



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

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA18/04452

Date and time of decision: 12 July 2018 14:59:00  
M Brereton, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Pakistani national, a Turi tribesman and a Shi'a Muslim from the Kurram Agency in North-West Pakistan. He left Pakistan legally in 2005 and went to [Country 1]. He left [Country 1] in March 2013 and travelled to [Country 2] and [Country 3]. He left [Country 3] by boat and arrived [in Australia] on [date] July 2013. On 21 December 2016, he lodged a valid application for a Temporary Protection Visa (TPV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 26 February 2018.
2. The applicant claims to fear harm: from the Taliban as a Turi and a Shi'a Muslim; and as a returned asylum-seeker who has been in the West.
3. The delegate accepted the applicant's claims as to identity and origin. The delegate considered country information in relation to the situation in Kurram Agency and found that the applicant faces a real risk of serious harm if he returns to that area, but that he could reasonably relocate to Islamabad. The delegate was not satisfied that the applicant faces a real chance of serious harm or a real risk of significant harm for being a returned asylum-seeker who has been in the West and found that the applicant is not a person in respect of whom Australia owes protection obligations.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. No further information has been obtained or received.

### Applicant's claims for protection

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6. The applicant's claims can be summarised as follows:
  - He is a Turi tribesman and a Shi'a Muslim from Parachinar district in Kurram Agency, Pakistan. He was born there in [year] and resided there until 1999.
  - Between 1999 and 2003, he resided in [Country 1] and [worked]. He returned to his village in Pakistan because his visa was not renewed and he remained there until 2005.
  - In 2005 he travelled to [Country 1] and resided there until 2013. He worked as [an occupation].
  - During 2005-2013 he returned to Pakistan on two occasions. He returned in 2009 for about two months because his father was ill, and for about four months in 2012 to get married.
  - In 2013, he heard that Shi'as were being deported back to Pakistan from [Country 1] so he decided to come to Australia.
  - He fears that the Taliban will harm him because he is a Turi and a Shi'a, and because he has been in the West. He fears that the Pakistani authorities will demand a bribe if he

returns and will harm him if he does not pay. He also fears that the authorities will harm him because they will think he has spoken badly about Pakistan.

## **Refugee assessment**

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7. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

8. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
9. The applicant has made consistent claims about his identity, religion, ethnicity and origin. He has provided documentary evidence, including a Pakistan National Identity Card, in support of these claims and was also able to answer questions about his ethnicity and religion during the interview with the delegate on 20 February 2018 (the interview). I accept that the applicant is a Turi tribesman and a Shi'a Muslim from the Kurram Agency and that Pakistan is the receiving country for the purpose of this review.
10. The applicant has not claimed that he or any member of his family has been harmed for any reason associated with ethnicity or religion in the past. He claims to fear harm in Kurram Agency because there is always fighting in the area and movement is limited. He said that the Taliban will stop cars and busses and if they recognise you as Shi'a they will kill you straight away. He said that he has not experienced any harm as a Turi but he was fortunate that he was living abroad, so it did not happen to him.
11. The Kurram Agency is one of seven agencies that make up the Federally Administered Tribal Areas (FATA). The FATA are situated on the Pakistan-Afghanistan border between the province of Khyber Pakhtunkhwa and Afghanistan, and border Balochistan in the south. In 2017 it was reported that the Government of Pakistan has plans to reform the FATA and

merge the region into Khyber Pakhtunkhwa within five years.<sup>1</sup> According to the Australian Department of Foreign Affairs and Trade (DFAT), the majority of the Shi'a population in the FATA is concentrated in Kurram and Orakzai Agencies. Shi'as account for 40 per cent of the population in Kurram Agency and Upper Kurram (where the applicant's village is located) is predominantly Shi'a (approximately 80 per cent).<sup>2</sup>

12. Much of the information in the review material refers to the successful operations conducted by the Pakistani authorities to combat generalised and sectarian violence, including within the FATA. However, most of those reports date to late 2016 or early 2017.<sup>3</sup> The most recent report in the review material paints a different picture of the situation in Kurram Agency.<sup>4</sup> This report notes that as at the end of 2017, the number of civilian casualties from such violence in the FATA had increased by over 60%. The report noted that there were 575 reported civilian casualties from violent incidents in Kurram Agency alone in 2017, up from 11 in 2016. The main reason for the surge in civilian casualties was four high profile attacks against Shi'as carried out by Islamic State (IS) affiliated groups. The report does however note a significant drop in incidents and casualties during the latter part of 2017.<sup>5</sup>
13. While the FATA report referred to above indicates that military operations are ongoing and the Pakistan government is assessing other measures it can take to combat the threats of generalised and sectarian violence, I consider that this most current information indicates that there is a real and not remote chance that the applicant may be harmed as a Shi'a in his home district. I am satisfied from the information above that such attacks are being targeted at Shi'as and that any harm the applicant may face will be for the essential and significant reason of his religion. I am further satisfied that the harm he may face will include death or serious injury and is thus serious harm as contemplated by s.5J(3). I am satisfied that the applicant faces a real chance of serious harm should he return to Kurram Agency.
14. Section 5J(1)(c) of the Act requires that the real chance of persecution relates to all areas of the receiving country. At the interview the applicant was asked if he could relocate to anywhere else in Pakistan, for example Karachi or Islamabad. He said that he could not do so because it is not safe for Shi'as in any city. He said that Shi'as are targeted in Karachi and the bigger cities. When the delegate again asked whether he could live anywhere else the applicant said that Shi'as are targeted more in Islamabad than in Kurram Agency.
15. According to DFAT, Islamabad is home to a small community of Turis and a large community of Shi'as. DFAT states that credible sources have said Islamabad is one of the safest places in Pakistan for Shi'as, and that Shi'a and Sunni communities tend to be more integrated here. There have been no deaths from sectarian violence in Islamabad reported since 2015. DFAT notes that Islamabad has a population of around two million people, including a large number of internal migrants from all parts of the country. There is a strong security presence, including checkpoints throughout the city and its entry points, and patrols by the paramilitary Rangers. These security measures provide a strong deterrent to militant groups planning attacks in the capital, and large-scale militant or sectarian attacks in Islamabad are rare. Such violence more often takes the form of targeted killings (such as drive-by shootings) of high-profile community leaders. Overall, DFAT has assessed that Shi'as face a

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<sup>1</sup> European Asylum Support Office (EASO), "EASO Country of Origin Information report Pakistan Security Situation", 7 August 2017, CISED50AD5088, at p 70.

<sup>2</sup> [Source deleted].

<sup>3</sup> DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, at p 9; DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, at pp 9-11.

<sup>4</sup> Fata Research Centre (FRC), "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188.

<sup>5</sup> FRC, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188, at pp 6-7, 15.

low risk of sectarian violence in Islamabad.<sup>6</sup> Other information in the review material corroborates DFAT's reporting that no Shi'as have been killed in sectarian violence in Islamabad since a Shi'a cleric was killed in a drive by shooting in 2014.<sup>7</sup>

16. DFAT has reported that according to the Turi community there has only been one attack on Turi migrants in Islamabad, on 10 August 2013, when there was an attempted suicide bombing. The suicide bomber was killed while the other four perpetrators (who came from Kurram Agency) were prosecuted. Some Turi migrants in Islamabad have reportedly received unspecified threats from sectarian elements but according to Islamabad-based think tanks, there is a declining incidence of kidnapping for ransom incidents and in any event, kidnappers have historically targeted Ahmadis and, to a lesser extent, wealthy migrants from tribal areas.<sup>8</sup>
17. In relation to Shi'as generally, DFAT reports that no laws or government policies discriminate against Shi'as on the basis of religion. Broadly speaking, there is also little community prejudice against Shi'as and societal discrimination is largely confined to local nepotism, favouritism or patronage. DFAT assesses that the greatest threats for Shi'as in Pakistan are from militant groups and, at times, sectarian clashes but as I have noted above, this risk is very low in Islamabad compared with other parts of Pakistan.
18. I note that the delegate also considered the risk in Rawalpindi, given its proximity to Islamabad. Information in the review material indicates that there has been more violence in Rawalpindi, including attacks on Shi'as, but the information before me, including that noted above, does not indicate that violence in Rawalpindi has adversely impacted on Turis and Shi'as in Islamabad, nor does it indicate that the situation in Islamabad is deteriorating because of incidents in neighbouring areas.
19. Having regard to all of the above I am not satisfied that the applicant will face a real chance of harm because of his ethnicity, religion, or from generalised violence, in Islamabad.

#### *Returned asylum-seeker from the West*

20. The applicant claims to fear harm from the Pakistani authorities and the Taliban because he is a returned asylum-seeker who has been in the West. When the delegate asked why he fears the Pakistani authorities, the applicant said that the authorities are corrupt and when he returns he will be identified and may be suspected of "talking bad" about Australia. He said that he may be forced to pay a bribe, could be imprisoned and could be beaten. The delegate asked a number of questions to explore this claim but the applicant did not expand on these issues.
21. DFAT understands that returnees who return to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation, and who have not committed any other crimes, are typically released within a couple of hours. The applicant left Pakistan legally and has a current passport. He has not claimed that he has committed any offences in Pakistan or while abroad and I am satisfied that he does not have any adverse profile with the Pakistani authorities for those reasons. The information in the review material does not indicate that returned

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<sup>6</sup> DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, at pp 14, 17, 20, 38.

<sup>7</sup> South Asia Terrorism Portal, "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539.

<sup>8</sup> DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, at p 11.

asylum-seekers are subjected to violence or detention for that reason and while I accept that he may be questioned at the airport, I consider his fear of being harmed in this way to be speculative. Similarly, the information before me does not refer to the prevalence of bribery at the airport and as noted above, the applicant has no other profile that would bring him to the adverse attention of airport authorities. I consider that this claim is also speculative. I do not accept that he faces harm from the Pakistani authorities for these reasons.

22. The applicant claims that he may be identified as a returned asylum-seeker by the media at the airport and that this information will be communicated to the Taliban. The information before me does not indicate that the Pakistani media undertakes such activities but even if it did so, I have noted the security situation in Islamabad as well as the size of that city. I do not consider it plausible that if the applicant was identified as a returned asylum-seeker from the West, the Taliban or any other insurgent group would track him down to harm him in Islamabad. Further, there is no information to indicate that such groups operate checkpoints or undertake any similar operations within Islamabad that could lead to the applicant being stopped and identified.
23. More generally, DFAT reports that Western influence is pervasive in many parts of Pakistan, particularly in large urban centres (such as Islamabad). Western films and music are widely available (though in many cases subject to censorship), and western-branded retail chains operate throughout the country. Both Urdu and English are official languages, and English is taught in many schools and is widely spoken among Pakistan's elite. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assesses that individuals in Pakistan are not subject to any additional risk of discrimination or violence on the basis of having spent time in western countries or because of perceived western associations (such as clothing), despite a generally increasing conservatism and religiosity across the country.<sup>9</sup> Having regard to the above, I am not satisfied that the applicant faces a real chance of harm from the Pakistani authorities, the Taliban or any other insurgent group or person for being a returned asylum-seeker from the West in Islamabad.
24. Having regard to all of the above, I am not satisfied that the applicant faces a real chance of harm because of his ethnicity or religion, from generalised violence, or for being a returned asylum-seeker from the West, should he return to Islamabad.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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26. 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.

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<sup>9</sup> DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, at p 32.

### **Real risk of significant harm**

27. 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.
28. I have found above that the applicant faces a real chance of being seriously harmed because of his ethnicity and/or religion if he returns to the Kurram Agency. This serious harm includes significant mistreatment or death and I am satisfied that this is conduct that amounts to significant harm. As 'real chance' and 'real risk' equate to the same threshold<sup>10</sup> I am also satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Pakistan, the applicant will face a real risk of significant harm in Kurram Agency.

### **Qualifications to the real risk threshold**

29. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
  - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
  - the real risk is one faced by the population of the country generally and is not faced by the person personally.
30. I have found above that the applicant does not face a real chance of harm because of his ethnicity or religion, or for being a returned asylum-seeker from the West, in Islamabad and for the same reasons I am not satisfied that he faces a real risk of significant harm for those reasons in Islamabad.
31. At the interview the applicant was asked whether he could relocate to another part of Pakistan, including Islamabad. He submitted that Shi'as are targeted for harm everywhere and that Islamabad is more dangerous than Kurram Agency. I have considered that submission above and found that he does not face a real chance of harm in Islamabad. He did not make any submission in relation to whether or not it would be reasonable for him to relocate to Islamabad.
32. I accept that if he returns to Islamabad, the applicant will be separated from his family, at least initially. I take into account that he has not lived with his family (apart from very brief periods) since 1999. He has not claimed, and the information before me does not indicate, that his family would be unable to join him in Islamabad should he or they wish to do so, or

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<sup>10</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

that he will otherwise face further separation from his family if he returns to Pakistan and relocates to Islamabad.

33. According to DFAT, Pakistan has seen improved economic growth and reduced inflation in recent years and the number of people living in poverty has fallen. There is still some dissatisfaction with the low level of development, which has acted as a “push” factor for external migration, but there are also better economic opportunities in large urban centres which have encouraged internal migration. The cities also offer better access to healthcare and education.<sup>11</sup>
34. The information in the review material does not indicate that Shi’as, Turis or returned asylum-seekers are subject to any discrimination or difficulties in Islamabad in obtaining employment, accommodation or in accessing health care or other services. Further, other DFAT information in the review material indicates that Islamabad has a relatively high population of internal migrants, many from the FATA, and while transportation costs and the higher costs of living in larger cities such as Islamabad can operate as a barrier to internal relocation, these can be offset by the higher wages typically received in these locations. There is a range of accommodation options in cities like Islamabad and no evidence to indicate any accommodation shortages.<sup>12</sup>
35. In relation to the applicant’s personal circumstances, I take into account that between 1999 and 2013, the applicant lived and worked outside Pakistan. I consider that this demonstrates both his resilience and his ability to find and sustain work. I also note that he has not claimed to suffer from any medical conditions, or referred to any other factors, which would prevent him obtaining work in Islamabad. I also note information cited earlier that Islamabad has Turi and Shi’a communities and I consider that the applicant will be able to interact with these communities in Islamabad.
36. I also take into account that Pakistani nationals require official identification in order to engage in formal employment, obtain a driver’s licence, register as a voter, and gain access to services. The applicant has a Pakistani National Identity Card, although this expired in 2015. According to DFAT, the old National Identity Card has been replaced by Computerised National Registration Cards (CNIC). An applicant who previously held the older type identity card is only required to submit that card, or a copy of it, to the authorities in order to obtain the new CNIC.<sup>13</sup> I consider that the applicant will be able to obtain a CNIC and will not be prevented from obtaining employment, accommodation or access to services for any reason associated with official identification.
37. Having regard to all of the above, I am satisfied that relocation to Islamabad is reasonable in the applicant's circumstances and as such, under s.36(2B)(a) of the Act there is taken not to be a real risk that the applicant will suffer significant harm in Pakistan.

### **Complementary protection: conclusion**

38. 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).

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<sup>11</sup> DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, at pp 5-6.

<sup>12</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264, at p 21.

<sup>13</sup> DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, at p 40.

**Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
  - (c) that is not inconsistent with Article 7 of the Covenant; or
  - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **5LA Effective protection measures**

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

...

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

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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