



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03104

Date and time of decision: 12 March 2018 11:17:00

Natalie Becke, 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 an Iranian citizen of Kurdish ethnicity from Kermanshah Province. [In] October 2016 he lodged a valid application for a Temporary Protection Visa (TPV). [In] June 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant this 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 1 August 2017 the IAA received a submission on behalf of the applicant ('the IAA submission'). The IAA submission reiterates claims made to the delegate that are contained in the review material. It also contains arguments in relation to issues before the delegate, which I have noted.
4. Accompanying the IAA submission are two documents:
 - A letter titled "Legal Advice" from a lawyer in Tehran, dated [in] July 2017. The letter sets out the different types of apostasy which exist under Sharia law, and the punishment for those who are accused of apostasy in Iran.
 - An information sheet from the Department of Home Affairs regarding 'SZQRB-affected cases', dated [in] January 2017.
5. The applicant was represented at his TPV interview, during which the delegate spent some time explaining how the applicant's protection obligations would be assessed, and the importance of providing all relevant information in the first instance, which the applicant indicated he understood. The delegate paused the TPV interview twice to give the applicant an opportunity to reflect on the concerns she had raised and she reminded him he could provide further information after the interview if he wished. A week after the TPV interview the delegate received a new statutory declaration from the applicant, as well as further identity documents as requested.
6. The IAA submission does not explain why the letter, which postdates the delegate's decision, was not sought earlier if it were relevant to the applicant's claims, or why it should now be considered. The letter presents generic information about apostasy and sharia law; however it makes no reference to the applicant or explain why this information is relevant to his claims for protection. I do not consider this letter has any probative value in relation to the applicant's claim based on religion and I am not satisfied exceptional circumstances exist to justify its consideration. Nor does the IAA submission explain why the information sheet, which predates the delegate's decision, was not provided earlier, or how, as a generic information sheet, it constitutes credible, personal information about the applicant. The applicant has not satisfied me as to either of the matters in s.473DD(b) in relation to the information sheet.
7. Accompanying the IAA submission are two new sources of country information which predate the delegate's decision. The IAA submission does not explain why these sources could not have been provided before the delegate's decision; nor does it explain how, as general country information, they constitute credible, personal information. The applicant has not satisfied me as to either of the matters in s.473DD (b).

Applicant's claims for protection

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

- In [a particular year] the applicant was born in Kermanshah, Iran.
- The applicant's mother is a devout Shia Muslim and the applicant practised Islam until he was [a particular age], but was not a deep believer.
- In 1998 the applicant attended an interview to enter [a university], the purpose of which was to test his religious and political views. The applicant did not pass the interview.
- The applicant sat an exam to get a position in [a government department], but did not pass because of his political and religious views.
- From 2001 the applicant watched many satellite TV programs on Christianity which caused him to question what he began to see as the hypocrisy of Islam. He also researched the Zoroastrian religion.
- In 2008 the applicant met his wife, who was a stateless Faili Kurd and did not have an Iranian birth certificate. It took the couple three years of visiting various government agencies, to obtain the required paperwork in order to get married.
- In 2013 senior members from the Ansar-e-Hezbollah paramilitary ('Hezbollah') got into the applicant's taxi and asked him to drive them out of town. They verbally and physically abused the applicant, and threatened to kill him if he kept disrespecting Islam.
- The applicant did not go to work for [a number of] days, and when he returned the same men entered the taxi business and wanted to engage the applicant's services. When the applicant refused they said they were there to arrest him and an argument started. The applicant escaped and hid at his [relative's] place until he was able to depart Tehran.
- In May 2013 the applicant departed Iran legally by plane.
- In June 2013 the applicant arrived in Australia and continued to investigate Christianity and Zoroastrianism, but settled on Christianity.
- From late 2013 the applicant began to attend [Church 1] in [Australian City 1], and in October 2015 was baptised there. The applicant has remained an active member of the church. He attends Sunday sermons and a weekly Bible study group.
- The applicant fears the Iranian authorities will detain, interrogate, torture or kill him because: he is an apostate from Shia Islam, and he has converted to Christianity.
- The applicant has not claimed to fear harm on account of his Kurdish ethnicity.

Refugee assessment

9. 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

10. 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.
11. The applicant has been consistent in stating his identity since his arrival in Australia. In support, the applicant has provided his original Iranian birth certificate, and copies of his Iranian passport, national identity card and military service completion card, accompanied by English translations. On the basis of the information before me I am satisfied the applicant's identity is as claimed and that Iran is the receiving country for the purposes of this assessment.
12. During the TPV interview the applicant gave detailed and consistent evidence regarding his life in Iran, and in particular his growing disenchantment with Shia Islam. The applicant told the delegate that there had always been a contradiction between himself and Shia Islam but that his mother was a true believer, who wanted to go to heaven, and he kept his doubts private so as not to damage their relationship.
13. The applicant explained how after he graduated from high school he passed the required exams to enter [a university] and become [a particular occupation]. However at the recruitment interview he was asked many questions about his religiosity including whether prayed five times a day, the name of the imam at his local mosque and what had been the topic of the most recent Friday prayers. At that time the applicant was not attending mosque regularly and could not answer the questions, or provide a letter of support from his mosque, and so did not pass the interview, which I accept.
14. The applicant also told the delegate that he did not pass an exam to get a position in [a particular government department] because of his political and religious views. However, the applicant has also stated he did not receive a letter to confirm the reasons for the rejection in this instance, and he has not claimed that he was interviewed in relation to this position. On the evidence I am not satisfied that the applicant's political or religious views were the reason why did not pass the [government department] exam.
15. In 1995 the applicant began work as a driver in a taxi company and held this role until his departure from Iran in 2013. The applicant explained to the delegate that the drivers would spend a lot of time talking amongst themselves at the company's office while waiting to be assigned a job, and that his anti-Islamic views were well known amongst them.

16. The applicant explained that the taxi company offices were situated close to Hezbollah headquarters and Hezbollah members often requested their services. The applicant estimated that he regularly drove Hezbollah clients, but was always careful not to disclose his personal views on Shia Islam. The applicant claimed, and I accept having regard to his oral evidence, that he watched many Christian programs on satellite TV and that he was researching both Zoroastrianism and Christianity during this period.
17. The applicant has claimed that in 2013 [a number of] senior Hezbollah members, whom he recognised, got into his taxi and asked him to drive to an address out of town. Upon arrival in a remote area the men pulled the applicant out of the car and began to verbally and physically abuse him, accusing him of being an infidel who disrespected Islam. They warned the applicant not to tell anyone what had happened. The applicant's evidence at his TPV interview regarding this incident was highly detailed and consistent with his written TPV application and I accept that an incident of this nature occurred during the period he worked at the taxi company.
18. However, I have concerns with the applicant's account of what he claims occurred after this incident and prior to his departure from Iran. The applicant told the delegate that following his assault he stayed at home, and [after a number of days] returned to the taxi company. The Hezbollah men who had attacked the applicant then arrived at the taxi company and specifically requested his services as a driver. Fearing for his life, the applicant said he was unavailable. An altercation started and the applicant's fellow taxi drivers [stopped] the Hezbollah men reaching him. The applicant was able to [escape] and reach his car, which was parked nearby. The applicant then drove straight to his [relative's] house, where he remained for a week, and then made an overnight trip to Tehran. The applicant remained in Tehran for one week before he departed Iran, using his genuine Iranian passport. The applicant confirmed to the delegate that he had not travelled outside Iran prior to commencing his journey to Australia.
19. The delegate put to the applicant that his passport had been issued [on a particular date in] 2013, which was [a short amount of time] prior to his departure, and that his decision to apply for a passport undermined the credibility of his claim regarding the incident with Hezbollah. The applicant insisted that he had applied for his passport as a routine matter, in case he and his wife wanted to take a holiday; however I do not find this to be a convincing explanation. I also do not find it credible that the applicant had been spent almost twenty years working as a taxi driver at the same company, for the majority of which time he had held strong anti-Islamic views, and yet he did not suffer any negative repercussions until after his passport was issued. I also note that [a number of the applicant's relatives] had departed Iran for Australia one month prior to the applicant's own departure, and I consider this timing further detracts from the applicant's credibility regarding this purported incident. Furthermore, given the applicant's evidence that Hezbollah are an official Iranian government organisation, with close ties to the secret police, I consider they would have been able to easily locate him at his [relative's], where he remained for a week prior to departing for Tehran, should they have wished to do so.
20. On the evidence, I am prepared to accept that the applicant experienced issues with Hezbollah members while working as a taxi driver, and that on one occasion they assaulted him because they were aware of his anti-Islamic views. However, I do not accept that this was the event which prompted him to leave Iran and travel to Australia in 2013.
21. During the TPV interview the delegate and the applicant spoke at length regarding the applicant's exploration of Zoroastrianism and Christianity in Iran, and his conversion to Christianity in Australia. The delegate put to the applicant that in his arrival interview he had

identified himself as a follower of the Zoroastrian faith, and claimed that his reason for leaving Iran was because he had converted from Shia Islam to Zoroastrianism two years prior to his departure. When asked during the arrival interview why he didn't leave Iran after his conversion he stated that he did not have the opportunity at that time. The applicant added that he liked the principles of Zoroastrianism and was always trying to following them in daily life prior to his departure, but had not officially converted because it was too difficult and dangerous to do so in Iran. The applicant explained that he knew he would have a choice in Australia as to whether to follow Christianity or Zoroastrianism, but that he ultimately chose Christianity as it was easier to connect to that community in Australia. I consider the applicant's evidence in this regard as credible.

22. The applicant gave a persuasive and credible account of his journey to become a Christian in Australia. The applicant explained that the answers to the key question which had always engaged him, being how to reconcile violence in the name of religion, he increasingly found in Christianity. The delegate put to him that it was difficult to understand that if he disliked religion so much he would leave one and join another, and he responded that he had always been religious and believed in God, even when he had turned away from Shia Islam. I note that earlier in the interview the delegate had asked the applicant if he was an atheist and he had responded that he was not because "God is always present in every aspect of our lives", but that he preferred a God which was kind and forgiving, not a "warrior God" as he felt was depicted under Islam.
23. The delegate questioned the applicant at length about his claim that Islam is a religion of violence, and that Christianity appeals to him because it is a religion of peace and love. The delegate put several examples to the applicant from the Bible which the delegate claimed were evidence that Christianity also has the potential to be a religion of violence, like the applicant claimed Islam was. The applicant raised counter-examples in response to the delegate's points indicating that he had a good understanding of the Bible.
24. The delegate acknowledged in her decision that the applicant had demonstrated consistency when recounting how he turned away from [Islam], and noted that "the applicant also demonstrated a critical, inquisitive and knowledgeable engagement with the Bible and Christian doctrine at his Protection visa interview. He presented a plausible picture of his possessing a consistent interest in religious matters, including a quest for answers about God."
25. The applicant was also able to describe his initial experiences at [Church 1] in [Australian City 1] from late 2013 in considerable detail, as well as the content of the weekly Bible study classes and Sunday sermons he attends there. The delegate asked the applicant why, if he is a Christian, he could not just pray at home and he responded that it was important for him to attend church on Sundays to feel connected to God and to the other worshippers, and where he can learn things he doesn't know and share those things he does.
26. The applicant has also provided a certificate documenting his baptism at [Church 1] [in] October 2015. He has provided testimonials from 2016 to his regular attendance at that church and at [Bible] studies. [In] June 2017 the delegate interviewed one of the applicant's religious referees, the pastor at [Church 1]. The pastor confirmed that she has known the applicant for eighteen months, and that he attends all Sunday services and [on a particular day of the week,] Bible study classes. The pastor stated she had gotten to know the applicant well during this period and that they had one-on-one conversations about the development of his faith, and that he listened to sermons, joined in discussions, and readily asked questions.

27. The pastor stated that the applicant is a very thorough person who has explained very clearly what attracted him to Christianity, and that she is satisfied he genuinely supports [Church 1] through participation in a range of church activities, including social events and assisting with renovations. The delegate asked the pastor if she had ever refused to write a letter of support for a parishioner, who was applying for an Australian visa, because of concerns about their motivations and the pastor confirmed that she had in the past refused to support a parishioner for this reason. The pastor added that usually she just wrote letters of support, but in this case she had wanted to also provide oral evidence in support of the applicant.
28. The applicant has also provided a letter of support, [dated in] June 2017, from the reverend at [Church 1], who convenes the [Bible] study classes. In this letter the reverend confirms that the applicant attends worship services on a weekly basis, and that he participates in a number of ways including reading the Bible from the front lectern in Farsi, acting as steward, attending morning teas and quarterly members' meetings. Additionally, the applicant attends a Bible studies class for [a number of] hours each week, in which he is an active participant. The letter concludes with the reverend's mobile phone number and an invitation to call if further information is required. Attached to the letter of support are three photos of the applicant participating in some of the named activities.
29. I am strongly persuaded by the evidence given by the applicant's religious referees, both oral and written. I consider the applicant's commitment to his faith, his long term involvement with the church on a variety of levels and his desire to seek advice from his church's leaders, is evidence of his genuine Christian beliefs. I have found the applicant to be both consistent in his claims and has generally presented as a credible witness. In responding to the delegate's questioning the applicant was both open and forthcoming with his answers.
30. I note some of the country information before the delegate does indicate some asylum seekers convert to Christianity in the belief it may aid their asylum claims but there are also a large number who convert for other reasons including a heartfelt faith in their new religion, gratitude to Christian groups offering support during perilous and frightening journeys and the increasing interconnectedness of the world.¹ I have found the applicant to be a generally credible witness and I have accepted that he was exploring Christianity and Zoroastrianism as possible alternatives to Shia Islam for many years prior to his departure from Iran, and that since his arrival in Australia he has consistently demonstrated an interest in, and growing commitment to, Christianity. I am satisfied that the applicant's conversion to Christianity and his involvement with the [Church 1] are genuine and not for the purpose of strengthening his claims for protection and therefore s.5J(6) does not apply.
31. I accept the applicant, given his long-term and regular attendance at church in Australia, will continue to practise his Christian beliefs on return to Iran and that he will seek out a house church or likeminded community in which to worship in Iran given the importance he places on his attendance at church and his involvement with the church community on a social level. I accept that the applicant was relatively outspoken in his views against Islam while he was in Iran, and although he has not expressed a specific intention to proselytise, I am satisfied that he will seek to promote his beliefs in Iran to others.
32. According to DFAT under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy.² Perceived apostates are only likely

¹ "European churches say growing flock of Muslim refugees are converting", Guardian (Unlimited) (UK), 6 June 2016, CX6A26A6E4884

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.³ Christians belonging to unregistered churches are at higher risk of adverse attention from officials and face considerable official discrimination. This is in part due to Islamic mores concerning apostasy and deep suspicion of evangelism. Most evangelical churches in Iran are not recognised and therefore cannot openly worship. Instead, some form underground 'house churches', which are illegal.⁴

33. DFAT reports that Iranian security forces are conspicuous in many aspects of Iranian life. An extensive network of police, security and intelligence services exercises effective control over almost all areas of the country.⁵ On the evidence before me, I find the applicant, an apostate and a Christian convert, will face a real chance of being subject to monitoring, arrest, being charged and detained for a period of time, for reasons of his beliefs and for the public manifestation of those beliefs.
34. Country information indicates that arbitrary arrest, torture and ill treatment in detention in Iran is common. It is common for detainees to be held incommunicado for days, weeks and even months after arrest.⁶ It has been reported by foreign NGOs that a range of different types of torture is used in Iran, including sexual torture, stress positions, use of water, sharp and blunt force trauma, electric shock, prolonged solitary confinement, asphyxiation and chemical torture.⁷ Torture is regularly used to extract confessions by security authorities.⁸ I am satisfied that the harm the applicant may face is serious harm, I am also satisfied that the essential and significant reason for the harm is his religion, and that it involves systematic and discriminatory conduct.
35. The harm that the applicant feared emanates from the Iranian authorities operating under laws which apply throughout Iran. As such, I find that the real chance of persecution relates to all areas of Iran.
36. As the Iranian government is the agent of harm, I am satisfied that the applicant cannot access effective protection in Iran. I find that effective protection measures are not available and s.5LA(2) does not apply.
37. I also find that s.5J(3) does not apply as I consider that requiring the applicant to modify his behaviour, by modifying or concealing his Christian beliefs, or cease to be involved in the practice of his Christian faith falls within a kind of modification that an applicant cannot be required to make in s.5J(3)(c)(i).

Refugee: conclusion

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

Decision

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

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.