



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05798

Date and time of decision: 7 November 2018 16:51:00

S Mansour, 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 claims to be of Persian ethnicity and from Iran. On 4 July 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 8 October 2018, a delegate of the Minister of Immigration and Border Protection (delegate) refused to grant the applicant a SHEV. In summary, the delegate accepted the applicant experienced low level harassment for having tattoos in Iran. The delegate also accepted that the applicant attended [University 1] in Iran, was attacked by two individuals, and that he may be considered a non-practising Muslim and failed asylum seeker on return to Iran. The delegate did not accept however that the applicant was arrested for having tattoos, had a criminal record in Iran, or was forced to quit his studies at [University 1] as claimed, and was ultimately not satisfied that he was a person in respect of whom Australia had protection obligations.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Shia Muslim who does not pray. He does not believe people should be punished for changing their religion. He believes in god but not in religion.
 - He has tattoos on his body. He obtained some of these in Tehran [number] years ago, for no specific reason. He obtained further [tattoos] on [Body Part 1], in Australia.
 - The Iranian authorities harassed and beat him because of his tattoos and because one of his tattoos resembles a [particular symbol] which they believed to be symbolic of Christianity.
 - He was arrested a few times and held for reason of his tattoos and has a record with the authorities.
 - In around late 2012, he was exchanging notes with a friend during a university lecture, relating to the upcoming election. The university professor took the paper and took the applicant to the Disciplinary Committee. He was accused of planning a riot and intimidated into leaving the university voluntarily.
 - He was returning home from work one night, and walking through a park, when he was involved in a security incident with two men. It led to a scuffle, and the men cut his jaw with a piece of [material].
 - He fears from the Iranian authorities on the basis of his political opinion, because he is a person with tattoos who will be perceived to be against Islam and because he has sought asylum in Australia and this would be added to his list of previous crimes on return.

Factual findings

6. The applicant claims to be an Iranian national and has provided a number of identity documents in support. I accept he is an Iranian national, and that Iran is the receiving country for the purpose of this review.
7. The applicant consistently claimed that the smugglers took his passport and disposed of it. I accept this may have been the case.

Tattoos

8. The applicant claims he fears harm in Iran for reason of his tattoos. He has [number] tattoos in total. [Number] were obtained in Iran [including] on [Body Part 2], and one on [Body Part 3]. The applicant's tattoo on [Body Part 2] resembles a [particular symbol]. The other tattoos include [specified designs]. I accept the applicant has these tattoos.
9. The applicant claims he was arrested a few times in Iran for reason of his tattoos, was held in a watch house after arrest and has a record with the Iranian authorities. I have concerns with the credibility of this claim. At the Entry Interview of 2 July 2013, the interviewing officer asked the applicant for his reasons for leaving Iran. The applicant spoke in detail about his issues at [University 1]. The applicant was given multiple opportunities to state all his reasons for departing Iran. The officer asked the applicant about his other problems in Iran. The applicant said he had been unable to sustain himself with his employment, to meet his University related expenses. The officer asked him again about additional problems. The applicant referred to a general security incident he faced in Iran when returning home from work one night (discussed further below). The officer asked the applicant a third time for other reasons he left Iran. The applicant said he was scared to report this security incident to the authorities as the police would have seen his tattoos, tattoos are illegal in Iran and if a little bit of the tattoo is shown when walking in the streets, they would arrest you. The applicant did not provide any information about being arrested due to his tattoos.
10. Moreover, the officer later asked the applicant directly whether he was ever arrested or detained by the police or security organisations, to which he responded, no. The officer asked the applicant whether the police or security or intelligence organisations impacted on his day to day life. The applicant said he could not wear a short sleeve T-shirt in Iran because of his tattoos. He said he would try to wear long sleeve to avoid harassment. When asked a second time whether he had ever been charged with any offences, he said no. He said he had been given a lot of trouble but had not been detained yet. He said he tried to live a quiet life to be away from the police. These statements directly contradict the applicant's later statements that he had been arrested, detained and held in a watch house a few times due to his tattoos.
11. At the PV interview, when the delegate asked the applicant about the reasons for his first claimed encounter with the police in Iran relating to his tattoos, the applicant said he was unable to recollect this information and told the delegate that if he recalled it later in the interview, he would inform the delegate. I find it surprising that the applicant would not remember fundamental details about the reason for his first police encounter. I found the applicant to generally be vague when describing his police encounters arising as a result of or in connection with his tattoos. He provided repetitive details, such as statements that his police encounters always involved strip searches and mug shots. He was unable to provide any convincing, specific details about the claimed incidences he had with the police.

12. The applicant's written PV application includes a Statutory Declaration of 27 June 2017, prepared with the assistance of volunteers at [a named asylum seeker service] (Statutory Declaration). In his Statutory Declaration, he said his arrests due to his 'record' were 'so frequent' and it 'may have been ten times.' In his Statutory Declaration, he gave the example of an incident while he was at a coffee shop and at a restaurant. At the PV interview, he did not detail any such specific incidences. Moreover, at the PV interview, he stated he had two to three police encounters. When the delegate put to him the discrepancies regarding the frequency of his police encounters, he provided a vague and unconvincing response by analogising the terminology he used about his police encounters, with the terminology of 'some' people (he said 'some' was not determinative of the number of people and could refer to various amounts). I do not accept this explanation, noting the applicant's Statutory Declaration was prepared with assistance and given he specifically referred to frequent incidences, up to ten, in that Statutory Declaration.
13. Moreover, I find the applicant's explanation at PV interview about why he stated he was never arrested at his Entry Interview to be unconvincing. He said his Entry Interview was conducted a few days after his arrival to Australia and he was suffering from the ordeal of the journey and severe stress. He said he was affected by the atmosphere around him in detention. However, the applicant provided many details with ease, during the Entry Interview, of other claims such as the University incident. Moreover, the applicant arrived to Australia in late May 2013 and his Entry Interview was conducted on 2 July 2013. It was not conducted a few days after his arrival, as he had claimed.
14. Due to credibility concerns, I do not accept that the applicant faced police encounters, arrest, or any form of detention in relation to his tattoos. Nonetheless, country information indicates the authorities can take a heavy handed approach around issues of moral code violations including the issue of tattoos. Country information also indicates that individuals with tattoos may face low level harassment. I have placed weight on the applicant's earlier statements at Entry Interview and accept that the applicant, given his numerous tattoos, may have had to conceal them to avoid harassment by the Iranian authorities.
15. I accept the applicant obtained [further] tattoos in Australia, [including specified designs].
16. The delegate asked the applicant why he had picked these symbols and whether they were of any special significance. The applicant said there was no specific reason and referred to liking the style. I have some doubts about why the applicant would obtain [further] tattoos in an area of high visibility such as [Body Part 1], in Australia. These doubts arise based on the applicant's comments at various stages of his PV process. In his Statutory Declaration, he stated that all young boys, between 14 and 20 years of age like to rebel and he got his tattoos at a young age in Iran and did not know why he got them. He said that if he could return to the time when he got his tattoos, he would not get them because of the trouble it has caused. He also referred to having no options in Iran and not being aware at the time that tattoo removal technology such as laser removal, was available in Iran. At the PV interview, he reiterated his statements that had he known of the consequences of getting his tattoos, he would not have done so. These statements suggest a lack of any special significance of getting tattoos, for the applicant. None of his tattoos has any particular value or meaning to him. He himself stated that he would not have obtained them, had he known the consequences in Iran. I consider it highly questionable that he actively sought to obtain two further highly visible tattoos while in Australia, particularly without knowing the outcome of his asylum process, and with the risk of returning to Iran with more visible tattoos than he did in the past. I consider that the applicant has obtained these tattoos - a somewhat extreme action - for the sole purpose of enhancing his claims to protection.

University Incident

17. The applicant claims he was forced to voluntarily leave [University 1] by the Disciplinary Committee following an exchange of politically sensitive paper notes with his university friend during a lecture (University incident). At the Entry Interview and in his Statutory Declaration, the applicant specifically referred to how his friend had given him a written note on a piece of paper, asking him something to the effect of who he would vote for in the upcoming election. He said he replied by writing on the paper something to the effect that the individual he had voted for in the past election did not do anything for them, and that the candidates were not suitable. At the PV interview, the delegate asked the applicant multiple times to elaborate on the contents of the insult he had written on the paper notes exchanged. The applicant came across as vague and evasive. After being asked three times about the contents of the note, the applicant again made general remarks that it related to the elections and said that he could not remember specifically the contents of the notes. Even having regard to the passage of time since the event, I find it difficult to accept that the applicant would not at least recollect vaguely the statement on the paper, given the claimed consequences of this event. I also note that later in the PV interview, the delegate raised concerns to the applicant about omission of arrest details relating to his tattoos in his Entry Interview and the applicant responded that he no longer had the stress he had at the Entry Interview and could now remember information more smoothly. I am not satisfied that the applicant's difficulty recollecting the contents of the paper notes exchanged, relates to any issues of memory.
18. The applicant has consistently claimed that his friend, with whom he was exchanging these politically sensitive notes at the University, was able to continue his studies after being reprimanded by the Disciplinary Committee. At the PV interview, he added that his friend was required to sign an undertaking but that the applicant did not have the option to do likewise. He said that his friend was a student activist, that the applicant was also 'involved' but not as much as his friend. He later said that by 'student activist,' he was referring to his friend's willingness to discuss political issues. I do not consider it plausible that given, by the applicant's own admission his friend was more of an involved 'student activist' than the applicant was, that his friend would be released with an undertaking but the applicant did not have such an option.
19. In this context I also note that the applicant was not a member of any political or cultural group at the University although he said he would think and discuss issues with others at University. However, when asked about the contents of those discussions and whom he would discuss with, the applicant's response was again vague. He reiterated that he was an individual who had been taught to think and that his chats were with those at his same level, including those at PhD level and those of basic knowledge. The applicant has not provided any credible evidence that he had a profile at the University that would plausibly explain why he would be forced to voluntarily leave, based on one minor incident while his friend, who was more outspoken than him, faced little consequence.
20. I do not accept that the University incident took place or any events arising as a result.

Security Incident

21. In the Entry Interview and the Statutory Declaration, the applicant was generally consistent in his claim that one night, he was returning home from work, was walking through a park when two men asked him for a lighter and attempted to force him to empty his pockets. When he resisted, the men cut his jaw with a piece of [material] (Security incident). However, his evidence about subsequent events was contradictory. At the Entry Interview, he said that after

this Security incident, he feared reporting it to the police because they would have seen the tattoos he had. However, in his Statutory Declaration, he stated that he did lodge a police complaint and upon doing so, the police searched his records, saw his tattoo records and then held him for one or two days, before he contacted his family and his father paid a bribe for his release. In his Statutory Declaration, he claimed that due to his tattoos, his security was affected.

22. At the PV interview, the applicant volunteered to show the delegate his scars that he claims were sustained as a result of the injuries that day. He said that a scuffle had broken out and 'like any other place in the world, during the scuffle I was knifed.' He said he had money with him and he thinks it occurred because of his money or because of his lighter. He failed to mention any details about lodging a police complaint and subsequently, being held by the police in relation to his tattoos. The applicant was given adequate opportunity during the PV interview to discuss his instances of trouble with the police relating to his tattoos. At no stage did he volunteer these particular details.
23. I accept that the applicant was a victim of generalised criminal activity in Iran, for reason of monetary or other criminal motivations, as he himself indicated, but I do not accept that he lodged a police complaint that led to his records being searched or his subsequent detention for reason of being tattooed and having 'tattoo records.' I do not accept that he was targeted for reason of or in connection with his tattoos or any other specific reason. He has not offered any evidence to suggest these persons specifically targeted him and by his own statements, the motivations of the attackers were criminal and random in nature.

Failed asylum seeker returning from Australia

24. In his Statutory Declaration, the applicant claimed to fear harm on return to Iran on the basis of seeking asylum in Australia. He said it would be added to his list of previous crimes. At the PV interview, he said it would be clear to the Iranian government that he left the country to reside in Australia or another country and he does not have a passport. I do not accept the applicant has any list of existing criminal records with the Iranian authorities. However, I accept that he may be considered to be a failed asylum seeker by the Iranian government on return to Iran.

Religion

25. The applicant identified as a Shia Muslim both in his Entry Interview and in his Statutory Declaration. However, in his Statutory Declaration, he also said he does not pray and does not believe people should be punished for changing their religion. He referred to belief in god but not in religion. At the PV interview, the delegate asked the applicant whether he considered himself to be a practicing Muslim. He responded 'not necessarily.' He referred to his attempts to live generally as a good human being. Based on the applicant's statements to date, I do not accept that he has entirely abandoned the Shia Muslim faith or would be seen as having done so on return to Iran. However, I accept the applicant would be considered to be a non-practicing Muslim on return to Iran.

Refugee assessment

26. 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

27. 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.

28. I accept that the applicant has various tattoos [including] on [Body Part 1], which were obtained in Australia. Following my findings above, for the purposes of s.5J(6) of the Act, I am not satisfied that the applicant engaged in the conduct of obtaining [further] tattoos on [Body Part 1] in Australia otherwise than for the purpose of strengthening his claim to be a refugee. In determining whether the applicant has a well-founded fear of persecution, I am required to disregard his conduct of obtaining [further] tattoos in Australia.

29. The applicant submitted country information with his PV application suggestive of the Iranian government’s stern stance towards male transgressors of social norms, including those who have tattoos. The Department of Foreign Affairs and Trade (DFAT) has previously reported it was not aware of reports of harassment or detention specifically for reason of displaying tattoos of Christian symbols or words,¹ and the other country information before me does not indicate otherwise. Tattoos are increasingly common in Iran, especially among youth. DFAT has regularly observed male Iranians with visible tattoos.² It is possible that a visible tattoo could come to the attention of the authorities and result in low-level harassment. Although it is likely that the penalty for having a tattoo would be a warning or a fine, a sentence of lashing is also possible but these have not been the subject of recent reports. DFAT considers it unlikely for the Iranian authorities to maintain interest in an individual who had previously come to their attention for having a tattoo, unless the tattoo evidenced another crime.³

30. Most recently, DFAT has reported that some men claimed to be discriminated against on the basis of their dress including for visible tattoos, but it is common to see young men fitting such profiles on Iranian streets, particularly in larger cities like Tehran. Incidents of harassment of men for violation of dress code are likely the result of over-zealous enforcement by individual

¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran,” 29 November 2013, CIS26780, 3.47.

² DFAT, “DFAT Country Information Report Iran,” 21 April 2016, CIS38A8012677, 3.77.

³ Ibid; DFAT, “DFAT Country Information Report Iran,” 29 November 2013, CIS26780, 3.47, 3.62-3.64.

security authorities, particularly outside of major cities or because an individual has come to the attention of authorities for separate activities.⁴ Country information indicates that cases relating to tattoos which have come to the attention of the authorities or public more broadly, are usually linked to higher profile individuals and/or circumstances, including the situation for a popular Iranian actress whose “women power” symbol tattoo was captured on camera or the situation for Iran’s National Football team, who revealed their tattoos on their arms during a public match-up.⁵ I do not accept the applicant has any existing or separate profile with the Iranian authorities. I note he is from Tehran, and based on the information before me, I accept he may face low level harassment in Iran if his tattoos obtained in Iran and of the type that he has are visible but am not satisfied that this low level harassment, including a warning or a fine, meets the threshold of serious harm. I am not satisfied he faces a real chance of serious harm on this basis.

31. I accept that the applicant was a victim of generalised criminal activity in Iran, for reason of monetary gain some years ago. The security situation in Iran is ‘peaceful and safe by regional standards’ with a security force that exerts effective control over the majority of the country. DFAT notes that official statistics on crime are not readily available, however observers assess that Iran has a relatively low rate of violent crime.⁶ I am not satisfied that this incident is indicative of a real chance of similar harm in the future, or of persecution.
32. I accept the applicant may be considered to be a non-practicing Muslim on return to Iran. Country information is indicative of a largely young population in Iran, who are increasingly disinterested in religion, particularly the country’s official religion Shia Islam. Many young Iranians are ‘cynical, even derisive, about their religion.’⁷ Accordingly, it is highly unlikely that the Iranian government would monitor whether or not an individual was religiously observant such as their mosque attendance or participation in religious occasions. It follows that it is also unlikely that such a person’s beliefs would come to the attention of the authorities.⁸ Persons perceived to be apostates are only likely to become known to the authorities through outward manifestations of their new faith, attempts to proselytize, and attendance at a house church or through informants.⁹
33. Based on the applicant’s individual and personal circumstances and country information, I do not accept that the applicant faces a real chance of coming to the adverse attention of the Iranian authorities on return to Iran, for reason of his failure to practice Islam or due to his tattoos.
34. I accept that the applicant may be identified to be a failed asylum seeker by the Iranian authorities on return to Iran. Iran has historically refused the issuance of travel documents for the facilitation of involuntary returns of its citizens from abroad, but on 19 March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia.¹⁰ The applicant arrived prior to this date and is not affected by this MOU. I am satisfied that if the applicant returns to Iran, it will only be on a voluntary basis.

⁴ DFAT, “DFAT Country Information Report Iran,” 7 June 2018, CIS7B839411226, 3.85.

⁵ Agence France Presse (AFP), “Tattoo lands Iranian actress in feminism controversy,” 1 June 2016, CX6A26A6E4895; Radio Zamaneh (Netherlands), “Explanations demanded for football players’ tattoos,” 7 September 2015, CXBD6A0DE13224.

⁶ DFAT, “DFAT Country Information Report Iran,” 7 June 2018, CIS7B839411226, 2.44-2.45.

⁷ Boston Review, “Iran’s other religion,” 1 January 2003, CX82EDE9415499.

⁸ DFAT, “DFAT Country Information Report Iran,” 21 April 2016, CIS38A8012677, 3.55.

⁹ Ibid.

¹⁰ DFAT, “DFAT Country Information Report Iran,” 7 June 2018, CIS7B839411226, 5.24.

35. Country information indicates that the Iranian authorities would usually question a voluntary returnee only if the individual has already come to the official attention of the government, such as committing a crime in Iran before departing.¹¹ I have not accepted that the applicant has previously come to the official attention of the Iranian authorities or that he has committed a crime prior to departing Iran. Country information provides that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Since the 1979 revolution, Iranians have departed Iran in large masses and the authorities accept that Iranians will seek to live and work abroad for economic reasons. The Iranian authorities have little interest in prosecuting failed asylum seekers for activities engaged in abroad, including activities relating to protection claims. Persons with existing high profiles may face a higher risk of coming to official attention on return, particularly political activists.¹² The International Organisation for Migration (IOM) indicates that a long stay abroad outside of Iran is not in itself an issue for voluntary returnees, as long as they left Iran legally. Moreover, those who left with their passports and are returned on a Laissez-passer will be questioned by the Immigration Police at the airport. This questioning may take a few hours, however according to IOM nobody has been arrested when travelling back on a Laissez-passer.¹³ The majority of persons questioned would be released after an hour or two.¹⁴
36. I do not accept that the applicant would have an elevated profile on return to Iran, such that he would face a real chance of any adverse attention by the Iranian authorities leading to more than routine questioning on return. I am not satisfied that any routine questioning that the applicant may face on return to Iran, would meet the threshold of serious harm.

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

¹¹ Ibid, 5.24.

¹² Ibid, 5.25.

¹³ United Kingdom Home Office (UKHO), "Country Information and Guidance Iran: Illegal Exit" July 2016, OGD7C848D28, 4.1.

¹⁴ DFAT, "DFAT Country Information Report Iran," 21 April 2016, CIS38A8012677, 5.34.

- the person will be subjected to degrading treatment or punishment.

40. I accept the applicant has a number of tattoos including [number] obtained in Australia on [Body Part 1], which are highly visible tattoos and would be difficult to conceal. The country information before me indicates that it is possible for a visible tattoo to come to the attention of the authorities and result in low-level harassment. There is no evidence to suggest that the applicant's [tattoos] would result in a real risk of more than this. I also accept that as a returning asylum seeker he may face questioning on re-entry, although I am not satisfied that his tattoos or lack of religious observance will raise his profile in this regard. I am not satisfied that such treatment, considered separately or together, meets the threshold required to establish significant harm. I am not satisfied that it will involve pain or suffering that is cruel or inhuman in nature, severe pain or suffering or extreme humiliation. It does not amount to the death penalty, arbitrary deprivation of life or torture. I am not satisfied that there is a real risk the applicant will face significant harm on return to Iran on these bases.

41. I accept that the applicant was a victim of an opportunistic crime a number of years ago. I am not satisfied that the applicant faces a real risk of similar harm in the future. Furthermore, the information indicates that the risk of such criminal activity in Iran is one faced by the population of Iran generally and not the applicant personally. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Iran due to generalised criminal activity or related violence.

42. In relation to the remainder of the applicant's claims, I have found there is not a real chance the applicant will be harmed on return to Iran. The same standard applies in assessing real chance and real risk.¹⁵ Based on the factual findings and country information outlined above, I find that the applicant will not face a real risk of significant harm on return to Iran.

Complementary protection: conclusion

43. 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.

¹⁵ *MIAC v SZQRB* (2013) 210 FCR 505.

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.