



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/03468

Date and time of decision: 16 April 2018 10:51:00

Matthew Currie, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen of Farsi (Persian) ethnicity. He arrived in Australia in July 2013. In April 2017 he lodged an application for a Temporary Protection Visa (TPV). A delegate of the Minister for Immigration and Border Protection refused to grant the visa in August 2017 on the grounds that Australia did not owe protection obligations to the applicant. On 30 August 2017 the matter was referred to the Immigration Assessment Authority (IAA).

### 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). A migration agent, acting for the applicant emailed the IAA. The email contained a document titled '*Facebook Acc Activity – [Applicant name]*'. The document contained 27 pages of images purported to be 'screenshots' taken from the applicant's Facebook account. These images were not before the delegate. They are new information. For the sake of completeness, I note that whilst the images themselves were not before the delegate, the claim that he had posted pro-Christian material on Facebook was (and was not accepted by the delegate).
3. Most of the images are untranslated. Some are in English and some display Christian symbolism. I accept that these posts are pro-Christian but I am unable to determine the content or context of the remainder. The applicant's representative as argued that since the delegate was aware of the claim to have posted pro-Christian messages on Facebook, but nevertheless found that the applicant's claim was false (having seen no evidence to support it), the images should be considered by the IAA on the grounds that they demonstrate the applicant's credibility. I am unpersuaded by this reasoning.
4. Given that the claim was before the delegate, and that the Facebook account was owned and operated by the applicant, I am not satisfied that the images could not have been provided to the Minister before the date of the delegates decision under s.65 of the Act. However, as the new information relates to activity on his Facebook page, I accept that it is credible personal information which was not previously known and, had it been known may have affected consideration of the applicant's claims.
5. Nevertheless, I observe that the applicant (nor his representative) has outlined any exceptional circumstances to justify considering the new information. I do not consider the reasons put forward by the applicant's representative (para. 3 above) to be exceptional, and, as I am unable to determine the content, or context of the posts it is not clear how they may have affected consideration of the applicant's claims. Having considered all of the evidence before me, and no exceptional circumstances are apparent to me. Thus I am prevented from considering the information. In any case I accept that the applicant has posted pro-Christian messages on his Facebook page.

### Applicant's claims for protection

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

- He is an Iranian citizen of Farsi (Persian) ethnicity. He was born on [date] He resided in Tehran his entire life, until his departure for Australia
- He was detained for a week in 2007 after fighting with the son of a local police officer.
- He was assaulted in a park in 2012 by a group of unknown men
- He departed for Australia in 2013 after concluding becoming dissatisfied with Iran's Government, policies, administration and economic outlook. He feared that Iran might become involved in a war and that he would have little opportunity for prosperity there.
- He departed Iran by plane, from Tehran airport and travelled to Australia, arriving in July 2013.
- In 2016, after his arrival in Australia he became aware of and converted to Christianity and is now a practising Christian. He has publically avowed his new faith on social media.
- If returned to Iran, he fears would face persecution arising from his new Christian faith.

### **Refugee assessment**

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7. 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**

8. 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.
9. Since his arrival in Australia the applicant has provided Australian authorities with copies of a number of documents in order to establish his identity. These documents include an Iranian Birth Certificate (and translation) and an Iranian National Identity Card (with translation). These documents establish the applicant's identity to my satisfaction. I accept that he is a Iranian citizen of Farsi (Persian) ethnicity who was born [date]. For the purposes of this decision, I find that Iran is his receiving country.

10. Throughout his dealings with Australian authorities the applicant has put forward several claims including:
- Around 2007, the applicant was detained for approximately one week in a local police station after he had an argument with the son of a local police officer. No charges arose from this event.
  - Around 2012, the applicant was assaulted in a park by an unknown group of men. He does not know the purpose of this assault. He claims to have suffered wounds to his head, and his chest.
11. The applicant has not put forward any independent evidence in support of these claims, but I am willing to accept that they occurred. However, for the sake of clarity I note that he has not he has not claimed to be the subject of any continuing adverse interest by the authorities or other persons in Iran because of these events. I am satisfied he does not face a real chance of harm as a result.
12. The applicant claims that over many years he came to the conclusion that Iran was a problematic country; he observed that Iran's foreign relations were bad with many other countries in the world; that Iran's economy was underperforming and that Iran's human rights record was poor. He knew that Iran supported terrorism, and he worried that Iran might become involved in a war. As a young adult, he could see no future for himself in Iran, since there was not any social security or effective welfare for ordinary citizens and there was high rate of criminality. As he could see no security in the community and little opportunity for prosperity, he decided to leave the country.
13. In 2013 he obtained a passport legally and arranged to travel out of the country. He departed Iran legally via Tehran Airport and flew to [another country]. Later he traveling to [a second country], and then to Australia. He arrived in this country in July 2013. I accept that the applicant's departure from his home country was not prompted by any specific event, rather it was the result of his general feeling that he no longer wanted to live in Iran. The applicant has not claimed to have expressed his dissatisfaction with the Iranian regime publically or to have a desire to do so; rather they are his private views. I am not satisfied that the applicant would face a real chance of harm due to his views about the Iranian regime.

#### *Conversion to Christianity*

14. After his arrival the applicant became aware of Christianity. He had an Iranian friend (S1) who was a Christian, and his employer and his son (N1) were both Christian. He became friendly with these people and was impressed with the way they lived their lives. He admired them. He came to believe that their Christianity was a factor in his admiration for them. He had many conversations with S1 and N1 about Christianity.
15. In December 2016 S1 took the applicant to a Persian Church in [a suburb]. He attended the service and found it to be a transcendent experience. From that time the applicant regularly attended the Christian church in [that suburb] each week. In February 2017 whilst after he attended a service and was departing, he saw a group of people handing out evangelical literature at the front of the Church. They had signs and materials in Farsi. They spoke to the applicant, and invited him to attend the [Baptist] Church in [a suburb]. The applicant first attended the [Baptist] Church on February [date], 2017. He was formally baptised there on the same day, though he himself has claimed to have converted 'in his heart' in mid-2016. Since that time the applicant has immersed himself in the activities of the [Baptist] Church, attending a wide variety of activities including bible study classes, social activities and regular church

services. He has become involved in church outreach, handing out church literature on the street to passers by.

16. Whilst he was explaining his conversion, the applicant contextualised his transition to his new faith by claiming that as a child he became disillusioned with Islam. He identified that at school he was forced to attend religious instruction in the Islamic faith and was not given any free choice; likewise, at home he was not offered any opportunity to decline Islam. He has stated that whilst at school he suffered from teasing by the other children because he had difficulties reading the Koran (it was in Arabic) and was punished by his teacher. I did not find the applicant's claim to have been disillusioned with Islam as a school student to be plausible or convincing. The applicant gave the impression that he was inventing these claims 'on the fly' at interview in order to justify his claim of conversion to Christianity. I am not satisfied this claim is genuine.
17. During interview, the applicant's conversion to Christianity was the focus of discussion. The applicant described many aspects of Christian theology, history and practice. He explained why he preferred Christianity over Islam. He outlined what he claimed was his favourite verse from the bible. He claims to have 'liked' and 'shared' Pro-Christian articles on Facebook, and claims that his Muslim family and friends in Iran are aware of his conversion. He provided documentary evidence of his baptism and his frequent participation and attendance at bible classes. He provide a letter from the Pastor at [Baptist] Church which outlined his many contributions to the church between his baptism (Feb 2017) and August when the letter was written. The delegate found that the circumstances of the applicant's arrival at [Baptist] Church and his Baptism on the same day were suspicious; but I note that the [Baptist] Church practises an evangelical Baptist theology and so I find the applicant's account plausible. I accept that the applicant was baptised in February 2017 and has since been a regular attendee at the [Baptist] Church and has made many contributions to church activities since that time. I also accept that he has made pro-Christian Facebook posts.
18. During his protection visa interview of August 2017, the applicant twice stated that the only reason he feared returning to Iran was because of his conversion to Christianity. Like the delegate I am suspicious about the timing of the applicant's conversion to Christianity. He has asserted that he converted to Christianity in mid-2016. However, I note that he has acknowledged that he did not attend a church until December 2016 and was not baptised until late February 2017. Similarly, the applicant has claimed that he was a member of the Church's public outreach program, but I note the he had only attended this activity twice, in the weeks immediately prior to his protection visa interview. In my view these factors suggest a tendency by the applicant to exaggerate his commitment to Christianity. Whilst I have accepted that the applicant regularly attended the [Baptist] Church after February 2017, I have doubts about the reasons for his attendance.
19. I note that the applicant was invited to apply a protection visa by the Department in July 2016 and was sent a letter from the department at that time which outlined the visa applicant process, and advised him that in order to accepted as a refugee he would be required to put forward his claims for protection. Noting that the applicant has personally stated twice at interview, and once in his statement of claims, that his sole reason to fear returning to Iran was his new faith, I conclude that at the time he received the invitation to apply for a visa (July 2016), he did not have any reason to fear returning to Iran, since he had never been to a Christian church, and was unbaptised. This is consistent with his statements at interview in 2013 where he said that he was a Muslim, had not suffered any significant harm in Iran and did not outline any fear of returning when asked; only expressing a desire not to return. The first mention of the applicant's conversion to Christianity was in his SHEV application which was

signed by him on 15 March 2017, approximately [number] days after his Baptism. I am not persuaded that this timing is coincidental.

20. I have observed above that the applicant was able to give lengthy and coherent answers to the delegate's questions about his conversion to Christianity. The delegate found that these answers were repetitive, and rehearsed. I did not find the answers to be repetitive but I observe that the applicant attended several months of bible studies classes between his Baptism and his protection visa interview when he gave the answers and I find that his responses could easily be learned by anybody who attended several months of intense bible study. I am not satisfied that the answers were truthful or reflected of the applicant's true and genuine feelings towards Christianity.
21. Whilst I have accepted that the applicant was a regular attendee at Christian services after December 2016, and has participated in many other Christian activities since he was baptised in February 2017, I am not satisfied that the applicant has engaged in these activities, including his Facebook posts, otherwise than for the purpose of strengthening his claim to be a refugee. As a consequence, I am required to disregard all of the applicant's activities related to his conversion to Christianity under s.5J(6) of the Act. For the same reasons I also conclude that the applicant's conversion to Christianity is not genuine.

*Failed asylum seeker*

22. During the applicant's August 2017 protection visa interview, his representative made a statement which claimed the applicant feared to return to Iran as a failed asylum seeker. This claim has not otherwise been put forward by the applicant at any time, and I note that at interview the applicant personally stated that his sole claim for protection was based upon his conversion to Christianity. Nevertheless, I observe that the delegate considered this claim, and for the sake of completeness I have too.
23. The applicant departed from Iran legally, using a passport issued in his own name. Whilst that passport is no longer in his possession, country information indicates he would be able to obtain a new one or a temporary travel document from Iranian diplomatic posts if returned to Iran. The applicant has his Iranian Birth Certificate and his Iranian National Identity Card in his possession. I am satisfied that if returned to Iran, the applicant would be able to establish his identity and Iranian citizenship to authorities in that country.
24. Country information before me indicates that voluntary returnees to Iran usually enter via Tehran Imam Khomeini Airport in Tehran. 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<sup>1</sup>. DFAT reports that Iran does not prosecute returnees<sup>2</sup>.
25. Country information indicates that where Iranian authorities maintain an interest in persons overseas, it is usually the result of perceived anti-regime activities which have been conducted by the person since their departure. The applicant has not been involved in any anti-regime activities since departing for Iran. On his own evidence he was not of interest to the authorities

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), Country Information Report: Iran April 2016", CIS38A8012677,, 5.34

<sup>2</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.33

at the time of his departure from Iran. I am not satisfied that the applicant would be of any adverse interest to the authorities in Iran if he was returned, beyond the routine questioning he could expect at the airport. I am not satisfied that a period of brief, routine questioning upon return amounts to harm, let alone serious harm.

### **Refugee: conclusion**

26. 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**

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27. 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**

28. 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.

29. I have found above that the applicant's conversion to Christianity was made for the purpose of strengthening his claim to be a refugee and is not genuine. Nevertheless I have accepted that since February 2017 the applicant has attended Christian services, has been baptised and engaged in a range of other Christian activities. I have also accepted that he has posted pro-Christian articles on Facebook. He claims that friends from Iran are aware of his conversion. The applicant has claimed that if returned to Iran his conversion to Christianity would become known to the authorities because of Facebook posts and that he would be identified as an apostate.

30. Country information before me indicates that Under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. While cases of apostasy are rare, Muslim-born converts to Christianity have been charged with apostasy in the past<sup>3</sup>.

31. The punishment for apostasy is subject to judicial discretion. There is no provision in Iran's Penal Code criminalising the act. Nevertheless, Article 167 of the Iranian Constitution requires judges to apply Shari'a in situations in which the law is silent and Article 220 of the Iranian Penal Code effectively states that crimes punishable under Iranian law are not limited to the

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<sup>3</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.52

ones specified in the Penal Code. According to Article 160 of the Iranian Penal Code, confessions, the testimony of two male witnesses or the 'knowledge of the judge' can each be the basis for a conviction. In the rare instances that they are applied, charges of apostasy have in the past resulted in the death penalty and are often combined along with other crimes related to national security such as waging war against God and the Prophet<sup>4</sup>. However DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy. 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<sup>5</sup>.

32. I have found that his conversion to Christianity was fabricated. When asked at interview the applicant stated that in Iran he still believed in God and was not an atheist. He was a conforming Muslim at the time of his departure. I conclude that if returned to Iran he would not attempt to attend Christian services, proselytise or otherwise practice Christianity. Rather, I find that if returned, he would resume his Islamic faith and practise Islam as he did before he departed.
33. Millions of Iranian's travel overseas each year without difficulty<sup>6</sup>. The applicant departed Iran legally and had not come to the adverse interest of the authorities in Iran at the time of departure. There is no evidence before me that Iranian authorities monitor the Facebook posts of citizens travelling overseas or otherwise monitor their activities. The applicant has not put forward any information which might suggest any Iranian interest in him. I am not satisfied that his activities in this country would bring him to the notice of the authorities in Iran should he be returned to Iran. I am not satisfied that he would be of interest to the authorities if returned. The applicant has not put forward any information about the size, scope or constituency of his Facebook network. He has described his Facebook connections as his 'friends'. His claim they may inform on him was made late, whilst at interview and not in his SHEV application. The country information above suggests that the applicant would only come to the attention of the authorities if he persisted in engaging in Christian activities whilst in Iran, which, since his conversion to Christianity is false, I have concluded he will not do. I am not satisfied that the applicant's Facebook activities whilst in Australia would result in him facing a real risk of harm in Iran.
34. On the evidence before me, I am not satisfied that the applicant would face the death penalty, the arbitrary deprivation of his life or torture if returned to Iran. I am also not satisfied that there is an intention to inflict pain or suffering, severe pain or suffering or to cause extreme humiliation against him. I am not satisfied that he would face cruel, or inhuman or degrading treatment or punishment.
35. I have otherwise found that the applicant would not face a real chance of any harm arising from his status as a returning asylum seeker. As 'real chance' and 'real risk' has been found to meet the same standard, I also find that the applicant would not face a real risk of significant harm if returned to Iran on this basis.

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<sup>4</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.53

<sup>5</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.54 – 3.55

<sup>6</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.28

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

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

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***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

## 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

## 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### 5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### 5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### 36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.