



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03725

Date and time of decision: 21 May 2018 11:51:00

M Simmons, 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. On 10 April 2017 he lodged an application for a Safe Haven Enterprise visa.
2. A delegate of the Minister for Immigration and Border Protection refused the visa application on 9 October 2017. The delegate found that the applicant was a non-practising Muslim and that he had been baptised in Australia. They did not accept the applicant had converted to Christianity or that he had been regularly attending church in Australia.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's legal representative provided written submissions to the IAA dated 27 October 2017. To the extent these submissions contain legal argument and discussed the findings of the delegate I consider that they do not constitute new information. Accompanying the submission was a number of documents which were already before the delegate. These are not new information.
5. Also submitted was a video clip purporting to show an instant message conversation between the applicant and his father in which footage of the applicant's baptism ceremony was transmitted. The applicant's representative submits this is evidence of recent communications between the applicant and his father. However I note that the messages shown are dated Sun, [date] May and Mon, [date] Jul which appear to be dates from 2017 and well before the delegate's decision. Also provided was a photo of the applicant with his father, which would appear to support the view that the applicant's father holds the instant message account featured in the video clip. I am not satisfied that either pieces of information could not have been provided before the delegate's decision.
6. The applicant also has not satisfied me that this is credible personal information that may have affected consideration of the referred applicant's claims. I am not satisfied the new information has the probative value that the applicant attributes to it. What the video clip does show is a transfer of a video file seemingly depicting the applicant's baptism to an instant messaging account under [a name] which bears a display picturing resembling the applicant's father. While I am satisfied the video was sent to the account described, of itself, I am not satisfied that this demonstrates that this instant messaging account is actually held by the applicant's father and that he in fact received the video as claimed. There is no indication of dialogue between the applicant and his father discussing his baptism other than the purported transmission of the video. Considering the significance of this event, and given the visa application indicates that the applicant contacts his family weekly by phone and internet, the absence of any accompanying records of discussion of the baptism between the applicant and his father or other family members is telling. The extract of the instant messaging account visible in the video clip shows the parties had not communicated for almost two months when the footage was transmitted, which creates further doubt as to whether this account is held by the applicant's father given he claimed to be in weekly contact with him.

7. In any event, the applicant's evidence at the interview with the delegate was that his family have had no difficulty in Iran since his departure and that they were happy and supportive his conversion. As such even if it were accepted that the applicant informed his father of his conversion his evidence indicates that this had not created any difficulties for him in Iran. The applicant has not satisfied me that the video clip of the instant messaging account contains information that may have affected consideration of his claims. Neither has the applicant satisfied me that the photo of himself and his father may have affected consideration of his claims. The requirements of s.473DD(b) are not met..

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
- Shortly after arriving in Australia the applicant stated his religion was Islam and claimed he left Iran because it was getting very expensive and there were no jobs. He also left because the police would hassle people for how they dressed and they might arrest a person for going out with their girlfriend.
 - After arriving in Australia the applicant became familiar with Christianity. The applicant attended a church in [City 1] after being introduced by a friend. The services were in English so he could not understand much, but attending gave him peace of mind.
 - In 2016 the applicant moved to [City 2]. He became familiar with a Persian language church through a friend and began attending their services in February 2016. After the first service one of the church members spent 7 hours explaining Christianity to the applicant.
 - The applicant began attending bible study classes. In May 2017 he was baptised. After his baptism he began attending church services regularly.
 - He has communicated his new faith to family and friends in Iran.
 - He would continue practising Christianity if he were to return to Iran. As a Muslim born person who converted to another religion he will be executed. The authorities will put pressure on him to repent, they want new converts to hide their religious beliefs.

Factual findings

Identity and background

9. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Farsi and English and has submitted copies and translations of identity documents including his birth record and national identity card. I am satisfied the applicant departed Iran legally by plane in May 2013 as the holder of a valid genuine passport as claimed. I accept the applicant's nationality and identity are as claimed and find Iran to be the receiving country for the purpose of the application.
10. Country information indicates that non-practising Muslims form a large part of the population of Iranian cities and that they are rarely questioned about religious practice.¹ It is plausible and I am prepared to accept that the applicant is a non-practising Muslim, noting his evidence at interview that he does not like Islam anymore.

¹ ACCORD, 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation', 1 September 2015, CISEC96CF13622.

Church attendance

11. It is plausible and I am prepared to accept that while residing in [City 1] the applicant attended church with a friend four times. I note the applicant's claim that as a young asylum seeker with limited support in Australia that attending church gave him peace of mind. I accept that the services were in English and he did not understand much. The applicant's evidence was, and I accept, that he cannot recall the name of the church but it was a catholic church.
12. I have doubts and concerns regarding various aspects of the applicant's evidence about his involvement with a church in [City 2], which he claims commenced [in] February 2016.
13. In submissions to the IAA the applicant's legal representative and the applicant's church pastor dispute findings made by the delegate in relation to a photo taken by the pastor. On 26 September 2017 the representative emailed the delegate a written submission attaching this photo. Paragraph 3 of those submissions state "(the pastor) sent a screenshot of the records showing the date of the applicant's first attendance. [The screenshot is attached]". The delegate made various findings based on the information conveyed in this photo, referring to it as an attendance record. The submissions to the IAA contend that this was a mischaracterisation, and that the photo depicts the pastor's call records and for this reason the delegate made various erroneous findings.
14. In relation to the claimed mischaracterisation, I note that when the call records were submitted to the delegate they were described as records of the applicant's attendance by the applicant's legal representative. There is no indication anywhere in the 26 September 2017 submission that the photo it enclosed actually depicted telephone call records. The legal representative submitted to the IAA that the contents of the photo could have been clarified easily as the delegate was informed that further information could be provided on request. If the photo were being submitted as proof of telephone correspondence between the applicant and the pastor this could have been explained in the submission.
15. During a phone conversation with the delegate on 20 September 2017 the pastor apparently gave a significantly different account of the applicant's involvement with his church, including that he began regularly attending the church after [May] 2017 and not [February] 2016 as claimed. The 26 September 2017 submission states that inaccuracies in the pastor's evidence were due to the pastor guessing attendance dates relying on memory and some limited documents he had access to at the time of the telephone conversation. There is no explanation or proof of what these other documents were which led the pastor to assert that the applicant only began regularly attending his church after [May] 2017 and not [February] 2016 as claimed.
16. The phone call with the delegate occurred on 20 September 2017. I note that [in] September 2017 the pastor had signed a letter of support stating he had known the applicant since [February] 2016 and that he was a regularly church attendee. That the pastor provided significantly differing information in the telephone conversation and the letter, albeit they occurred three days apart, leads me to doubt the reliability of the pastor's evidence. I am also concerned that the pastor would guess such information, given he indicated in the letter of support that he considered if the applicant were sent back to Iran he would face certain death for converting to Christianity. As it is apparent he appreciated the significance of the visa application, in this context I consider the explanation that he was guessing to be unsatisfactory. If the applicant were a regular attendee then it may be expected that the pastor would have a more accurate, and ready recall, of his involvement in the church.

17. I also have some concerns with the pastor's letter of support itself. It states that "I have known *applicant* (page 45) since [February] 2016". The photo of the document submitted as proof of the applicant's first attendance at the church shows his name, along with many others, listed on a page entitled Page 45. This suggests it was necessary for the pastor refer to the applicant by the page number from his records of church goers, rather than just his name, in order to distinguish him. It does not suggest that the applicant is known well to the pastor as claimed in the letter of support. I consider that if the applicant was regularly attending Sunday morning church services from February 2016 to September 2017, as the letter claims, the relationship between the pastor and the applicant would have evolved to a level where he did not need to identify the applicant by a page number in order to distinguish him from other church goers.
18. The letter also states that "according to my phone records, *applicant* regularly attends our Sunday morning church service." In submissions to the IAA it was argued that it was the pastors 'call records' and not proof of attendance which were before the delegate. However, these records only indicate monthly entries against those listed, including the applicant. At best these records could evidence monthly attendance, which I do not consider to be proof of regular attendance at Sunday morning services, as the letter claims the phone records evidence.
19. The applicant's statement of claim submitted with his visa application provides that in May 2017 he was baptised and that after his baptism he began attending church services regularly. At the interview, and in the letter of support from the pastor, the evidence is that the applicant was regularly attending church from February 2016. Given my other concerns with the applicant's claimed church attendance and the evidence he has produced in support of this, I am not prepared to accept that this discrepancy was due to a misinterpretation as was suggested. Furthermore, I note that the evidence in the statement of claim is consistent with the evidence from the pastor to the delegate during their phone conversation, which the pastor subsequently resiled from, that the applicant began regularly attending his church after [May] 2017.
20. The visa application was submitted in April 2017, with the help of his legal representative, on a form which clearly instructs: "All claims and supporting documentation and evidence should be provided when you lodge this application." I note that no supporting evidence of the applicant's religious activities was provided until the interview with the delegate on 20 September 2017, notwithstanding the applicant claims to have attended church regularly for at least 18 months prior to this.
21. The letter of support from the pastor was dated 3 days before the interview with the delegate. A copy of his baptism certificate was certified by his representative [in] September 2017 and forwarded to the delegate that day, a week after the delegate's interview. However the baptism ceremony occurred [in] May 2017. The photo of the pastor's 'church attendance records' or 'call records' was only supplied in response to an issue raised by the delegate.
22. While I am prepared to accept that he applicant may have had some limited involvement with a church in [City 2] including occasionally attending some services, I am not prepared to accept that he has been a regularly attendee at services since February 2016 as claimed. I consider the submissions and supporting evidence purporting to corroborate the applicant's claimed frequent church attendance to have numerous significant shortcomings and I give these little weight. I accept that he took part in a baptism ceremony [in] May 2017 and was issued a certificate.

Christian beliefs

23. At the interview with the delegate the applicant provided generally brief answers, including when he was questioned about what Christianity meant to him, what aspects of the religion were most significant to him and which teachings spoke to his personal beliefs. The delegate had to probe for detail on a number of occasions. When questioned about reading the bible it appears the applicant alluded to his attendance at bible study, but did not give any indication of him reading the bible in his own time. When asked what he knew about Christianity after his baptism the applicant indicated that he got more information about the lord at bible study, but mainly he was watching films rather than reading the book. I note that many of the services and classes he claimed to have attended were conducted in Farsi. I am not convinced that the applicant demonstrated a level of understanding of Christianity commensurate with someone who claims to have been regularly attending church since February 2016. His answers did not evidence a genuine expression of faith. While I appreciate religious beliefs are personal and subjective, the brevity and generalised nature of the applicant's responses support a conclusion that he was providing rehearsed answers rather than conveying his own understanding of a faith which he sincerely follows.
24. I am not satisfied that the applicant has genuinely converted to Christianity as claimed. Although I accept the he has undergone a baptism ceremony, I consider it was contrived for the purposes of enhancing his protection visa application. Because I do not accept that he has actually converted, in these circumstances I do not accept that the applicant has told friends and family in Iran of his conversion.

Refugee assessment

25. 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

26. 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.

Difficulties in Iran

27. The applicant's statement of claims included with the visa application mentions that life became very difficult in Iran. However, during the protection visa process the applicant did not otherwise reiterate claims from the arrival interview that Iran was very expensive, there were no jobs, and that police harass people for how they dress and for going out with their girlfriend. He has not subsequently indicated that he or anyone he knew has experienced any harm of this nature in Iran. When asked by the delegate whether he feared persecution for any reason other than his claimed religious conversion the applicant's response was that he saw many things in his childhood that made him hate Iran, but that praying to god saved him. He did not advance or allude to any reasons distinct from his claimed conversion. On the applicant's evidence I am not satisfied that he fears harm in Iran in the foreseeable future because that country has become expensive, there are no jobs or because of police harassment related to dress standards and public displays of relationships. I do not accept there is a real chance of the applicant suffering harm for these reasons, and I do not accept the applicant has a well-founded fear of persecution for these reasons.

Religion

28. Under Iranian law, a Muslim who leaves their faith or converts to another religion or atheism can be charged with apostasy. While cases of apostasy are rare, Muslim-born converts to Christianity and Muslims who challenge the prevailing interpretation of Islam and others who espouse unconventional religious beliefs have previously been charged with apostasy.²
29. I accept that at least initially the applicant found attending church help with dealing with the difficulties he was experiencing as an asylum seeker in foreign country and due to be separated from his family. Therefore I do not consider his initial church attendance was solely for the purpose of enhancing his protection visa application and I have considered it. However, I do consider his baptism ceremony was conducted engaged in only for the purpose of strengthening his claim to be a refugee, and I have disregarded this per s.5J(6). Because I do not accept that the applicant has converted to Christianity, I do not accept that he would practise Christianity or discuss Christianity with others, were he to return to Iran in the foreseeable future. I do not accept that he faces a risk of harm for being suspected of apostasy or that he would hide his Christian beliefs to avoid harm, as I do not accept he holds such beliefs.
30. I have found that he is a non-practising Shia Muslim. There is no suggestion that the applicant was ever adversely treated for being a non-practising Muslim. This is generally consistent with country information, which indicates that non-practising Muslims form a large part of the population of Iranian cities, and are rarely questioned about religious practice or pressured to observe Muslim precepts.³
31. Relying on a survey conducted in Tehran, a January 2006 article from the Middle Eastern journal *Critique* observed that mosque attendance rates are surprisingly low and that many people, even some with strong religious beliefs, do not attend Friday congregational prayers.⁴ More recently, DFAT considers it is unlikely that the government would monitor religious observance such as whether a person regularly attends mosque or participates in religious

² DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

³ ACCORD, 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation', 1 September 2015, CISEC96CF13622.

⁴ Gunes Murat Tezcur, Taghi Azadarmaki and Mehri Bahar, 'Religious Participation among Muslims: Iranian Exceptionalism', *Critique: Critical Middle Eastern Studies*, vol.15, iss.3, 2006, CIS21784.

occasions. As such it would be unlikely for it to become known that a person was no longer faithful to Shia Islam.⁵ There are some reports that disclosure of non-practising status may impact on a person's employment prospects including if they are seeking to obtain employment with a government agency.⁶ I note that while the applicant previously complained of difficulties securing employment in Iran, he was able to obtain a [job]. He has not suggested that he had any difficulties securing employment for religious reasons. There is no indication that he experienced any harm for failure to observe the Muslim faith while in Iran and I am not satisfied there is a real chance he would experience any harm for this reason in the foreseeable future were he to return to that country.

Returning asylum seeker

32. DFAT reports that credible sources have advised that returnees will generally only be questioned if they had done something to attract the specific attention of the Iranian authorities, and the vast majority of people questioned would be released after an hour or two.⁷ Reports indicate that persons who have engaged in anti-regime activism overseas, or who have a known anti-regime profile in Iran, may be subject to arbitrary arrest, detention and mistreatment upon return to Iran.⁸
33. I am not satisfied that the applicant has engaged in any conduct that would be of interest to the Iranian authorities either while in Iran or since departing. The applicant's evidence at interview was that he was never politically active in Iran, and there is not indicative he has become politically engaged while in Australia. DFAT assesses that Iranians who convert to Christianity outside Iran could face adverse attention upon their return if they join a house church, but that generally speaking the mere fact of conversion would be insufficient to attract official attention.⁹ In light of DFAT's assessment regarding overseas conversions, I am not satisfied that his occasional church attendance in Australia would constitute conduct that would be of interest to the Iranian authorities. Nor am I satisfied on the evidence before me that the Iranian authorities would become aware of this limited church attendance.
34. I note that the applicant himself has not expressly advanced a claim to fear harm in Iran because of having sought asylum in a western country. The material before me does not suggest a chance of harm to the applicant for this reason. I do not accept that there is a real chance the applicant would suffer harm for the reason of being a returning asylum seeker returning from a western country.

Refugee: conclusion

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

⁵ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

⁶ ACCORD, 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation', 1 September 2015, CISEC96CF13622.

⁷ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

⁸ Amnesty International, 'We are ordered to crush you': Expanding Repression of Dissent in Iran', 28 February 2012, CIS22610, International Campaign for Human Rights in Iran, 'New Video: Iranian Expats Face Arrest upon Return to their Homeland', 23 April 2015, CXBD6A0DE5203; Radio Zamaneh 'Iranian poet/activist arrested at Tehran airport', 8 January 2016, CX6A26A6E140.

⁹ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

Complementary protection assessment

36. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

37. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
38. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.¹⁰ I have concluded for the reasons set out that the applicant does not face a real chance of any harm for being a non practising Shia Muslim or for being a returning asylum seeker. As such, I am also satisfied that there is not a real risk that he would face harm, including significant harm, for any of these reasons were he to return to Iran.
39. I have considered the applicant's conduct in Australia, including his church attendance and that he undertook a baptism ceremony, when considering whether there is a real risk he may experience significant harm.
40. For Iranians who convert to Christianity outside Iran, DFAT assesses that generally speaking the mere fact of conversion would be insufficient to attract official attention.¹¹ I have not accepted that the applicant has genuinely converted to Christianity. In light of country information, I am not satisfied that his occasional church attendance in Australia and participation in a baptism ceremony would constitute conduct that would be of interest to the Iranian authorities. Nor am I satisfied on the evidence before me that the Iranian authorities would become aware of this limited church attendance or that they would learn that he took part in a baptism ceremony. Given I do not accept the applicant is a Christian, I do not accept that he would seek to practice the Christian faith were he to return to Iran and I do not accept he would engaged in any Christian related activities. Nor do I accept that he has told anyone in Iran that he has converted to Christianity. Because I do not accept the applicant has converted to Christianity, I am not satisfied he faces a real risk of significant harm in Iran for that reason. I also do not accept that there is a real risk of significant harm due to his Christian activities in Australia.

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).

¹⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

¹¹ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

Decision

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

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.