



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03239

Date and time of decision: 8 May 2018 09:39:00

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. On 20 January 2017 he lodged an application for a Temporary Protection Visa (application for protection). On 27 July 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)(review material).
3. On 21 August 2017 the IAA received a submission on behalf of the applicant. The submission refers to country information that was before the delegate, claims raised by the applicant before the delegate, aspects of the delegate's decision and the protection visa interview and legal argument. I do not consider the above to be new information and have had regard to it.
4. There are a number of documents in the review material that appear to relate to the applicant but as they have not been translated I have been unable to give them any weight in my assessment.

Applicant's claims for protection

5. The applicant's claims, as outlined in his statement attached to the application for protection (the statement), can be summarised as follows:
 - He is a citizen of Iran born [in] Khuzestan Province.
 - He completed a [Occupation 1] degree at university.
 - He married his wife in 2001 and had [children] born in [years].
 - From 1999 until 2012 he worked for a government-owned company called [Employer 1] as [an Occupation 1].
 - He heard about atheism in early 2009 through a friend named [Mr A] who introduced him to classes and meetings about atheism which he began to attend. After attending the classes he found atheism more compatible to reality and in 2011 he became an atheist.
 - He and his brother, [Mr A], who lives in [Country 1], are the only atheists in his family.
 - In 2011 he was living and working in Karaj and would attend classes and meetings supporting atheists. He heard from friends that the leaders of these classes were arrested by the Basij and the leaders confessed the names of the people who attended these meetings, including his name.
 - In 2012 he was captured by the Basij and asked to sign a paper which stated that he will not be an atheist any more. He did not sign the paper and Basij let him go but he was threatened verbally that he would be arrested soon and that there would be negative consequences.

- He believes he was targeted at his workplace as Basij officers were embedded at [Employer 1], to reinforce the regime, force people to pray and check on employees. After he was captured by the Basij he was recognised as an atheist and targeted three to four times a month by the Basij who worked at the company. This included breaking into his car and damaging it. They also broke the windows of his family home more than once.
- During 2012, after he was captured, he was also threatened by the Basij at the company, that if he did not sign the paper they would pour acid on his [children's] faces. For these reasons he left Iran. His [children] were also forced to leave Karaj and go to [another location].
- He and his wife divorced in 2012 because of their religious differences and the threats to his family.
- In 2013, he was asked to resign from his job at the company and was told that he was not allowed to work there anymore even though he had held a very important role. His employer did not give a reason, and when he asked the reason, they said "you know the reason". He believes this was because he was an atheist.
- He departed Iran legally using his own passport [in] May 2013 but the passport was taken from him by the people smuggler in [Country 2].
- He fears arrest, imprisonment, harassment and torture by the Iranian authorities because of his atheism. He is also unable to gain employment because of his atheism.
- Being a refugee is not acceptable by the Iranian government and he is afraid to return as a failed asylum seeker.

Factual findings

6. The applicant has provided a number of original and certified copies of identity documents from Iran which confirm his claimed identity which I accept. I am satisfied the applicant is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.
7. His birth certificate also provides information about his wife and their marriage, which it indicates occurred in 2001, and their divorce in January 2013 and the details of his children. I accept that he married his wife in 2001 and that they had [children] and that they divorced in January 2013.
8. I accept the applicant's claimed education and employment history and that he last worked for a company in Iran called [Employer 1] from 1999 as [an Occupation 1]. The applicant has claimed that it was a government owned company but he has not provided any evidence, and there is none before me about the company, to corroborate this claim.
9. I also note that there are a number of inconsistencies in the applicant's evidence which I have found to be significant and not minor and which has caused me to question the credibility of his claim to have converted to atheism and the related events that he claims led to his departure from Iran.
10. In his statement the applicant claimed that he first heard about atheism through his friend, [Mr A], at the beginning of 2009 who introduced him to classes and meetings about atheism in Iran. However, during his protection visa interview he claimed that he came to know about atheism through his brother, [Mr A], who lives in [Country 1] and who he visited in 2009 and

who shares these beliefs. In that interview he claimed he attended classes and gatherings on atheism with his brother in [Country 1] and after mixing with these people, he became enlightened and that was the turning point for him. I also note that, when the delegate asked the applicant questions about what drew him to atheism and about his point of view on God and theology, I found his responses to be overly general and brief despite his claim to have researched and converted to atheism over six years prior in 2011 .

11. In his statement, the applicant claimed that he heard that the leaders of the atheist classes he attended in Iran were arrested by the Basij and the leaders gave his name to the Basij and 2012 he was captured by the Basij who asked him to sign a paper that he will not be an atheist any more. However in the protection visa interview he claimed that he was caught by the Basij when he was overheard speaking to one of his atheist colleagues and they were then taken to the Basij office in his company and told that they had a recording of the conversation. In that interview he did not repeat the claim that the leaders of the atheist classes had been arrested and given his name to the Basij but said that he did not know if anyone from the group had been arrested.
12. In the protection visa interview the applicant claimed that, after he and his colleague refused to sign the paper they were told that they could not come to work for a week. When they returned to work after a week they were given a letter stating that they had been dismissed from their jobs. I also find this inconsistent with the account of his job dismissal in his statement where he claimed that, after a period of harassment and threats by the Basij in 2012, he was asked to resign from his job in 2013 without reason. I also find this account in his statement difficult to believe, that is, that he was permitted to remain working until 2013 even though he refused to sign the paper and whilst simultaneously being threatened and violently harassed by the Basij and that he was not given a reason for the dismissal when he had previously been allegedly directly threatened by the Basij in his workplace in respect of his atheist beliefs.
13. In the applicant's protection visa interview, he then claimed that, after being dismissed from his job in 2012, he was taken to the Basij headquarters for a few hours and pressured to sign a paper that he had been mistaken. He refused to sign the paper and was then threatened but then claimed they let him go in order to give him the opportunity to sign the paper in order to return to his job. After this incident they started to throw stones at his window and attack his car which I note is inconsistent with his statement where he claimed these things happened before he was dismissed from his job in 2013. I have also given weight to the fact that the applicant referred to being "captured" by the Basij in his statement in 2012 prior to his job dismissal and did not refer to any further period of detention by the Basij after his dismissal. During the protection visa interview the delegate also pointed out that he had not referred to being arrested in his arrival interview, and the applicant responded that he thought "arrested" meant being captured and physically harmed. However, I am not satisfied of this explanation for this omission.
14. When asked by the delegate if the Iranian authorities targeted members of his family, the applicant claimed the authorities approached his [children's] school and informed them about his beliefs and they were under pressure. After they left Karaj, they were approached again and his wife told the authorities that they were divorced and that the applicant had gone. However according to his statement the final consequence, after he refused to sign the paper, was his dismissal from his job in 2013 and he did not claim that his wife and children were directly approached by the authorities. I also question the plausibility of the claim that they would approach his wife in another city to ask about him.

15. During the protection visa interview, the applicant claimed that the intelligence in Iran is extremely powerful and know everything about his profile and there is no way one can hide from their surveillance. However I note that he remained in Iran for several months after being dismissed from his job, until May 2013 when he departed Iran, and there is no credible evidence that he was further harmed or threatened by the Iranian authorities for his atheist beliefs or any reason during this time. The applicant has also provided a certified copy of his international driving permit issued in Iran [in] April 2013. The fact that the applicant thought to apply for such a document a few weeks prior to his departure is not suggestive of someone in fear of their life from the authorities.
16. During the protection visa interview the applicant claimed that the majority of his family members were against his conversion to atheism, his siblings were not supportive and he was not on speaking terms with his family when he left Iran. However, in his statement, he claimed that his national identity card and birth certificate were with one of his brothers in Karaj. In the protection visa interview he also explained that one of his brothers in Iran gave his identity documents to his brother [Mr A], when [Mr A] visited Iran in 2016. The fact that one of his brothers in Karaj kept such important identity documents on his behalf does not indicate a strained relationship as he claims but indicates an ongoing relationship. When the delegate also asked him why, during his arrival interview, he gave his brother's phone number in Karaj as his emergency contact instead of his brother in [Country 1], he responded that it was the only number he could remember at the time and also so that his children would know that he is safe. I find this explanation difficult to believe given the applicant claims to have a close relationship with his brother in [Country 1] whose number he would also likely be able to recall and who could have contacted his ex-wife to advise of his arrival. Further, although he claims that he was not on speaking terms with his family members when he left Iran and [Mr A] shares his atheist beliefs and moved to [Country 1] over 30 years ago for this reason, in the protection visa interview he claimed that one of his [brothers] had visited [Mr A] in [Country 1] suggesting an ongoing relationship despite [Mr A]'s alleged atheism.
17. During the protection visa interview, the applicant claimed that when [Mr A] visited Iran in 2016 he was questioned for two hours on entry and asked why he left and why he was back and then told that he should not come back again. He further claimed that when [Mr A] departed Iran on that occasion he had "some issues" but the applicant did not have any information about that. The delegate asked the applicant to ask [Mr A] about the alleged issues he had on departure and to provide that information to the Department but there is no evidence before me that the applicant provided this information to the delegate after the interview. I do not consider it plausible that the authorities would allow his brother to enter Iran whilst simultaneously telling him that he would not be permitted to return and I am not satisfied on the evidence that there was any reason for such a directive even considering that he may have been living outside the country for thirty one years. Given this and little evidence the applicant provided about his brother's circumstances, I do not accept that [Mr A] was questioned on his return for two hours and was told that he would not be able to return to Iran or that he had "issues" on his subsequent departure from Iran.
18. On the evidence before me, I do not accept the applicant has converted to atheism or that his brother, [Mr A] is an atheist. I do not accept that he became interested in atheism in 2009 and converted in 2011 and attended atheist meetings and gatherings in [Country 1] or Iran. I also do not accept that his former employer at [Employer 1] found out and he was harassed and threatened or detained by the Basij, lost his job, his marriage ended, and he stopped speaking to his family because of his conversion to atheism. I also do not accept that [Employer 1] is a government-owned company.

19. Country information before me indicates that many Iranians have a secular attitude, rejecting all religions, Islam included.¹ Despite my findings above, I accept that the applicant does not believe in Islam. However, I am not satisfied that the applicant was dismissed from his job at [Employer 1] as a result of not believing in Islam or that he was dismissed at all. In making this assessment I note the applicant has stated that he had not practised Islam for a long time and I note that he had been employed in this company since 1999.
20. Although I accept that the applicant and his wife divorced in January 2013 I note his claim that he did not practise any religion or faith prior to allegedly converting to atheism and he and his wife had been married for approximately twelve years prior to their divorce. On the evidence before me I am not satisfied their marriage ended because the applicant does not believe Islam. Furthermore, I am also not satisfied the applicant was not on speaking terms with his family when he departed Iran because he does not believe in Islam.
21. I accept that the applicant departed Iran legally on his passport and that the people smuggler took his passport from him and did not return it.

Refugee assessment

22. 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

23. 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.
24. I have not accepted that the applicant became interested in atheism in 2009 and converted in 2011 or that his brother, [Mr A], is an atheist. I have not accepted that the applicant attended meetings about atheism in Iran or [Country 1] or that his former employer found out about it and he was harassed, threatened or detained by the Basij, that he lost his job, his marriage

¹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

ended and that he was not on speaking terms with his family for these reasons. I am not satisfied he is a well-founded fear of persecution in Iran for these reasons.

25. I have accepted that the applicant no longer believes in Islam. Country information before me indicates that the official religion of Iran is Shia Islam. Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy” and that apostasy is a capital offence, but that such cases are rare.² Country information sources before me also indicate that Islam plays a smaller role in public life today than it did a decade ago and the power of clerics has “waned”. According to one source, Iranian clergy have complained that more than 70% of the population does not perform their daily prayers. Abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques.³ In its most recent 2016 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT 2016 report) considers it unlikely that individuals will be prosecuted on charges of apostasy. It 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– and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely 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.⁴ I am not satisfied the applicant has been harmed by any group or person because he no longer believes in Islam. I am not satisfied he lost his job, that he is no longer on speaking terms with his family or that his marriage ended for this reason. During the protection visa interview the applicant claimed that he was not outspoken about his beliefs and is a reserved person and he is not one to promote his views. I am not satisfied the applicant has publicly voiced his religious views in Iran or in Australia or that he is a genuine desire to do so. I am not satisfied he will publicly voice the fact that he no longer believes in Islam in Iran or proselytize others in this regard and am not satisfied he will not do so due to a fear of persecution. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because he does not believe in Islam.

26. The applicant has also claimed that he fears return to Iran as a failed asylum seeker as being a refugee is not acceptable by the Iranian government. In its 2016 report, DFAT indicates that Iran does not accept involuntary returnees. Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. On the basis of the country information before me, I am not satisfied there is a real chance the applicant will be returned to Iran involuntarily. In 2011 an Iranian Supreme Court judge wrote an article stating that failed asylum-seekers could be prosecuted for making up accounts of alleged persecution but in the same period DFAT stated that it was not aware of authorities implementing this idea.⁵ In its more recent 2016 report, DFAT further stated that strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally and I have accepted that the

² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622; Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

³ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622; Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

⁴ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

⁵ Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610; DFAT, "Response to IRN 11738 Iran - Article on returned asylum seekers and people exiting Iran with false documents", 19 April 2011, CX263145

applicant departed Iran legally. In 2013 the Head of the Iranian Passport and Visa Department, also stated that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country.⁶ I am not satisfied there is a real chance the applicant will be prosecuted on return to Iran for seeking asylum in Australia. There are a number of reports before me of returned asylum seekers including artists, PHD students, journalists and political activists, being arrested on return to Iran at the airport. However, I am not satisfied the applicant has a profile that would attract the adverse attention of the Iranian authorities on return.

27. Country information sources before me published in 2009 and 2013 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.⁷ However, DFAT's more recent 2016 report states that a voluntary returnee does 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 without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The vast majority of people questioned would be released after an hour or two. Having considered my findings in respect of the applicant's profile, that the applicant departed Iran legally, and the country information before me, I am not satisfied there is a real chance the applicant will be questioned by the Iranian authorities if he were to return to Iran voluntarily. Even if the applicant were to be questioned in such circumstances for a short period, 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. Even if the Iranian authorities became aware that the applicant sought asylum in Australia, I am not satisfied he will be imputed as holding an anti-government or anti-Islamic opinion for having sought asylum in Australia. I am not satisfied the applicant will face a real chance of serious harm from the Iranian authorities as a failed asylum seeker returning from a western country.

Refugee: conclusion

28. 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

29. 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.

⁶ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 20 July 2016, OGD7C848D28

⁷ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 20 July 2016, OGD7C848D28; Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329

Real risk of significant harm

30. 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.

31. I have not accepted that the applicant became interested in atheism in 2009 and converted in 2011 or that his brother, [Mr A], is an atheist. I have not accepted that the applicant attended meetings about atheism in Iran or [Country 1] or that his former employer found out about it and he was harassed, threatened or detained by the Basij, that he lost his job, his marriage ended and that he was not on speaking terms with his family for these reasons. I am not satisfied the applicant will face a real risk of significant harm in Iran for these reasons.

32. For reasons already stated I have not found the applicant will face a real chance of harm in Iran because he no longer believes in Islam from the Iranian authorities or any other group or person. As real chance equals real risk⁸ I am also not satisfied the applicant will face a real risk of significant harm on return to Iran for this reason.

33. Having considered the country information before me and the applicant's profile, I am not satisfied he will face a real risk of significant harm from the Iranian authorities on return to Iran as a failed asylum seeker from a western country. I am not satisfied there is a real risk the applicant will be questioned on return. Even if the applicant were to be questioned on return to Iran by the Iranian authorities for a short period, I am not satisfied he would face a real risk of significant harm during questioning and I am not satisfied that being questioned for a short period 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

34. 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.

⁸ *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.