



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08924

Date and time of decision: 9 April 2021 10:31:00

K Juttner, 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 an Iranian national who is of Arab ethnicity. On 22 September 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 2 March 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the grounds that Australia did not owe protection obligations to the applicant.

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 25 March 2021, a new representative acting for the applicant provided the IAA with written submissions and submissions on new information, both dated 25 March 2021; translations of [social media] posts dated 23 March 2021; two letters from [Mr A], [Organisation 1] dated 23 March 2021 and from [Mr B], [Organisation 2] dated 19 March 2021; and pages from the written record of the applicant's entry interview.
5. The written submissions include arguments about why the delegate's decision was wrong and refer to evidence and claims that were before the delegate. To that extent, I do not consider the submissions to be new information and have had regard to them.
6. The translations relate to [social media] posts that were before the delegate and the entry interview extracts were before the delegate. They are not new information.
7. The two letters from [Organisation 2] and [Organisation 1] were not before the delegate and are new information. The applicant argues that the letters corroborate the continuing interest of the Iranian authorities in him. He also submitted that the letters were credible because they were signed by the people who run the organisations, who provided contact details and a willingness to provide further information if necessary. He further submitted the letters contained credible personal information which was not previously known which may have affected consideration of the applicant's claims because it reaffirmed the applicant's testimony about his links with the Ahwazi community and the persecution he is likely to suffer because of his Arab ethnicity. While the applicant has claimed that he may be accused of supporting Arab Separatist groups (Tajziyeh Talab) because of his Arab ethnicity and the things he has said, and referred to his "community" in very general terms, he has not previously specifically referred to links with the Ahwazi Arab community in Australia.
8. The letter from [Organisation 1] refers to the applicant's links to that organisation, as well his links to the Ahwazi Arab community in Australia, his participation in political and cultural activities, his having suffered persecution in Iran and some general information about the discrimination faced by Arabs in Ahwaz. It post-dates the delegate's decision, although it refers to the applicant's involvement in that organisation since it began in 2020. It appears to have been written at the behest of the applicant in support of his visa application. The letter contains a letterhead with contact details and a website address for the organisation as well as the name and position of the author. It includes the applicant's name, address and date of birth. The letter contains bald, non-specific statements about the discrimination and persecution suffered by the applicant. There is a similarly general reference to his activities in Australia. It also refers in general terms to the applicant's links to the Ahwazi Arab community in Australia.

and participation in activities and events which do not reflect the applicant's own evidence to the delegate. The applicant did not mention that he was involved in this organisation or had links with the Ahwazi Arab community in Australia at his recent SHEV interview that took place in January 2021. Indeed, he told the delegate he was not a member of any political organisations or groups. The accompanying submission provides no additional detail of substance in relation to these activities and associations. The author indicates he can be contacted if further information was required, but I note that the letter appears to have been specifically obtained and provided in relation to the IAA review and was presented by the applicant's representative as evidence in support of the applicant's involvement in the Ahwazi community in Australia, who, like the applicant, was aware of the applicant's responsibility to provide evidence in support of the claims.

9. The letter was prepared after the delegate made her decision, and while it is not apparent why the applicant could not have sought such evidence from these groups earlier and provided it to the delegate (including in post-interview submissions), to the extent this letter was not in existence at that time I am satisfied that s.473DD(b)(i) is met. The letter contains some information about the applicant's identity and broad statements about the situation for Ahwazi Arabs in Iran. These are not new and are reflected in some of the material already before me. The new information in the letter about the applicant's activity in Australia is very cursory and the applicant's submissions do not at all particularise the nature of his activities and involvement in this organisation or the Ahwazi community. I consider the letter is of no real value. I am not satisfied that it is credible personal information that may have affected consideration of his claims. Having regard to these matters, and the applicant's submissions in relation to them, I am not satisfied that there are exceptional circumstances to justify considering the new information.
10. The letter from [Organisation 2] refers to the applicant's membership and involvement with a demonstration and briefly to him being discriminated in the past. It post-dates the delegate's decision and includes reference to the applicant's participation in recent activities relating to the arrangement of a future demonstration taking place [in] April 2021. The information in the letter is very cursory. It provides limited information about the applicant's activities with [Organisation 2] and again, non-particularised references to the discrimination faced by the applicant in Iran. The author also invites further inquiries to be made if necessary on the contact details provided, although as set out above, I am satisfied that the letter was provided to the IAA as evidence of the applicant's involvement in the Ahwazi community and with the applicant's knowledge regarding his obligations to provide evidence in support of his claim. According to the letter, the applicant has been a member of [Organisation 2] since coming to Sydney. The applicant submitted he moved to Sydney in January 2020. He did not mention he was a member of [Organisation 2] in his SHEV interview in January 2021 or in his post-interview submissions. He explained that there was no Ahwazi Association, organisation or group in Queensland, where he was residing prior to moving to Sydney. Even if true, this does not explain his failure to mention his claimed involvement in [Organisation 2] in his SHEV interview. While the letter contains basic personal information about the applicant which is not in contention, the rest of the letter is not compelling. The letter contains statements that do not reflect the applicant's own account to the delegate. The accompanying submission does not provide any meaningful detail about his involvement in the Ahwazi community. It too, like the [Organisation 1] letter, is extremely scant in this regard. I am not satisfied that the new information is credible personal information that may have affected consideration of the claims. While the document only came into existence after the delegate's decision, considering the matters overall, I am not satisfied that there are exceptional circumstances to justify considering the information.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - He is of Arab ethnicity. After he started school, he learnt that he was different because of his ethnicity and recalls that his teachers always spoke negatively about Arabs.
 - He disliked the Iranian government because it oppressed people, particularly the younger generation and religious and ethnic minorities. He wanted to be free to drink alcohol and be with his girlfriend. Once he was detained by the religious police when he was with his girlfriend, hit and verbally abused and kept in a police station overnight.
 - He read many books about the history of Iran and talked to his friends about politics, the Iranian regime and religion at university. A few months before he left Iran, he discovered that one of his friends had recorded him when he was talking and demanded that he pay the friend a large sum of money or he would distribute the recording. He did not pay the money and feared living in Iran not knowing what his friend would do with the recordings. He left Iran in June 2013.
 - He does not have any religion or faith in any religion.
 - He has shared anti-regime material on his [social media] page in Australia. The authorities threatened his family in Iran in relation to his activities on [social media].
 - He fears he will be imprisoned, tortured and executed on his return to Iran because he has promoted anti-government and anti-Islamic views. He would be labelled as an apostate and an 'enemy of God'. He may also be accused of supporting Arab Separatist groups because of his Arab ethnicity.
 - He fears harm on return because he claimed asylum in Australia.
12. At his arrival interview on 19 July 2013, the applicant stated that he was involved in protests at the time of the 2009 election and went out on the street once or twice.

Factual findings

13. The applicant has consistently claimed that he is an Iranian national of Arab ethnicity. He was born in Shiraz and lived in Ahwaz from shortly after his birth until 2009, when he moved with his family to Tehran until he came to Australia. He can speak, read and write Farsi, Arabic and English. The applicant provided a number of pieces of identification issued by the Iranian authorities, including a copy of his Iranian passport, and his Iranian birth certificate (*shenasnameh*), national identification card and his military service exemption card (with translations). DFAT¹ reports that Iranian passports serve as proof of Iranian citizenship. DFAT also reports that Iranian Arabs speak Arabic and live predominantly in the south-western province of Khuzestan. They are often referred to as 'Ahwazis' after the capital city of Khuzestan, Ahwaz. I am satisfied that the applicant is an Iranian national and that Iran is his receiving country. I also accept that the applicant is of Arab ethnicity, and that he lived in Ahwaz before he moved to Tehran.
14. The applicant stated that his father worked for [a] company and his family were financially comfortable. Notwithstanding this, the applicant claimed that he learnt very quickly after

¹ DFAT, "DFAT Country Information Report Iran April 2020", 14 April 2020, 20200414083132.

starting school that he was different because of his ethnicity. His teachers always spoke negatively about Arabs and he was one of the few students who asked questions about this. At his arrival interview, he stated that because of his ethnicity, there was more chance to get caught. At his SHEV interview on 21 January 2021, the delegate questioned the applicant about whether he had experienced discrimination because of his ethnicity. He took a while to respond, before reiterating his earlier evidence that teachers and lecturers had “said something” during his schooling and tertiary education. He said he had “sort of” experienced discrimination. When asked if he had any further examples, he said that his ethnicity could make the situation worse because there were many people from his ethnicity who were more sensitive. He also claimed that because of his ethnicity and things he had said, “they” might think that he is a Separatist. The applicant indicated he was not a member of any political groups.

15. DFAT has reported² that there is a high level of societal discrimination against Arabs which can lead to unfair day-to-day treatment, such as in employment and access to housing and services. On the applicant’s evidence, his family were financially secure and he undertook two and a half years of a [Discipline 1] degree at university. Notwithstanding that the applicant went to school and university in Ahwaz where a large proportion of the Arab population in Iran live, I am willing to accept that his teachers may have spoken negatively about Arabs when he was at school. However, I am not satisfied that the applicant was otherwise discriminated against personally when he was in Iran. Despite the delegate making several attempts to ascertain if he had examples of the discrimination he faced, the applicant was unable to provide any compelling evidence. The evidence that he “sort of” suffered discrimination was equivocal at best, and his other evidence related to problems faced more generally by Arab people, and to claims about what may happen if he returns to Iran. I am not satisfied that the applicant faced any other discrimination when he was in Iran on the grounds of his ethnicity.
16. The applicant claimed that he disliked the Iranian government. In his SHEV application, he provided an overview of the historical background and his political beliefs. After he started university, he began reading books about the history of Iran. He stated that more and more people in Iran resented Islam after the Revolution, and that people who were religious under the Shah lost their faith in Islam. This was because the Iranian government represented a very negative picture of Islam, which was made more negative because they forced people to abide by various Islamic rules. He was interested to know why Fars people in Iran hated the Arabs so much, and blamed the Iranian government for this because people linked Arabs and Islam together, and as they resented Islam, they expressed their hatred towards Arabs as well. He strongly believed that the reason behind the misery of the Iranian people was not Islam but the Iranian government. The applicant claimed that he personally disliked the Iranian government because they oppressed people, particularly the younger generation and various religious and ethnic minorities. He wanted to be free and to be able to drink alcohol and be with his girlfriend, which were banned by the Iranian regime.
17. The applicant claimed that on one occasion he was detained by the religious police (*Gasht Ershad*) when he was out with his girlfriend and was kept in a police station overnight. He was hit and verbally abused and released the next day. He told the delegate at his SHEV interview that he was not charged with any offences in relation to this incident. The applicant has consistently claimed that he was arrested for being out with his girlfriend in Iran and subsequently released, including at his SHEV interview where he gave a credible, if brief,

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

account of this matter. DFAT³ has reported that some elements of the Iranian security forces were involved in occasional morality campaigns to enforce standards of Islamic conduct, including cracking down on public displays of affection with non-family members of the opposite sex. I accept that the applicant was briefly arrested on one occasion by the morality police in Iran for being out with his girlfriend. He did not face any further repercussions in relation to this incident.

18. Since his arrival in Australia in July 2013, the applicant has claimed that he spoke to his friends in Ahwaz about politics, the Iranian regime and Islam and used to inform them about his concerns. In his SHEV application, he also stated that he felt strongly about the rights of various minority groups, particularly Arabs. He believed it was important for him to let as many people as he could know about these matters because people his age would not read the books he had and were not interested in such topics.
19. The applicant has consistently claimed that the reason he left Iran was because one of his friends who was present at gatherings where he spoke about politics had recorded his conversations on his phone and later demanded a bribe from him. His friend told him that he had a number of recordings, not just one and he was going to publish it on the internet. His family initially suggested they just pay the bribe, which he told the delegate was in the amount of 20 million tomans, but he could not be certain that this would resolve the matter. He was afraid that he would have to live in fear all the time, not knowing what the friend was going to do with the recordings. He was afraid of being accused as an anti-government activist. He decided to leave Iran and left by plane on a lawful Iranian passport in June 2013.
20. The applicant told the delegate the friend who made the recording, "A", was studying the same course and he was of [a certain] ethnicity. He saw A many times in a social setting because they were so close to each other and would meet each other every two or three days. He saw A with other friends as well. He could not remember exactly when he first met A but thought it was during university. They were friends for two or three years. He could not remember why they became friends but guessed it was because they were studying in the same field and using the same books. When asked if A shared the same political views as him, he stated that A never disclosed any information about this and most of the time he was a listener. He then said that he was guessing that no, A wasn't even close to his ideas or anything like that, and he never disclosed that information. Other people did bring up their points of view and discussed the matters too, but they were just listeners. He was the main speaker making speeches most of the time. I do find it somewhat difficult to believe that the applicant was comfortable about discussing his anti-regime political views with a person in circumstances where he was not sure that that person shared his views.
21. The applicant does not remember where he was or what he was doing when A first threatened him about the recordings. The applicant told the delegate that A just said, "Do you know the consequences of making these speeches" and told him that some of his relatives were working for the government and he could disclose this information to them and put the applicant's life at risk. In his SHEV application and earlier in his SHEV interview, he had said only that A had threatened to publish the recording on the internet. There is no evidence before me that any recordings were published on the internet when the applicant did not pay the bribe in Iran, or subsequently.

³ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

22. The applicant claimed that he saw the recordings, which involved video as well as voice recordings. The delegate queried how many of the recordings he had seen and he said A had only shown him part of it. He said it was about whatever he made a speech about, and that he talked about many things. Some aspects of his description of the recording was somewhat confusing, but the essence of his evidence was that he was talking about racism and saying everything that he was thinking on the day and that was in his mind. He talked about the policy the government was following that was trying to destroy the ethnicity in Ahwaz.
23. The delegate also asked applicant about the nature of political views he felt so strongly about in Iran. He talked at some length in response. He said that the issue was the foundation of the Islamic Republic and he was against it because only a saviour could establish the Islamic government. He explained that the other people who were not really the saviours were the voice who were establishing the Islamic government, and they were just creating more infidelity and corruption and putting people under too much pressure. He had a problem with the government for its religious sect from the beginning. The goals of the Islamic Republic were just trying to destroy the religion as well as pushing the people towards nationalism. He was against the government destroying the religion. When asked what religion he identified with, the applicant claimed he did not have any religion or faith in any religion at that time. He had faith through his ideology and beliefs in the 'pure source' which he said was commonly found in every religion and formed the base of all religion. He said that his belief and ideology was mostly philosophical. I note that in the written record of his arrival interview, his religion was specified as "not stated", but at the time of his 2017 SHEV application, he stated that his religion was Islam and that he was born into and brought up in a moderate practicing Shia Muslim family. He also stated that his parents were not really religious and he was not quite sure about what his [siblings] believed in but they were not religious either.
24. Having regard to the applicant's evidence about his political and religious beliefs, I accept that the applicant may have disliked the Iranian government. His evidence about his current religious beliefs was generally credible and I accept that he no longer has faith in any religion, although I am not satisfied that this was the case at the time he was in Iran. Indeed, when explaining his political views, which was confined to his political rather than his religious beliefs, one of the reasons the applicant did not like the Iranian government was because they were misrepresenting or trying to destroy Islam, and his concern suggested that he was a follower of Islam. I do have real concerns about the applicant's claims that he had discussions with friends when he was at university about politics and Islam. The statements in his SHEV application about the historical background in Iran and his political views were fairly brief and generalised in nature. When he was asked to talk about his political views at his SHEV interview, the information he gave was nebulous and rudimentary. Despite claiming in his SHEV application that he felt strongly about the rights of minority groups, particularly Arabs, and had an interest in why the Fars people dislike Arabs so much, he did not mention anything about this to the delegate. He also did not discuss the concerns expressed in his SHEV application about government oppression, particularly of young people and of religious and ethnic minorities. Overall, he did not demonstrate anything other than a rudimentary knowledge and understanding of Iranian politics, and his description of his own beliefs was simplistic.
25. Notwithstanding that he has consistently claimed that this was the reason his left Iran, and made submissions to the IAA that he was forthcoming and provided ample information about his dealings with A, I do not accept the applicant's claim about A recording him speaking about politics.
26. In addition to my concerns that the applicant discussed politics with his friends at university, the applicant's evidence about what he was speaking about in the recording he claimed to have

seen lacked meaningful detail, with the only substantive matters being a reference to 'racism' and to government policies about 'destroying ethnicity in Ahwaz'. Despite claiming to have seen part of a recording, the applicant's evidence about its content was very limited.

27. I also have concerns that the applicant was not able to recall other key aspects about the incident, such as where he was and what he was doing when A threatened him, or exactly when or why he became friends with A. This contrasted with the applicant's ability to provide other information about his dealings with A, such as his name, ethnicity and what they were studying, as well as details about the closeness of their friendship and how often they saw each other. His representative submitted that people usually don't remember why they became friends because most cannot pinpoint the relationship to one specific reason or event and friendships develop over time. While this is possible, the applicant knew relatively little about A, despite claiming that they were close friends and saw each other regularly for a couple of years. The applicant also argued it was unreasonable to expect the applicant to remember all the details of events that occurred over a decade ago. While I accept that these incidents are said to have occurred some time ago, I find it somewhat difficult to believe that the applicant could have a good recollection about some matters but not others that related to A, particularly when these matters were not insignificant.
28. The applicant took issue with the delegate's findings that he was unable to say with any certainty how many videos he appeared in; whether he was named in the videos; whether he could be seen clearly; the circumstances of the videos; or whether exactly A was threatening to publish the videos, on the basis that he was not specifically asked these questions during the SHEV interview. I accept that he was not asked about these matters. The applicant has argued that he could not say how many videos he appeared in because A did not tell him, and that the issue was the content rather than the number of the videos. He also submitted there was no need for him to be named in the videos as the sophisticated Iranian intelligence services would easily be able to identify him, and A could easily do that for them. This does not directly address the delegate's issue with whether the applicant could be seen clearly in the video. The applicant also reiterated his earlier evidence that A told him he would hand the videos to the authorities.
29. The applicant submitted that his answers at the SHEV interview aligned with the information previously given in his visa application and arrival interview, and there were no inconsistencies. I am not satisfied that this is the case. While it is true that the applicant has consistently claimed that he was subject of an extortion attempt by a friend who had recordings of his political conversations, some core details have varied over time. There were variations in his evidence about when this incident occurred. In his SHEV application he claimed he was living in Tehran at this time but was travelling to Ahwaz frequently and staying there, and assumed the recordings belonged to that period. According to his SHEV application, he moved to Tehran after he finished university and lived there from 2009 to 2013. In contrast, he said at his SHEV interview that it happened when he was studying at university in Ahwaz, which was between 2006 and 2009. This was re-iterated in the submissions to the IAA that these events occurred 15 years ago (ie around 2006). The applicant's evidence about when he was approached by A also differed. In his SHEV application, he claimed it was a few months prior to leaving Iran that he learnt that his friend had recorded him on his phone. His SHEV interview evidence indicated that it took place earlier than in his SHEV application. He told the delegate that he thought there was about four or five months after he received the last threat from A and departed Iran, and that the threats from A had taken place two or three times prior to that. I note that at his arrival interview, the applicant also said that he found out about the recording four or five months beforehand.

30. Notwithstanding the claimed threats and the applicant's failure to pay the money demanded, it appears that even on the applicant's own evidence, nothing further happened to him. He was able to leave Iran through lawful means and without any apparent problems. The applicant applied and was issued with a lawful Iranian passport by the Iranian authorities in [2013], [number] months before his departure. On his SHEV interview evidence, this was after the time he claimed the threats were made by A. He was able to leave Iran through the international airport without any problems in June 2013. DFAT⁴ reported in 2016 (a few years after the applicant's departure) that while it was possible to leave Iran to flee arrest warrants or charges, this usually takes place overland rather than through the main airports. Passport control checks are sophisticated in Iran and an outstanding warrant for arrest would not go undetected at the main airports, although it was theoretically possible for an individual to convince an airport officer to allow them to proceed. There is no evidence before me that the applicant had any difficulties obtaining his passport or leaving through the sophisticated security checks at the International airport.
31. Consistent with this there is no credible evidence before me that the applicant or his family experienced any subsequent problems with A. The applicant did not have any further contact with A in the months before his departure from Iran. When asked by the delegate if A continued to threaten his family after he left Iran, the applicant said he did not hear anything from A and did not know about whether his family had heard from him. According to the applicant's evidence at his SHEV interview, he is in regular contact with his family in Iran and talks to them every week by telephone. In response to the delegate's findings the applicant submitted both that people in Iran do not talk about issues like this on the phone as they fear that their phones may be tapped, and in the alternative, that it was likely that A did not approach them given that he (the applicant) had fled the country and his family were not involved in the recordings. It struck me as somewhat perplexing that the applicant presented two quite contrasting scenarios about whether A had been in contact with his family. I did not find the applicant's explanations convincing. I am not satisfied that the applicant's family had any subsequent contact with A.
32. I do not find the applicant's claims about his experiences with A at all credible. His evidence about his political beliefs and what he claimed to have said in the recording was very superficial, and I am not satisfied that he spoke about politics or the Iranian regime with a group of friends at university, or that any conversations were recorded. I do not accept that he had a friend called A at all, or that A threatened to publish or disclose recordings to the authorities or demanded a bribe. I do not accept that the applicant had any problems with a person called A when he was in Iran.
33. The applicant also claimed that he continues to dislike the Iranian government and wants to educate people and help them understand about the lies of the Iranian government and the fact the government is misrepresenting them. He claimed that since he came to Australia, he is "making the same speech", and is active on [social media]. He has shared information on [social media] in Australia to educate other people. He claimed that he will be imprisoned if he returns to Iran because he has posted animations and caricatures of the Supreme Leader on [social media] and has friends who are Jewish and holy.
34. Country information before me⁵ indicates the Iranian constitution provides for freedom of expression, association, opinion, assembly and religion, but stipulates that freedoms must not violate certain principles, including Islam and public rights. Under Iran's Press Law, the media

⁴ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

⁵ DFAT, "DFAT Country Information Report Iran April 2020", 14 April 2020, 20200414083132.

is restricted from publishing materials that ‘violate Islamic principles and codes and public rights’, which can include ‘publishing atheistic articles’, ‘promoting subjects which might damage the foundation of the Islamic Republic’ and ‘offending the Leader of the Revolution and recognised religious authorities’. Notwithstanding this, DFAT⁶ has also reported that Iranians are able to criticise the government robustly, both in public (for example, during conversations on the street and in workplaces) and online (for example, on social media). DFAT also indicated that the media represented different views and did so forcefully, provided they do not cross the established ‘red lines’, which include criticism of the Supreme Leader, the constitutional and territorial foundations of the Islamic Republic and the place of Shia Islam in Iran.

35. The applicant provided a number of screenshots from his [social media] account shortly before his SHEV interview in January 2021. The screenshots contain a number of posts from the applicant’s [social media] page between 12 August 2017 and 31 December 2017. Six of the posts were made between 10 September and 30 September 2017, around the date of the applicant’s SHEV application on 22 September 2017. At his SHEV interview, he said that his last post on [social media] was on 25 January 2018, although there is no corroborative evidence before me of any [social media] activity after 2017.
36. The [social media] account is in the applicant’s full name. The profile picture is of a male person [and] with a beard which appears to be of the applicant. I accept that the screenshots provided are from the applicant’s [social media] page. One of the posts (in which the applicant shared a post from Donald Trump) is in English and there are three cartoons that depict the Supreme Leader, Ayatollah Khamenei and President Rouhani. One of these cartoons contains Farsi text, as do most of the remaining posts. At the SHEV interview, the applicant’s then representative submitted that English translations had not been provided as they were “basically pictures” and self-explanatory but that she thought some translation would be beneficial. She did not provide any English translation of the Farsi text to the delegate with her post-interview submissions. English translations of the text in the posts have now been provided to the IAA.
37. The meaning of the cartoons can be inferred from their face, and having regard to the country information about ‘red line’ topics, I accept that that they contain material that may be considered to be against the Islamic regime and political in nature. Two cartoons depict the Supreme Leader holding puppets of Rouhani, and another has the Supreme Leader’s head on a snake next to President Rouhani with figures hanging from the insignia of the Islamic Republic. I also accept that other posts on the applicant’s [social media] page may be considered anti-regime and political. The applicant’s posts include a picture of the Supreme Leader with blood drawn on his chin and cuts to his face, surrounded by males with bloodied chins that include Bashar al-Assad; a post about lashes for drinking alcohol that were executed on a refugee deported from Norway to Iran; a post from “Israel in Persian” with a video of the Israeli prime minister making a speech to the people of Iran; and a post from Harana News that referred to the International Federation of Journalists condemning the treatment of a named journalist by the judiciary. The post from Donald Trump may also be regarded as anti-regime in nature, as it includes text about Iran’s leaders fearing Iran’s people and the military power of the US. In addition, there is also a post [from] October 2017 that indicates that the applicant joined a public group called ‘[Group 1]’ which has [number] members. The applicant has submitted that this means that his name would be included in the group’s membership and his account outreach is widespread, and that it increases the likelihood he will become subject to the adverse attention of the Iranian authorities. However, he has not provided any

⁶ DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677; DFAT, “DFAT Country Information Report Iran April 2020”, 14 April 2020, 20200414083132.

independent evidence in support of his contention that his name has been included in the membership of [Group 1], that this information is publicly known or that it has impacted on the outreach of his account, and I am not satisfied that it has.

38. The applicant claimed that the Iranian government might be interested in him because they had once threatened his family back in Iran in relation to his [social media] activity. He said they approached his family and told them “their son was active” and doing things that were against the government and the Supreme Leader, and that they had to tell him to stop. The applicant did not know exactly what part of the authorities they were from but they “might definitely” have been from the intelligence services. He said the visit to his family occurred around two or two and a half years ago (ie early 2019 or mid 2018). The applicant agreed that he stopped posting on [social media]. I note that on the screenshots provided the applicant’s last [social media] post was in December 2017, a year or six months before he claimed his parents were visited by the authorities. His representative submitted that the visit to his family coincided with the time the applicant stopped posting any material against the regime on [social media], but I am not satisfied that is the case on the evidence put forward. I do not consider the applicant’s evidence about this visit or the authorities in Iran being aware of his [social media] activity convincing.
39. The applicant claimed that since he stopped posting on [social media], he was still making speeches and talking with his own community and friends. He told the delegate he did not belong to any particular group. He said that he had his own ideology and philosophy, and that when you belong to a specific party or group you have to be ‘against the others’. He also did not want to be known by any political groups. He has not spoken in public places against the Iranian regime but has made speeches against the government in Iran in social gatherings such as parties. He has not provided any corroborative material in support of these activities.
40. The applicant told the delegate he had never attended protests or demonstrations in Iran or Australia. This differs from the information he gave at his arrival interview. When asked if he had been involved in any protests against the government, he said that he went out in the street maybe once or twice at the time of the 2009 election and was involved in protests. However, he did not mention that he had taken part in protests in Iran in his SHEV application, and denied taking part in any protests in Iran at his SHEV interview. I am not satisfied that the applicant has taken part in any protests in either Iran or Australia.
41. While I accept that the applicant has posted material on [social media] that may be regarded as anti-regime, political or religious, most of his posts are the applicant sharing posts of others and not his own content. Two of the cartoons he posted are attributed to other sources, and I am not satisfied that he created the third cartoon. I am not satisfied that the applicant created the cartoons or other material on his [social media] page. Of the posts provided, only two have received ‘likes’ from other people and both were from the same individual. The applicant took issue with the delegate’s finding that the small number of screenshots provided, and ‘likes’ on those posts, indicated that the applicant’s exposure on [social media] was not widespread. He submitted that these posts were provided as examples of his activities on [social media] and if the delegate had checked the applicant’s [social media] page, she would have realised that he had published a large amount of material criticising the regime and these screenshots were just samples. As the delegate explained to the applicant at the start of the SHEV interview, it was his responsibility to provide evidence in support of his claims. He has not provided any further evidence of his [social media] activity to the IAA. In addition to not creating the material on his [social media] page, I am not satisfied the applicant posted material on [social media] at all regularly. I am not satisfied that in the eight years he has been in Australia, he posted anti-regime, political or religious material on [social media] other than on those occasions

presented in the screenshots. Those instances all took place in a four month period that began a few weeks before he lodged his application for protection and ceased a few months later. I am not satisfied that this is a mere coincidence. I am not satisfied that the applicant's activities on [social media] were anything other than irregular and short-lived. The fact that the applicant did not create his own anti-regime or political material and posted only a dozen times over a limited period indicates to me that he did not have a commitment to sharing political content, particularly when considered against his evidence about his political views more generally, which was very superficial. Furthermore, the applicant's evidence about speaking to friends in Australia about the Iranian government was very limited. In addition, in the applicant's SHEV application lodged a few weeks before he joined [Group 1] on [social media] in October 2017, he stated he was a Muslim. At the time of his 2021 SHEV interview, he claimed that he did not have faith in any religion, although he did say that he did have faith through his ideology and beliefs in the beliefs that formed the basis of all religion. While I accept that the applicant no longer has faith in any religion, I am not satisfied on the evidence before me that the applicant was an atheist or an agnostic at the time he joined [Group 1] on [social media]. I am not satisfied that the applicant's reasons for joining this group on [social media] were genuine. I am also not satisfied that the applicant's motivations for posting anti-regime or political material were genuine, or that he has a genuine intention to engage in political activities on [social media] in the future. I am not satisfied that the applicant posted political, anti-regime or religious material on [social media] in Australia otherwise than for the purpose of strengthening his claim to be a refugee. I am also not satisfied that the applicant has spoken to friends or his community about politics or the Iranian government in Australia.

Refugee assessment

42. 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

43. 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.

44. I am not satisfied that the applicant posted political, anti-Islam or religious material on [social media] in Australia or joined [Group 1] on [social media] otherwise than for the purpose of strengthening his claim to be a refugee. Accordingly, I have disregarded this conduct in determining whether he has a well-founded fear of persecution pursuant to s.5J(6) of the Act.
45. I do not accept that the applicant's conversations were recorded or that he was the subject of an extortion threat. I am not satisfied that the applicant would face a real chance of harm from for this reason if he returned to Iran.
46. I accept that the applicant does not like the Iranian government and that as at the time of his SHEV interview, he did not have any religion or faith in any religion. He claimed that he disliked the government because it oppressed people and he wanted to be free and to be able to drink alcohol and be with his girlfriend. He claimed he would be labelled an apostate and an enemy of god ("*moharebeh*") because he is against Islam and the Iranian government. The applicant also claimed that he may be accused of supporting Arab Separatist groups such as Tajziyeh Talab because of his Arab ethnicity and the things he has said. He further claimed that he is going to continue his activities as well as his speeches to other people and cannot be in the situation where he does not do anything. His representative argued that if the applicant is returned to Iran, he will have to conceal his ideology and political and religious views in order to be safe and will have to modify his behaviour.
47. I do not accept that the applicant spoke about politics, the Iranian regime or religion with friends at university, including about issues relating to minority groups such as Arabs, or that he has spoken about these matters to friends or his community in Australia. The applicant is not a member of any political group. I am not satisfied that he has participated in protests in Iran or Australia. I am not satisfied that the applicant has been politically active or vocal in Iran or Australia. I am not satisfied that he has any intention to share his views about not liking the Iranian government (including in relation to Arab ethnic issues) if he returns to Iran. I am also not satisfied that he intends to join any Arab political or separatist groups either in Australia or if he returns to Iran. I do not accept that he would be accused of supporting Arab Separatist groups. I am not satisfied that the applicant would need to conceal his political views or modify his behaviour in order to avoid harm.
48. On the applicant's evidence, he does not have any religion but does have faith in the beliefs that form the basis of all religion. As a result, it is possible that he is not following or practising any religion at present. I do not accept that he is an atheist or an agnostic as those terms are properly understood. Country information before me⁷ indicates that Iran is an Islamic republic and Shia Islam is the official state religion. A Muslim who leaves his faith or converts to apostasy can be charged with apostasy, and the death penalty can be imposed for proselytising and attempts by non-Muslims to convert Muslims, and for *moharebeh* ("enmity against God"). Notwithstanding this, DFAT⁸ reports that secularism is widespread, particularly in major cities and among younger and wealthier Iranians, and a significant proportion of the population does not attend mosque or pray on a regular basis, and alcohol consumption is common. A 2020 survey report of 50 thousand Iranians about their attitudes to religion indicates that 22.2 per cent of Iranians have no religion (and another 8.8 per cent are atheist, 7.1 per cent are spiritual and 5.8 per cent are agnostic)⁹. The survey also stated that approximately half of the population reported losing their religion and around 60 per cent reported that they did not

⁷ DFAT, "DFAT Country Information Report Iran April 2020", 14 April 2020, 20200414083132; United States Department of State, "2019 Report on International Religious Freedom: Iran", 10 June 2020, 20200615122952.

⁸ DFAT, "DFAT Country Information Report Iran April 2020", 14 April 2020, 20200414083132.

⁹ The Group for Analyzing and Measuring Attitudes in IRAN, "Iranians' Attitudes Towards Religion: A 2020 Survey Report", 1 August 2020, 20200918134111

pray, although 78 per cent of Iranians believe in God. DFAT¹⁰ assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. I am not satisfied that the applicant intends to share his religious beliefs or proselytise if he returns to Iran. I do not accept that this is a case of the applicant having to modify his behaviour to conceal his beliefs, finding instead that he will not disclose these beliefs by choice, rather than a fear of harm. Having regard to the country information, I am not satisfied that the applicant will come to the adverse attention of the Iranian authorities for not having any religion if he returns to Iran. I am not satisfied that he would be labelled an apostate or a *moharebeh* for being against the Iranian government.

49. In conclusion, I am not satisfied that the applicant would face a real chance of harm for his political or religious beliefs if he returns to Iran.
50. In relation to the applicant's claim that he wanted to be free and to drink alcohol and be with his girlfriend, I note that he has not provided any information that he drank alcohol in Iran or that he drinks alcohol in Australia. I am not satisfied that the applicant has consumed alcohol in Iran or Australia, although I accept it is possible that he may want to do so if he returns to Iran. DFAT¹¹ reports that alcohol consumption is an offence punishable by flogging, although the police do not actively investigate or seek to entrap people consuming alcohol in their own home and will generally only act if it comes to public attention or if they are specifically instructed. DFAT also indicates that alcohol consumption is widespread in Iran and is readily available on the black market. There is no evidence before me that applicant would want to consume alcohol in public if he returned to Iran and I am not satisfied that he would. If the applicant were to drink alcohol at home on his return to Iran, I am not satisfied that the chance of him coming to the attention of the police for doing so is no more than remote. I am not satisfied that he would face a real chance of harm for drinking alcohol in Iran. At the time of the applicant's SHEV interview he was not in a relationship, and I accept that the applicant may want to go out with girls or have a girlfriend if he returns to Iran. DFAT¹² reports that close contact between unmarried men and women and de facto relationships are illegal, although there is now a greater tolerance for mixed-gender interactions, particularly in larger cities. The authorities generally tolerate unmarried couples being together in public, particularly in major cities. The applicant was living in Tehran prior to coming to Australia, and his family (with whom he is in regular contact) still live there. I am satisfied that he is likely to return to live in Tehran where relationships between unmarried couples and being out in public is generally tolerated. Given this, I am not satisfied that the applicant would face a real chance of harm for having a girlfriend in Iran.
51. I accept that the applicant is of Arab ethnicity. DFAT¹³ reports that Arabs constitute two per cent of the population in Iran. Arab cultural activities are tolerated and Arabs can freely speak Arabic and wear Arabic dress. Like other ethnic minorities, Arabs complain of economic neglect and discrimination in education, employment, housing, politics and culture. However, DFAT assesses that Arabs are not specifically targeted for discrimination on the basis of their ethnicity, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities. Arabs who are active politically are likely to attract the adverse attention from the authorities although I am not satisfied that the applicant falls into that category. I am not satisfied that the applicant faced discrimination on account of his ethnicity when he was in Iran other than being present when teachers made negative comments about Arabs. The applicant came from a family that was financially comfortable. He

¹⁰ DFAT, "DFAT Country Information Report Iran April 2020", 14 April 2020, 20200414083132.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

completed his schooling and attended university for nearly three years of a [Discipline 1] degree. He was employed in several different roles in Iran, including as an [Occupation 1], [Occupation 2] and as a supervisor in [Occupation 3]. I am not satisfied that there is a real chance the applicant would not be able to find employment or housing on his return to Iran or that he would be unable to subsist. I am not satisfied that he would face a real chance of harm because of his Arab ethnicity on his return.

52. The applicant also claimed to fear harm as a returning asylum seeker. He left Iran on a lawful Iranian passport which was due to expire [in] 2018. He claimed that the people smugglers in [Country 1] took his passport and he no longer has it, which I accept may be true. Iran does not accept involuntary returnees unless they arrived in Australia after March 2018. This does not apply to the applicant, as arrived in 2013. I am satisfied that if he returns to Iran it will be on the basis that it is voluntary. DFAT¹⁴ reports that if a person is returning on a *laissez-passer* (which can be obtained from an Iranian diplomatic mission on proof of identity and nationality) rather than a passport, they are questioned by the Immigration Police at the International Airport in Tehran, usually for between thirty minutes and an hour, about the circumstances of their departure and why they are travelling on a *laissez-passer* or for longer where the returnee is considered evasive or a criminal history is suspected. The authorities are informed of a person's imminent return if they are travelling on a *laissez-passer*, and from this I am satisfied that they may be able infer that the person sought protection in Australia.
53. The applicant provided a copy of his now-expired passport with his SHEV application, and if he were to choose to return voluntarily it is not apparent to me why he would not be able to apply for a new Iranian passport. However, I accept that he may be issued with a *laissez-passer*, in which case, he would be questioned at the airport in Tehran on return. I am not satisfied the applicant has a criminal history or profile with the authorities. DFAT reports that arrest and mistreatment are not common during the questioning at the airport. I accept that the applicant may be questioned for a brief period at the airport but I am not satisfied that it amounts to serious harm, or that there is a real chance he will be mistreated.
54. Other than this, DFAT indicates that the authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting them for activities conducted outside Iran, including in relation to protection claims. A well-placed source was not aware of voluntary returnees being prosecuted for criticising the Islamic Republic, converting to Christianity or proselytising while abroad on their return to Iran. DFAT assesses that returnees are unlikely to attract attention from the authorities unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism). I do not accept that the applicant spoke out against the Iranian government, or that he has a profile in Iran. I am not satisfied that the applicant was or is of any interest to the Iranian authorities. I am not satisfied that the applicant would face a real chance of serious harm as a returning asylum seeker.
55. Overall, I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

56. 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).

¹⁴ Ibid.

Complementary protection assessment

57. 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

58. 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.
59. 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.
60. I accept that the applicant posted political, anti-Islam and religious material on [social media] in Australia, but I am not satisfied that his activities on [social media] were genuine or that he has any genuine intention to engage in similar activities on [social media] if he returns to Iran.
61. Nor am I satisfied that his posting of material on [social media] in 2017 would give rise to a real risk of significant harm. The applicant claimed that the intelligence services in Iran, who were very broad and strong, were aware of his activities and were after him because they had threatened his family (which I have not accepted). He stated that his name may be on a list. The applicant's former representative argued that anyone looking at [social media] could easily tell that the applicant is a strong opponent of the Iranian authorities, Islamic regime and the Supreme Leader and cited a number of pieces of country information in support of the harm that he would face in relation to his [social media] activity. The post-interview submissions were submitted in February 2021, but I note that the information relied on was mostly dated between 2014 and 2016, which is now some years ago. Country information from that period reported that [social media] was not monitored on a systemic basis and will only be monitored by the authorities if the person has an open page or a friend who is an agent¹⁵. More recent reporting from DFAT¹⁶ is that [social media] is blocked in Iran but not monitored, and that the authorities have little interest in prosecuting people for activities conducted outside Iran, including posting social media comments critical of the government as heavy internet filtering means most Iranians will never see them. DFAT is not aware that the authorities check social media accounts of Iranians returning from abroad.
62. It is now over three years since the applicant posted a small amount of what may be perceived as anti-regime, political and religious material on [social media]. I do not accept that he will continue to post this type of material if he returns to Iran. Even assuming that the applicant's

¹⁵ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", 1 June 2014, CIS28931.

¹⁶ DFAT, "DFAT Country Information Report Iran April 2020", 14 April 2020, 20200414083132.

[social media] page may be publicly accessible or able to be viewed by the Iranian authorities, in light of the information that the authorities have little interest in activities conducted outside Iran, I am not satisfied that the applicant's [social media] activities would give rise to a real risk of any harm, including significant harm.

63. I accept that if the applicant travels on a *laissez-passer* he may be briefly questioned at the airport on his return to Iran, but I am not satisfied that this process would amount to significant harm. I am not satisfied that there is a real risk of the death penalty being carried out, an arbitrary deprivation of life or torture, or that it amounts to severe pain and suffering, pain and suffering that could reasonably be regarded as cruel or inhuman in nature, or extreme humiliation, such that it would amount to cruel or inhuman treatment or degrading treatment and punishment as defined in the Act. I am not satisfied that the applicant faces a real risk of significant harm in this regard.
64. Beyond this, I am not satisfied that there is a real chance of the applicant experiencing any harm if he were to return to Iran. The Federal Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment¹⁷. Having regard to the reasoning and the country information above, I find that there is no real risk that the applicant will suffer significant harm in connection with any of the matters raised.

Complementary protection: conclusion

65. 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.

¹⁷ 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.