claims that he and his family could not resume their Iraqi citizenship vague and disingenuous. I agree with the delegate particularly in light of the hardship the applicant claims to have suffered as a stateless person in Iran. I also find it surprising in the circumstances that he appears to have been equally unaware of his options in relation to obtaining Iranian citizenship after having lived there all his life.

38. The applicant claims that as they were stateless, they were forbidden from possessing travel documentation which meant they were unable to relocate within Iran, depart or re-enter Iran, and that they left Iran illegally at Imam Khomeini airport on fake passports. Country information before me<sup>12</sup> relevantly indicates that those leaving Iran were subject to various checks and security measures including having details from their passports entered into computer systems at the airport. The applicant and his wife have consistently claimed that a smuggler in Iran obtained their fake passports, that they were fake Iraqi passports, issued in their own names and displaying their own photos. In the arrival interviews they claimed they paid \$5,000 American to a people smuggler in Iran for their fake passports and travelled from Imam Khomeini airport to [Country 1] and then onto [Country 2] where they disembarked and passed through immigration. They then paid \$11,000 to a people smuggler [and] travelled by boat to Australia. It is claimed the first people smuggler accompanied them on the plane to [Country 1] from Iran and went to the counter with them when their passports were checked, but neither they nor the people smuggler spoke to the officer. In [Country 2] a second people smuggler who also did not speak with the officer was with them at the time their passports were stamped in [Country 2]. When questioned more about this in the visa interview the applicant said that they gave their white cards to the people smuggler who also took their photos for the passports, but he did not know where the passports were issued. He said that when they departed Iran, they were checked by officers, but he did not notice if their details were entered into the computer. They were also checked in [Country 1]. He said they had no problems at any of the airports with their passports. When asked how much they paid in total for the whole trip the applicant said it was \$11,000 American (in contrast to \$16,000 as previously claimed) and confirmed this included all costs including for the fake passports. At the conclusion of the visa interview the delegate noted that despite security at airports making it difficult to depart on fake passports the applicants passed through three large international airports in the usual way and without any issues and that this may indicate they were travelling on genuine passports. Like the delegate based on the country information and description of their travel I find it difficult to believe they travelled through Tehran, [Country 1] and [Country 2] airports on fake passports as claimed.

39. The applicants have consistently claimed since as early as the bio data interviews to be stateless and broadly to have suffered hardship in various ways on account of this and to have fled Iran illegally on fake passports. Although the consistency of a claim does not always in itself indicate it is true. Documentation before me including from the applicant's brother's visa application consistently indicates that the applicant's family originally came from Iraq. On the evidence I accept that the applicant and his family were expelled from Iraq at the time of the Ba'ath party and had their Iraqi citizenship stripped and that for a period they lived as stateless refugees in Iran and experienced some hardship as a result. However as noted above, I am of the view that the applicants have sought to exaggerate the difficulties experienced by them in Iran as evidence of their statelessness and while a lack of precision with the claims is to be expected, especially with the passing of time, as already discussed in this matter I am of the view that they have not always been forthcoming about their lives in Iran. The evidence shows

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<sup>12</sup> UK Home Office, 'Country Information and Guidance - Iran: Illegal Exit', 20 July 2016, OGD7C848D28.

they were able to purchase and sell a property which I do not accept was done informally, attend school in Iran in circumstances which were not as difficult as claimed, and the applicant worked almost consistently, albeit in different roles, from a young age until his departure all of which in the circumstances of this case I consider seriously undermines their claim to be stateless. I consider it implausible that since lodging their visa application some six years ago they have been unable to provide any personal documents from Iran. I also note their travel through three international airports without issue and the Iranian law regarding entitlement to Iranian citizenship. On the evidence I do not accept that the applicants are stateless or that they left Iran illegally. I consider they left Iran legally on their own valid passports and that they are Iranian citizens. I consider Iran the receiving country.

40. The applicants have consistently claimed to be Shia Arabs. In both their arrival interviews the applicant and his wife said they were Shia Arabs when asked their ethnicity and faith and this was reflected in the visa application. DFAT<sup>13</sup> reports that most Arabs are Shias. When asked about his faith in the visa interview the applicant merely confirmed they were practising Shia Muslims. While I accept the applicant and his family identify as Shia Arabs on the evidence before me, I do not consider they have suffered past harm on account of this or that they fear harm on account of this. DFAT's<sup>14</sup> report indicates that Shia Islam is the dominant faith in Iran. It also reports that Arabs predominately live in the south-western province of Khuzestan bordering Iraq. DFAT's report notes that these areas are underdeveloped economically, suffer from widespread unemployment and poverty. Arabs who are active politically or advocate for greater rights and autonomy and/or self-determination, particularly in those border provinces, reportedly face a high risk of official harassment, monitoring, imprisonment, and mistreatment (meaning that there is a strong pattern of this mistreatment against them) however Arabs are not reportedly specifically targeted for discrimination on the basis of their ethnicity alone. The evidence before me does not indicate the applicants have been engaged in Arab cultural activities, groups or otherwise whether in Iran or Australia. They have not indicated involvement in protests or other political activities in Iran or Australia. While the applicant appears to have studied some Arabic in the past, when asked in the visa interview if he spoke much Arabic the applicant said he did not, and that his parents only spoke Arabic to one another at home and not to him or his siblings when growing up. The applicant and his wife have indicated their preferred language is Farsi not Arabic. The applicant utilised a Farsi interpreter in the visa interview. The applicants lived most if not all their lives in Isfahan while in Iran, not the economically underdeveloped south-western provinces dominated by Arabs. They still have family in Isfahan. I consider that if they were to return to Iran it would very likely be to Isfahan. Based on their profiles I am not satisfied the applicants face a real chance of harm on account of their ethnicity or faith.

41. I consider that the applicants may be identifiable as people who have sought asylum in Australia and as failed asylum seekers if they return to Iran. While the applicant did not make this claim, the delegate considered it. The country information before me<sup>15</sup> indicates that for some time now Iran has refused to accept involuntary returns<sup>16</sup> and as such I consider that if the applicants were to return to Iran it would be on a voluntary basis. The country information has also overwhelmingly and consistently indicated for some time that on return returnees will

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<sup>13</sup> DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>14</sup> Ibid.

<sup>15</sup> DFAT, 'Response to IRN 11738 Iran - Article on returned asylum seekers and people exiting Iran with false documents', CX263145; Guardian (Unlimited) (UK), 'Iran refuses to take back asylum seekers who have been forcibly returned', 15 March 2016, CX6A26A6E2264; DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>16</sup> As the applicants arrived in Australia in 2013, they are not covered under a more recent memorandum of understanding between Iran and Australia under which Iran agreed to facilitate the return of Iranians who arrived after March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.

be questioned by authorities at the airport and that activists or those already known to authorities and criminals may be detained or otherwise harmed by Iranian authorities on return, but that this is not the case for someone who has simply claimed asylum abroad. DFAT's 2020 report indicates that those relevantly returning on *laissez passers*, or temporary travel documents, are also likely to be questioned briefly about the circumstances of their departure and why they are returning on temporary travel documents (and only questioned for longer if considered evasive or to have a criminal history). The applicant and his family have not claimed to have been involved in demonstrations or any other types of political activity in Iran or Australia. While the applicant told the Department that he had been erroneously charged for [an] offence in the past in Australia, he said that the charges were dropped when it was discovered this had been in error and that it had been a case of mistaken identity. The applicant and his then migration agent confirmed this in the visa interview when asked about it again and said it had been an isolated event only brought up in the interests of transparency. Based on the country information above I accept the applicants may be to be questioned on their return to Iran, including in relation to return on temporary travel documents, however based on their profiles I am not satisfied they would be otherwise questioned or harmed. I am not satisfied the applicants face a real chance of any harm on account of being failed asylum seekers or returnees.

42. I am not satisfied the applicants have a well-founded fear of persecution for any reason or reasons claimed.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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44. Under s.36(2)(aa) of the Act, a criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

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

45. 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.
46. 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.



47. In considering the applicants' refugee status above I have concluded that there is no 'real chance' the applicants would suffer harm on their return to Iran for the reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicants would face a 'real risk' of significant harm.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### **Migration Act 1958**

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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