



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/05672

Date and time of decision: 17 October 2018 11:47:00

D Power, 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Sunni Pashtun from Khost province in Afghanistan. On 15 September 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 13 September 2018 the delegate refused to grant the visa. The delegate did not find the applicant's claim to have been targeted by the Taliban to be credible, identifying inconsistencies and implausibilities with the applicant's narrative at his protection visa (PV) interview. He further found that the applicant would not face a real chance or risk of harm on account of the security situation in his home province, as a Sunni Pashtun, or as a returnee from a western country.

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. On 9 October 2018, the IAA received a submission from the applicant's representative which refutes a number of the delegate's findings. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates or clarifies a number of claims made to the delegate.
5. Sent with the submission to the IAA was a statutory declaration from the applicant. The statutory declaration was not before the delegate and is new information. The declaration generally seeks to clarify the applicant's claims for protection but also includes some new information. In the declaration, the applicant raises for the first time the death of his [uncle] at the hands of the Taliban. He states that his uncle was involved in dispute resolution and so "represented authority not derived from the Taliban". The applicant states his uncle was killed on this basis and that the uncle's son was later also murdered, although the applicant does not know the reason for this killing. The death of the uncle allegedly took place while the applicant was in Kabul.
6. The applicant does not indicate when his cousin was killed but does not indicate that it was a recent occurrence. He states that the uncle was killed while the applicant was still in Kabul. He does not suggest he has only just learnt of this information. The information on the death of his uncle would have been available to the applicant prior to lodging his claims for protection. The probative value of this evidence in establishing the applicant's claims to protection is clear. The applicant did not raise these incidents in his written claims, at interview or in the post-interview submission his agent made to the delegate. There are other amendments to the applicant's evidence in the declaration. For example, he now states that the [officer] for whom he had claimed to work was from Khost, although at interview he stated that he did not where the [officer] was from. As this is all information that is purported to have been drawn from the applicant's personal experience, it is not clear why this information has not been provided earlier. The applicant states he has little formal education and that it is difficult for him to understand the protection process. The agent's submission also notes that the applicant has poor English skills. However, I have also considered that the applicant was represented by a migration agent both in the preparation of his SHEV application and at interview. There was also an accredited interpreter present at the interview and the delegate confirmed with the

applicant that he understood the interpreter. He also advised the applicant that he should indicate to the delegate if at any time he did not understand the interpreter or any of the question being put to him. The applicant's first migration agent who assisted with the preparation of the client's SHEV application was himself an accredited interpreter in the applicant's native language. The submission to the IAA claims that the applicant was "under the mistaken apprehension that he was not to elaborate on his answers". However, in the interview recording there is ample evidence of the delegate putting open-ended questions to the applicant, and prompting him for additional detail. The delegate was also clear in explaining to the applicant that the interview was his chance to put forward his claims in as much detail as possible and that he may not have another opportunity. The applicant was offered a break during the interview and the opportunity to confer with his agent, after which he was asked if he had further information that he wanted to put forward about [Officer A]. At the end of the interview, the delegate asked the applicant if there was anything important to his claims that he had not discussed. The applicant raised the alleged planting of a bomb in the driveway of his family home at that time but made no mention of the incident involving the murder of members of extended family by the Taliban. The agent then made a further submission to the delegate post-interview in which he addresses concerns that the delegate raised at interview. Again, no mention is made of the deaths of the applicant's uncle and cousin in that submission, nor is there any further personal information offered about the [officer]. I do not accept the explanation for not providing it earlier. I have serious concerns about the credibility of the evidence relating to the deaths of his uncle and cousin, given that these events are clearly relevant to the consideration of the applicant's claims but are only now being raised by the applicant.

7. I am not satisfied that there are exceptional circumstances that justify consideration of this information under s.473DD.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He moved to Kabul to find work where he struck up a friendship with a soldier in the Afghan National Army (ANA) who learnt that he was looking for work.
 - Through this friend, he was able to obtain employment as a driver for [Officer A], a high ranking Army official.
 - When the Taliban learned of his employment they began making enquiries about the applicant at his family home in Khost province.
 - His family warned the applicant that the Taliban were asking after him and told him not to come back to Khost.
 - The applicant made arrangements to leave Afghanistan and came to Australia.
 - Now that he has sought the protection of 'infidels' in Australia this will further inflame the Taliban.

Refugee assessment

9. 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

10. 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.

Targeting by the Taliban / Government Worker

11. The applicant stated that he is from [Khost] province. He is a Sunni Pashtun. He states that he was married around 2000 and that he has [number] children.
12. The applicant estimates that he was born around [year]. He was vague about his employment and work history up until his departure to Kabul in 2012. He claims to have been unemployed and that his activities were limited to assisting around the house and with the family farm. When the delegate asked him how he had managed to support such a large family, the applicant seemed to indicate that he had sometimes borrowed money from friends already in Australia.
13. The applicant claims that sometime in 2012 he left his village and went to Kabul to find work. His written claims seem to indicate that a friend of his found him work and then he moved to Kabul to take up the job. However, at interview the applicant confirmed that he had already moved to Kabul to look for work when the job opportunity came up. He states that he met an ANA soldier through mutual friends and that he first met him after moving to Kabul. At interview, the applicant stated that the soldier came from Khost, but from a different village. The applicant did not know what tribe the soldier was from, only that he was Pashtun. He indicated that the soldier was of a relatively low rank. The ANA soldier liked him and as a consequence recommended him to [Officer A]. The applicant says that he started working for the [officer] about a month later.
14. The applicant’s SHEV application indicates that he was in Kabul from about February 2012 until March 2013. The applicant also indicated that he worked for [Officer A] for about a year. Given that he commenced work about one month after the initial discussion with the ANA soldier who arranged the job offer, this would indicate that he first met with this soldier very soon after arriving in Kabul and in relatively short order was recommended for a job.

15. There are some issues with the applicant's account of how he came to be employed by [Officer A]:
- The applicant was apparently able to get the job of driving for an Afghani [officer] on the recommendation of a low level soldier
 - The soldier recommended him for this position based on what must have been a very brief acquaintance, especially given that there was no particular tribal or village affiliation between them
 - The applicant was able to gain the chauffeur position despite the fact that [he] had never driven in a professional capacity
 - The applicant was offered this job even though he claims he had never previously left his village and would have been relatively unfamiliar with Kabul.
16. More problematic, however, is the applicant's lack of any personal knowledge about the [officer] he purported to drive around Kabul for a year. Despite being prompted several times, the applicant was unable to supply any meaningful details about the [officer]. Even after a break to discuss matters with his agent, all the applicant could recall about the [officer] was that he was well-mannered, medium height, with a little moustache and a little beard. This is a description that could reasonably apply to a significant number of men in Afghanistan. At one point in the interview, the delegate prompted the applicant for any information that might help substantiate his claim that he drove for [an officer]. He asked the applicant, for example, whether he had any photos with the [officer] or payslips or other documentation associated with his job. The applicant replied that he never took any photos with the [officer] and that he had been paid in cash. When asked where the [officer] worked, the applicant stated that he had never driven to the [officer]'s workplace.
17. In his written claims the applicant states that he drove the [officer] "as well as, taking his family around". However, at interview he stated that he had not driven the family, and that his duties were limited solely to transporting the [officer], taking him to visit his relatives and purchasing groceries on the [officer]'s behalf. When the delegate asked him to name any of the [officer]'s family, the applicant was not able to do so. It is difficult to accept that the applicant could be mistaken about whether or not he drove the [officer]'s family around Kabul.
18. I note that the applicant stated that the [officer] was a high-ranking official who was not prone to discussing official business. In the post-interview submission to the delegate, the agent further advised that the difference in social status between the applicant and the [officer] limited the nature of their exchange. I accept that an Afghani [officer] may be very circumspect about discussing operational matters or issues connected with his official duties. I can also accept that the difference in social status may preclude detailed, intimate exchanges between the two. However, that does not adequately explain why the applicant did not know even basic personal information about the [officer]. The applicant specifically stated at one point that the [officer] trusted him and that he purchased groceries on the [officer]'s behalf. Whatever the social distance between them, clearly the relationship was not entirely remote. During the interview, the delegate noted that there was more than one person named [Officer A] in Afghanistan. In order to identify exactly which '[Officer A]' was under discussion, the delegate asked the applicant to tell him the [officer]'s full name. The applicant was unable to supply even this information.
19. The applicant was asked about his claims to have come to the attention of the Taliban. The applicant said that once the Taliban learned that he worked for [Officer A] they came twice to his family home in Khost to enquire about him. He was unable to adequately explain why,

having come to the Taliban's attention for driving a [officer] around Kabul, the Taliban instead enquired about his whereabouts at his family home in Khost. The applicant stated that the Taliban might have thought he had returned home. However, the Taliban had been able to discover his identity, his employment as a driver for [an officer] in Kabul, and the location of his home village. Given this, it is difficult to accept that the Taliban would be confused as to his whereabouts, and on both occasions make enquiries in Khost rather than Kabul.

20. Towards the very end of the interview, the delegate asked the applicant if there was anything else the applicant wished to add to his claims. The applicant then mentioned an alleged bombing attempt at his family home in Khost. The applicant said that about one year ago, a bomb was placed in front of the family home. Upon discovering it, his family reported it to the Afghani police who then disposed of it. Given his family were the subject of a bombing attempt by the Taliban it seems curious that the applicant has not attempted to relocate them. The applicant said that his children used to walk to school, but now the family has arranged for a car to take the children to school. It is not clear how arranging a car will afford them much safety given the Taliban knows where the family lives and has visited there on at least two occasions. No evidence of this attack has been provided and the agent did not mention or expand on this claim in his post-interview submission to the delegate.
21. In their submission to the IAA, the agent cautions against taking too restrictive an approach to questions of credibility. However, the issues with the applicant's evidence go beyond mere confusion, forgetfulness or exaggeration. The applicant has offered no independent evidence that he worked for the [officer], nor was he able to supply any personal information about the [officer] beyond his surname and a brief description of his physical appearance. As set out above, I do not consider that differences in status or the nature of the [officer]'s work adequately explain the abiding lack of detail in the applicant's account. Added to this are other implausibilities around how he came to obtain the chauffeur position and in regard to an alleged bombing incident at his family home in Khost. Viewed as a whole, they raise significant concerns about the credibility of the applicant's evidence.
22. Given the implausibilities in the applicant's account of his employment noted above, I am not satisfied that he ever held a position as a driver for an Army [officer] or any other senior official. I am not satisfied that the applicant was targeted by the Taliban on that account or that they subsequently targeted his family.
23. I am not satisfied that the applicant faces a real chance of harm due to being targeted by the Taliban on account of this claimed employment.

Returnee from a Western Country / Returning Asylum Seeker / Sunni Pashtun Ethnicity

24. The applicant has also expressed a fear of returning to Afghanistan based on the fact that he spent time in Australia. He indicated that the Taliban would particularly target him for having sought protection from "infidels". I accept that the applicant may be regarded as a returnee from a western country.
25. The 2017 DFAT Country Information report notes that DFAT has no information to suggest that returnees from western countries attract negative attention from state authorities for having sought and failed to gain asylum¹. The same report says that DFAT assesses western returnees

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680

as not facing a significantly higher risk of violence or discrimination than other Afghans with a similar ethnic and religious profile².

26. In regard to the applicant's religious and ethnic profile, the applicant identifies as a Sunni Pashtun male. I accept that this is the applicant's religious and ethnic profile. DFAT notes that it is generally accepted that Pashtuns are the country's largest ethnic group at approximately 40 per cent³. Country information demonstrates that the Taliban itself has a Sunni Pashtun affiliation and orientation⁴.
27. The European Asylum Support Office (EASO) assesses that groups at risk from Anti-Government Elements (AGEs) include Afghani military and law enforcement personnel, government officials, humanitarian workers and human rights activists, journalists, and others associated (or viewed as associated) with the Afghani government⁵. As set out above I do not accept that the applicant was associated with an Afghani [officer] or targeted by the Taliban, and he has made no other claim to belong to any of the groups listed above. The country information does not otherwise support the view that the individuals are targeted on the basis of their Pashtun ethnicity or Sunni faith.
28. The applicant still speaks Pashto fluently. As stated in his application, the applicant maintains regular contact with his own large family and with his siblings by phone. Though he may possibly have acquired an accent, he maintains his language skills and a familiarity with the current usage of the language via contact with his family back in Afghanistan. Although the applicant has spent time in a western country, I am not satisfied on the information before me that he has taken on western values or been 'westernised' to any discernible degree or that he would be viewed that way on his return. EASO has stated that "Documented instances of individual targeting of returning Afghans on the basis of 'Westernisation' due to having travelled in or lived in Europe, holding Western ID documents, or adopting ideas that are seen to be 'un-Afghan', 'Western' or 'European' following time spent outside Afghanistan were scarce".⁶ The fact that an individual's risk of discrimination or persecution is not higher than that of others does not of itself mean that there is not a real chance of harm; however in this case, the evidence does not support a finding that the risk to the applicant is other than remote. As set out above, I do not accept that the applicant was previously targeted by the Taliban or that he has any particular profile with them.
29. Although those who have previous associations with the Afghani government might be targeted on that basis, I do not accept that the applicant worked for an Afghani [officer] or otherwise had any such association. The available country information does not support the view that people would be imputed to have such an association or punished for seeking the protection of 'infidels' simply on the basis of having sought protection abroad. Rather, the country information indicates that whether a person had developed a critical stance on Islam and the way a person conducted themselves on return were both much more important

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680

³ Ibid

⁴ IHS Jane's World Insurgency and Terrorism, "Taliban", 28 September 2016, CIS38A80122216

⁵ European Asylum Support Office (EASO), "Afghanistan: Individuals targeted by armed actors in the conflict", 12 December 2017, CISED50AD7868

⁶ EASO, "EASO Country of Origin Report: Afghanistan – Individuals targeted under societal and legal norms", December 2017, CISED50AD8181

factors in how returnees are perceived⁷. I do not accept that being in Australia, even if it were known he had sought asylum, would lead to such a perception.

30. I am not satisfied that the applicant faces a real chance of harm on account of being a returnee from a western country, because of perceptions that he sought protection from 'infidels' or because he is a Sunni Pashtun.

General security situation

31. I accept that the applicant comes from Khost province. I also accept that country information indicates that the Taliban have a presence in the area⁸.
32. Country information makes it clear that a key focus of insurgent attacks, both by the Taliban and other AGEs, are Afghani military and law enforcement personnel, government officials, and others who are closely linked to or seen as supporting the Afghani government or foreign troops, humanitarian workers and human rights activists (especially those advocating for women's rights), tribal elders or religious scholars and Shia minorities⁹. The country information does not support the view that people are targeted on the basis of their Sunni faith alone.
33. I accept that if someone worked as a driver for an Afghani [officer] they might be viewed as supportive of the government, and be targeted for that reason. However, as set out above, I do not accept that the applicant was ever hired to drive for an Afghani [officer]. The applicant does not otherwise claim to be politically active or to have made any public statements on Afghani politics and there is no information before me to suggest that the applicant has any sort of public profile. The applicant has not made any other claim to have been associated with the Afghani government or international community and human rights actors in Afghanistan. As set out above, I am not satisfied that the applicant faces harm in connection with his time spent in Australia.
34. In regard to Khost province, specifically, the United Nations Assistance Mission to Afghanistan (UNAMA) noted that of the four suicide attacks there in the first half of 2017, three were directed at the Khost Protection Force, "a pro-government paramilitary group"¹⁰ with a further attack targeting the Afghan National Army. Other attacks appeared to target humanitarian workers and ANA personnel¹¹. Total civilian casualties in Khost for the period 1 January to 30 June 2017 numbered 104 (22 dead and 82 injured)¹², out of a provincial population of well over half a million¹³. The majority of these stemmed from attacks directly aimed at security and law enforcement personnel¹⁴. Given that I do not accept that applicant had any association with security or law enforcement personnel, and given the population of the province as a whole and the applicant's personal circumstances, I am not satisfied that the risk to the applicant rises beyond remote.

⁷ EASO, "EASO Country of Origin Report: Afghanistan – Individuals targeted under societal and legal norms", December 2017, CISED50AD8181

⁸ United Nations Assistance Mission to Afghanistan (UNAMA), "Afghanistan - Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852

⁹ EASO, "Afghanistan: Individuals targeted by armed actors in the conflict", 12 December 2017, CISED50AD7868

¹⁰ UNAMA, "Afghanistan - Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852

¹¹ UNAMA, "Afghanistan - Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852

¹² UNAMA, "Afghanistan- Protection of Civilians in Armed Conflict Midyear Report 2017", 01 July 2017, CISED50AD4852

¹³ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 01 November 2016, CIS38A80122597

¹⁴ UNAMA, "Afghanistan - Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852

35. I am not satisfied that, given the relatively low number of attacks in Khost and the profile of their intended targets, the evidence supports a finding that the risk to the applicant is other than remote.

36. I am not satisfied that the applicant faces a real chance of harm on account the general security situation in Khost.

Refugee: conclusion

37. 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

38. 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

39. 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.

40. I have concluded that the applicant was not employed as a driver by an Afghani [officer] and is not a person of interest to the Taliban, or any other group in Afghanistan, nor would he face a real chance of harm on that basis or on account his religion or ethnicity, the general security situation, or due to his having sought asylum in the west or as a returning asylum seeker. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm in Khost or elsewhere in Afghanistan.

41. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm on return to Afghanistan.

Complementary protection: conclusion

42. 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.

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.