



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA16/00807

Date and time of decision: 15 February 2017 18:28:00
Matthew Tubridy, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan. [In] May 2015 he lodged an application for a Temporary Protection visa (TPV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] September 2016.

Information before the IAA

2. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The delegate considered evidence provided at interview by the applicant as to his knowledge of the faith of the Holy Apostolic Catholic Assyrian Church of the East (the Assyrian Church of the East) compared to that of the Roman Catholic Church. The delegate found that this information, and his inability to name the church he had attended, raised doubts about whether he had attended such a church. She also considered a purported certificate of baptism subsequently provided by the applicant. The delegate did not consider the certificate evidence that the applicant was a genuine practising Christian. These conclusions were reached without reference to advice from the church in question about whether the applicant is a practising Christian and without reference to information about the beliefs of Assyrian Church of the East compared to those of the Roman Catholic Church. I have obtained information of this kind¹ and, as this information was not before the delegate, this information amounts to new information. I consider that the credibility of the applicant's claims in these regards cannot be properly assessed without information of this kind and I am therefore satisfied that there are exceptional circumstances to justify considering this new information. I have also obtained new information about the situation in Pakistan for persons who have converted from Islam to Christianity.² As I have reached different conclusions about the credibility of the applicant's claim to have converted to Christianity to those reached by the delegate, I am satisfied that there are exceptional circumstances to justify considering this new information.
4. On 4 October 2016 the applicant's representative provided a submission to the IAA. The October 2016 submission has, in part, referred to the information which was before the delegate and engaged in argument with the delegate's decision. I do not consider this to be new information.
5. The October 2016 submission also provided a statutory declaration signed by the applicant and dated 4 October 2016. The statutory declaration submits that he is certain that his parents

¹ "Faith", Apostolic Catholic Assyrian Church of the East Archdiocese of Australian New Zealand, and Lebanon (Assyrian Church of the East for ANZL), (undated), <http://assyrianchurch.org.au/about-us/faith/> ; Royel, D. "The Assyrian Church of the East: A Panoramic View of a Glorious History", Apostolic Catholic Assyrian Church of the East Archdiocese of Australian New Zealand, and Lebanon, (undated), <http://assyrianchurch.org.au/about-us/history/ancient/> ; K. Mardinkha & Ioannes Jaulus PP. II, "Common Christological Declaration Between The Catholic Church And The Assyrian Church Of The East", 11 November 1994, http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/documents/rc_pc_chrstuni_doc_11111994_assyrian-church_en.html

² UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15; "Leave the village or face consequences", Friday Times, The, 03 June 2016, CX6A26A6E5030; Canadian Immigration and Refugee Board of Canada, Pakistan: Religious conversion, including treatment of converts and forced conversions (2009-2012), 14 January 2013, PAK104258.E.

were nationals of Afghanistan and that he is fearful that he could lose his citizenship of Pakistan because he is now over 21 and was born with Afghan citizenship which he did not renounce. The October 2016 submission also makes reference to a May 2015 news report relating that the Pakistan authorities have cancelled the citizenship documents of some 100,000 persons suspected of being aliens and not legitimate citizens of Pakistan, and that most of these people had been Afghans. The October 2016 submission also refers to various reports about the deportation of Afghans to Afghanistan by the Pakistan authorities, and the situation in Afghanistan in the context of the applicant's new claim to be a national of Afghanistan and to fear being returned there after being stripped of his Pakistan citizenship. None of this information was before the delegate and it amounts to new information. It is submitted that this information could not have been provided earlier because the applicant did not realise that his Pakistani citizenship was invalidly granted until he read the delegate's decision and learned of the particulars of Pakistan citizenship law in this regard. It is also submitted that some of the reports referred to regarding the deportation of Afghans from Pakistan and the situation in Afghanistan were not available at the time of the delegate's decision.

6. The applicant has proven an inconsistent source of evidence in regard to matters relating to his identity and his and his family's nationality. When he arrived in Australia he presented himself to Australian authorities as a minor and a citizen of Afghanistan. The department subsequently put it to the applicant that information previously provided by his [Relative A], who had arrived in Australia years earlier, indicated that the applicant was an adult. The applicant conceded that he was an adult. The department provided the applicant with a nominal date of birth which reflected him to be over 18 years of age upon the date of his arrival. The applicant subsequently provided his actual date of birth along with his Pakistan passport, national identity card and birth certificate, all of which show that he is a national of Pakistan who was born in Quetta. He has also provided documents of this kind for all of his family members and these show that all of his family, including his parents, are nationals of Pakistan who were born in Quetta. At the same time, the applicant has claimed that his parents and his [Relative A] were born in Afghanistan and that his [Relative A] is a national of Afghanistan; providing his [Relative A's] Australian issued Titre de Voyage as evidence of this (this lists his [Relative A] as a national of Afghanistan who was born in Afghanistan's Ghazni Province). The applicant claims his initial claim to be a national of Afghanistan was an honest mistake resulting from his ignorance of the difference between nationality and ethnic origin or of the significance of documentation and law in these regards.
7. The applicant has submitted that when he arrived in Australia he said that he was an Afghan because he was not aware of the difference between nationality and ethnic origin or of the significance of documentation and law in these regards. Given the applicant's level of education I do not find this persuasive. Further, applicant initially misrepresented not only his nationality but also his age. He also withheld information about his possession of a genuine Pakistan passport and national identity card. I have concluded that the applicant knowingly sought to mislead the department in this regard and that, with regard to the matter of his nationality and the nationality and place of birth of his family members, the applicant is not a reliable source of information. Although the applicant's [Relative A's] Australian issued temporary travel document indicates that his [Relative A] is an Afghan national who was born in Ghazni, the greater weight of evidence provided by the applicant for his [Relative A] (including a passport, national identity card, family registration records, etc) indicates that his [Relative A], like the applicant and his other family members, was born in and is a citizen of Pakistan. That the applicant is a legitimate citizen of Pakistan, and that he has no fears of being investigated by the Pakistan authorities in such a regard, is evidenced by the fact that in August 2014 the Pakistan [representative] in [Australia] confirmed the authenticity of the applicant

Pakistan driving licence, a document which carries the applicant's Pakistan computerised nationality identity card (CNIC) number. The applicant has provided no indication that he, or any members of his family, have been adversely affected by the cancelation of any Pakistan nationality documents. Given all of this, I have decided not to invite the applicant to an interview in this matter, and I am not satisfied that there are exceptional circumstances to justify considering any of the new information that he or his representative have provided in regard to his claim to be a national of Afghanistan, to have obtained Pakistan citizenship unlawfully, or to fear return to Afghanistan.

8. The applicant's October 2016 statutory declaration also submits that he fears harm because of his association with [a Relative B] who was formerly [in a local agency] and who now resides in Lahore, and that his [Relative B's] son was killed in Quetta by Lashkar-e-Jhangvi (LeJ) in April 2010. The applicant claims that this [Relative B] acted as his guardian after his own father died. The October 2016 submission has also provided a purported death certificate for the son of the applicant's [Relative B], the purported police first information report (FIR) for this alleged event of [April] 2010, and also a statutory declaration provided by the applicant's [Relative B] and dated [in] October 2016. Although the applicant has consistently claimed that his father is deceased he has never before provided an information about an [Relative B] who was his guardian or that he has fears arising from his [Relative B's] being formerly [an office bearer of the agency], and whose son was killed in Quetta by LeJ, or that this [Relative B] now lives in Lahore. This is new information. No reasons have been provided for why this information could not have been provided before the date of the delegate's decision, and I note that at the TPV interview the delegate specifically discussed with the applicant the possibility of the applicant's relocating to Lahore and whether he had any fear in that regard. Given this, and given that the applicant claims that the attack on his [relative] occurred over six years ago, I am not satisfied that this information is credible information, or that it could not have been provided before the date of the delegate's decision, or that there are exceptional circumstances to justify considering this information.
9. The applicant's October 2016 statutory declaration also provides a number of pieces of information about the applicant's reasons for having converted to Christianity, his understanding of the faith, and his involvement with the faith which were not before the delegate and as such amount to new information. It is submitted that this information could not have been provided before the date of the delegate's decision because he had no way of knowing further evidence was required to support this claim, and because the delegate explicitly stated at interview that that he had only until [a date in] December 2015 to provide further documents and information regarding his Christian beliefs. However, the delegate made it clear to the applicant that she had doubts about whether the applicant had made a genuine commitment to Christianity, even stating that she considered that he may have explored Christianity solely for the purpose of enhancing his claims to refugee status. It was for this reason that the delegate give the applicant two weeks to provide any further evidence of his conversion to Christianity. The delegate made it clear that if the applicant had a good reason he could request an extension of time to provide the requested information. The applicant never requested an extension of this kind. The delegate also informed the applicant that she would have regard to any information that he provided to her until she made the decision. Given this, I am not satisfied that the new information regarding the applicant's claims to have converted to Christianity could not have been provided before the date of the delegate's decision. However, and while I have my doubts about the applicant's overall credibility, on the basis of the information I have obtained from a senior cleric of the Assyrian Church of the East I am willing to accept that the new information provided by the applicant in this regard amounts to credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims, and that

there are exceptional circumstances to justify considering this information. The October 2016 submission has also provided information about the history of Christian beliefs and also about the situation of Christian Converts in Pakistan. All of this information was available before the date of the delegate's decision. Given this, and given that I have already obtained information of this kind, I am not satisfied that there are exceptional circumstances for considering this information.

10. The October 2016 submission refers to a number of reports about the situation in Pakistan for Shia Hazaras and more generally. A number of these were not before the delegate and as such amount to new information. No reasons have been provided as to why this information could not have been provided before the date of the delegate's decision, or alternatively, why it should be considered credible personal information which, had it been known, may have affected the consideration of the claims. Of those reports published after the date of the delegate's decision I am satisfied that these could not have been provided before the date of the delegate's decision and that there are exceptional circumstances to justify their consideration. However, with regard to those reports which were published before the date of the delegate's decision, I am not satisfied that these could not have been provided before the date of the delegate's decision. The new information is country information and I am not satisfied that it is credible personal information. I am therefore not satisfied that s.473DD(b) is met with regard to this information, nor am I satisfied that there are exceptional circumstances to justify the considering this information.

Applicant's claims for protection

11. The applicant's claims are contained in the information referred and subsequently given to the IAA. They can be summarised as follows:
 - He is a national of Pakistan and an ethnic Hazara and a Shia Muslim.
 - He originates from Quetta and witnessed a number of attacks upon other members of the Shia Hazara community, including the Eid bomb attack of 31 August 2011.
 - While completing his tertiary studies he suffered mistreatment from Baluch and Pashtun students.
 - While travelling on a bus to Karachi to depart Afghanistan for Australia he was questioned by security personnel, and was singled out in this way because he is a Shia Hazara.
 - He has converted to Christianity while in Australia.
 - He fears that if he returns to Pakistan he will be killed by Wahhabi groups like Lashkar-e-Jhangvi (LeJ) because he is a Shia Hazara. He also fears violence, mistreatment and discrimination from the Baluch and Pashtun community in Quetta and from the wider non-Hazara population of Pakistan more generally. He also fears the Pakistan government will punish him for attempting to migrate to Australia.

Refugee assessment

12. 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

13. 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.

14. When he arrived in Australia the applicant presented himself to Australian authorities as a national of Afghanistan who was born in the Pakistan city of Quetta on [a later date], making him just under [number] years of age and a minor when he arrived in Australia in November 2012. The department subsequently put it to the applicant that information previously provided by his [Relative A], who had arrived in Australia years earlier, indicated that the applicant was an adult. The applicant conceded that he was an adult. The department provided the applicant with a nominal date of birth of [several years earlier], which reflected him to be over 18 years of age upon the date of his arrival. In his May 2015 TPV application the applicant has subsequently provided what he claims is his actual date of birth, [further years earlier], and documents presenting as his Pakistan passport, national identity card, driving licence, and a number of further Pakistan documents including the Pakistan passports and national identity cards of all his family members, as well as family registration documents. These present the applicant, and all of his family members, as nationals of Pakistan who were all born in Quetta (including his [Relative A] who arrived in Australia some years before the applicant and who has been granted refugee status as a national of Afghanistan who was born in Ghazni, Afghanistan). However, in the TPV application the applicant has listed his parents and his [Relative A] as having been born in Afghanistan; and while he listed his parents as nationals of Pakistan he listed his [Relative A] as a national of Afghanistan. He listed himself as a citizen of Pakistan but also listed himself as stateless at birth. At his November 2015 TPV interview he stated that he had listed himself as stateless because he was not sure whether he himself was born in Pakistan or Afghanistan.

15. The applicant has proven an inconsistent source of evidence in regard to matters relating to his identity and his and his family's nationality. At his November 2015 TPV interview he submitted that when he arrived in Australia he said that he was an Afghan because he was not aware of the difference between nationality and ethnic origin or of the significance of documentation and law in these regards. I do not find this explanation persuasive. The applicant has received an extensive education and has also travelled to [Country 1], and Afghanistan, on his Pakistan passport before making his journey to Australia. I do not accept that the applicant is unfamiliar with the concept of nationality and citizenship. Moreover, when the applicant first arrived in

Australia he presented himself as a minor who could provide no documents other than some school certificates. He made no mention of being able to provide documents like his Pakistan passport or Pakistan national identity card. I consider that the applicant knowingly attempted to mislead the Australia authorities about his age and nationality.

16. Subsequently, in his May 2015 TPV application, the applicant has listed himself as a citizen of Pakistan who was born in Quetta while also listing himself as stateless at birth and that money was paid to obtain his Pakistan documents. At his November 2015 TPV interview he said that he listed himself as stateless because he was not sure if he was born in Afghanistan or Pakistan, and in his written claims to protection he has stated that his family departed Afghanistan when he was born because of the Taliban. Asked how it could be that his [Relative A] was a national of Afghanistan while all his family were nationals of Pakistan, the applicant responded that this was because his [Relative A] was born in Afghanistan. He repeated this when asked again and did not address the issue of why this would be the case for his [Relative A] but not for his parents.
17. The applicant claims that his parents were born Afghan nationals in Afghanistan and that his parents, and his siblings, have all acquired Pakistan citizenship fraudulently. It has been widely reported that many Afghans have acquired genuine Pakistan citizen documents by fraudulent means.³ However, given that the applicant has proven such an unreliable source of evidence about such matters I cannot be confident that his parents were, as he claims, born Afghan citizens in Afghanistan or that they have acquired Pakistan citizenship for themselves and the applicant and his siblings fraudulently. The applicant's claim that he is not sure whether he was born in Pakistan or Afghanistan is not convincing. The applicant's mother is alive and he is in contact with her. I do not accept that the applicant's mother has not informed him of his actual place of birth. The applicant has, moreover, supplied a birth certificate indicating that he was born in Quetta, and all of his other Pakistan documents also list that he was born in Quetta on [the earliest date of birth]. Further, the applicant's claim that he has been told that his family fled from Afghanistan to Pakistan after his birth because of the Taliban is implausible given that the applicant was born in [year] and the Taliban did not emerge until 1994. Given this, and given the manner in which the applicant has previously sought to mislead Australian authorities about his age and nationality, I consider that the applicant is not a credible source of evidence with regard to his nationality, place of birth and date of birth; nor is he a credible source of evidence regarding the nationality, place of birth and date of birth of his various family members. All the Pakistan documents held by the applicant show that not only he but that all his family members including his [Relative A] were born in Pakistan. The applicant has travelled on his Pakistan passport in a number of occasions to [Country 1], and also to Afghanistan in December 2010, and has then returned to Pakistan without complication. Moreover, while in Australia the applicant successfully sought the assistance of the Pakistan [representative] in [Australia] to confirm the authenticity of his Pakistan driving licence, a document which carries the applicant's Pakistan computerised national identity card (CNIC) number.
18. Given that there is no evidence before me to indicate that the Pakistan authorities have any concerns about the applicant's documentation, and given that the applicant himself is not a credible source of information about such matters, I have concluded that, as per the details of the Pakistan passports and national identity cards for the applicant and his family, that the applicant and his family members are all Pakistan nationals who were all born in Pakistan. I do not accept that their Pakistan documents were acquired fraudulently. I do not accept that the

³ DFAT, "Citizenship of Pakistan-born Afghan children; mailing of passports within Pakistan", 11 July 2013, CX311292.

applicant or any members of his family are nationals of Afghanistan. I therefore find that the applicant is a national of Pakistan and that Pakistan is the country of reference.

19. The applicant's principal claim in his May 2015 TPV application was that he feared harm from groups like Lashkar-e-Jhangvi (LeJ) because he is a Shia Hazara. DFAT reports that Shias in Pakistan continue to face a threat from anti-Shia and militant groups, particularly LeJ and Sipah-e-Sahaba Pakistan (SSP) or Ahl-e-Sunnat Wal Jammāt (ASWJ). Most of these networks have broad agendas, which include strong anti-Shia sentiments. Various Pakistani Taliban groups operating under the banner of the Tehreek-e Taliban Pakistan (TTP) have also claimed responsibility for attacks on Shias. LeJ is the main perpetrator of anti-Shia violence in Pakistan and has claimed responsibility for a large number of attacks upon the Shia community, particularly Hazaras in the Baluchistan capital of Quetta.⁴ Approximately 700,000 Hazaras live in and around the Balochistan capital of Quetta, mostly in their own communities in Hazara Town (also known as Brewery Road) and along Alamdar Road towards Mehrabad.⁵ Because they are ethnically distinct, militant groups target the Hazara community to a greater extent than other Shias in Balochistan. There were ten sectarian attacks in Balochistan in 2015, resulting in 29 deaths (seven attacks specifically targeted Hazaras, resulting in 16 fatalities, while two attacks targeted Shias in Quetta, resulting in 13 deaths). There was also an attempted suicide bomb attack close to the entrance of Hazara Town on 18 July 2015. A group of students from the University of Balochistan claimed responsibility for a number of these attacks.
20. The applicant now claims to no longer practice Shia Islam. Given this, the applicant would not attend Shia Muslim communal worship or festivals upon return to Pakistan and would not face a real chance of harm from attacks perpetrated against such Shi Muslim gatherings. Nevertheless, as a Hazara the applicant would be perceived as a Shia and would face the same risks as other Shia Hazaras in Quetta in terms of attacks perpetrated against bazars and other places where members of the Hazara community gather. DFAT understands that Hazaras generally stay within the two predominantly Hazara enclaves in Quetta, where they enjoy a greater degree of security. Credible sources have told DFAT that security forces continue to escort Hazaras travelling to and from their workplaces in Quetta. Notwithstanding such security measures, DFAT assesses that there is a moderate level of generalised violence in Balochistan. There is also a moderate level of sectarian violence, and despite a decline in the number of sectarian attacks, Hazara Shias remain segregated and are a key target of militant groups.⁶ Given this, I am satisfied that for the foreseeable future the applicant would face a real chance of being killed or of suffering serious physical harm from an anti-Shia militant group like LeJ if he were to return to Quetta for reason of his being a Hazara and an imputed Shia Muslim.
21. However, pursuant to s.5J of the Act the real chance of persecution must relate to all areas of the receiving country; and although DFAT considers that there is a moderate level of sectarian violence in Quetta, and a moderate overall threat of sectarian violence for prominent Shias such as high-profile professionals, DFAT also assesses that for Shias in Pakistan more generally the risk posed by sectarian violence is low.⁷ The applicant claims that Shia Hazaras like himself cannot live safely anywhere in Pakistan as LeJ and other anti-Shia militias are killing Shia Muslims throughout the country. He also claims that once he becomes [an occupation 1] (the applicant had been studying [occupation 1 studies]), he would be on the list of persons who would be targeted by groups like LeJ. I accept that if the applicant returned to Pakistan he may

⁴ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 4.4-4.5.

⁵ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 2.9.

⁶ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 4.24-4.25.

⁷ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 4.3.

resume and complete his studies in [occupation 1 studies]. However, the possibility that the applicant would become not just [an occupation 1] but a prominent high-profile figure in the Shia community in this regard is highly speculative. I am not satisfied that there is a real chance that the applicant would be targeted on this basis by LeJ or a similar group.

22. It is true that all of Pakistan's provinces and major cities have seen sectarian attacks upon Shia Muslims in the recent decade. However, the security situation in Lahore remains better than many other places in Pakistan, with lower levels of generalised and sectarian violence than many other major population centres.⁸ It is true that Lahore has seen mass casualty bomb attacks against its Shia community in the past; at a mosque in October 2004 (killing five and injuring six), in September 2010 during Ashura celebrations (killing 43 and injuring 230), and in a January 2011 bomb attack (killing 10 and injuring 85). But Lahore has seen no mass casualty attacks of this kind in recent years. Shias in Lahore have told DFAT the security situation has improved because of Operation Zarb-e-Azb (a counter-terrorism military operation which commenced in June 2014).⁹ Although Shias are more prominent during Ashura processions, heightened state protection measures during these celebrations mitigate the threats associated with this greater exposure (and in any event, the applicant is no longer a practising Shia Muslim).¹⁰ Lahore is home to large Shia communities, including a Shia Hazara community.¹¹ There have been no reports of any specific attacks upon Lahore's Hazara community. Some of Lahore's Shias live in Shia enclaves while many live in mixed and generally well-integrated Shia and Sunni communities.¹² Lahore is a major city with an international airport and the applicant would be able to enter the city directly. Given this, I am not satisfied that the applicant would face a real chance of harm if he returned to Lahore for reason of being a Hazara and/or an imputed Shia Muslim.
23. The applicant has also claimed to fear that the Pakistan government will punish him for attempting to migrate to Australia. I do not find the applicant's claim to hold such a fear to be credible given that he has successfully sought the assistance of the [Pakistan representative] in [Australia] since arriving in Australia. Further, there is no evidence to indicate that the Pakistan authorities punish or otherwise harm citizens who have attempted to migrate to, or claim asylum in, another country such as Australia. The only matter that may be of concern to the Pakistan authorities is the applicant's irregular migration movements. For although the applicant departed Pakistan lawfully he has subsequently entered Australia as a unlawful maritime arrival and, if returned to Pakistan involuntarily, this unlawful travel could result in his being placed on a black list which would prevent him from holding a passport, and thus from travelling abroad, for a period of three years.¹³ I accept that there is a real chance that the applicant may face a penalty of this kind if he is returned to Pakistan involuntarily from Australia. However, and while such a penalty may be disappointing for the applicant, I am not satisfied that being unable to hold a Pakistan passport, or being unable to engage in international travel, for a period of three years would amount to serious harm. Moreover, on the evidence such a punishment would be imposed as a law of general application which is appropriate and adapted to achieving the legitimate state aim of regulating the international movements of Pakistan's citizens. I am not satisfied that the applicant's being penalised in this way would amount to persecution within the meaning of s.5J(4).

⁸ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264, 5.19.

⁹ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264, 5.19.

¹⁰ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 4.3.

¹¹ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 2.9.

¹² DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265, 2.8.

¹³ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 5.22-5.27.

24. The applicant claims to have converted to the Christian faith and to fear harm upon return to Pakistan from his own Shia Hazara community, as well as the Pakistan Sunni Muslim community and extremist Islamic groups in Pakistan. At his November 2015 TPV interview the applicant stated that he had become interested in Christianity and that he wanted to convert to this faith. He said that shortly after arriving in Australia he had ceased to practise Shia Islam. Asked why this was, he said that he did not like that they had to hit themselves and at school the Sunni students would hit him on the back. The applicant appeared to be implying that he no longer wanted to be part of a Shia Islam because of the self-flagellation rituals associated with the commemoration of Ashura, and because Sunnis would strike him on the back at school as a way of mocking and mistreating him. He also said that he felt attracted to Christianity because it was the religion of Australia, the country to which he now wished to belong, and because it was a religion that was not forced on you and that is was about humanity and kindness. He said that his [Relative A] in Australia was involved with a Christian girl, a Roman Catholic, and that he was working with Christian men who he liked and who had introduced him to their Assyrian church. He said that he had attended church twice. He said that he did not know the name of the church but it was an Assyrian church in [Suburb 1]. He said that he preferred the beliefs of the Assyrian church. He said that Catholics believe that Jesus is God whereas Assyrians believe that Jesus is the Son of God, and that he agreed with this view that Jesus is the Son of God but not God himself. He said that he had not previously mentioned his interest in Christianity prior to the interview before because he was worried that doing this, and taking a different name with baptism, might adversely affect the assessment of his claims.
25. [In] January 2016 the applicant provided the department with a certificate of holy baptism. This stated that [in] December 2015 the applicant was been baptised as [Alias 1] into the Assyrian Church of the East by a senior cleric of the church. On [a date in] February 2016 the senior cleric confirmed the authenticity of this certificate. In response to the IAA's queries the senior cleric advised that the applicant's conversion to the Christian faith has seemed genuine in his opinion. He stated that the applicant was a work colleague of his [relative] and that although the applicant's work colleagues had confirmed the applicant's intentions of conversion to the Christian faith for some time, the senior cleric had delayed the conversion process to test the applicant's love and zeal for the faith. He said that numerous meetings and gatherings were arranged between the applicant and the senior cleric to prepare the applicant for his baptism, and that through these meetings the applicant was taught the key features of the faith according to the Assyrian Church of the East. The senior cleric advised that the requirement for conversion into the faith was solely dependent on the love and zeal that the individual has for the Lord Jesus Christ and his teachings, and that the applicant had displayed these through their numerous meetings. He stated that the applicant has since attended a couple of church services at the church but that the senior cleric could not be certain as to the extent of the applicant's attendance owing to the size of the congregation and the alternate use of different priests for the services. Because the applicant does not understand Assyrian the applicant has not understood the church's services completely and he has requested to attend other churches which conduct their services in English. The senior cleric has supported this request. The applicant still makes his appearances at the church's services and the last time the senior cleric saw the applicant was some six weeks ago at the Christmas 2016 service. Given that a senior cleric of the the Assyrian Church of the East has reached these conclusions after engaging with the applicant over a prolonged period of time, and with a view to ascertaining the genuineness of his convictions before agreeing to baptize the applicant, I give the senior cleric's evidence significant weight.
26. The applicant claims to have been wary of introducing his new claim to have converted to Christianity for fear that this would further undermine his credibility. Given that the applicant's

inconsistent evidence regarding his nationality and identity claims had already placed the applicant's overall credibility in doubt I accept that the applicant had concerns of this kind. The credibility of the applicant's claim to have converted to Christianity cannot, however, be dismissed solely as a consequence of the fact that the applicant has proven an unreliable source of evidence with regard to other matters. The fact that the applicant has been baptised into the Assyrian Church of the East after convincing a senior cleric of his commitment to the faith cannot be disregarded, and the applicant's own evidence regarding his religious beliefs must be considered in the context of the entirety of the evidence available. The applicant's account of how he has discovered Christianity through his [family member] and his work colleagues suggests that his engagement with the Christian faith has occurred on its own terms rather than as part of a strategic attempt to pursue a claim to refugee status. His account of how he has become estranged from Islam has proven less compelling. There is no evidence before me indicate that in Pakistan members of the Shia Muslim community are forced to participate in Ashura self-flagellation rituals, or that members of the Sunni community mock or strike Shias on the back in such a regard. Nevertheless, it is not inconceivable that the applicant might have felt compelled to participate in such rituals by the social expectations of family and friends. It is also not inconceivable that he was mocked by Sunnis at school may have struck him on the back and mocked him in this regard.

27. The applicant's discussion of Christian beliefs and his commitment to the confessions of the Assyrian Church of the East was, likewise, less compelling than his account of how he became engaged in the faith through his acquaintances. Contrary to the applicant's explanation at interview, both the Roman Catholic Church and the Assyrian Church of the East confess that Jesus Christ is the only Son of God and that Jesus Christ is both true God and true man, and also that Jesus Christ is one part of a triune god (or trinity) consisting of God the Father, the Son and the Holy Spirit.¹⁴ The two churches have differed, however, over the manner in which Jesus Christ is understood to be both true God and true man. The Roman Catholic Church addresses the Virgin Mary as the "Mother of God" and also as the "Mother of Christ". The Assyrian Church of the East, however, prays to the Virgin Mary as "the Mother of Christ our God and Saviour".¹⁵ The distinction is a subtle one, and it may be that the applicant was attempting to refer to this distinction, and the greater emphasis given to the humanity of Jesus Christ by the Assyrian Church of the East, in saying that Roman Catholics believe that Jesus is God while the Assyrian Church of the East believes that he is the Son of God but not God himself. It may be that problems in language and interpreting confused the matter. In any event, and even if the applicant misunderstood the precise nature of one or both confessions, his statements in this regard at least appeared to show that he had had some engagement with thinking about the nature of Jesus Christ.

28. Given the applicant's lack of credibility in other regards, and given that his evidence regarding his religious beliefs at the November 2015 TPV interview was not compelling, I have my doubts about whether the applicant has made a genuine conversion to the Christian faith. Nevertheless, given that his evidence regarding his religious beliefs is not implausible or insubstantial, and given the significant fact that a senior cleric of the the Assyrian Church of the East considers that the applicant has made a genuine conversion to the Christian faith and has shown an ongoing commitment to attending Christian worship, I accept that the applicant has

¹⁴ "Faith", Apostolic Catholic Assyrian Church of the East Archdiocese of Australian New Zealand, and Lebanon (Assyrian Church of the East for ANZL), (undated); K. Mardinkha & Ioannes Jaulus PP. II, "Common Christological Declaration Between The Catholic Church And The Assyrian Church Of The East", 11 November 1994.

¹⁵ K. Mardinkha & Ioannes Jaulus PP. II, "Common Christological Declaration Between The Catholic Church And The Assyrian Church Of The East", 11 November 1994; Royel, D. "The Assyrian Church of the East: A Panoramic View of a Glorious History", Apostolic Catholic Assyrian Church of the East Archdiocese of Australian New Zealand, and Lebanon, (undated).

made a genuine conversion to the Christian faith and that he would seek to practice his new faith upon return to Pakistan. I am thus also satisfied that the applicant undertook his engagement with the Christian faith for reasons other than the purpose of strengthening his claim to be a refugee

29. Christians are a religious minority within Pakistan and amount to less than one per cent of Pakistan's population of 190 million, of whom some 95 per cent are Muslim (Sunnis are generally estimated to account for approximately 75 per cent of the population and Shias a further 20 per cent).¹⁶ Nevertheless, the number of Christians in Pakistan is not insubstantial. There are an estimated four to six million Christians in Pakistan, and most of these live in the Punjab Province¹⁷ of which Lahore is the capital. DFAT has observed that there are no legal restrictions on the rights of Pakistani Christians to worship freely. However, Christians and Christian places of worship have often been subjected to communal and sectarian violence. For example, eight people died in a mob attack on Christians accused of blasphemy in Gojra in August 2009, and a mob destroyed 100 houses in Joseph Colony, Lahore, in March 2013. Credible sources have told DFAT these problems are worse in rural areas, where there is less access to religious leaders able to defuse religious and sectarian tensions.¹⁸ In May 2012 UNHCR commented similarly, stating that the Christian minority in Pakistan is subject to recurrent discrimination and harassment, as well as acts of religiously motivated violence, at the hands of militant groups and fundamentalist elements. Criminal provisions, particularly the blasphemy laws, are reportedly used by militant organizations and members of some Muslim communities to intimidate and harass Christians, as well as to exact revenge or settle personal or business disputes. UNHCR assessed that members of the Christian community, including those targeted by Islamic extremist elements or charged with criminal offences under the blasphemy provisions, victims of bonded labour, severe discrimination, forced conversion and forced marriage, as well as Christians perceived as contravening social mores, may, depending on the individual circumstances of the case, be in need of international refugee protection.¹⁹ In January 2016 DFAT assessed that there is a low level of official discrimination and a moderate level of societal discrimination against Pakistan's Christian community, and that Christians in Pakistan are subject to a low level of communal and sectarian violence.²⁰
30. Unlike the applicant, the majority of Pakistan's Christian community is composed of persons who were born Christians, and whose ancestors were Hindus who converted to Christianity during the British colonial period.²¹ Neither DFAT nor UNHCR have provided any advice on the specific situation in Pakistan for Muslims who have converted to Christianity, or whether effective protection measures are available to persons in this particular situation. According to the UK Home Office the situation is far more difficult for a person who is known to have converted from Islam to Christianity, than for a person who was born Christian. It is rare, in Pakistan, for a person to convert to Christianity, especially openly. It is likely that the fact of a person's conversion will be well-known within their community, with potential repercussions. In May 2016 the UK Home office assessed that would it would be difficult for those known to be Christian converts to live freely and openly in Pakistan. People who are known to have converted to Christianity suffer acts of violence, intimidation and serious discrimination from

¹⁶ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 2.3, 3.10; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 14 May 2012, CIS3563, n.5.

¹⁷ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 3.21.

¹⁸ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 3.23.

¹⁹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 14 May 2012, CIS3563, pp.24-30.

²⁰ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 3.24.

²¹ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 3.22.

non-state actors. People who are known to have converted to Christianity are likely to face and be at real risk of attacks by non-state actors.²² Family members will often deem it their duty to kill the convert. If the conversion becomes publicly known an extremist group or conservative community members may similarly seek to kill or harm the convert.²³

31. According to the UK Home Office, such treatment is prevalent throughout Pakistan and internal relocation to escape such treatment is unlikely to be a viable option.²⁴ The British High Commission in Islamabad has advised that internal relocation may be possible, in theory, as there are Christian communities in many urban areas such as Rawalpindi, and across Punjab and Sindh provinces. Due to the anonymity afforded by moving to an urban area, it may be feasible to relocate and not reveal the fact of the conversion. However, the increasing isolation of Christian communities means that even acceptance into such a community would not preclude harassment for a convert.²⁵
32. DFAT has noted that since 2013 local police have provided security to major churches during religious services and that Pakistan courts have dismissed several blasphemy cases recently brought against Christians based on the dubious nature of accusations or the ineffectiveness of official investigations.²⁶ The UK Home office has similarly reported that there is evidence to indicate that in some circumstances and places effective protection measures are available to the broader Christian community. However, in the case of converts the UK Home Office reports that such persons suffer discrimination when dealing with the authorities. Although conversion is not illegal, and although is theoretically possible to change one's religion from Islam, in practice, the state attempts to hinder the process. The UK Home Office assesses and that Christian converts would not generally be able to seek and obtain protection from the state against acts perpetrated against them by non-state actors.²⁷
33. I accept that the applicant faces a real chance of being killed or of suffering serious physical harm from an anti-Shia militant group like LeJ in Quetta for reason of his being a Hazara and an imputed Shia Muslim. However, I am not satisfied that the applicant would face a real chance of harm of this kind in Lahore. The question of whether the applicant would face a real chance of harm for reason of having converted from Islam to Christianity is more difficult to assess. The UK Home Office has reported that converts from Islam to Christianity will likely suffer violent attack, intimidation and serious discrimination, and that relocation is not a viable means of escaping this risk. The report is based on advice received from the UK High Commission in Islamabad and other government fact-finding missions as well as Christian groups, NGOs and a survey of recent relevant reporting, and I give it significant weight. Nevertheless, the applicant does not claim that his family have reacted adversely to his conversion to Christianity and it is often from the family that such harm comes. The applicant claims that his Muslim housemates in Australia initially reacted to his conversion adversely. But he has now supplied a statement from them in which they wish him well with his new faith, and there is no evidence before me to indicate that the applicant's conversion is known to anyone in Pakistan who intends him harm. This noted, if the applicant's conversion were to

²² UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15, 2.3-2.3.2, 2.7.2, 3.1.6.

²³ UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15, 8-8.1.6.

²⁴ UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15, 2.3-2.3.2, 2.7.2, 3.1.6.

²⁵ UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15, 8.1.6.

²⁶ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, 3.23, 3.27.

²⁷ UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15, 2.5-2.5.2.

become publicly known the reporting of the UK Home Office indicates that he would face a real chance of harm from offended members of his community (the report gives no indication that the Shia Hazara community is more tolerant of such conversions than are Pakistan's other Shia Muslim or Sunni Muslim communities).

34. As has been noted above, the British High Commission in Islamabad has advised that internal relocation may be possible, in theory, if the convert can find acceptance with a Christian community and if the anonymity afforded by moving to an urban area prevents his conversion from becoming public knowledge and he is able to establish himself in a Christian community. The applicant has no existing links with any Christian communities in Pakistan. Moreover, even if he were able to quickly establish these upon return to a location like Lahore, I cannot dismiss as remote the possibility that the applicant's conversion would nonetheless become publicly known and that he would be harmed on this basis. Given that Pakistan officials generally hinder the process of conversion it is unlikely the applicant would return to Pakistan with his documents amended to show his new religion and, if he so chose, the Christian name he has adopted at his baptism. Although his religion of birth is not visibly printed on his national identity card as is the case on his passport and birth certificate (the identity card carries this information in its electronic chip)²⁸ the Muslim name on his national identity card effectively announces the applicant's religion at birth. Moreover, the applicant would be unlike the vast majority of Pakistan's Christian community in that he is a Hazara, an ethnically distinct identity which is closely associated with Shia Islam. Any person in Pakistan who saw the applicant entering a church, or participating in some other publicly observable Christian activity, would likely recognise the applicant as a Hazara and thus as a Shia Muslim who has converted to Christianity. Given this, it is likely that the applicant's conversion to Christianity would become publicly known wherever he might go in Pakistan. Even if he were to establish himself in a rural area where no Christian churches or communities exist and where he would not be seen attending such gatherings, the applicant's non participation in Islamic observances, together with the greater familiarity of smaller societies and the conservative nature of rural areas, would mean that the applicant's conversion to Christianity would likely become publicly known.
35. Given the rarity of Muslim conversions to Christianity in Pakistan the regularity with which reports of attacks upon such converts have appeared seems significant.²⁹ Given this, and given that that the UK Home Office has assessed that a convert from Islam to Christianity would likely suffer violent attack, intimidation and serious discrimination if the conversion became publicly known, and given that the applicant's conversion likely would become publicly known no matter where he might go in Pakistan, I am satisfied that the applicant would face a real chance of serious harm for reason of his religion in all areas of the receiving country. Given that the UK Home Office has assessed that converts from Islam to Christianity would not generally be able to seek and obtain protection from the state against acts perpetrated against them by non-state actors, I am satisfied that effective protection measures against the persecution are not available.
36. Section 5J(3) of the Act provides that a person will not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour so as to avoid a real chance of persecution. However, this does not include a modification that would require the person to conceal his or her true religious beliefs, or cease to be involved in the practice of his or her

²⁸ UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian Converts", 1 May 2016, OGD7C848D15, 9.3.1.

²⁹ "Leave the village or face consequences", Friday Times, The, 03 June 2016, CX6A26A6E5030; Canadian Immigration and Refugee Board of Canada, Pakistan: Religious conversion, including treatment of converts and forced conversions (2009-2012), 14 January 2013, PAK104258.E.

faith. In these circumstances, requiring the applicant to conceal his adherence to Christianity or to cease practising Christian worship in order to avoid the real chance of persecution would constitute an impermissible modification of behaviour. Accordingly, I find that s.5J(3) of the Act does not apply. I am satisfied that if the applicant returned to [Pakistan he] would face a real chance of persecution for reason of [his religion.]

37. I am satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

38. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...