



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/02557

Date and time of decision: 1 February 2018 15:26:00

Patricia Tyson, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. [In] February 2016 he lodged an application for a Safe Haven Enterprise Visa (protection visa), claiming to fear harm because of threats made against him by the Iranian government in relation to an invention and because he has converted to Christianity in Australia. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa in a decision dated [in] April 2017. The delegate did not accept the applicant had been threatened over the invention or that he had genuinely converted to Christianity and found there was not a real chance or risk of the applicant being harmed in Iran.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The IAA received submissions from the applicant's representative [in] May 2017. These respond to the delegate's decision and I have taken them into consideration with the exception of a statement that the applicant fears persecution on the basis of his race which is new information. No such claim has previously been made and no information or evidence has been provided to explain the basis of the claimed fear, such that I am unable to be satisfied that the claim could not have been made to the delegate prior to the decision being made, that it is credible, or that there are any exceptional circumstances to justify its consideration.
4. I have obtained new information from a report of the Department of Foreign Affairs and Trade (DFAT).<sup>1</sup> The information is about classes of persons of which the applicant is a member (asylum seekers returning to Iran and Muslims who have left Islam) and is relevant to determining claims which arise on the material before me but were not considered by the delegate. I am satisfied there are exceptional circumstances to justify considering the information.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - The applicant had a number of ideas for inventions. One of these involved [a project for which] he needed government permission.
  - In 2010 the applicant met with the [government Ministry] to apply for land for [project]. They approved his request but kept him waiting for [number] years before allocating land. He believes they wanted him to get tired and slowly give them his information. He believed that if he gave the information they would make him disappear.
  - After [number] years, the officials offered the applicant [size] acres to start the [project], but wanted his patent and a share in his work. The applicant refused, thinking he would set up the [project] then be thrown out. The meeting ended with the Department's security guards throwing the applicant out of the building and almost calling the police.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677.

- The applicant left Iran about [number] days after this.
- On a number of occasions people came to his house and his wife's business asking about his whereabouts. One person pushed his wife, causing her to fall and [sustain an injury] and after this she left the business and removed their [child] from school for a year. These people would not identify themselves but would ask for the applicant. His father said they looked like Basij. The last time this occurred was in around 2015.
- The applicant cannot obtain protection because the government works together and has a poor justice system. Nor can he relocate because the government will hunt him down for his invention.
- The applicant fears he will be disappeared, jailed or killed, he will be held incommunicado without legal assistance.
- In Iran, the applicant wanted to go to church but was told that it was dangerous. Since being in Australia he has attended churches and has changed his religion to Christianity.

### **Refugee assessment**

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6. 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**

7. 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.
8. The applicant's identity is not in issue. He has provided consistent personal details since his arrival in Australia, substantiated by Iranian identity documents. I accept the applicant's identity as claimed and that he is a national of Iran.
9. The applicant attended a protection visa interview with the delegate [in] September 2016. Following that interview, he provided further material. The delegate wrote to the applicant in January 2017 inviting a response to concerns over how his relationship status could be

reconciled with his claim to be a Christian, to which the applicant responded with a statutory declaration dated March 2017. The delegate again wrote to the applicant in April 2017, inviting comment on information received from a third party. The applicant responded by providing submissions and various documents relating to that information. I do not see the applicant's relationship status as determinative of whether or not he is a Christian, and do not view the information provided by the third party relevant to determining the applicant's claims for protection.

#### *Events in Iran*

10. The applicant's claims to have an invention/project which he presented it to the [government Ministry] have been made with broad consistency in an arrival interview that took place [in] December 2012 and in the protection visa interview. During the protection visa interview, the applicant presented a number of documents relating to his plans for the [project] and dealings with the Iranian [government Ministry]. I accept on the basis of these, and the applicant's oral evidence including descriptions of how his inventions were to work, that he approached the [government Ministry] in relation to obtaining permission and land for a [project]. He referred in both the protection visa interview and the arrival interview to the government having delayed acceptance of the project, although made no mention at the arrival interview of the government attempting to take his invention, or threatening him. However, considering his account at the protection visa interview I am willing to accept that after being kept waiting for [number] years he was offered land only if the Ministry were able to benefit from his invention, and that he then had an argument which ended in him being escorted from the building and the police almost being called.
11. The applicant claimed in his written claims that he was threatened to give up his invention or go to jail. He does not claim to have received any further contact from Iranian authorities in the [number] days between his last meeting and departure from Iran. He has said that after he left Iran, people have been visiting his wife and father asking for him, that they looked like Basij and on one occasion his wife was pushed and injured. He says these visits continued for a number of years after his departure. On his own evidence these people did not identify themselves as being from the government or indicate why they were looking for him. The applicant left the country at short notice, and people could have been inquiring after his whereabouts for any number of reasons.
12. I am not satisfied on the evidence that the applicant's dealings with the [government Ministry] led to any adverse interest in him, or intention on the part of government officials to harm him in order to obtain his invention. A substantial amount of time has now passed and I am not satisfied there is a real chance of the applicant being harmed in the reasonably foreseeable future in connection with the invention or these events.

#### *Religious beliefs*

13. The applicant claims to have converted to Christianity. At his 2012 arrival interview the applicant indicated that his religion was Shia Muslim. His February 2016 protection visa application form indicates his religion as Muslim, although 'N/A' was also written and crossed out. A further protection visa application form submitted in June 2016, completing information missing from the February 2016 form, states 'N/A' for his religion. At the protection visa interview in September 2016, the applicant stated he has changed his religion and is now Christian.

14. The applicant said that when he was in Iran, he had wanted to visit a church located near to his friend's property, but had been warned it was dangerous. He was given a phone number to contact a nun, but did not do so. After the protection visa interview the applicant's representative sent a submission giving the address of the church he claims to have attended in Tehran and states that he cannot obtain further information about his participation in churches in Iran for fear of getting his family into trouble. However, on my understanding the applicant did not claim during the interview to have actually participated in any churches in Iran, other than making inquiries about attending one. I accept he may have entered the church on that occasion, and that he expressed interest in attending but am not satisfied his participation in churches in Iran went beyond that.
15. The applicant claims that when living in [city] after arriving in Australia, he would go to church and observe sometimes, and he liked the way that people prayed. He claimed to have begun thinking of himself as a Christian when he arrived in [another city] and went to a [certain] church. According to his visa application he moved to [the other city] in February 2013. He then went to English classes at a church in [suburb], where they would read the bible. He said he talked to a priest and was told he needed to come for six weeks, but the applicant said 'I want to change it now, I don't want you to make a big deal, I want to change, if somebody asks me I say I'm Christian'.
16. The applicant demonstrated some basic familiarity with Christian concepts, identifying that Christians view Jesus as god. Asked to identify things he liked or were important to him in Christianity, he referred to the way Christians behave and care about each other and help each other without expectations. He expressed views in favour of Jesus, because Jesus had not sought revenge. The applicant claimed to have a Persian bible, but when asked to about specific parts that were meaningful, he referred to Jesus carrying a cross and his mother crying, saying that he had seen a movie of that in the church. He also referred to a story where Jesus plays with children, and one where they are on a boat and it is windy. His evidence did not demonstrate any familiarity with the bible.
17. The applicant's evidence did not suggest that he has had any real engagement with the more spiritual side of Christianity. He said he had never been to a bible study group, although one of the reference letters he provided, discussed below, contradicts that evidence. When asked how often he goes to church, he said not all the time, but sometimes there are parties, dinners or [games]. He said that they read the bible at these events or sometimes show movies, and referred later in the interview to watching a movie depicting the crucifixion. Asked about how often he attended actual church ceremonies, he said lately he is not going much. He said before he went every day, but it seemed this may have been referring to English classes.
18. Following the protection visa interview, the applicant's representative submitted by email that the applicant had trouble with nerves and anxiety on the day of the interview and did not explain himself well enough regarding his involvement with his new faith. In the context of responding to the delegate's concern that his living in a de facto relationship in Australia while still married to his wife who remains in Iran is contrary to his claimed Christian beliefs, the statutory declaration submitted in March 2017 expresses his understanding of relationships outside marriage as a sin, bigamy being contrary to Christianity, and states that he prays to Jesus for forgiveness, demonstrating some understanding of these concepts.
19. The applicant has submitted a number of references regarding his religious activities. A reference from [clergyman] of [a church] dated September 2016 refers to the applicant having attended English classes held at church premises weekly, and more regularly in 2013. The letter confirmed that a lesson from the bible is conducted in every class. It states that as result

of the classes, the applicant became very interested in Christianity and in recent years has been attending worship at different churches, including [the clergyman's church], but gives no indication of his frequency in doing so or which other churches he has attended. It states he has abandoned Islam and embraced Christianity. An earlier letter from [another clergyman] dated July 2015 refers to the applicant having attended English classes regularly in 2013 and 2014. After the interview, the applicant submitted a joint reference from [a number of pastors] at [another church], which states he attended [certain] Bible studies there from April to September 2013. I am willing to accept this, despite the applicant's own evidence he had not done any bible studies. There is also an email dated October 2016 and signed by a number of people who say they are from the Roman Catholic Church. It states that they have been giving the applicant a brief idea about their religion, and that he had shown faith and trust and had been seeking advice on how to convert. I note the applicant had given evidence in the protection visa interview that he preferred the Baptist to the Catholic church, because Baptists were happy whereas Catholicism was strict, tiring and boring.

20. Considering this evidence as a whole, I accept that the applicant had some curiosity about Christianity, reflected in his interest in visiting a Christian church in Iran, and that there are aspects of what he knows of the religion that he finds appealing. I accept the applicant's engagement with Christian communities in Australia has been other than for the purpose of strengthening his claim to be a refugee, also having social and educative elements. However, while I acknowledge that religious belief can vary between person to person and manifest in different ways, and have taken into account the applicant's nerves and the fact he was speaking largely in English during the protection visa interview, I did not find the applicant's evidence regarding his involvement with or understanding of Christianity indicative of a genuine belief in or commitment to the practise of that religion. His engagement appears to have been primarily through English classes and social activities and I am not satisfied on the evidence that he has attended church services with any regularity, or that he has undergone baptism. His knowledge of Christianity appears minimal, considering his claimed belief in the religion since around 2013. I consider his claim to have changed his religion and become a Christian to be a recent invention for the purpose of the application. I do not accept that he would identify as Christian or practise Christianity in Iran and find that this is because of his lack of genuine commitment or belief rather than because of a fear of persecution.
21. To the extent the applicant's evidence suggested he had spoken to his wife and father about his religious beliefs, I accept he might have mentioned his interaction with church groups but do not accept that he told them he had converted to Christianity.
22. The applicant identified a number of things about Islam that he does not like during the protection visa interview and indicated he will not identify as Muslim or practise that religion if he were to return to Iran. Information from DFAT regarding Muslims who have left Islam states that apostasy is punishable by death in Iran. However, prosecutions for such offences are rare and DFAT assesses it is unlikely that individuals would be prosecuted on such charges. It is also highly unlikely the government would monitor religious observance such as mosque attendance or participation in religious occasions. DFAT therefore assesses that it is unlikely that it would become known that a person was no longer faithful to Shia Islam, unless they publicly manifested or were identified practising a new faith, or sought to publicise their views.<sup>2</sup>
23. I am not satisfied on the evidence that the applicant would identify as or practise Christianity or any other faith in Iran, or otherwise seek to publicise his views. As I have found earlier, the

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<sup>2</sup> Ibid, 3.52-3.53, 3.55, 3.57.

applicant was not a person of any interest to the Iranian authorities. I consider it remote that his engagement with Christian churches in Australia, his lack of belief in Islam and/or non-practise of that religion in Iran would come to the adverse attention of the Iranian authorities or other persons who might harm him. I am not satisfied there is a real chance of the applicant being harmed because of his religious beliefs or his activities in Australia.

#### *Return to Iran after claiming asylum in Australia*

24. The applicant stated in the March 2017 statutory declaration that he had been scared to attend an Iranian embassy in Australia as they would have found out he had sought asylum.
25. I accept that if the applicant returns to Iran, it is possible that the Iranian authorities may infer from the manner of return, which would require consultation with Iranian diplomatic representatives to issue a travel document,<sup>3</sup> that the applicant has sought asylum in Australia.
26. However, I do not accept that persons returning to Iran after seeking asylum and having spent time in countries such as Australia are viewed with any adverse interest for those reasons by Iranian authorities. From DFAT's anecdotal observation at airports, voluntary returnees (which the applicant would be if he were to return to Iran, since Iran does not issue travel documents to involuntary returnees<sup>4</sup>) do not attract much interest from authorities amongst the large regular international movements of Iranians. Credible sources have told DFAT that returnees will generally move quickly through airports – usually Tehran Imam Khomeini – without official interest. DFAT has said based on 'strong anecdotal evidence' that voluntary returnees are not prosecuted, and DFAT's sources advise that returnees will generally only be questioned if they have done something to attract the specific attention of authorities, and the vast majority of people questioned would be released after an hour or two.<sup>5</sup>
27. The applicant departed Iran lawfully using a passport in his own name. I do not accept that he was a person of any adverse interest to the Iranian authorities at the time of his departure, and find it remote that he has subsequently come to any adverse attention. It is possible the applicant may be briefly questioned on return in relation to his travel document, but I am not satisfied there is a real chance of him being mistreated during this process or identified as a person of any interest. Questioning does not amount to serious harm and I am not satisfied there is otherwise a real chance of the applicant being harmed either on his return to Iran or otherwise in the reasonably foreseeable future.
28. Considering the evidence as a whole, with regard to my findings and the country information above, I am not satisfied there is a real chance of the applicant being seriously harmed in relation to his invention or the events that took place prior to his departure from Iran, his religious beliefs or activities including his non-practise of Islam and activities in Australia, because he has sought asylum and spent a period of time in Australia, any combination of these matters, or for any other reason. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

29. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

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<sup>3</sup> Ibid, 5.34-5.35.

<sup>4</sup> Ibid, 5.33.

<sup>5</sup> Ibid, 5.34.

## Complementary protection assessment

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30. 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

31. 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.

32. The Full Federal Court has held that real chance and real risk involve the same standard.<sup>6</sup> I have found above there is not a real chance of the applicant being harmed in relation to his invention or the events that took place prior to his departure from Iran, his religious beliefs or activities, including his non-practise of Islam in Iran and activities in Australia, because he has sought asylum and spent a period of time in Australia or any combination of these matters, other than potentially being questioned at the airport. Questioning, which on my above findings will not involve any mistreatment or result in him being identified a person of interest, is not arbitrary deprivation of life or the death penalty, and I do not accept that it involves the level of pain, suffering or humiliation required to satisfy the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment in s.5(1). It is not significant harm. On the findings and country information above, I am not satisfied there is a real risk of the applicant suffering significant harm.

### Complementary protection: conclusion

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

## Decision

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

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<sup>6</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### **Migration Act 1958**

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

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**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.