



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/04024

Date and time of decision: 17 August 2018 16:01:00

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 national. On 1 September 2016 he lodged an application for a safe haven enterprise visa. On 4 December 2017 a delegate of the Minister for Immigration refused to grant that 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 29 December 2017 the applicant's representative provided written submissions. To the extent these contain elaboration on material before the delegate and legal arguments in response to the delegate's findings it is not new information and I have considered it.
4. For the first time in this submission the applicant states that after the incident at the workplace he went to an apartment he owned, which no one in his place of employment knew of. That is how he was able to avoid the authorities until his departure from Iran. At interview he evidence was that he returned to the home he resided in with his parents and did not leave that premises for 5 days while arranging his departure. No explanation has been provided for why this new information meets either limb of s.473DD(b). The applicant has not satisfied me that his ownership of this apartment and that he hid out there in order to avoid the authorities following the work place incident could not have been disclosed to the delegate prior to their decision. The delegate specifically asked the applicant what he did following the workplace incident, to which he replied he went home and told his parents and did not leave home for 5 days. There was no suggestion that he hid at an alternate address - quite the contrary. No supporting evidence, such as proof of the applicant's claimed ownership of the apartment, has been provided. Given the evolving nature of the applicant's narrative and the late disclosure of this information, I do not consider his claim to have hidden in an apartment he owned that was not known to his employer to be capable of being believed. The applicant has not satisfied me either limb of s.473DD(b) is met, I have not considered this information.
5. On 7 June 2018 the Australian Department of Foreign Affairs and Trade (DFAT) published an updated Country Information Report on Iran.¹ This report postdates the delegate's decision, updates the report they relied upon, and is specifically prepared for the purposes of protection determination in Australia. It contains up-to date information on the situation for religious non-believers and returnees in Iran. I am satisfied that there are exceptional circumstances which justify consideration of this information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - The applicant was born Muslim however his family were not strict in their religious practice. He and his siblings did not practice Islam and their parents did not force it upon them. He deeply objects to Islam and does not believe in any religion.

¹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

- He took part in the 2009 Green Movement protests, though he wore a mask and his involvement was never known to the authorities.
- The applicant worked at [a Government agency] for around 10 years. Initially [in Occupation 1], he worked his way up to become a supervisor.
- In early 2013 some of the workers were not being paid and they expected the applicant to resolve this. They began to strike. Management expected the applicant to ensure the workers continued to work irrespective and management him for the strikes. During discussion in the management offices, the applicant became angry he lost his temper. He condemned Islam and the Iranian government. He complained about the Iranian government sending money to extremists overseas but not paying their own workers.
- After this outburst he was warned by a friend [that] the Basij were coming to his workplace to arrest him, so he fled. He returned home and remained there for 5 days while he made arrangements to flee Iran.
- Around 2 years after the workplace incident, the authorities issued a summons for the applicant, but as he was absent required his father to attend court instead. As there is a court order for him, if he returns to Iran he will be arrested and executed. The applicant fears being prosecuted and harmed for insulting Islam, speaking out against the government and for his religious non-belief should he return to Iran.

Factual findings

Identity and background

7. 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 of Iranian identity documents. I accept the applicant's nationality and identity are as claimed and find Iran to be the receiving country in this matter.

Religious views

8. The applicant described his family as broadminded. While his parents are Muslim his evidence was that they never forced him to practise their faith. Neither of his siblings follow Islam. In an arrival interview completed soon after the applicant entered Australia, he indicated that he does not follow any religion. This is consistent with the information subsequently provided in the visa application and at the interview with the delegate. I accept that the applicant is an atheist as claimed.
9. Prior to the workplace incident, the applicant has not claimed to have ever experienced harm in Iran because of his religious beliefs. I am satisfied that is the case. He completed his military service and successfully held down government employment for around 10 years notwithstanding his atheism.

Protests, workplace dispute

10. The applicant's involvement in the election protests was not mentioned his visa application. He stated in his arrival interview that he went to protest before the election, but not after the election because it was dangerous. When asked whether anything personally happened to him at the arrival interview, he responded that fortunately he was not a trouble maker, the Basij were not looking for him and nothing happened to him. He has not claimed to have ever come

to the attention of the authorities in Iran for this reason, stating that he wore a mask during protests. This is notwithstanding that security forces arrested hundreds of demonstrators and beat and harassed thousands more during and after the election protests.² The applicant has not indicated he had any involvement in organising the protests. I am prepared to accept the applicant may have had some involvement in the 2009 election protests as an attendee. I am not satisfied that he was ever of any interest to the Iranian authorities for this reason at the time of his departure from Iran

11. In his statement of claims the applicant asserts he has ideological problems with the Iranian government and does not agree with them forcing religion on to people. He claimed at the interview with the delegate that he has been active in political issues and he wanted to change the government. While he referred to doing his share by participating in demonstrations, he did not mention any specific protests other than those following the 2009 elections. When probed for detail on these matters by the delegate his responses were generally vague and evasive. When questioned about how he would object to Islam and the regime should he return to Iran, the applicant responded by indicated that he could not object while in Australia for fear of adverse consequences to his parents in Iran. It is unclear why the applicant's claimed activism in Iran would not expose his parents to a similar, if not greater risk. I do not accept that he has engaged in any anti-regime activism or conduct, either in Iran or Australia, other than attending the 2009 election protests.
12. I am not satisfied that the applicant has been truthful in relation to the incident at his workplace when he claims he lost his temper and condemned Islam and the Iranian regime. I do not accept that these events occurred as claimed. It was this outburst that the applicant claims caused him to flee Iran when he did, for fear of imminent arrest by the Basij. However in his arrival interview the applicant gave conflicting evidence that the Basij were not looking for him and nothing happened to him.
13. The applicant claims after he condemned Islam and the government at work the Basij were seeking to arrest him. A friend warned him that the Basij were on their way, so he quickly left his workplace, returned to his house and remained there for 5 days. I have concerns that other than returning to his known residential address and remaining there, it does not appear the applicant took any steps to avoid the Basij. If the Basij or any government agency had any interest in him at that time, I consider that they would be able locate him at his home. I do not consider it plausible that if he was truly fearing arrest he would simply return home and remain there for 5 days.
14. I also have some concerns that the applicant may have embellished his seniority in the government [agency] for the purpose of fabricating protection claims. In both the arrival interview and visa application form his occupation history does not set out that he held senior supervisory position. Both indicate he [did certain work] for the duration of his employment. Neither set out the claimed progression in positions from [Occupation 1] to a supervisor he refers to in his statement of claims. In his arrival interview he referred to his wages being withheld for 4 months because of budget problems. However in his visa application he claims that the employees he was responsible for had their wages withheld and began striking for that reason. He did not reiterate the claim that his own salary was not paid, nor did he mention this at interview. Reports before me indicate that Iran has recently endured various economic difficulties,³ as such it is plausible that some employees of government agencies may have had their wages withheld for periods in Iran. However, I am not satisfied that the applicant had a

² DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

³ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

heated conversation with management over this. On the evidence before me I do not accept he supervised a team while employed at the [government agency].

15. The applicant left Iran using his own Iranian passport via Imam Khomeini Airport, 5 days after the claimed workplace incident. His evidence was that had he waited 10-12 days he would have been on the travel blacklist, but as he only waited 5 days he was confident he would be able to depart without incident. The Danish Refugee Council and Danish Immigration Service quote a Head of the Passport and Visa Department, who stated it could take a court up to three months to issue a travel ban depending on the circumstances of the individual case. However, there can be cases of urgency, for example in a case involving homicide, where border points would be alerted as quickly as possible. The Head of Department also advised that persons who have been politically active are not subject to any exit ban.⁴ Whereas DFAT assesses that the Iranian authorities routinely impose travel bans on citizens, for various reasons including security concerns, and that political activists are particularly likely to face travel bans. The Ministry of Intelligence and Security and the Islamic Revolutionary Guards Corps, which oversees the Basij, have the power to impose travel bans without recourse to the judiciary.⁵ Weighing the information before me, I am satisfied that if the applicant were of interest for condemning Islam and the regime it is very likely he would have come to the attention of the authorities when departing via the airport.
16. In his visa application the applicant indicated he has never been charged with any offence or subject of any arrest warrant. He mentioned for the first time at interview with the delegate (around a year after the application was made) that around 2 years before that interview the authorities summoned his father to court under the applicant's name. When asked whether he had a copy of that summons, he said he did not and that he did not mention this previously due to the not having a copy of the summons. Then towards the conclusion of the interview the applicant's evidence evolved further when he added that his father had only told him 2 weeks before that interview that around 2 years ago he was summoned to court because of him. I do not find that applicant's evidence on this matter to be credible. He has provided a vague and shifting narrative in relation to the court summons. The applicant left Iran in 2013 and attended the interview with the delegate in September 2017. I do not accept that the Iranian authorities would wait until 2015, as the applicant claimed, before issuing the court summons.
17. I do not accept that the applicant condemned Islam or the regime at his workplace, or that he has been subject to any court summons because related to that incident. I do not accept that the applicant was of any adverse interest to the Iranian authorities at the time of his departure from Iran for any reason related to his employment or his attendance at the 2009 protests.

Returning asylum seeker

18. The applicant left Iran lawfully on his own Iranian passport through a major international airport without incidence. I am satisfied he was not of any adverse interest to the Iranian authorities for any reason at that time. However, I accept that if he were to return to Iran in the future he would do so after having requested asylum in a western country.

⁴ Danish Refugee Council, Landinfo and Danish Immigration Service. "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114.

⁵ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

Refugee assessment

19. 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

20. 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.

2009 Election protests

21. The applicant remained in Iran for around 4 years after the election protests without incident, until he claims to have lost his temper at his workplace. At the interview with the delegate he indicated he did not come to Australia due to problems arising from his involvement in the election protests. DFAT assesses it likely that those who had a more active organisational role in the green movement election protests are more likely to face continuing official attention and possible harassment.⁶ Information before me does not support a conclusion that a person would continue to be of interest to the authorities for attending protests during the 2009 election. I am not satisfied the applicant would be of any interest for this reason should he return to Iran, or that he faces a real chance of any harm because of his attendance.

Atheist, apostate

22. I accept that the applicant is an atheist. I have not accepted he was ever adversely treated for his non-belief or for failing to observe Islamic practices while in Iran. This is generally consistent with country information, which indicates that it is rare for a person to be questioned about religious practice or pressured to observe Muslim precepts.⁷ A June 2014 Danish Immigration Service fact finding mission assessed that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do

⁶ DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226.

⁷ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation”, 1 September 2015, CISEC96CF13622; DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226.

not regularly attend mosques.⁸ The information before me suggests it would be unlikely for it to become known that a person was no longer faithful to Shia Islam, and the applicant has not indicated he was ever previously harmed in Iran for this reason.

23. It has been reported that there is a growing number of atheists in Iran and that this is becoming “more accepted among some Iranians”.⁹ A senior research fellow in Iranian studies at a university in Germany stated that atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions.¹⁰ There is no indication that the applicant ever sought to publicise his views while in Iran. 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.¹¹ The applicant, not merely a non-practising Muslim but a religious non-believer, has not suggested that he had any difficulties securing employment for religious reasons. In fact he had a successful career working for a government entity for around 10 years. He was also able to complete his mandatory military service without incident.
24. Under Iranian law a Muslim who leaves his or her faith can be charged with apostasy. While such charges are not common, reports indicate they have been used for political purposes.¹² I have not accepted that the applicant publically condemned Islam or the Iranian regime at his workplace, as such I do not accept that there is any risk of apostasy charges, politically motivated or otherwise, being brought against him for that reason. The applicant claims to have resided for much of his life in Iran as an irreligious person without incident. The applicant’s evidence is that both of his siblings have left Islam, his sister continues to reside in Iran and his brother recently relocated to [another country]. There is no indication that either has ever experienced any difficulties in Iran because of their religious views.
25. I am not satisfied there is a real chance of the applicant attracting adverse attention for having left Islam, noting he resided in Iran and work for a government entity without incident for an extended period after having left that religion. I am not satisfied that there is a real chance of any harm to the applicant in Iran for being considered an apostate, an atheist or for failing to practise Shia Islam.
26. As I accept that the applicant is an atheist, I am prepared to accept he disagrees with the Iranian regime’s position in respect of Islam and religion generally. However I do not accept that he has ever come to the adverse attention of the authorities for holding these views, nor has the applicant claimed this. Other than attending the 2009 protests I am not satisfied that he has ever engaged in any anti-regime activities, either in Iran or Australia. There is no indication he is currently or was ever aligned with any anti-regime groups or causes, or that he would seek to become so should he return to Iran. I do not accept that he would seek to or has any desire to engage in any conduct in furtherance of these views should he return to Iran.

⁸ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation”, 1 September 2015, CISEC96CF13622.

⁹ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation”, 1 September 2015, CISEC96CF13622.

¹⁰ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation”, 1 September 2015, CISEC96CF13622.

¹¹ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation”, 1 September 2015, CISEC96CF13622.

¹² DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226.

Returning asylum seeker

27. International observers have advised DFAT the Iranian authorities pay little attention to returning asylum seekers, and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹³ 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.¹⁴ There is no indication on the information before me that the applicant has engaged in any conduct since departing Iran that may be regarded as anti-regime, and I have not accepted he engaged in any such conduct prior to departing.
28. 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

29. 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

30. 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

31. 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.
32. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.¹⁵ I have concluded for the reasons set out above that the applicant does

¹³ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁴ 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.

¹⁵ *MIAC v SZQRB* (2013) 210 FCR 505.

not face a real chance of any harm for being an atheist, for being considered an apostate, not practising Shia Islam, due to holding views contrary to the ideology of the Iranian regime, in connection with his former employment 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.

Complementary protection: conclusion

33. 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.