



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08889

Date and time of decision: 12 March 2021 11:04:00

G Deal, 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 applicant (the applicant) claims to be from Tehran, Iran. [In] May 2013 he arrived by boat in Australia. On 24 July 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (protection visa application) with the then Department of Immigration, now part of the Department of Home Affairs (the Department).
2. On 17 February 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate accepted the applicant was a non-practising Muslim and that his sister passed away from injuries caused by her abusive husband, "A", in 2011 and was willing to accept A and his family had threatened the applicant and his family in this regard. However, because of issues with the applicant's verbal account, including inconsistencies and a lack of detail, the delegate did not accept A had family in the Sepah or Etelaat who had threatened the applicant or that the applicant was slashed with a knife by people on a motorbike sent by A in about 2012. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm, and was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received submissions and supporting document from the applicant's migration agent on 8 March 2021. The submission contains facts that were before the delegate as well as several arguments to which I have had regard. The supporting documents comprised several documents that were before the delegate when he made the decision and as such are not new information. 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 an Iranian national from Tehran, Iran. His father continues to live in Tehran (his mother passed away in 2020). After completing high school and his military service he worked in retail trade selling [products] up until leaving Iran. During this period, he also made short trips to [Country] to purchase [products]. He has worked in various jobs in Australia, more recently in a [Workplace 1].
 - In 1997 his sister was forcibly married to A and they had two children together. After 14 good years together, A became addicted to drugs, had mental health issues and began assaulting his wife. In September 2011 she passed away from injuries sustained in one of these assaults.
 - He and his family helped authorities eventually apprehend A for his sister's death.
 - He and his family were subject to ongoing threats, harassment by A and his family/associates in an effort to get them to drop the case and allow A to be released. They also targeted him as the only son and someone who helped authorities capture [Mr A].

- He was slashed with a knife by people on a motorbike sent by A. A would call him from prison to threaten him. A had a brother in law who was [an Officer] in the Sepah and another in the Etelaat who called the applicant and went to his home to threaten him. They also threatened to create false political charges against him.
- In December 2012 he fled Iran afraid he would be killed or otherwise harmed by A or his family/associates or the authorities in connection with the brothers in law and their threats.
- After much pressure his parents eventually dropped the matter against A and A was released from prison in about 2014.
- A still holds a grudge against him and he and his family have continued to be threatened by A and his family/associates.
- Since being in Australia he has renounced Islam.
- He is a failed asylum seeker who has been in Australia for several years.

Refugee assessment

6. 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

7. 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.
8. Based on the applicant’s evidence, including his documentary evidence and the consistency of his background evidence, I accept his education and employment history, that he is an Iranian national of about [Age] years of age from Tehran, Iran where his father still lives. I consider Iran the receiving country.
9. In the visa interview the delegate noted the applicant’s claim in the arrival interview to have been in a de facto relationship with a woman (who had claimed to be stateless). Since lodging

his visa application, the applicant has said this was stated in error because he was told by others it would improve his chances of being granted a visa, but that it was not true, and he was not in this relationship. The applicant said he had not had contact with this woman since arriving in Australia. The delegate noted information before him indicating they resided at the same address until about 2019. The applicant reiterated they were not in a relationship. He had earlier indicated different people lived at that address and I do not consider it implausible that this woman may have also let a room at the same address. This does not necessarily indicate they were in a relationship. The delegate also noted the transfer of tens of thousands of dollars in the applicant's name to this woman's mother in Iran. The applicant said he did not know about these transfers and that he was shocked to receive this information. He explained he did not have the sums of money claimed to have been transferred in those transactions at his disposal. This is plausible considering his intermittent and unskilled work in [Workplaces 2] and [Workplaces 1] since being in Australia. His migration agent also verbally submitted there were criminal groups who used the identities of innocent people to launder money in overseas transactions and that these sorts of records should not be used to discredit an applicant. The applicant agreed with his migration agent stating his identity may have been fraudulently used to transfer the money and subsequently. After the visa interview the applicant reported the fraudulent transactions to police. He provided the delegate with the police receipt issued in this regard. I accept the applicant did not make these money transfers and that he has never been in a relationship with the woman.

10. The applicant claims his sister, about a year older than him, was forcefully married to an older man, A, in about 1997 and that she had two children with him. They were good together for about 14 years. However, A subsequently turned to drugs, became addicted and suffered hallucinations. He was paranoid his wife was having an affair. He would physically abuse her. She was taken to hospital for her injuries a few times. On one occasion the applicant and his parents took her in to protect her. However, after a number of promises were made, and because of the children, she eventually returned to A. The last time A beat her was in about September 2011. A subsequently took her to hospital and she went into a coma and eventually passed away days later. A evaded arrest. He could not be found. The applicant helped to get A arrested. A and A's family (including relatives in the Sepah and Ettalat) threatened the applicant and his parents stating A was innocent. The applicant and his family were pressured to agree to A's release. These claims have been made consistently.
11. The applicant also provided a copy of an article from an Iranian newspaper published in 2011. The translation states that a woman was taken to Tehran hospital around early September 2011 by her husband who told doctors she had suffered a dizzy spell while doing housework and fell. However, after testing they discovered brain trauma and internal bleeding. The young woman died from these injuries [in] September 2011. It goes on to state that the young woman's family reported the incident to Tehran Criminal Investigation blaming A for her death. The applicant's parents were quoted as saying to the investigator "Our daughter has serious problems with her husband since last year and ...[A]...always hit her. This time we are also sure he had hit her so hard to cause her death". It states that after the complaint was made forensic experts examined the young woman's body and a warrant for A's arrest was issued. Detectives arrived at A's house and he was arrested along with an aunt. The aunt tried to pretend her niece's death was accidental however, eventually, she confessed to seeing A assault her prior to her death. After these confessions were made A also confessed stating that due to his severe addiction, he had hit his wife. A was arrested and further investigations were on foot. The article is dated [in] September 2011, five days after the young woman died.
12. Based on the detailed information provided about these events and the documentary evidence I accept the applicant's sister suffered domestic violence at the hands of A, a drug addict with

mental health issues, and that the last of these assaults led to her passing away [in] September 2011. I also accept that initially A was not forthcoming about his involvement in her death however, by [September] 2011, and after the applicant's family had complained to authorities and notified them of A's whereabouts, A was detained, confessed to the crime and had been arrested.

13. The applicant claims that after A's arrest he was subject to ongoing harassment, threats and assault by A and his family/associates, including two brothers in law (in the Sepah and Etelaat) who threatened to make up political charges against the applicant and that these events were what led to him fleeing Iran in fear of his safety. However, I have a number of issues with these claims.
14. The applicant claims A and his family embarked on a campaign of intimidation and harassment to have the applicant's family drop the matter so that A could be released. In this regard in his visa application the applicant made several claims regarding his and his family's ongoing harassment and harm by A and his family. He said that A's brothers in law in the Sepah and Etelaat, "threatened" him "in person" and "over the phone" and went to his house "a lot". A told the applicant that he was going to get his brothers in law "to create a false political activism charge...saying...[the applicant was]...politically active against the regime". The applicant also said in his visa application that at one stage A "sent people to find me" and while on his way home from work "[t]wo people came past on a motorbike and slashed me with a knife" and he knew this was connected to A because "he called me after the incident" and said they were "people connected to him" who had been sent to give him a "warning". The applicant stated in his visa application that he had only provided a summary and would be happy to provide further details at interview. He did not indicate when the motorbike incident occurred in his visa application and when the delegate asked when it occurred in the visa interview the applicant said he was not sure. He thought it was after A was arrested. Then he said he thought it happened in 2012 (which was the following year and the year he left). Somewhat at odds with his claim in his visa application (where he said A called and confirmed he was behind the motorbike attack) in the visa interview the applicant indicated he knew the attack was linked to A because "they" messaged him and told him they would stab him in the shoulder next time. When asked if he had reported it to police, he simply said that he had. When asked what happened after that the applicant indicated the police promised to follow it up but that nothing eventuated. The delegate noted A was arrested in September 2011 but that the applicant did not leave Iran until sometime later (the applicant left [in] December 2012). The applicant replied that he was being harassed "everyday" and "threatened" by A who was calling him from prison, and "threatened" by his brothers in law. His parents were very concerned. They said that as the only son he needed to leave the country. The delegate pointed out that his parents were also being threatened and queried why they had not also left Iran at that time. The applicant said they were older. They had more "dependency". His father had a shop to run. They were concerned about him. As the only son they said he needed to leave the country because the same thing could happen to him. The applicant also said in his visa application that even after his parents agreed to A's release, A held a grudge against him for the time he had served in prison and because he had helped the authorities apprehend him and also because he was the only son in the family and so a target.
15. When compared to the details provided in the applicant's account of events related to his sister's death and A's imprisonment (including relevant dates, the applicant's involvement and how the events unfolded), I have found the information provided by the applicant about his claimed harassment and assault by A and his family/associates to be brief and repetitive (for example in relation to the claimed motorbike incident) or only provided in the most generalised terms (for example, they "threatened" him "in person and over the phone" and went to his house "a lot").

This raises concerns for me as to veracity, particularly given these events are said to have directly involved the applicant, were the more recent of the claimed events and are what he claims precipitated his departure from Iran.

16. The applicant claims his mental health issues make it difficult for him recall things and to concentrate. A letter from a Clinical Psychologist dated in January 2021 states the applicant presented with symptoms of anxiety and clinical depression and that he is “taking psychotherapy” and medications to manage his sleep and mental state. The psychologist states that the applicant is struggling with his memory and concentration, which is worse when he is stressed, and asks that this be taken into consideration in the interview. In the letter the psychologist also broadly relays what the applicant recently told them about his sister’s murder and fears for his own safety at the hands of A and A’s family and I place no weight on this regarding the veracity of these claims. The delegate noted the applicant’s mental health issues at the commencement of the visa interview and asked if he could assist the applicant with the interview in any way. The applicant said he had medication which he took at night and that he had brought a piece of paper with things written down that he wanted to say which he could recite to the delegate, which the delegate accepted. There was also a break during the visa interview. The applicant said he had been seeing the psychologist for about a year and had attended seven or eight sessions with them. The applicant indicated he wanted to proceed with the interview. When asked about his sister’s marriage and death and the events around that time the applicant appeared to have good recall, providing a coherent and lengthy account in the visa interview. His migration agent also made lengthy verbal submissions at the end of the visa interview. On the evidence it appears that having sought help with his mental health issues he is managing these, that the visa interview was conducted a manner sensitive to the challenges faced by the applicant given his condition and that the applicant wanted to proceed and was capable of recalling details and responding to questions in a coherent manner. I do not accept the applicant’s mental health issues meant he was unable to meaningfully engage in the visa interview or that this explains why his evidence in the visa interview was, at some points, generalised or brief in nature. The applicant was also given an opportunity to provide further written submissions after the visa interview, although he did not.
17. I acknowledge the country information before me¹ which indicates that while there is an extensive network of police, security and intelligence agencies in Iran who, in general, exercise effective control, they operate inefficiently, corruption remains endemic and impunity pervasive. It is reported that some law enforcement officials accept bribes and rich Iranians or those with political connections have the ability to influence judicial outcomes, among other things. It also reports that those who fear ‘rogue’ state agents are unlikely to be able to access effective protection given the reported levels of impunity. I accept that there may have been acrimony between the applicant and A and their families and that hollow threats may have been made. However, on the evidence, including that the applicant did not leave Iran until some 15 months after A was arrested, was not detained by the authorities (including the Sepah or Eteelaat) in that time, the applicant’s subsequent legal departure without issue, that his parents continued to live in Tehran after he left, as well as the identified issues detailed above with the applicant’s evidence in his visa application and interview I do not accept he was slashed by people on a motorbike sent by A, or that false political charges were made against him or was wanted by authorities or that he and his family were subject to harassment and threats by A and his family/associates to the extent claimed, forcing the applicant to flee Iran in fear of his safety. The applicant’s father continues to live in Tehran almost a decade after A’s arrest. A death certificate indicates the applicant’s mother passed away in 2020 from heart disease however

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132; UK Home Office, 'Country Policy and Information Note - Iran: Actors of protection', November 2019, 20200110110533.

she too lived in Tehran with his father until then, and I do not accept A's family caused her death as asserted by the applicant in the visa interview. I also note A was released from prison about six years ago. I do not accept the applicant and his family are subject to ongoing threats against their lives and harassment by A and his family/associates, as has been claimed. The events surrounding the applicant's sister's death were almost a decade ago. Based on the country information before me and the applicant's profile I am not satisfied he faces a real chance of being harmed by the authorities, A or his family/associates in connection with his sister's death and A's incarceration or otherwise.

18. The applicant claims he has no faith and that he fears harm at the hands of the authorities as an apostate. Until the visa interview the applicant consistently claimed to be a Shia Muslim. At the beginning of the visa interview he told the delegate that he had something to change about his application indicating he wanted to talk about his religion. The delegate said they could talk about that later in the interview. When the applicant and delegate eventually spoke about the applicant's faith, the applicant said he had a "lack" of religion. He used to be a Muslim but did not believe in any religion. He said it was because the religion "bothers" him. He said if he returned to Iran and he saw that "behaviour" he would "oppose" it and they would call him an apostate and could imprison him. Despite having the opportunity to provide further written submissions, which the delegate said at the end of the interview would be considered if received prior to the decision being made, the applicant provided nothing further in this regard. The applicant did not mention these claims in his visa application in 2017, only the visa interview in 2020, suggesting it was a recent development. The applicant's evidence does not indicate much introspection on the issue or that his views are particularly strongly held or that he has otherwise shared them. The applicant has been in Australia for some eight years and his evidence did not previously indicate he was particularly devout. In submissions to the IAA the applicant's migration agent reiterated that the applicant was claiming to have renounced Islam. Like the delegate I am willing to accept as plausible that over the eight years in Australia the applicant has ceased practising his Muslim faith altogether, however on the evidence, I do not accept he has gone to the extent of renouncing Islam and it is because of this and that the evidence does not indicate he has otherwise publicly shared his views (rather than out of a fear of harm) that I do not accept he would do so if returned to Iran.
19. The country information before me² reports that apostasy (where Muslims renounce their faith or convert to another faith) and blasphemy (making utterances deemed derogatory toward holy figures or the Prophet) may be punishable by death (or a lesser punishment in certain circumstances). Apostasy cases, and converts being convicted of blasphemy, is now reportedly rare, and the the death penalty for apostasy and blasphemy is also reportedly rare. It is also reported the authorities have increasingly focused on prominent persons, such as Islamic scholars, in apostasy cases. DFAT also notes that some religiously based cases have clear political overtones while others are confined to being of a purely religious nature, particularly when connected to proselytization. The US Department of State's report indicates proselytising and attempts to convert Muslims and enmity against god and insulting the prophet attract the most serious punishment. Despite the decline in cases, it is reported authorities continue to use religiously based charges against certain groups such as Muslim born Christian converts, certain members of religious minorities and those who espouse unconventional religious beliefs. DFAT notes of reports of secularism in Iran being widespread with a significant proportion of the population not attending mosque or praying on a regular basis. Reports indicate the authorities

² DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132; , US Department of State, 'Iran 2018 International Religious Freedom Report' 21 June 2019, 20190627091702; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', 1 September 2015, CISEC96CF13622; ACCORD, 'Iran - COI Compilation', 1 July 2018, 20190326122102.

are more concerned with public displays having said that provided Iranians do not eat or hold parties during the holy month of Ramadan, how one observed Islam was a private matter. DFAT assesses that non-practising Muslims face a low risk of official and society discrimination, particularly in the major cities (like Tehran). Based on the applicant's profile, including his past experiences in Iran and Australia and the country information detailed above, I am not satisfied he faces a real chance of harm on account of being a non-practising Muslim or his religious views.

20. I accept the applicant may be identifiable as someone who has sought asylum in Australia. Australia is a Western and predominately Christian country where the applicant has lived for several years. The country information before me³ reports that historically Iran has refused to accept the involuntary return of its citizens. However, in a Memorandum of Understanding signed with Australia in March 2018, it agreed to facilitate the return of Iranians who arrived in Australia after that date and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia. As such, I consider that if the applicant were to return it would be on a voluntary basis. It is reported that Iranians have left Iran in large numbers since the 1979 revolution and that the Authorities accept that many Iranians seek to live and work abroad for economic reasons. While the Iranian government fears Western social influences and cracks down on perceived Western culture in Iran, Authorities reportedly pay little attention to failed asylum seekers on their return and have little interest in prosecuting them for activities conducted abroad. Those with an existing high profile may face a higher risk of coming to adverse attention on return, with reintegrating being the greatest challenge faced for those who do not have such a profile. Those returning on a *laissez-passer* are reportedly questioned by Immigration police at the airport about the circumstances of their departure and why they are travelling on a *laissez-passer* which takes between half an hour and an hour, only stretching longer if they are considered evasive in their answers or a criminal history is suspected. I do not accept the applicant was harassed or threatened by A and his family/associates to the extent claimed or assaulted by them or that A's brothers in law created false political charges against him or that the applicant and his family have been subject to such threats and harassment or false charges more recently. The evidence does not indicate the applicant was wanted by authorities when he left Iran. While he suffers from anxiety and depression, he was able to meaningfully engage in the visa interview in a coherent fashion. He may be briefly questioned on his return if he returns on a *laissez-passer*, but I am not satisfied he faces a real chance of being otherwise questioned or detained, even when considering his mental health condition and his privately held religious views. Based on the country information detailed above I am not satisfied the applicant faces a real chance of harm as someone who sought asylum in Australia and has been in Australia for several years.
21. I am not satisfied the applicant has a well-founded fear of persecution on account of his experiences in Iran, experiences in Australia, as a non-practising Muslim, his religious views or as a failed asylum seeker who has spent several years in Australia.

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).

³ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132; ACCORD, 'Iran - COI Compilation', 1 July 2018, 20190326122102.

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. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

26. In considering the applicant's refugee status, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

27. 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.