



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/02763

Date and time of decision: 13 December 2017 11:40:00

Rebecca Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] October 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). [In] May 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

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. On 15 June 2017 the IAA received a new statement from the applicant.
4. The statement refers to aspects of the delegate's decision, the applicant's original claims for protection and evidence he provided to the delegate and argument in response to the delegate's decision. I am satisfied that the above is not new information and I have had regard to it.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a citizen of Iran and lived in Tehran.
 - He has been arrested in Iran on one occasion for smoking in public and on another occasion while consuming alcohol in the privacy of his home. On both occasions he was detained overnight and forced to sign a pledge and then released.
 - He has not practised Islam since he was a teenager.
 - He used marijuana and attended [Agency 1] for treatment of his drug addiction and became interested in Christianity through [Agency 1] which he claims is based on Christianity. He left Iran in order to learn more about Christianity and to become a Christian.
 - He departed Iran on his own passport but threw it away on his way to Australia on the direction of the people smuggler.
 - He was baptised at [Church 1] [in] July 2013 and then baptised at [Church 2] [in] October 2013 and has attended church regularly since then.
 - He has told his family and friends in Iran that he has converted to Christianity and referred to his new faith on his [social media] account.
 - He fears persecution because of his Christian conversion and harm because he escaped from Iran and applied for asylum.

Factual findings

6. The applicant has provided original identity documents from Iran including his translated Iranian military service card and untranslated driver's licence. On the evidence before me I am

satisfied that the applicant is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.

7. I accept the applicant's claim that he was born into a Shia Muslim family but that he stopped practising Islam when he was a teenager. The applicant claimed that he was not punished for his lack of religious practise by his family or Iranian society but claims those who are more religious were considered more acceptable and was impacted by religious laws which applied to everyone. The applicant also referred to being arrested on two occasions. I accept that the applicant was arrested in Iran on one occasion for smoking in public and on another occasion whilst consuming alcohol in the privacy of his home. He claims that on both occasions he was detained overnight and forced to sign a pledge and then released. The applicant claims that was set free in relation to the alcohol offence as he lied to the court and said that he drank [alcohol] [for a specific purpose]. I accept that these incidents occurred as I found that the applicant raised these claims during the protection visa interview in a natural and matter-of-fact manner and did not attempt to elaborate or exaggerate these claims. I am satisfied the applicant did not receive any other punishment in regards to these incidents. There is no credible evidence before me that he was of any further interest to the Iranian authorities or imputed with a political opinion against the Iranian government or Islam as a result of these incidents and I am not satisfied he was.
8. The applicant claims that he had been under a lot of pressure in Iran because they did not have any individual rights or freedom and everything had to comply with Islam and during his entry interview I note that he also claimed that Iran was not a lawful country. I am satisfied the applicant has a political opinion against the Iranian regime.
9. The applicant claims that he used to smoke marijuana for a number of years and eventually joined [Agency 1] in Tehran where he was reformed through their help. I accept these claims as the applicant demonstrated credible knowledge of the [Agency 1] program. However, I note the applicant has not claimed he came to the adverse attention of the Iranian authorities because of his drug use in Iran. During the protection visa interview the applicant claimed that he attended a number of [Agency 1] sessions in Australia in 2013 but not since and has not claimed that he continues to have a drug addiction or uses illicit drugs. I am not satisfied the applicant has a current drug addiction or has continued to use illicit drugs or that he will do so if he were to return to Iran. I am also not satisfied that he came to the adverse attention of the Iranian authorities because of his drug use in Iran.
10. For reasons outlined below I do not accept the applicant's claim of having developed an interest in Christianity in Iran and having genuinely converted to Christianity in Australia.
11. The applicant claims that his personal connection with Christianity developed through his attendance at [Agency 1] which he claimed was based on Christianity. As the organisation had changed his life, he became significantly interested in Christianity. During the protection visa interview he referred to some similarities between the principles of [Agency 1] and Christianity. However, the applicant also acknowledged that [Agency 1] is not affiliated with any religion and there is no credible evidence before me to indicate that [Agency 1] is based on Christian principles.
12. The applicant claims that he was scared to show his interest in Christianity in Iran due to severe threats from the Iranian authorities and his family and wanted to learn more about Christianity and for this reason he left Iran. However during his entry interview held [in] May 2013, when asked why he left Iran, he claimed there was not a specific event or occasion that caused him to leave Iran and referred to the fact that it was not a lawful country and they did

not follow the simple rules and he came to Australia to live and work and made no reference to his interest in Christianity. When this was raised by the delegate during the protection visa interview, the applicant first said that he did not have enough information about Christianity at that time and he was told that he could decide after being released to the community. When the delegate pointed out that he had claimed that his primary reason for coming to Australia was to learn about Christianity, he responded that he did not know and probably it was “kind of a fear” that he had and referred to the fact that he converted to Christianity promptly after being released from Australian immigration detention. The applicant did not elaborate on what his fear was based on and, as outlined below, the timing of his baptism is questionable given he had would had very little time to explore Christianity in-depth prior to being baptised so quickly after being released from immigration detention. I am not satisfied of the explanation the applicant gave for not raising his alleged interest in Christianity during his entry interview.

13. The applicant claims that due to the threat of being punished by the Iranian authorities he developed anxiety and stress that caused depression and he is currently attempting to receive counselling and support for his conditions. I note the applicant has not provided any medical evidence of his anxiety and depression or that he has sought or received medical attention for these conditions.
14. During the protection visa interview the applicant claimed that he tried to find out information about Christianity in Iran but faced barriers because he could not enter a church in Iran and was not able to get in contact with any Christian people or community and only got information on the internet and that he left Iran in order to learn more about Christianity. During that interview he also claimed that he did not attend any Christian services whilst held in immigration detention as someone told him that it was better to wait until he was released from detention in order to choose the right church. The applicant claims that he was released from immigration detention around June or July 2013. He claims he was subsequently baptised and provided a copy of his baptism certificate from [Church 1] which indicates he was baptised [in] July 2013. However, he has also provided a baptism certificate from [Church 2] dated [in] October 2013. I accept that the applicant was baptised on these two occasions in these churches. When discussing his first baptism he explained that he came all the way to Australia to be Christian so could not wait any more. During the protection visa interview the applicant explained that he attended [Church 2] on the encouragement of his friends who told him he should be baptised there but because the services were not in Farsi he returned to [Church 1]. Nonetheless, I have considerable concern about the fact that the applicant was baptised in two different churches shortly after being released from immigration detention and within months of each other particularly given he did not have much access to information about Christianity other than through the internet in Iran and appears to have spent a short amount of time attending both churches before being baptised in each church. He has also provided little information of what was required of him prior to being baptised in these churches other than first speaking to [a religious official] at [Church 1] who explained the errors of Islam and principles of Christianity and being told that he should be baptised at [Church 2].
15. The applicant has also provided a letter of support from [Leader A] from the [Church 1] in [Suburb 1] which is dated [in] May 2017. In his letter, [Leader A] states that he has known the applicant since about June 2013 when he visited their [church] service where his [colleague] explained serious mistakes in the Koran and aspects of Christianity to the applicant. [Leader A] then claims that the applicant prayed to receive Jesus Christ as his saviour. He claims that “according to his phone records” the applicant has regularly attended their [church] service since June 2013 and confirmed that he was baptised [in] July 2013. He stated that the applicant is very keen for all Muslims to become Christian and has brought [a number of] people to their church and puts Bible information on his [social media] page. The applicant tells him that he

wants everyone to become Christians and [Leader A] believes that the applicant is a true Christian based on his answers to his questions. The applicant has told him that he studies his bible at home and that he has read Matthew and John's Gospel and loves chapter one of a book called "Proofs of Christ and the Bible". I have concerns about the fact that [Leader A] is only able to confirm the applicant's attendance at his church since 2013 from his "phone records" as I consider that, if the applicant had been attending his church for four years regularly, that the pastor would be aware of this without relying on his phone records. It is also unclear how his phone records are able to confirm the applicant's church attendance. [Leader A] also claims that he believes the applicant is a true Christian based on answers to his questions but has not elaborated what those questions were and what the applicant's answers were. Much of the letter also refers to merely repeating what the applicant has told him in regards to his spiritual beliefs and practices. Given my concerns above, I find this letter gives little corroborative evidence of the genuineness of the applicant's Christian faith or how often he has attended church.

16. During the protection visa interview the applicant claimed that he has read the Bible but he has focused on the Gospels of Matthew and John because they are more practical to his life and easier to understand and gave examples of this such as showing love to others, anger management and being calm and having peace but I note that he did not explain why these Gospels were easier for him to understand compared to others. He was able to recite several verses from Chapter 5 from the Gospel of Matthew and referred to other stories from the Bible that he liked and the Ten Commandments. However, when pressed about other chapters in the Gospel of Matthew he could not remember and could not remember any verses from the book of John. In his statement to the IAA, the applicant claimed that the level of knowledge of Christianity should not be considered a reflection of someone's conversion to Christian faith and should not be interpreted as absolute ground to exclude a Christian convert from other Christians and cannot be an accurate measure for the decision-maker to refuse a visa. But I note that in this matter it is the applicant who has claimed to have focused his Biblical study on the Gospels of Matthew and John yet could not provide any examples of any verse from John and could only remember some verses from the Gospel of Matthew which he seemed eager to recite during his protection visa interview. This lends me to believe that he memorised these verses from the Gospel of Matthew for the purpose of his protection visa interview and not because of a genuine and in-depth engagement with either Gospels.
17. I have also taken into account that, although the applicant was able to display some understanding of the significance of Easter during the protection visa interview, when asked if he attended Easter services this year he claimed he did not as he was on holiday and was unable to confirm whether he attended the previous year. When asked about Good Friday church services he referred to eating chocolate and getting together and praying and having a meal together but did not provide any further detail and did not think there were any church services on the Thursday before Good Friday. Given the applicant's alleged devotion to Christianity and the significance of Easter to Christianity, I find the fact he did not attend Easter services this year and could not recall if he had attended the previous year and provided vague knowledge in regards to Easter church services raises further doubts as to the applicant's regular attendance at church and overall genuineness and commitment to his new faith.
18. The applicant claims that he has declared his Christianity on social media and has told [Leader A] has claimed that the applicant puts Bible information on his [social media] page. The applicant did not provide evidence of this but included in the referred materials are images from the applicant's [social media] page where it is noted that there are only four references to Christianity on his [social media] page. It also only shows two posts by the applicant about Christianity that were both uploaded on [a date in] May which the delegate has noted was ten

days prior to his protection visa interview. The limited references to Christianity on his [social media] account and the timing of the two posts just prior to his protection visa interview and the lack of any other evidence from the applicant about his social media activity strongly suggests that his recent Christian posts on his [social media] account was a deliberate attempt to raise his profile for the purpose of his application for protection prior to his protection visa interview and creates further doubt as to the genuineness of his new faith.

19. The applicant has also claimed that he talks to Muslims about the errors of Christianity and that they can only be saved through Christianity but he has not provided any evidence of this and, although [Leader A] does claim that the applicant has brought [a number of] people to his church, he has not said they were Muslims.
20. In his statement to the IAA the applicant claimed that his limited level of English skills impeded him learning Christianity and communication with Australians but he has engaged with the Christian community to the best of his ability and these factors were not taken into account by the delegate. However the applicant has claimed that he attends [Church 1] because of the Farsi church services available and I am not satisfied that the concerns I have raised in respect of his evidence can be attributable to his English level. Other than the letter he has provided from [Leader A], of which I have outlined my concerns and have given little weight, the applicant has not provided any other credible evidence of his engagement with the Christian community in Australia including any letters from leaders and members of [Church 2] or other members of the congregation at [Church 1].
21. As a result of my findings above and the concerns I have in regards to the applicant's evidence, I do not accept that he became interested in Christianity as a result of his participation in [Agency 1] or that he fled Iran due to a genuine desire to learn more about Christianity and to become a Christian. I accept that he was baptised in both [Church 1] and [Church 2] in 2013 and accept that he attended church services in these churches but not as often and regularly as he has claimed. I am not satisfied that he has a genuine interest in Christianity or that he has attended church and been baptised in Australia otherwise than for the purpose of strengthening his claim to be a refugee. I do not accept that he has preached Christianity to other Muslims in Australia. I am not satisfied, that if the applicant returns to Iran, he will continue to attend church or engage in any other Christian activities in Iran or identify as a Christian.
22. Although the applicant criticised aspects of Islam during the protection visa interview, he did so in support of his purported decision to convert to Christianity and in support of his claim that he preaches Christianity to other Muslims, claims which I have rejected. I also note that the applicant considered himself a non-practising Shia Muslim when he departed Iran. I am not satisfied the applicant has renounced his Islamic faith or no longer believes in it.
23. The applicant claims that the Iranian government knows that he has converted to Christianity and also refers to his [social media] page. There is no credible evidence before me to suggest that the Iranian government is aware of his church attendance or baptism in Australia through his [social media] page or any other means and I am not satisfied they are aware or that they will become aware of this in the reasonable foreseeable future.
24. The applicant claims he has told his family and friends in Iran that he is now a Christian. As I have not accepted that the applicant has generally converted to Christianity and no evidence has been provided that his family and friends are aware of his church attendance and baptism in Australia, I do not accept that the applicant has told his family and friends that he is now a Christian.

25. I accept that the applicant departed Iran on his own passport and then threw it away on route to Australia on the direction of the people smuggler.
26. During the applicant's entry interview he claimed that something would happen to him on return because he escaped Iran and became an asylum seeker in another country and in his application for protection he also referred to the fact that the Iranian authorities know that he escaped to Australia. I am not satisfied on the evidence that the Iranian authorities would deem the applicant to have "escaped" from Iran as I am not satisfied he was of adverse interest to the authorities when he departed Iran for any reason and he departed on his own passport or because he sought asylum in Australia.

Refugee assessment

27. 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

28. 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.
29. As I am not satisfied that the applicant has attended church and was baptised in Australia otherwise than for the purpose of strengthening his claim to be a refugee, I am required to disregard this conduct in determining whether he has a well-founded fear of persecution pursuant to s.5J(6) of the Act.
30. I have found that the applicant was not of any further adverse interest to the Iranian authorities because he was caught smoking in public and drinking on two different occasions. The applicant has not claimed that he continues to drink alcohol or smoke. There is no credible evidence to indicate the applicant was imputed with a political opinion against the Iranian government or Islam because of these offences, both individually and cumulatively. I am not satisfied the applicant faces a real chance of harm from the Iranian authorities as a result of these offences, both individually or as a result of the cumulative effect of these offences.

31. I have found on the evidence that the applicant does not have a current drug addiction or has continued to use illicit drugs or will do so on return to Iran. I am also satisfied he did not come to the adverse attention of the Iranian authorities in Iran because of his past marijuana use. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any group or person as a result of his past drug use/addiction.
32. I have accepted that the applicant is a non-practising Shia Muslim but I have not accepted that he has renounced his Islamic faith or no longer believes in it. Although I am satisfied the applicant is against the lack of individual freedom and rights in Iran, I am not satisfied on the evidence that he has expressed this opinion publicly in Iran or Australia and I am satisfied he will not do so if he were to return to Iran due to a lack of interest rather than a fear of persecution. In its most recent 2016 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) assessed that it is highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram.¹ Other country information sources indicate that a sizeable proportion of the Iranian population do not attend mosque regularly, say their daily prayers or fast during Ramadan.² The applicant claims his family knew that he did not practise Islam since he was young and he was never punished by his family or society for it. I have already found that he was not imputed by the Iranian authorities to be anti-Islam because he was caught smoking and drinking previously and he has not claimed to have continued to drink or smoke. He has not provided any other examples of being harmed for not practising Islam since he was a teenager. I am not satisfied the applicant's lack of religious Islamic practise will come to the adverse attention of the community, his family or Iranian authorities in Iran because he will not engage in public manifestations of Shia faith. I am not satisfied he faces a real chance of harm from the Iranian authorities or community or his family because he is a non-practising Shia Muslim and/or because of his political opinion.
33. I have considered whether the applicant will face persecution in Iran as a failed asylum seeker from Australia. In one report by Amnesty International an unnamed Iranian judge is quoted as saying that rejected asylum-seekers returning to Iran are questioned, regardless whether they were politically active in Iran or abroad. According to the judge, they are guilty if they attempted to engage in "propaganda" against Iran, and remain in detention until a verdict has been delivered by a judge. Returning asylum-seekers are thus placed in detention for several days until the police have verified that they had not engaged in any political activities, after which they are released.³ However, DFAT considers it unlikely that authorities would prosecute someone simply for claiming asylum overseas although it is possible that a known dissident would be prosecuted in this way.⁴ It further stated more recently that strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally.⁵ In 2013 Mr Hossein Abdy, Head of the Iranian Passport and Visa Department, also stated that it is not a criminal offence in Iran for

¹ Australian Department of Foreign Affairs and Trade, (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

² Gunes Murat Tezcur; Taghi Azadarmaki; Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", Critique: Critical Middle Eastern Studies, 1 January 2006, CIS21784; Bahman Baktiari, "Iranian Society: A Surprising Picture" in The Middle East Institute, "The Iranian Revolution at 30", 1 January 2009, CIS17095; "Tehran during Ramadan 'nobody is really in the spirit'", Guardian (Unlimited) (UK), 27 July 2013, CX312197

³ Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610

⁴ DFAT, "Response to IRN 11738 Iran - Article on returned asylum seekers and people exiting Iran with false documents", 19 April 2011, CX263145

⁵ DFAT, "Country Information Report – Iran", 21 April 2016, CIS38A8012677

any Iranian to ask for asylum in another country.⁶ There are reports of a small number of failed asylum seekers being arrested on return to Iran at the airport in 2010 and 2011, one of which was a political activist,⁷ but there are no more recent reports of this occurring and I am not satisfied the applicant has a political profile or any other profile that would attract the adverse attention of the Iranian authorities on return. On the basis of the recent country information that was before the delegate, I am not satisfied the Iranian authorities impute failed asylum seekers from Australia/western countries as holding an anti-regime or anti-Islamic opinion.

34. In 2013, the International Organization for Migration (IOM) stated that Iranians who have left the country on their passports and are returned on a *Laissez-passer* will be questioned by the Immigration Police at the airport. This questioning may take few hours, but according to IOM nobody has been arrested when travelling back on a *Laissez-passer*.⁸ It appears this information has been provided in regards to voluntary returns. Nonetheless, even if the applicant were to return to Iran on a *Laissez-passer* and be questioned by the Iranian authorities on return, I am not satisfied this amounts to serious harm and I am not satisfied he will face a real chance of harm from the Iranian authorities during questioning for any reason. I am not satisfied the applicant will face a real chance of serious harm from the Iranian authorities as a failed asylum seeker from Australia.

Refugee: conclusion

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

Complementary protection assessment

36. 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

37. 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.

⁶ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114

⁷ UK Home Office, "Iran January 2013", 16 January 2013, 3863

⁸ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114

38. For reasons already stated I have not found the applicant will face a real chance of harm in Iran because of his past drug use, because he is a non-practising Muslim, his political opinion or because he has been previously caught smoking in public and drinking alcohol. As real chance equals real risk⁹ I am also not satisfied the applicant will face a real risk of significant harm on return to Iran for these reasons.
39. I have not accepted that the applicant developed an interest in Christianity in Iran or that he has genuinely converted to Christianity. I am not satisfied that he will practise Christianity if he were to return to Iran. Although the applicant has attended church and been baptised in Australia I am not satisfied on the evidence that the Iranian authorities or community, or his family in Iran are aware of this or that there is a real risk they will become aware of this. I am not satisfied the applicant faces a real risk of significant harm in Iran from the Iranian authorities or community or his family as a result of his church attendance and Christian baptism in Australia.
40. On the basis of the country information before me and taking into account the applicant's profile I am not satisfied the applicant will face a real risk of significant harm from the Iranian authorities on return to Iran as a failed asylum seeker from Australia. Even if the applicant were to be questioned on return to Iran by the Iranian authorities if he returns on a *Laissez-passer*, I am not satisfied he would face a real risk of significant harm during questioning for any reason and I am not satisfied that being questioned amounts to significant harm as it does not reach the level of pain, suffering or extreme humiliation required to amount to cruel or inhuman treatment or punishment or degrading treatment or punishment. It also does not involve torture, an arbitrary deprivation of life or the death penalty.

Complementary protection: conclusion

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

Decision

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

⁹ *MIAC v SZQRB* (2013) 210 FCR 505.

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.