



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04542

IRAN

IAA reference: IAA18/04544

IRAN

IAA reference: IAA18/04545

IRAN

IAA reference: IAA18/04543

Date and time of decision: 26 October 2018 11:20:00

M Simmons, Reviewer

Decision

In respect of the referred applicant (IAA18/04544) the IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

In respect of the other referred applicants (IAA18/04542, IAA18/04543, IAA18/045445, the IAA remits the decision for reconsideration with the direction that:

- the other referred applicants are members of the same family unit as the above-named applicant and satisfy the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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 applicants (the applicants) claim to be Iranian nationals of Kurdish ethnicity. The first and second applicants are husband and wife respectively, the third and fourth applicants are their daughters. On 15 November 2016 they lodged applications for safe haven enterprise visas.
2. On 9 March 2018 a delegate of the Minister for Immigration and Border Protection refused the grant of the visas.

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 legal submissions to the IAA on 29 March 2018. These submissions convey new information, specifically that the second applicant was baptised [in] March 2018. Accompanying the submission were supporting documents containing new information, namely a baptism certificate, and two statutory declarations from a priest. All this information postdates the delegate's decision as it relates to an event after the delegate's decision, the second applicant's baptism. I am satisfied it could not have been provided before the delegate's decision. I am also satisfied exceptional circumstances exist which justify consideration of this material. This is evidence of a substantial change in the second applicant's personal circumstances material to her claims for protection. Relevantly, the delegate indicated at the interview that he would be contacting members of the second applicant's church community to discuss her religious beliefs, however there is no indication from the decision record or in the review materials that this inquiry was ever made. I have had regard to the new information.
5. In addition, I invited the reverend of the applicant's church to provide information concerning the second applicant's baptism and to offer his opinion on the sincerity of her Christian belief. On 17 October 2018 the reverend provided a letter in response. I am satisfied that there are exceptional circumstances justifying considering this letter. This includes because the delegate who interviewed the applicant indicated he would contact someone from the second applicant's church but there is no indication this actually occurred. I have considered the reverend's letter.
6. I have also obtained new information regarding the situation for Christian converts in Iran.¹ I have reached a different conclusion to the delegate on the sincerity of the second applicant's Christian belief. These reports postdate the delegate's decision and contain recent details on the situation for converts to Christianity in Iran. As the delegate did not accept the second applicant had converted to Christianity, this matter did not arise for consideration. Furthermore, the 7 June 2018 report of the Australian Department of Foreign Affairs and Trade (DFAT) Country Information Report on Iran is a report prepared specifically for the purposes of protection determination in Australia. I am satisfied exceptional circumstances exist which justify consideration of these reports.

¹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; United States Commission on International Religious Freedoms (USCIRF), "USCIRF Condemns Detentions of Iranian House Church Pastor and Congregants", 01 August 2018, CXBB8A1DA32793.

Applicants' claims for protection

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

- He is Kurdish and an Iranian citizen. He originates from Ilam but later moved to Tehran. As a Kurdish person he was often treated differently and required to pay bribes.
- In [2009] he was delivering [goods] when he was inadvertently caught up in a green movement protest. He was taken out of his vehicle by plain clothed members of the security forces on suspicion of having been part of the protests. Their suspicions were heightened by a piece of green fabric the applicant had tied around his wrist for religious reasons, however this was perceived by the security forces as denoting support for the green movement. He denied any involvement but was not believed.
- He was arrested by the authorities and held there for [number] days where he was subject to questioning and torture. Eventually they let him go once it became apparent he had no information to provide them.
- Due to their suspicion of his involvement in the green movement, the authorities continued to monitor the applicant and his family. Sometimes they would follow him when he was delivering [goods].
- In [2011] he was arrested for a second time. He was playing Kurdish music at his house when members of the security forces came. The applicant was arrested and held for [number] days, during which time he was tortured. This mentioned his Kurdish ethnicity and accused him of being politically active. They let him go eventually but told him they would keep watching him.
- In the lead up to the 2013 presidential elections the applicant received written death threats from the authorities on official letterheads. They accused the applicant of being involved in anti-regime activities and told him to leave the country otherwise he would be killed. He made arrangements to flee Iran with his family.
- He fears being arrested, tortured and killed. He has been imputed with an anti-regime political profile and will also be targeted for being Kurdish and for being a returning asylum seeker.

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

- She is originally from Ilam. She is Kurdish, and obtained Iranian citizenship after marrying the first applicant.
- She escaped Iran with her husband as they feared for their life. Her husband was twice arrested and tortured by the authorities, in 2009 and 2011. Due to this and constant monitoring from the authorities it became difficult for him to support the family.
- In 2013, in the lead up to the presidential elections, her husband started receiving death threats from the authorities. They decided there was no other option but for them to leave the country.
- A few years after arriving in Australia the applicant began taking her youngest daughter to a children's playgroup at an Anglican church. Subsequently she and her husband began taking English classes at the church.
- After around 6 months involvement with the church community she began attending Sunday services. In March 2018 she was baptised. Her husband is not a Christian but is supportive of her decision to adopt this faith.

- As a person who renounced Islam and who changed their religion, the Iranian authorities will harm the second applicant and her punishment may be death.
9. No claims have been expressly raised in respect of the third and fourth applicants.

Factual findings

Identity and nationality

10. The applicants have provided various identity documents from Iran and have undertaken a number of interviews in Farsi. I am satisfied their identity and Iranian nationality is as claimed. There is no evidence before me to indicate any have a right to enter and reside in any other country. I am satisfied that Iran is the receiving country for the purpose of this assessment.
11. I am satisfied that the applicants are ethnically Kurdish. This has been consistently reiterated since their arrival in Australia, and both the first and second applicant originate from a province with a sizeable Kurdish population.²

Religion

12. Both applicants indicated that prior to travelling to Australia they identified as Muslim and they believed in god, however they were not strictly adherent to Islamic precepts. Reports before me commenting on the period when the applicant were still in Iran noted that while Iranians remain a spiritual people who see Islam as part of their identity, many had moved away from institutionalised religion.³ I am prepared to accept that neither the first or second applicant were devout followers of Islam while in Iran.
13. The second applicant claims that after becoming aware of a playgroup for young children at her local Anglican church she enrolled her youngest daughter in the group early 2016. She and her daughter have been regularly involved in this group since that time and proof of their ongoing attendance is before me. Subsequently she and her husband began attending English Language classes which were provided by the church. The Church Reverend, Parish Councillor and Children's Minister have all corroborated her claims to have become involved in these church activities. I consider the second applicant has provided a plausible narrative around how she came to be involved in the Anglican Church. I am satisfied that she is involved with and active within the church community.
14. At the delegate's interview the second applicant explained that while she was involved in the church community she would see how compassionate people were and that they would help each other without expecting anything in return, and that she wanted to be like them. She claims that through her involvement with the church playgroup and other church activities and after becoming friendly with some parishioners, she eventually decided that she would like to become a Christian.
15. The second applicant began attending Sunday Services at the church in roughly November 2016. As the Sunday Services are in English there are parts she does not understand. She also helps with the Sunday children's program which her eldest daughter attends, and find the

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

³ The Economist, 'Religion: Take it or leave it', 1 November 2014, CX1B9ECAB7499.

language used in this service easier to follow. She received a Persian language bible from a fellow parishioner at around the same time she commenced attending church services. Letters of support from officer holders within the church affirm that the applicant regularly attends these church services, and that she takes her daughters to the family services.

16. . I consider the second applicant has provided a credible explanation of her introduction to Christianity. That she initially became active with the church through programs offered to the community at large, including playgroup and English classes, does not of itself undermine the sincerity of her subsequent interest in the Christian faith.
17. The first and second applicants were interviewed separately by the delegate. The first applicant indicated that he was aware of the second applicant's interest in Christianity, that he did not have a problem with this, and that he would support her decision to change her religion. His evidence was that he attended church a few times to see what it was like and to support his wife, but that he was not interested in attending. He stated that his wife attends church regularly and that she takes their daughters to a church playgroup and church services. He indicated he did not see any difficulty with his wife becoming Christian and himself remaining a Muslim. His evidence supports a conclusion that he is not strictly adherent to Islamic teachings and provides general corroboration of the second applicant's explanation of how she came to be involved in the church and the nature of her ongoing practice.
18. The delegate found that the second applicant was only able to demonstrate a basic knowledge of the Christian faith after considerable prompting. I note that the decision maker was not the same delegate who interviewed the applicants and after listening to the interview recording I am not of the view that the applicant was overly prompted for answers during the interview.
19. Despite her occasionally limited biblical and historical knowledge, the second applicant did demonstrate an appreciation of basic tenets of Christianity including that it preaches compassion and kindness, the symbolic aspect of baptism as cleansing one's sins, that Jesus was crucified and that he sacrificed himself for 'our' sins, and that he performed various miracles.
20. I consider that the second applicant was spontaneous in her responses and spoke candidly. Even where she did not provide lengthy or detailed responses, she was generally quick to respond to the delegate's questions and had a sound degree of familiarity with the various biblical topics he raised. When asked by the delegate who he could contact in her church community to verify her evidence she readily and easily provided a number of names. Her responses were also quite considered, she was careful to clarify certain questions and qualify some of her answers.
21. The second applicant was baptised in March 2018, a few weeks after the delegate's decision. The timing of this baptism on its face does raise questions and appears more than coincidental. However I note at the interview with the delegate she foreshadowed her interest in being baptised, and one of her support letters from 2017 indicates that she had previously raised the matter. Furthermore the second applicant has evidenced sustained involvement with her church community for more than two and a half years prior to her baptism, and participation in worship for around 2 years. Over this time officer holders within her church have attested to the continued development of her understanding of the Christian faith.
22. The reverend's letter indicates that he agreed to baptise the applicant because she was a regular church attendee and because fellow members of the parish expressed the view that her belief was sincere. He also shared this opinion. He states that before the baptism he

explained to her in detail the baptism order of service and made sure she understood what was involved and what it meant. This included a declaration to Christ, repenting sins, and an affirmation of faith in accordance with the Apostles Creed. After satisfying himself that the second applicant understood what was required of her the reverend agreed to perform the baptism. He also indicated that he is of the opinion that she is a sincere follower of the Christian faith.

23. On the evidence before me I am satisfied that the second applicant has genuinely adopted the Christian faith and is a sincere follower of that religion. I consider that she has demonstrated an understanding of Christianity commensurate with a person who is relevantly new to the faith. She has demonstrated a sustained involvement in her church community over a considerable period, and fellow parishioners and church office holders have indicated they are of the opinion that her belief is sincere.
24. I do not consider the second applicant's Christian activities, including her church attendance, involvement with various church groups, and baptism, were carried out solely for the purpose of strengthening her claims to be a refugee. The evidence from the applicants, corroborated by various witnesses, is that the second applicant became involved in the church through services offered to the community at large. As I am satisfied that she continues to carry on her practise of the Christian faith due to her being a sincere follower of that religion, I am satisfied this conduct is not being conducted for the sole purpose of enhancing a claim to be a refugee.

Refugee assessment

25. Under s.36(2)(a) of the Act a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee.] 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.

Religion

27. I am satisfied that a second applicant has a genuine commitment to Christianity and that she will continue to have such a commitment in the foreseeable future. The evidence before me indicates she is quite active in the church community. She has engaged in regular communal worship in Australia, and her evidence along with the various the support letters suggest the communal nature of the applicant's practise is significant to her.
28. It is submitted that in Iran the punishment for converting to Christianity is apostasy which might lead to long imprisonment and possibly death. Information before me indicates that apostasy and blasphemy cases are no longer an everyday occurrence in Iran, although the authorities continue to use religiously-based charges (such as 'insulting Islam') against a range of individuals. Death sentences in apostasy are rare but in March 2017 the Supreme Court upheld the decision of a criminal court in Arak to sentence a 21 year old man to death for apostasy.⁴
29. In June 2018 DFAT cited international observers who advised that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from authorities upon return to Iran, provided they have not previously come to the attention of authorities for political activities conducted in Iran, maintain a low profile and do not engage in proselytisation or political activities within the country.⁵
30. I consider there is a real chance the second applicant would seek to engage in communal worship in Iran should she return there. Country information indicates, and I accept, she would not be permitted to practise in a recognised church,⁶ as such I consider she is very like to engage in worship in a house church.
31. I note that both DFAT and the UK Home Office report that the Iranian authorities have interpreted the growth in house churches as a threat to national security.⁷ A number of credible sources refer to numerous incidents of Iranian authorities raiding church services, threatening church members, and arresting and imprisoning worshipers and church leaders.⁸ The UK Home Office cites the Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, in which the Rapporteur expressed concern at the treatment of Iranian Christians from Muslim backgrounds. It is reported they continue to face arbitrary arrest, harassment and detention and that many of these individuals are often accused of acting against national security or "propaganda against the state," and can be prosecuted for the crime of apostasy. Dozens were reportedly detained in Iranian prisons as of January 2016, many for involvement in informal house churches.⁹ Christian converts subject to detention continue to report being exposed to physical and psychological abuse, including threats of execution. Some activists believe such mistreatment in custody is meant to intimidate others who may wish to convert to Christianity.¹⁰

⁴ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

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

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

⁷ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; UK Home Office, "Country Policy and Information Notice – Iran: Christians and Christian converts", 27 February 2017, OG6E7028813..

⁸ USCIRF, "USCIRF Condemns Detentions of Iranian House Church Pastor and Congregants", 1 August 2018, CXBB8A1DA32793.

⁹ UK Home Office, "Country Policy and Information Notice – Iran: Christians and Christian converts", 27 February 2017, OG6E7028813.

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

32. In light of the country information cited above, I consider that in pursuing her practise of her new faith in Iran there is more than a remote possibility she may be subject to harassment, arrest and subsequent detention, or significant physical abuse. I am satisfied that there is a real chance the second applicant would face serious harm for reasons of her religion. I am also satisfied that this harm is systematic and discriminatory conduct carried out by the Iranian authorities against Christian converts from Islam for the essential and significant reason of their religion.
33. An extensive network of police, security, and intelligence services exercises effective control over almost all areas of Iran.¹¹ I consider the real chance of persecution relates to all areas of Iran, and that the second applicant therefore have a well-founded fear of persecution within the meaning of s.5J(1) of the Act .
34. I do not consider there to be effective protection available to the second applicant for the purposes of s.5J(2). As the harm emanates from the State, protection could not be provided to the applicant as required by s.5LA(1).
35. I am also satisfied that s.5J(3) of the Act does not in this case. While the country information indicates that the second applicant could avoid a real chance of persecution by concealing her conversion, not participating in house churches and maintaining a low profile in her practise this is not a permitted modification of conduct under the Act: s.5J(3)(c)(i).
36. I am satisfied the second applicant's fear of persecution on the basis of her adoption of Christianity is well-founded.

Refugee: conclusion

37. The second applicant meets the requirements of the definition of refugee in s.5H(1). The second applicant meets s.36(2)(a).

Member of same family unit

38. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a spouse of the family head and children of the family head or their spouse or de facto partner.
39. The first and second applicant have consistently represented themselves has being each other's spouse in various dealings with authorities since their arrival in Australia. Support letters also confirm they have represented themselves as husband and wife to various acquaintances. The applicants indicated they were married in April 2006 and their respective residential address histories indicated that they have cohabitated since that time. I am satisfied that they are validly married, that they are mutually committed to a shared life, that their relationship is genuine and continuing, and that they live together. The requirements of s.5F are met, they are each other's spouse.

¹¹ DFAT, 'DFAT Country Information Report Iran', 7 June 2018, CIS7B839411226.

40. I have before me a Queensland birth certificate for the fourth applicant, which lists the first and second applicant as her father and mother respectively, and indicates that the third applicant is her sister and a previous child of the same relationship. I am satisfied that the third and fourth applicants are children of the second and first applicants per s.5CA. The information before me indicates that the third or fourth applicants have not turned 18
41. I am satisfied that the first applicant is the spouse of the second applicant, and that the third and fourth applicants are children of the second applicant. The first, third and fourth applicants are members of the same family unit of the second applicant per r.1.12.
42. As the second applicant is a person mentioned in s.36(2)(a), the first, third and fourth applicants meet s.36(2)(b)(i).

Decision

In respect of the referred applicant (IAA18/04544) the IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

In respect of the other referred applicants (IAA18/04542, IAA18/04543, IAA18/045445, the IAA remits the decision for reconsideration with the direction that:

- the other referred applicants are members of the same family unit as the above-named applicant and satisfy the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - 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
 - 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:

- conflict with a characteristic that is fundamental to the person's identity or conscience; or
- conceal an innate or immutable characteristic of the person; or
- without limiting paragraph (a) or (b), require the person to do any of the following:
 - 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;
 - conceal his or her true race, ethnicity, nationality or country of origin;
 - alter his or her political beliefs or conceal his or her true political beliefs;
 - conceal a physical, psychological or intellectual disability;
 - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - 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):

- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- the persecution must involve serious harm to the person; and
- 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 threat to the person's life or liberty;
- significant physical harassment of the person;
- significant physical ill-treatment of the person;
- significant economic hardship that threatens the person's capacity to subsist;
- denial of access to basic services, where the denial threatens the person's capacity to subsist;
- 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.