



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03715

Date and time of decision: 12 June 2018 15:10:00

N Becke, 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 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 Tehran, Iran. On 14 September 2016 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 10 October 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 13 November 2017 the IAA received a submission on behalf of the applicant ('the IAA submission') prepared by a solicitor and registered migration agent. 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. The IAA submission also refers to a new source of country information, which predates the delegate's decision, relating to the treatment of Kurds in Iran. The IAA submission does not explain why this source could not have been provided before the delegate's decision; nor does it explain how, as general country information, it constitutes personal information about the applicant. Overall I am not satisfied exceptional circumstances exist to justify consideration of this new source, nor has the applicant satisfied me as to either of the matters in s.473DD(b).
5. The IAA submission also refers to two other sources of country information relating to the treatment of asylum seekers returning to Iran – one of which is undated and one of which predates the delegate's decision. Neither source is properly identified. Again, the IAA submission does not explain, and it is not otherwise apparent, why these two sources could not have been provided before the delegate's decision; nor does it explain how, as general country information, they constitute personal information about the applicant. The applicant satisfied me as to either of the matters in s.473DD(b). I am also not satisfied that there are exceptional circumstances to justify considering this new information

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - In [year] the applicant was born in Tehran, Iran to a Kurdish father and Faili Kurdish mother.
 - At school the applicant faced teasing and beatings for being a Kurd, and because his mother was born in Iraq.
 - In 2000 the applicant left school because of the harassment, and because of his family's financial situation. He began working for [Business 1 owner] named Mr A, who was friend of the applicant's father.
 - Mr A's son, Mr H, was in charge of [Business 1] and physically and sexually abused the applicant, who eventually told his mother. The applicant's mother told him to keep it secret because Mr A was a Sepah member.

- The applicant began working on the streets selling [goods] while attending night school, and qualified as a [occupation].
- The applicant and his brothers were unable to find jobs because of their Kurdish ethnicity. As Kurds they did not have health insurance or receive government assistance when one of his brothers received [an] a back injury.
- In January 2013 the applicant ran into Mr H for the first time in many years, during a religious ceremony. He accused Mr H of not being a real Muslim, and Islam of not being a real religion, because of the sexual abuse he had suffered. The pair had to be separated by onlookers.
- One week later the applicant received a notice requiring him to attend the police station where he was accused of insulting Islam by disrupting the ceremony. The applicant was released the next day after he and his father signed an undertaking that he would not fight again or insult Islam.
- A few days later the applicant saw Mr A, who was very upset because the applicant had publicly accused his son of sexual molestation and threatened to have the applicant jailed for life. The applicant's father tried to reason with Mr A without success.
- In February 2013 the applicant travelled to [Country 1], but because he was unable to pay a bribe upon arrival he was returned to Iran where he lived in great fear for several months.
- In May 2013 departed Iran again, successfully transited through [Country 1], and in June 2013 arrived in Australia.
- In June 2013 the applicant's parents received a court summons for him to attend the Revolutionary Court of Tehran. In September 2013 the applicant's parents received a written notification that the applicant had been convicted 'in absentia' of attending an illegal gathering, and insulting Iran's leader while holding a placard. He was sentenced to 40 lashes and ten years imprisonment.
- The applicant fears the Iranian authorities will detain, interrogate, torture or kill him because: he is a Kurd; his mother is from Iraq; he has outstanding convictions against his name; and he would be returning as a failed asylum seeker from Australia.

Refugee assessment

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. The applicant has been consistent in stating his identity since his arrival in Australia. In support, the applicant provided certified copies of his Iranian birth certificate and national identity card, with 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.
10. The applicant is a Kurdish citizen of Iran, who was born in Tehran. Kurds make up around ten per cent of the Iranian population, and DFAT notes they may face considerable societal discrimination or unfair treatment on a day-to-day level; however it is not the result of official or state-directed policies.¹ Kurds complain of discrimination with regard to their access to employment (including government employment), university admissions, and housing and land rights.² The Iranian authorities do not prohibit the use of Kurdish language but prohibit most schools from teaching it, with the exception of the Kurdish language program at the University of Kurdistan.³
11. Country information indicates that Kurdish citizens may come to the attention of the Iranian authorities, and face official harassment, if they attempt to assert cultural or political rights, or have perceived links to Kurdish political groups.⁴ There is no evidence before me that the applicant has been culturally or politically active on behalf of any group, or has any interest in being so in the future. I also note Iranian Kurds are predominantly Sunni and DFAT draws a distinction between the comparatively worse treatment of Sunni Kurds and those who are part of the Shia majority, such as the applicant and his family.
12. The applicant's written SHEV statement primarily refers to issues faced by the Kurdish population as a whole, rather than to his own specific situation. When given the opportunity to do so, the applicant did not fully elaborate on claims relevant to his Kurdish ethnicity at SHEV interview. I accept the applicant's evidence that he faced teasing and beatings at school because he is a Kurd and his mother is from Iraq. When the delegate the applicant if he faced any other issues relating to this, the applicant responded that he had not.
13. In the applicant's written SHEV statement he has claimed that Kurds face discrimination when seeking employment and during the SHEV interview he referred to Kurds being unable to obtain government jobs. In light of the country information cited above, I accept some Kurds may face discrimination in the job market, including obtaining work in the public sector as well as from Iranian society generally.

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

² Reuters, "Iran executes Kurdish activist, wary of Kurdish gains in Middle East", 27 August 2015, CXBD6A0DE12731; Amnesty International, "Amnesty International Report 2016-2017", 23 February 2017, NG2A465F54

³ US State Department, "2016 Human Rights Report: Iran", 3 March 2017, OGD95BE926964

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

14. While I accept the applicant may have been unable to find work as a [occupation], as claimed in his written SHEV statement, he has not provided any reasons as to why he believes this was because of his Kurdish ethnicity. Furthermore I note the applicant was continuously employed as a labourer up until his departure from Iran. Similarly, the applicant has claimed that his brothers were unable to find government jobs and were forced to work as labourers. One of the applicant's brothers suffered [an] injury but the family could not afford his surgery because, due to their Kurdish ethnicity, they had no insurance and were unable to obtain government assistance.
15. DFAT indicates that Iranian citizens are able to receive government benefits including health cover and other public services.⁵ During his arrival interview the applicant gave evidence that his parents were both Iranian citizens, and he has consistently claimed to be an Iranian citizen himself. On the evidence I am satisfied the applicant's brothers are Iranian citizens and I do not accept that his brother was unable to obtain health insurance or government assistance for his [injury]. In the applicant's written SHEV statement he has also claimed that Kurds are not entitled to any mortgage or insurance and cannot get loans from banks; however there is no country information before me to indicate Iranian citizens of Kurdish ethnicity, like the applicant and his family, would be unable to access these kinds of services. While I accept it is possible the applicant, as a Kurd, may face discrimination if he applied for government employment, given his personal circumstances and work history I am not satisfied there is a real chance of this occurring. Overall I do not accept the applicant faces a real chance of harm in Iran because of his Kurdish ethnicity or his mother's origins.
16. While the applicant's evidence at SHEV interview regarding the physical and sexual abuse he claims to have suffered at the hands of Mr H in 2000, and their chance meeting in 2013, was detailed and consistent with his written statement, I have serious concerns with the veracity of these claims. In his SHEV application the applicant has claimed that he left his employment with Mr H [age] as the result of the abuse he had experienced and was then forced to sell [goods] on the street. Then, from [age] until his departure from Iran at [age], the applicant worked as a labourer for various employers [and] in [another job], while studying for his [diploma] at night school.
17. However, I note in the applicant's arrival interview he provided information that he graduated from high school at [age], then obtained his mechanic diploma, and that his first employment began at [age], working for his uncle as a labourer until his departure from Iran at [age]. There is no reference in the applicant's arrival interview to being forced to leave school at [age], his employment with Mr H, his work on the streets, or his employment as a [labourer].
18. Furthermore, when asked during his arrival interview why he had left Iran, the applicant responded that the families of the Basij, martyrs, war veterans, and Sepah were given priority over others such as the applicant. When asked what had occurred recently to make him leave Iran, the applicant responded that he had come to Australia for a better life. The officer conducting the arrival interview stated that something must have happened to make the applicant leave Iran and he again responded that his lifestyle came below the groups he had already mentioned and that it was impossible to go out with a girlfriend, even for study purposes, without the Basij interfering. The interviewing officer then asked the applicant if he had come to Australia to work and he responded that no, he had come for life and for peace, that he had lost his passport and mobile phone on the way to Australia, and he had no reason to want to return to Iran where there is no karma or peace.

⁵ Ibid.

19. The delegate asked the applicant why he had not disclosed the situation with Mr H during his arrival interview. The applicant responded that he had misunderstood the interviewing officer's question and also because, at that time, he had not yet been convicted. The delegate then noted that there was more than one opportunity during his arrival interview to provide his real reasons for leaving Iran. The delegate also noted that while the sexual abuse was documented in the arrival interview the fight with Mr H, or its consequences, was not. The applicant then responded that he had in fact fully disclosed the situation with Mr H in his arrival interview and the delegate stated that he would listen to the audio recording of the SHEV interview to confirm.
20. I have listened to the full audio recording of the applicant's arrival interview and I am not satisfied that the applicant made any reference to being sexually abused in Iran, or to Mr H, during his arrival interview. Overall I consider the contents of the applicant's arrival interview significantly undermine the claims for protection which he has raised in his SHEV application.
21. During the SHEV interview the applicant reiterated his written claims that a week after the confrontation with Mr H in January 2013, he was ordered to attend the police station where he was arrested for disturbing a religious ceremony while fighting with Mr H. The applicant told the delegate he was held overnight at a detention centre and the next day he and his father signed undertakings that the applicant would get involved in fights again. The applicant's father then tried to resolve the situation with Mr A without success. The applicant stayed at home in fear until in February 2013 he departed Iran for [Country 1] legally, using a passport issued in his own name. The applicant was returned to Iran, where he remained for several months before departing again for [Country 1] and then in June 2013 arrived in Australia.
22. The applicant has claimed that after his arrival in Australia, his parents received a court summons for him to attend the Revolutionary Court of Tehran to provide some "clarifications", followed by a court verdict notice sometime later. The applicant has provided photocopies of these documents, accompanied by English translations, with his SHEV application. The court summons is dated 26 June 2013 and requires the applicant to attend the Islamic Revolutionary Court of Tehran on 3 July 2013 regarding an "inquiry into some matters". The court verdict is dated 1 September 2013 and states the applicant's offence as "causing public disturbance by attending an unlawful gathering while holding a placard with offensive comments about the Supreme Leader". The court verdict further states: "In regards to the offense of [the applicant]...residing at Tehran, with no previous penal records, single and educated, reported by the disciplinary forces as causing public disturbance by attending unlawful gathering and insulting the supreme leader and having been arrested at the scene and considering all the existing evidence the offense is ascertained by the court. Accordingly refereeing to Articles 618 and 514 the aforesaid person is sentenced to 10 years in prison and receiving forty lashes in public."
23. Following the SHEV interview the delegate advised the applicant in writing of a number of concerns he held with the court verdict document. Firstly, maximum sentences under Articles 618 and 514 of Iran's Penal Code respectively carry maximum sentences of one year and 74 lashes, and two years, but the applicant had been sentenced to ten years and 40 lashes. Secondly, the court verdict document stated the applicant was arrested at the scene, but in his SHEV application he has claimed he was arrested a week later after he complied with an order to attend the police station. Thirdly, the applicant had stated in his arrival interview that he had never been arrested, nor had pending charges in Iran.

24. The applicant responded to the delegate's concerns in writing claiming that he had not mentioned his arrest during his arrival interview because in his culture to be arrested means being imprisoned for a few months or a year, and he did not believe it was worth mentioning that he was also arrested on the day of flight, as well as one week later. However, the applicant now realises that in Australia the definition of arrest is different and includes being detained for even just one day. In relation to the excessive sentence the applicant claimed to have received under Articles 618 and 514, he claimed that even though specific penalties are stated in Iranian law, actual penalties vary depending on the personal circumstances of the person and other factors as determined by the judiciary.
25. The applicant also provided the delegate with a 2015 Amnesty International article regarding the imprisonment of a well-known Iranian political activist, and a 2016 'Iran Human Rights' article regarding the imprisonment of a well-known British-Iranian journalist in Iran. I accept, based on the contents of the articles, that the defendants appear to have been tried without due legal process and given politically-motivated and excessive sentences. I do not however consider this reflective of the applicant's situation. I also consider the applicant's written response to the concerns the delegate raised regarding the authenticity of the court verdict document, lacked credibility.
26. I note the court verdict document describes the applicant as "educated" which contradicts the evidence in his SHEV application that he was forced to leave school at [age]. I also do not consider it credible that the applicant was not issued with a court summons until six months after the claimed incident with Mr H. Overall I place no weight on the court summons and court verdict documents which the applicant has provided to corroborate his claims for protection. On the evidence I do not accept that the applicant was forced to leave school at [age] and work for Mr H, where he was physically and sexually abused, or that in 2013 he had an encounter with Mr H resulting in the applicant being charged with the claimed offences.
27. At the end of the SHEV interview the delegate asked the applicant if there were any other reasons he had left Iran, and he responded that he was prevented from walking openly in the street with his girlfriend. DFAT notes unmarried couples appearing together in public are a very common sight and the authorities usually turn a blind eye. This is in part because – if questioned - such couples may suggest they have a religiously-sanctioned temporary marriage. If such couples are arrested they would usually be taken to a police station, where parents or guardians are summoned and then released after making a statement, and sometimes paying a fine.⁶ Furthermore, in 2016 DFAT observed the Basij were less visible on the streets than was previously the case and noted credible sources which report the Basij have become less assertive and generally more respectful in their interactions with Iranians.⁷ On the evidence I am not satisfied the applicant faces a real chance of coming to the attention of the Iranian authorities for this reason.
28. During the SHEV interview, after some prompting by the delegate as to any other reasons why he had left Iran, the applicant also raised that he had been detained on one occasion for alcohol possession, just prior to his departure for Australia. The applicant claimed that he and his cousin were stopped at a checkpoint where their car was searched and a whiskey bottle found. The applicant claimed that because there was only one bottle his cousin was sent home but that he was held over a weekend, and then released on the Monday. The applicant claimed that he and his cousin were sent to court where they were sentenced to lashes, but that they paid a fine instead and were released. I note this claim is not included in the

⁶ Ibid.

⁷ Ibid.

applicant's arrival interview or written SHEV statement, and given the timing with which it was raised, I consider that it lacks credibility and I do not accept it occurred.

Returning Asylum Seeker from Australia/Western Country

29. I accept the applicant departed Iran legally in May 2013 and travelled to Australia. I accept that the applicant would be returning to Iran after having spent a number of years in Australia during which he claimed asylum. I also accept that if the applicant was to return to Iran the government may be aware of this, given that he is no longer in possession of his passports and his return would require temporary travel documents issued by Iranian diplomatic representatives.⁸
30. According to DFAT, Iran says it does not accept involuntary returnees and Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. Officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally (a regular departure through airports or with passports).⁹
31. From DFAT's anecdotal observation at airports, 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 – usually Tehran Imam Khomeini – 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.¹⁰
32. With reference to the applicant's particular circumstances, I have found he departed Iran lawfully, and there is no credible evidence before me to indicate they have an adverse profile with the Iranian authorities. On the evidence I am not satisfied the applicant's Kurdish ethnicity would lead any differential treatment upon re-entry. Nor does the country information before the delegate support a finding that persons who have sought asylum in Western countries, such as Australia, are imputed to hold an anti-Iranian government political opinion. Overall, I am not satisfied the applicant had a profile of interest to the Iranian authorities for any reason prior to his departure, or would attract the adverse attention of the Iranian authorities as a returning asylum seeker.
33. While I accept the Iranian authorities may question and even briefly detain the applicant as a returnee, I am not satisfied that this treatment would amount to serious harm. Based on the applicant's personal circumstances, I am also not satisfied he faces a real chance of harm for any of the above reasons, should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

34. 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

35. 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

36. 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.
37. I accept that the applicant is of Kurdish ethnicity and his mother is from Iraq. However I have not accepted that the applicant, with this background, would face a real chance of harm in relation to these reasons upon return. For the same reasons I also find there is not a real risk he will suffer significant harm.
38. I accept that as an asylum seeker returning to Iran without a passport the applicant may be questioned on his return for a few hours, but I do not consider that this would amount to significant harm. The applicant will not be arbitrarily deprived of his life or subject to the death penalty. The applicant will not be subject to torture, cruel or inhuman treatment or degrading treatment or punishment.
39. I have not accepted the applicant's other claims to fear harm in Iran.
40. I am not satisfied that there is a real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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.