



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05099

Date and time of decision: 28 August 2018 09:36:00

S McNeill, 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) is a national of Iran. On 30 May 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV application). He claims to fear persecution from the Iranian authorities because he worked as a satellite installer and distributor prior to departing Iran. His brother A was involved in a dowry dispute with his ex-wife's whose family were members of Sepah and they Basij and they alerted the authorities to his work and an arrest warrant was issued in his name.
2. On 25 May 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted the applicant worked as a satellite dish installer but did not accept his claims that his brother's ex-wife's family had links to Sepah and the Basij or members of the Basij and Sepah attempted to arrest him for illegally installing satellites.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born in [year] in Tehran, Iran and is of Persian ethnicity.
 - He has [number] brothers and he is the second child in the family.
 - In 2008 his brother A married F. They never lived together but had their religious marriage registered. They had problems with their relationship from the beginning.
 - His family were not a religious or strict family but a moderate family. His brother's ex-wife F's family were a very religious family; they were devoted to Islam, the Islamic regime and many members of her family were active employees and members of Sepah and the Basij.
 - Due to the conflicts between his brother A and his ex-wife F, F's family requested for the dowry to be paid. They wanted to use the dowry to force his brother to be in line with their beliefs. F was distantly related to them.
 - When the conflicts with his brother A and F got out of hand, his brother A was forced to go into hiding in Booshehr after F's family successfully obtained a warrant for his arrest as he was unable to pay the dowry in full. A lawyer's advice to his brother was to get out of town.
 - His main employment was at a [warehouse]. He had a second job distributing and installing satellite services and dishes in Iran. It is illegal to do this; however, he wished to make more money as his income was insufficient. He is believed that everyone had the right to have access to information.

- When his brother was in hiding, F and her family tipped him off to the authorities and the Basij to get back to his brother as they knew he was involved distributing and installing satellites.
- A few months before he departed Iran a number of Basij and Sepah members came to his house. Although they were wearing plain clothes they had beards and radios in their hands and he realised from their appearance they were the authorities.
- When they rang the door, his mother opened the main door to the apartment building as she was expecting his aunt. His mother did not check who was at the front door. There is a few stairs between the main door and their apartment and when he opened the door of their unit to greet his aunt he saw the men coming. One of them tried to force himself in their door. He forced the door shut and escaped out the window and went into hiding.
- Because of his second job he believed they were after him and not his brother A. Previously it was the police in uniform who had come to look for his brother and this time they were different.
- He spent the night in different homes of relatives and it was getting difficult to live like a fugitive. He spoke to his brother A and they decided to depart Iran.
- After arriving in Australia F had her family learned from relatives they had escaped to Australia. They spread rumours between their relatives and friends he and his brother had converted to Christianity and sought asylum in Australia as Christian converts. This will make them apostates in Iran and the punishment is severe including the death penalty.
- Around March 2017 F's family went to his uncle's residence and threatened him and his brother telling him they would be forced to fight in Syria if they returned to Iran. F's father and uncle have high ranks in Sepah.

Refugee assessment

5. 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

6. 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.
7. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purpose of this review.

Interest from the authorities because of satellite dish distribution and installation

8. I have a number of key credibility concerns arising from the applicant's evidence given at his SHEV interview on 23 February 2018. Whilst the applicant consistently claimed that his brother A married F in approximately 2009, they had problems with F's family whose family were involved with Sepah and the Basij, they asked for the dowry and his brother ran away and then he had a problem because of his installation and distribution of satellite dishes; there were a number of major discrepancies forthcoming in his evidence including the escape from his apartment. Other elements of his evidence presented also lacked plausibility. This and other matters of concern will be discussed below.
9. Firstly, I do not find it plausible that the marriage between his brother A and F would have been arranged in the first place or that his brother A would agree to such a marriage given according to his written claims they grew up in a moderate family that was not religious or strict and would choose to marry a woman who came from a very strict, religious family who were devoted to Islam and the Islamic regime and whose many family members were connected to Sepah and the Basij. At his SHEV interview the applicant stated her father was a member of the Basij and Sepah and her uncle was a leading member who was also high ranking in the army. His brother A only worked as [an Occupation 1] and could not pay the dowry. The two families were distantly related. Both families would have been aware of each other's respective backgrounds. That his brother A worked as [an Occupation 1] and the applicant himself was a [specified] worker, I do not consider that F's family, who were both religiously conservative and well connected with the authorities, would likely agree to this marriage. Given they had problems from the beginning, the whole scenario of their marriage and immediate request of the dowry to put pressure on his brother to confirm to Islam comes across as contrived.
10. In his SHEV application form the applicant wrote that he worked for his [friend] distributing and installing satellite receivers and dishes between December 2012 and January 2013 which equates to a two month period. In his written claims the applicant did not state a period of time for how long he undertook this work. At his SHEV interview the applicant stated he has been installing satellites for approximately less than one year and the authorities came looking for him approximately three to four months (approximately October or November 2012) before he departed Iran in February 2013. At the very earliest he would have commenced his satellite installation work at the end of 2011. I accept the two month period stated in the SHEV application form may be an administrative error but his brother A had been in hiding for approximately three to four years and this means their relationship broke down and he had been on the run since 2009 or 2010. Asked by the delegate how his wife would have been aware of his employment, the applicant stated that she was his brother's wife and they knew he was working at night and he had some 'stuff' (satellite equipment) at home and they could see it. The applicant said he was living with his parents. Asked again how his brother's wife was able to see the equipment, the applicant again said because they had the 'stuff' at home when they were visiting and he never thought it was going to be a

problem in the future. He did not know how long she knew this but she definitely knew. I do not accept this as plausible given the applicant's brother had been on the run since 2009 or 2010 given he would have only had the satellite equipment from late 2011. I do not accept that given her family were very religious and strict, who were forcing his brother to pay the dowry and an arrest warrant had been issued in his brother's name and that his ex-wife F would have continued to visit their family home. Given his description of F's family, that they were both religious and well connected with the authorities, I do not accept that he would openly leave out the satellite equipment in his house so it could be seen as claimed.

11. The applicant's claimed escape from his apartment when the authorities came also differed between his written claims and evidence given at his SHEV interview. In his written claims, the applicant stated a few months before he departed Iran members of Sepah and the Basij came to their house. When they rang the door his mother opened the main door to their building as they were expecting his aunt. He opened the door to let in his aunt and saw the men coming; one of the men tried to force the door open with his foot and he closed the door and escaped out the window. At his SHEV interview the applicant did not state that his mother was expecting a visit from his aunt and the description he provided varied considerably from that presented in his written claims. Asked how he saw them coming by the delegate and how he escaped, the applicant said he first looked at the intercom and then through the window and made sure. He didn't know if the neighbours opened the door to the front building and after they came inside the building he immediately closed the door of the entrance to their house and he escaped from the back door. He didn't think they rang his unit bell and he didn't know how they opened the door of the main building. Asked who they were speaking to, the applicant stated the neighbours and people outside; he didn't know exactly who they were talking to but he realised they were gathering some information about him. Asked what their conversation was, the applicant stated it wasn't a very clear conversation but he recognised the way they looked because they had looked for his brother before and they had long beards and the threats they had previously given to them made him know it was them after him. The applicant then stated the main issue now was that they were being accused of changing their religion. The delegate put to the applicant he was focussing on how he had avoided arrested and whether he could remember the date this happened. The applicant said he couldn't remember the date but he thought it was three to four months before he departed Iran. Not only because of the inconsistencies presented his mother opened the front door to the main building and he escaped through the window (SHEV claims) and then he didn't know who opened the main door perhaps a neighbour and he escaped out the back door (SHEV interview) but also his vague and unconvincing reasons presented as to why he believed they were after him; and lastly, his inability to provide an accurate date of when this incident occurred all lead me doubt the veracity of his attempted arrest and subsequent escape from the authorities.
12. Furthermore, the applicant's description of his time in hiding was also not persuasive. In his written claims the applicant stated he spent nights in different homes of relatives. Asked by the delegate what areas he was hiding at, the applicant said most of the places were in the outskirts of Tehran, at his maternal uncle's, friend's uncle, his paternal uncle, his maternal aunt's but mostly at his maternal uncles. The authorities were still after them because of the letters coming to his house. The applicant's evidence here is also vague. Earlier in the SHEV interview the applicant stated he had received a summons from the court. All the documents and summons he had received from the court were unfortunately drowned in the water. They had spent five hours in the water and he had lost his documents but a friend who had returned to Iran had brought his original documents to him in Australia. At his SHEV interview the applicant was able to present the originals of his various Iranian identity documents including his national identity card, birth certificate and driver license. I find it unusual that he

would have brought the original summons on a potentially dangerous boat journey but had the foresight to leave his original identity documents at home. It would have made more sense to leave the original summons at home to be brought by the same friend to Australia and bring a copy of the summons only or at the very least saved a copy of the summons.

13. The applicant displayed some knowledge of installing satellites, this work he undertook in the evening for a friend who called him and told him where to go, that the satellites were installed on the roof and their client base were normal people. He listed the various parts required; however, I am not convinced he worked as a part time satellite installer who was alerted to the authorities by his brother's ex-wife family. The technical knowledge he displayed was somewhat limited and could have been obtained by someone using their own satellite dish given DFAT estimates there are 8 million satellite dishes in Iran, 85 per cent of the population has access to satellite channels and 50 to 70 per cent of households in Iran have a satellite dish.¹
14. I am not satisfied the applicant is a witness of truth. I am of the view the applicant has fabricated this claim to be a satellite installer and distributor who came to the attention of the authorities and subsequently a summons for arrest was issued in his name to create a reason for seeking protection. Whilst the applicant's brother A may have been married to a woman named F for a brief period of time in approximately 2009 I am not satisfied her family sought to harm the applicant. I do not accept the applicant worked as a satellite installer and distributor prior to his departure in Iran. I do not accept the applicant's brother's ex-wife family who were members of Sepah or the Basij alerted the authorities to his behaviour or that the authorities came to his house from whence he escaped and lived as a fugitive for three to four months prior to his departure. I also do not accept a summons for his arrest was sent to his house. Given I have rejected this claim in its entirety I find the applicant does not face a real chance of being harmed by the authorities including F's various family members or anyone else for that matter on this basis.

Imputed Christian convert/perceived apostate

15. The applicant claimed that since he and his brother have departed Iran F's family have spread rumours that they have converted to Christianity and have even been granted protection on the basis they are Christian converts. As apostates they will be punished severely and this includes the death penalty. Around March 2017 F's family went to his uncle's house and threatened him and his brother, if they returned to Iran they would be forced to fight in Syria. I have found the applicant is not a witness of truth and given I have not accepted his claim that he was of interest to F's family and that he fabricated his reasons for seeking protection and on the evidence before me, I also do not accept these claims. I find that he has fabricated these claims in order to strengthen his claims for protection. I am not satisfied the applicant faces a real chance of serious harm for reason of being imputed as a Christian convert or a perceived apostate or that he will be forced to fight in Syria.
16. I accept that the applicant although born into a Shia Muslim family no longer has a religion as per his SHEV application and also stated by him at his SHEV interview. According to DFAT, under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. While cases of apostasy are rare, Muslim-born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs have been charged with

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.110.

apostasy in the past. Apostasy charges have also been applied against political opponents of the regime.² DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy. DFAT also considers it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.³ There is no information before me to suggest the applicant has attempted to publically assert that he has no religion. I am not satisfied on the evidence before me that the applicant will genuinely seek to publicise his non adherence to Islam, or has any desire to do so, on his return to Iran. I am also not satisfied the applicant will have to pretend to practise as a faithful Muslim in order to avoid harm. I am not satisfied he faces a real chance of harm for reason of religion.

Failed asylum seeker returning from a western country

17. The delegate considered whether the applicant would be harmed on the basis of being a failed asylum seeker returning from a western country and so have I. I accept the applicant has spent over five years in Australia, a western country and that he has sought asylum. I accept he will be returning to Iran having sought asylum in Australia. I have already found the applicant was not of adverse interest to the authorities when he departed Iran. There is nothing before me to indicate he has been involved in any activities since arriving in Australia that would have brought him to the adverse attention of the Iranian authorities.
18. I am mindful of the various reports before the delegate which identify cases in which failed asylum seekers have been arrested on their return to Iran.⁴ However, those reports generally reference cases involving individuals such as students, journalists or political campaign workers with pre-existing profiles in Iran and/or profiles abroad indicating involvement indicating activism against the Iranian regime. I do not consider the applicant to have such a profile. The reports before me, including DFAT reports dating back to 2010, do not indicate that returnees are harmed for reason only of having sought asylum abroad.⁵
19. Iran currently does not accept involuntary deportees.⁶ As such, if the applicant were to return Iran, I consider it would be as a voluntary returnee. From DFAT's anecdotal observation at airports, a voluntary returnee does not attract much interest from authorities amongst the large regular international movements of Iranians. Returnees will generally move quickly through airports without official interests. DFAT notes returnees even if traveling on a temporary travel document will only be questioned if they have done

² Ibid 3.52.

³ Ibid 3.55.

⁴ "AMNESTY INTERNATIONAL - URGENT ACTION UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; "Rouhani has yet to deliver on press reforms in Iran", Committee to Protect Journalists (CPJ), New York, 13 March 2014, CX318970; "Mousavi's campaign worker arrested upon return to Iran", Radio Zamaneh, 16 February 2014, CX318168; "Jailing of returning journalists called part of anti-Rohani plan", Radio Zamaneh, 31 July 2014, CX324017; Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 01 February 2012, CIS22610,

⁵ 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; DFAT, "Response to CIS Request No. IRN11072; Return of failed asylum seekers", 22 December 2010, CX255525; DFAT, "Response to CIS Request No. IRN11738: Iran – Article on returned asylum seekers and people exiting Iran with false documents, 19 April 2011, CX263145.

⁶ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 5.33.

something to attract the attention of the authorities and the vast majority of people questioned would be released after an hour or two.⁷

20. On the evidence before me I am not satisfied the applicant, if he returns to Iran, would attract the adverse attention of the Iranian authorities or is otherwise of interest to the authorities in Iran as I am not satisfied he has done something to attract the attention of the authorities either in Iran or Australia. I accept the applicant may be questioned and even detained for a brief period of time as a returnee but I am not satisfied that this treatment of being questioned or detained briefly would amount to serious harm in this case.
21. I find that the applicant does not have a well-founded fear of persecution on any of these bases.

Refugee: conclusion

22. 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

23. 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

24. 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.
25. I have concluded that the applicant does not face a real chance of serious harm resulting from his claimed distribution and installation of satellite dishes which came to the attention of the authorities as a result of his brother's relationship with his ex-wife F whose family were members of Sepah and the Basij and that since he has been in Australia they have accused him of converting to Christianity, as I have rejected this claim. Given real chance and real risk involve the same standard, I am not satisfied he faces a real risk of harm on these bases.
26. I accept that the applicant has no religion and that he may not practise Islam on his return to Iran. On country information referred to above I am not satisfied that he would be viewed as

⁷ Ibid 5.34.

an apostate or that his non observance of Islamic practices will give rise to a real risk of harm on his return.

27. I accept that, as an asylum seeker returning to Iran from Australia he may be questioned and briefly detained on his return for a couple of hours but I do not consider that this would amount to significant harm. There is not a real risk he will not be arbitrarily deprived of his life or subject to the death penalty or that he would be subject to torture, cruel or inhuman treatment or degrading treatment or punishment.
28. I am not satisfied that there is no real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

Complementary protection: conclusion

29. 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.