



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09462

Date and time of decision: 20 August 2021 17:18:00

J Bishop, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He arrived in Australia by boat [in] May 2013.
2. On 15 September 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 5 July 2021 a delegate for the Minister for Immigration (the delegate) refused the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

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) (the review material).
4. Section 473DB of the Act provides that, subject to Part 7AA, the IAA must review decisions by considering the review material without accepting or requesting new information and without interviewing the applicant. Section 473DC provides that the IAA may obtain new information – defined to mean information that was not before the delegate when the decision was made and I consider may be relevant – but it does not have a duty to get, request or accept any new information, whether the IAA is requested to do so by an applicant, or in any other circumstances. If I get or accept new information, I must not, pursuant to s.473DD of the Act, consider that new information unless I am satisfied that there are exceptional circumstances to justify its consideration. In relation to new information given to the IAA by the applicant I must also be satisfied that it:
 - was not, and could not have been provided before the delegate's decision was made; or
 - is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
5. On 19 July 2021 the applicant contacted the IAA asking for an extension of time because his lawyer's office had temporarily closed due to the COVID19 lockdown and he wanted to provide documents from 2013 indicating the Iranian government was looking for him in Iran. On 20 July 2021 the IAA contacted the applicant and asked for more information. The applicant said he can contact his lawyer by email or telephone but there was no point because he didn't have the money to pay him and he didn't have the documents. The IAA asked for more information about the documents he wanted to provide and the applicant said his family received documents in 2014 and 2015 indicating the applicant was being pursued in Iran. The applicant said he had photographs of these documents on his telephone but he lost that telephone and his family are looking for the letters again. He didn't know how long it would take for his family to find them. On 20 July 2021 the IAA sent the applicant an email about his extension request. The IAA stated the applicant's case had been referred to it on 8 July 2021 and a decision could be made after 29 July 2021. The IAA relevantly stated:

With regard to the matter of your submitting that you are currently unable to afford a lawyer, the IAA notes that its procedures are designed to be simple so that outcomes do not depend on whether you have received professional advice or assistance. With regard to the matter of the documents you have referred to, the IAA notes that you have given no specific indication of what these documents/letters are (which you consider indicate that you were being

pursued in Iran), nor have you provided any indication of what steps you have taken to obtain these documents (beyond your assertion that your family is looking for them), nor have you given any indication of your being able to provide any such documents, if at all, within a reasonably approximate amount of time.

6. Although the IAA did not grant a formal extension of time, it undertook not to make a decision on the applicant's review until after 5 August 2021.
7. On 29 July 2021 the IAA received submissions from the applicant's representative. To the extent the submissions were based on information that was before the delegate I have had regard to them.
8. Although it was not clear, the IAA submissions did appear to contain new information about increased monitoring by the Iranian authorities around significant events like elections (in particular around the elections in June 2021) and information about uprisings still raging in the Ahvaz region during July 2021. The information is very vague and general and does not fall within the ambit of personal. However, even if I accept it could not have been provided before the delegate made his decision, its probative value when assessing the applicant's individual claims, given the lack of detail, is very limited. Overall, I am not satisfied there are exceptional circumstances justifying its consideration and I have not had regard to it.
9. I have considered whether to invite the applicant to provide further information given his reference to his family looking for supporting documentation in Iran. However, it was explained to the applicant at the beginning of his SHEV interview that it was his responsibility to raise all his claims and that he may not have another chance to provide further information to support his claims in the future. The applicant was represented during the SHEV application process (including at the SHEV interview) and over a period of three hours and about ten minutes he was given ample opportunities to put all his claims for protection forward. Yet the applicant made no mention of his family receiving documents indicating he was being pursued in Iran in 2013 or 2014 or 2015. Since the delegate made his decisions, the applicant's representative has taken the opportunity to provide further written submissions which I have considered as outlined above. And, the IAA has ultimately made its decision about six weeks after the delegate's decision. Overall I am satisfied the applicant has had ample opportunities to provide further documentation. Taking into consideration all the information before me, I have decided not to exercise my discretion to invite the applicant to provide further information whether at an interview or otherwise.

Applicant's claims for protection

10. The applicant fears harm in Iran because of his:
 - Actual and/or imputed political opinions - Ahwazi Arab, anti-Iranian regime activist
 - Religion – Christian convert

Factual findings

11. The applicant provided a copy of the bio-page of his Iranian passport and copies of his birth certificate and national identification card and their translations. I accept the applicant is who he claims to be. I accept the applicant was born in Iran and is an Iranian citizen.

12. I find the applicant's receiving country is Iran.
13. In submissions to the IAA, the applicant's representative stated that the delegate didn't give weight to the fact that the applicant has little knowledge of the law and holds fear 'deep in his heart'. It was submitted the applicant was hesitant to tell everything in detail or speak his mind during the SHEV interview and his fear is not easy to overcome after living in Australia for 'a few years'. The applicant attended his SHEV interview with his registered migration agent and it is not apparent to me how the applicant's lack of legal knowledge is relevant given he was represented. I have listened to the SHEV interview. The applicant answered the delegate's questions and was given ample opportunities to put all his claims forward. I am not satisfied the applicant was hesitant to tell everything in detail or speak his mind as claimed.

Ahwazi Arab

14. The applicant identified as an Ahwazi Arab in his arrival interview and he has consistently claimed to have been born in Ahvaz, Khuzestan. The DFAT report¹ indicates Khuzestan is one of the provinces that Arabs predominately live in. Based on the information before me, I accept the applicant's claim that he is an Ahwazi Arab.

Political activities in Iran

15. The applicant said in his last job in Iran he had a computer in the shop he was working at. The shop owner asked the applicant to copy some CD's and USBs about Ahwazi history and culture and some publicity about Ahwazi. He did the same at home on his own computer. The Basij forces stormed the shop more than once, inspected the shop and searched the computer. The applicant was subjected to insults and bad treatment. The last time he was in the shop was just before he left Iran. The owner of the store had left the applicant with some things about Ahwazi and the Basij forces came, searched the shop and found the USB. The applicant ran off. The Basij took the hard disk out of the computer and closed the shop permanently.
16. The applicant said he fled to his friend's home and called his [sister]. His sister brought the applicant some money and told him the Basij forces had arrested a number of Ahwazis. His sister told the applicant not to return home for fear of him being arrested.
17. The applicant got his passport on [date] April 2013 and decided to leave Iran. The shop was closed, the owner had disappeared and no one knew his fate. The applicant was afraid the Basij forces would know where the applicant was and arrest him. He fled Iran on [date] May 2013 via the airport.
18. The applicant told the delegate he feared harm in Iran because he was involved in Ahwazi Arab activities in Iran and has continued his involvement in Australia. The delegate put to the applicant that during his arrival interview he said he was never involved in any political groups or organisations in Iran. The applicant responded he wasn't a member 100% and he was on and off. The delegate put to the applicant that he said he had never been involved in any activities or protests against the Iranian government during that interview and he responded that he was making DVD's and photocopies of information. If he goes back to Iran he will be arrested and put in jail. He watched the protests that occurred from 2003 to 2005. He didn't take part in the protests because he was scared and saw people being hurt. He then said he was not part of any organisations in Iran.

¹ DFAT Country Information Report – Iran, 14 April 2020

19. Civil and political activists can be subjected to travel bans that can be applied without recourse to the courts.² If the applicant held a genuine fear of being arrested by the Basij for his political activities, I find it implausible he would obtain a genuine passport and submit himself to the multiple Iranian authorities checkpoints at the Khomeini International airport. One of those checks is conducted by the Immigration Police who check the person's passport and personal information on a computer system. The passport and exit visa are verified and the data of the passport holder appears on the screen together with a photograph of the traveller. Country information states that the Immigration Police do not have influence over who can or cannot exit Iran and are reliant on the information in the computer system.³
20. The applicant has given inconsistent evidence. He first said he was involved in anti-Iranian regime activities in Iran and then confirmed he wasn't. And, if the applicant was unable to return home and fled Iran because he feared he would be arrested, I find it astounding he would fail to mention those significant details during his arrival interview. Based on all the evidence before me, I am not satisfied the applicant was making DVD's, photocopies and USB's as claimed. Nor am I satisfied the shop the applicant was working in was searched by the Basij, that the applicant had to run off or that the applicant couldn't return home for fear of being arrested. I am not satisfied the applicant was ever involved in any political activities in Iran. I am of the view the applicant was able to leave Iran via the airport without difficulties because he was of no adverse interest to the Iranian authorities at that time.

Political activities in Australia

21. The applicant's written evidence is that he considers the Persian Iranian regime an occupier and rapist of his country and the land of his Ahwazi Arab ancestors. In Australia he has been participating with other Ahwazi Arabs in activities against the Persian regime's occupation.
22. The delegate asked the applicant if he had joined any groups or organisations in Australia and he responded that he had. He has joined the [Organisation 1]. When the delegate asked for the name of the president of this group the applicant responded there were a lot of people. He said the group gathers at one of the members' houses every second month. There are 200 to 300 people in the group and about 20 to 30 people attend the meetings.
23. The applicant said he has attended many protests in Australia but cannot remember the dates. He attended his first protest in April 2014. He has protested outside the Iranian embassy in Canberra and in the centre of Sydney. The last protest he attended was in Canberra a few weeks before his SHEV interview.
24. When the delegate asked the applicant what his motivation was for attending demonstrations and being politically active in Australia, he responded that he feels like a human and it is his right. He can defend their rights in Australia and no one judges him. When the delegate asked why this cause was important to him, he responded he wanted to express his opinion and show the Ahwazi people have lost their land and have been killed.
25. The delegate put to the applicant that he hadn't posted anything on his [social media] page that was controversial about the Iranian government and he responded he has [number of] siblings living in Iran and doesn't want them hurt or to face problems. He said the Iranian

² DFAT Country Information Report – Iran, 14 April 2020

³ Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc., Danish Immigration Service, Danish Immigration Service, 01 April 2009; Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures, Danish Refugee Council, Landinfo and Danish Immigration Service, Danish Refugee Council, 01 February 2013

authorities found out the applicant was active in Australia and went to his family house in Iran and told his mother and father to tell him to stop his activities. When the delegate asked when this happened, he said when he first left in 2013 and recently his family and neighbours were checked. The delegate asked the applicant if he has stopped protesting in Australia because of this warning and he responded that he hasn't. He still attends but doesn't take photographs. He does have some photographs but he doesn't post them on [social media] because of his family. If he returned to Iran he would continue to protest.

26. The applicant said the Iranian authorities went to his family home and told his mother and father to tell him to stop his activities in Australia in 2013 soon after he left Iran. However, the applicant said he attended his first protest in April 2014. And, if the Iranian authorities were coming to the applicant's family home and delivering such warnings as claimed, I find it astounding he would fail to mention such significant information in his written evidence. I do not accept the Iranian authorities have ever come to the applicant's family home as claimed. This raises doubts about whether the applicant's evidence is reliable.
27. The delegate asked the applicant if he would continue to protest in Iran even if protesting would get his family into trouble and he said he would. He said it is his right and he will defend his right. The delegate put to the applicant that his evidence didn't make sense given he said he didn't post anything on [social media] for fear of his family being harmed. The applicant said he would take part in protests but not involve his family. He would do the same as he was doing before and not let anyone know. I was not satisfied the applicant was involved in any anti-Iranian regime activities when he lived in Iran but I accept he could have watched protests. And, I accept the applicant could continue to watch protests if he returned to Iran. However, I am not satisfied the applicant would protest in Iran as claimed.
28. In support of the applicant's claim of political activism he provided a letter from the [Organisation 1] dated 9 September 2017. The letter is typed and does not appear to have any features that would make it difficult to reproduce. The letter is signed by the executive director and stamped with the details of a telephone number, email address, [street] address that does not appear to be complete and a web address. The letter states the applicant was a political and human rights activist and acting in Iran to highlight Ahwazi Arabs suffering. It states the applicant was persecuted and suffered socially, culturally and politically as an Arab fighting for his Arab people and Iranian freedom. Recently the Iranian authorities have increased executions against Ahwazi activists especially those who have got relatives living abroad. It states the applicant is at risk of execution or a lifetime of imprisonment if he returns to Iran. The letter does not provide details about what human rights and political activities the applicant undertook in Iran or how he was persecuted. Nor does the letter indicate how the author became aware of the applicant's activities and persecution. On the applicant's own evidence - which I didn't accept - he was involved in no more than making copies of DVD's, photocopies, and USB's about Ahwazis. This is inconsistent with the contents of the letter. I was not satisfied the applicant was ever involved in political activities in Iran and I am not satisfied the contents of the letter is reliable. I place no weight on it.
29. The applicant provided four photographs that appeared to be taken at the same event. The applicant was wearing the same clothes in each photograph and is with a group of people some of whom are holding the Ahwazi flag. I do not know when the photographs were taken or where. Although the landscape is consistent with Australia. Based on the evidence before me, I am prepared to accept the applicant has participated in one protest since he arrived in Australia. However, I am not satisfied the applicant has attended more than one protest nor am I satisfied he has attended Ahwazi Arab meetings as claimed.

30. The IAA submissions state that the applicant's participation in anti-Iranian demonstrations in Australia is low profile. It was submitted the applicant was not of a "certain considerable profile in Iran" and is not high profile in Australia. He feared information could reach the Iranian regime and cause harm to his family. He also feared being refused protection and forced to return to Iran. It was submitted that the applicant tried to keep a low profile as much as he could to avoid the dangerous consequences of a wrong protection visa decision. As detailed below, the applicant arrived in Australia before the Memorandum of Understanding (MOU) with Iran was reached and he cannot be returned to Iran involuntarily. The applicant has had a migration agent assisting him with his SHEV application since 2017 and I find it astounding he would not know he could not be returned involuntarily. And, if the applicant kept a low profile in Australia for fear of his family being harmed, his claim that he would continue to protest in Iran does not make sense. I accept the applicant has a very low profile in Australia for political activities but I do not accept the reasons for that low profile.
31. I am of the view the chances of the Iranian authorities being aware – or becoming aware – of the applicant attending one protest in Australia is remote. Country information before me indicates the Iranian authorities have numerous cyber intelligence organisations (for example FATA the cyber police and the cyber army) that monitor and pursue activists who express dissenting views online.⁴ Iranian authorities restrict and disrupt access to the internet, block or filter websites considered objectionable – including Facebook, monitor private online communications and censor online content. However, the DFAT report⁵ states the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran including posting social media comments that are critical of the Iranian government. This is because heavy internet filtering means the majority of Iranians would never see such posts. Even if the Iranian authorities did become aware of the applicant's attendance at one protest, I am not satisfied there is a real chance he would suffer any harm because of that low-level involvement.

Non-practising Muslim

32. The applicant told the delegate that he identified as a Shia Muslim in Iran but wasn't into the religion that much. His father forced him to go to the Mosque and he prayed because there would be problems if he didn't. He first started to question Islam when he was about [age] years old because he didn't agree with what was being said at the Mosque. When the delegate asked what was being said, the applicant responded that whatever 'we' do we go to hell. He said he last practised Islam in 2011 or 2012 before coming to Australia. He last went to the Mosque a few months ago for his mother's funeral. I accept the applicant was a non-believing, non-practising Muslim in Iran.
33. The delegate asked the applicant what didn't appeal to him about Islam and he responded that from the beginning he didn't have strong views about Islam or other religions. He didn't like things like having to wear a hijab and the extremists. The applicant told the delegate that his partner is a Sunni Muslim but he told her from the beginning that he wasn't interested in the religion. He accepts his partner's religion and his partner accepts his religion.
34. The IAA submissions state that not many people in Iran adhere to practising Islam and do not regularly attend Mosque. The applicant was one of those people. The IAA submissions referred

⁴ Security Agencies and the Prosecution of Online Activists, International Campaign for Human Rights in Iran (United States), 11 November 2014

⁵ DFAT Country Information Report—Iran, Department of Foreign Affairs and Trade, 7 June 2018; DFAT Country Information Report – Iran, Department of Foreign Affairs and Trade, 14 April 2020

to the delegate's finding that there was not a real chance the applicant would be harmed for being a non-practising Muslim in Iran and submitted that the applicant has not claimed to fear any harm for being a non-practising Muslim in Iran.

35. I accept the applicant's submission that he does not fear any harm in Iran for being a non-practising Muslim.

Conversion to Christianity

36. The applicant claims he is now a Christian and if he returned to Iran he would be killed because of his conversion.

37. The applicant's written evidence was that when he was in Ahvaz he met a group from the church who were meeting in secret. The group distributed some publications about Jesus Christ the saviour. The applicant said he was impressed with the church group and their conversations. He felt a psychological comfort when they talked about Christ. After he arrived in Australia he met and started sharing a house with another Ahwazi Arab A. A had converted to Christianity and would attend church. A would tell the applicant what he was doing at church and that his mind and soul were satisfied. The applicant asked A if he could go to church with him and told him about his involvement with the Christian group in Iran. He first started going to [Church 1] in May 2015 where he met Father [A] and Brother [B]. He was told to believe in the Lord Jesus and he and his family would be saved. The applicant said he kept attending church and decided to get baptised. He was baptised on [date] November 2015. The applicant states he became a Christian and believes Christ is the son of god who died for our sins and rose again. He is confident Jesus is his salvation from sins. His psychological condition has improved and the anxiety that he had since fleeing Iran has faded. He is very happy to know the truth and regretted the years he spent away from Christianity. He feels that the Lord is closer to him than he has ever felt before. Turning to Christianity has helped the applicant overcome his problems and hardship. He has found the self-peace he was seeking in Christ.

38. The delegate asked the applicant how he first became interested in Christianity and he responded that there was a church group in Iran that talked about Jesus. He would go and talk to them about Jesus. He was told Jesus would take away all his sins but in Islam a person will go to hell whatever they do. The delegate asked the applicant what his motivation for changing his religion was and he responded that the biggest things in Australia was he was alone and didn't have anyone. He said a person took him to church where he met Father [A] and Brother [B]. He was socialising at the church and a person was telling him about Jesus helping us in this life and the next. He decided to become a Christian a couple of months before he was baptised.

39. The delegate asked the applicant what values of Christianity he has adopted since his conversion and he responded that he felt relieved and psychologically at ease. He said Christianity gave him peace of mind and relief. In Islam you are scared that if you do something you will go to hell. The delegate asked the applicant what the differences in beliefs between Christianity and Islam were and he responded that the Islamic faith came with wars and countries fighting. Christianity is more peaceful and there is no fighting.

40. The delegate asked the applicant why he considered himself a Christian and he responded that Christianity helped him get out of many problems. He said when people tell him that what he has done is wrong or he is a deserter of his religion his belief grows stronger. He said Jesus Christ has given him lots of gifts. He is working, has a son and a place to live. When the delegate asked the applicant if there was anything about Christianity that didn't make sense to

him, he responded that he hadn't thought about it. He said even when he was a Muslim he just accepted 'things' and didn't argue.

41. The delegate asked the applicant if he had a Christian role model and he responded Pastor [A] was kind and a role model. He said Pastor [A] helps people and distributes food and other things to people in need. The delegate asked the applicant what Pastor [A]'s views of Muslims were and he responded that Pastor [A] was a good man and talked about how Muslims kill and slaughter people. The delegate put to the applicant that Pastor [A] has a well published strong dislike for Islam and supports a ban on Muslim migration. The delegate put to the applicant that Pastor [A] has said the Koran is a virus and Islam a cancer that should be destroyed. The delegate asked the applicant how he felt about Pastor's [A]'s views and he responded he is a good person and everyone has their own opinions. He said Pastor [A]'s views had not affected him and he had witnessed his good deeds. The delegate put to the applicant that he said he believed in the peace of Christianity and his role model is spreading views of hatred and discrimination. The applicant responded that he respects Pastor [A]'s opinion and beliefs.
42. The applicant said he attends [Church 1]. He was going to church once or twice a month but doesn't go that often now because he is working and has a child. He now goes to church once every couple to four months. When the delegate asked the applicant when he last went to church he said about eight months ago when one of his friends passed away. The delegate asked the applicant how he practises his religion given he doesn't attend church that often and he responded that he practises through [social media] but he was not an extremist. He also talks with people in the Christian community. When the delegate asked how else he committed to Christianity he responded by being a good person, being respectful of others and being kind to others.
43. The delegate asked if he sang songs at church and he responded that he did. The delegate asked him to name some of the songs he sung and he responded his English wasn't that good and the songs are sung in English but he prayed. The delegate asked the applicant what his favourite pray was and he responded "thank goodness for the peace god gave us". The delegate asked the applicant if he knew the Lord's Pray and told him the pray started with the words "Our Father". The applicant responded he didn't recall that prayer.
44. The applicant said he got baptised so he could feel Christian. When the delegate asked what preparation he went through in the weeks and months before he was baptised he responded that he didn't remember 100%. He wasn't an extremist. He would go to church and talk to the Father. He said when he was a Muslim and saying prayers, he didn't know what he was saying. He said being baptised washed away his sins and he was born again.
45. The delegate asked the applicant what the basic principles of Christianity were and he responded not to commit sin and to be kind to people. He said Jesus sacrificed his life for all of us and Jesus will come back to earth and peace will prevail. When the delegate asked the applicant who Jesus Christ was, he responded his saviour because he has given him so many things. He has given him freedom, a good life, good food and good living.
46. The delegate said Christmas, Holy Friday and Easter were Christian holidays. When the delegate asked their significance, the applicant responded it was an occasion to get together and pray together for god to forgive us. The delegate asked the applicant what the next significant event in the Christian calendar was and he responded Good Friday. The delegate put to the applicant that Good Friday was a few weeks ago and he responded that he was not 'cluey' about the dates. He said the next significant event was Christmas when Jesus was born.

47. The delegate asked the applicant if he partook in communion at church and he responded the eucharist, the bread and the wine is the blood of Jesus. When the delegate asked the applicant what the bread was, he responded Jesus was sitting with his companions and gave them a piece of bread. When the delegate asked the applicant what he could tell him about the Bible he responded not much. He said the Bible was a book given to us by Jesus and he should respect it. But he doesn't know 'deeply' about it. He said he knows about the story of Adam and Eve being in heaven and god warning them not to eat fruit from the tree. He said Adam and Eve disobeyed what god said and god got upset with them. When the delegate asked the applicant what he thought the story was about he said that god is good and when he tells you to do something you should do it. The delegate asked the applicant if he knew anything about the 10 commandments and he asked if the delegate was talking about what Jesus said to his companions at the last super. The delegate responded that he didn't think it was at the last supper and said there were 10 commandments of the Christian religion and asked the applicant what they were. The applicant responded "no I don't think so". He said he was not that knowledgeable about Christianity but was happy and comfortable with it. Even when he was a Muslim he didn't know much about it. When the delegate asked the applicant if he would practice Christianity in Iran he responded 100%. He said Jesus was in his heart.
48. In support of the applicant's claim of attending church, being baptised and converting to Christianity he provided a Certificate of Baptism indicating he was baptised on [date] November 2015 and two photographs of what appears to be him participating in the actual ritual of baptism.
49. The IAA submissions state the punishment for changing religion in Iran is death. It was submitted that the applicant's parents know he has changed his religion, attended church and been baptised. It was submitted that others in the Iranian community know that the applicant has converted to Christianity and could expose him. It was submitted that the applicant doesn't practise Christianity and could not explain its teachings and fundamental pillars. It was submitted the applicant was baptised and attended the church a few times but was not 'so close to it'. His understanding of Christianity is the same as his understanding of his previous Muslim faith. It was submitted that it is not necessary for every Christian to fully understand the Bible and its teachings. It was submitted the applicant believes he is a Christian and would attend church whenever he is free and able to attend. He is working and has a family. He is busy and doesn't believe studying the Bible is necessary.
50. On the applicant's own evidence he didn't know much about the Bible and he hadn't been to church in eight months. In submissions to the IAA the applicant's representative states the applicant doesn't practise Christianity, he had attended church a few times and he could not explain its teachings and fundamental pillars. But his understanding of Christianity was the same as his understanding of the Muslim faith and the applicant considered himself a Christian. I accept the applicant went to a church a few times because of his loneliness and that he went through the ritual of being baptised. However, the applicant has made no attempt to understand the teachings or fundamental principles of Christianity over a protracted period of time and, despite claiming to be a Christian, he was unaware the significant Christian event of Easter had passed. I do not accept the applicant continued to practice his faith using [social media] when he was no longer attending church that often. I do not accept the applicant ever attended church on a regular basis. I do not accept the applicant's lack of knowledge about the Christian faith can be explained because he is not an extremist. I find the more plausible explanation is the applicant has no genuine interest in learning about and exploring the teachings of the faith. Based on all the evidence before me, I am not satisfied the applicant has ever been a genuine Christian or practised the religion. Even if I accepted the applicant's family and/or members of the Iranian community know the applicant has attended church a few

times and gone through the ritual of baptism, I am not satisfied they consider the applicant a Christian.

Telling others and evangelising

51. The applicant said he called his brother A and told him he had become a Christian. A was angry and told the applicant he had gone crazy, was an infidel and apostate. He was angry with the applicant for a while but contact eventually resumed. A sometimes asked the applicant questions and he answers them. The applicant states he has tried to convince A of the Christian religion because he wants rest and salvation for his family. This appears inconsistent with the applicant's claim to accept his partner's Muslim faith.
52. The applicant states that he spoke with many of his friends about religion and their reaction was harsh. He was accused of being an infidel and cut off their relationship with him. They told the applicant's family including his father, mother, brothers and sisters who were angry with the applicant. His relatives and neighbours were telling the applicant's family that he was an infidel and apostate.
53. His family, but especially his father, reacted harshly to his conversion. His father refused to speak to the applicant at all but his mother did and tried to persuade him to return to Islam. He did not get angry with his father but asked the Lord Jesus to forgive him his sins, to guide him and to help his family and save them.
54. During the SHEV interview the applicant said he tells people he is a Christian and is happy. When he told his brother and parents, they were not happy and said he was a deserter and infidel. He has told his friends and neighbours and doesn't hide his Christianity from other Muslims.
55. During the SHEV interview the applicant said he is on better terms with his brother A now. His sisters are 'OK' but his father is still angry with him. The delegate put to the applicant that he advised his case manager until July 2018 that he was in regular contact with his parents and siblings. The applicant responded that he did speak to his mother and father but felt his father had bad feelings towards him in his heart. The delegate put to the applicant that he sent money back to his father in July 2020 and he responded that he did. The delegate put to the applicant that the information on his [social media] account and sending money to his family in Iran suggests that he does have a relationship with them. The applicant responded that he was following the teachings of Jesus and respecting his seniors. The applicant then had a break with his migration agent. When the SHEV interview recommenced, he said his parents were elderly and his mother has died. Although his father has some hard feelings towards him, he still has to respect him and this is his duty. Jesus said that you have to respect your elders.
56. The applicant appears to have had contact with a case manager every month during the period 10 November 2016 to 10 September 2018. Notes were taken at each contact and it was reported over and over again that the applicant was in regular contact with his family, that his family were well and he had not heard of any issues. On one occasion the note stated the applicant's parents and siblings were well. The applicant did not mention having strained relationships with any of his family members or his father not talking to him. And, when this information was put to him during the SHEV interview, he confirmed he was speaking to his father because Jesus said you have to respect your elders.
57. The delegate asked the applicant if he has tried to persuade others to become a Christian and he said that he does. He tells people that Jesus is their saviour and salvation and will get them

through all their troubles. When the delegate asked how Jesus was going to save or help people the applicant responded that he tries to convince people to go to church and speak to the Father and the Father will convince them. The delegate asked the applicant to pretend he was teaching him about Jesus and why he should become a Christian. The delegate asked the applicant what he would say to him and he responded he would convince the delegate that Jesus is the saviour, he will wash away his sins, he will come back to earth and he will get you through his life. When the delegate put to the applicant that he didn't have any problems or sins the applicant said Jesus gave us commandments like don't kill or disobey your parents. The applicant said you cannot pray at home to become a Christian you have to evangelise. He said he asked his partner to attend church with him but she didn't. The delegate put to the applicant that he hasn't shared anything about being a Christian on his [social media] account and he responded that he is not that active on [social media]. He is busy at work and when he comes home, he is tired.

58. I have found that the applicant's knowledge of the Christian faith is limited and superficial and his evidence about how he would attempt to convert someone to Christianity amounted to telling someone Jesus is their saviour and salvation, that Jesus will get you through all their troubles in life, that Jesus will wash away your sins and will come back to earth. When the delegate asked the applicant how Jesus was going to save or help people the applicant responded that he would convince them to attend church and speak to the Father. If the applicant held the genuine belief that to become a Christian a person has to evangelise, then I find it astounding he would have such a superficial and limited understanding of the religion nearly six years after he was baptised. And, his attempts to convert his partner appear to be limited to asking her to go to church with him. I am of the view the applicant has made no attempt to understand the teachings of Christianity or its fundamental principles because he has no genuine interest in doing so. I do not accept the applicant has ever evangelised or would attempt to do so upon his return to Iran.

Harm caused by removing the applicant from Australia

59. I accept the applicant has a de-facto partner and a [child] who are both Australian citizens. It was submitted to the IAA that the applicant's child would be deprived of his father if the applicant returned to Iran.
60. In essence the claim is that the very act of removing the applicant from Australia would result in harm from being separated. The courts have consistently held that separation from a person's family members in Australia does not meet the definitions of significant harm.⁶ And, separation from family as a consequence of removal cannot be said to be intentional.⁷
61. It was submitted the applicant's child has a right to good quality health care, clean water, nutritious food and a clean environment. The applicant's representative asked what the consequences would be if the applicant's de-facto and child decided to return to Iran with the applicant. The applicant has not claimed that his de-facto and child would return to Iran with him and the submission is speculative. Even if I accepted the applicant's de-facto and child would return to Iran with the applicant, that fact would have no impact on the principle that the act of removing the applicant from Australia does not meet the definition of serious significant harm.⁸

⁶ *SZRSN v MIAC* [2013] FCA 751 (upholding the reasoning at first instance *SZRSN v MIAC* [2013] FMCA 78); *GLD18 v MHA* [2020] FCAFC 2

⁷ *Ibid*

⁸ *GLD18 v MHA* [2020] FCAFC 2

62. I do not accept the applicant faces a real risk of significant harm if he is removed from Australia and returned to Iran.

Refugee assessment

63. 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

64. 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.

65. The applicant claims Ahwazi Arabs had their lands and rights stolen and are subjected to ill-treatment from the Iranian regime. It was submitted to the IAA that Ahwazi Arabs are an oppressed minority in Iran and face mistreatment in detention. There are reports of beatings, torture, sexual violence and forced confessions. It was submitted Ahwazi Arabs cannot wear their Arab attire in public or celebrate their celebrations. They are subjected to persecution for any action they take to show their own identity as Arabs.

66. The applicant completed vocational secondary [education]. He started studying [a major] but he claims that because he was an Ahwazi, he was forced to leave the institute and go back to work. The applicant indicated during his arrival interview that he completed the first semester of tertiary education from December 2012 to February 2013 when he was self-employed. He said during that interview that he decided to leave Iran from the beginning of 2013. The applicant was working when he studied the first semester of a tertiary education and I do not accept he was forced to leave to go back to work. The most plausible reason he didn't continue his studies is that he had decided to leave Iran. I am not satisfied the applicant was forced to stop his studies because he was an Ahwazi Arab.

67. The applicant claimed that he applied for many jobs but because he was an Arab his requests were rejected. He invented a [product] which he registered. But his invention was stolen, manufactured and presented back to the applicant to buy. The applicant couldn't demand his

rights because the person who stole his invention 'governs' him and, because that person was a Persian and the applicant is Arabian, he had the power and authority to do whatever he wanted. The IAA submissions state the applicant's invention was stolen by an Iranian person because of the applicant's race. If the applicant complained he would be interrogated at length.

68. The applicant completed compulsory military services from [February] 2008 to [August] 2009. He was treated like a slave. He worked [in multiple roles] and did [work]. The Persian officers subjected him to many insults and regarded Ahwazi Arabs as traitors who were not loyal to Iran.
69. The applicant claimed that during their festivals they wore traditional Arabian Ahwazi dresses but when they returned home they were "always beaten" and sometimes exposed to firing and tear gas bombs by the Basij. He was forbidden from speaking Arabic and Ahwazi Arabs are forbidden to give their sons Arabic names. He said the names of Arabic cities are being changed to Persian names and they are prevented from learning the Arabic language.
70. The delegate asked the applicant if he had ever been harmed in Iran and he responded his family were harmed when he left Iran. His family were harassed. He said in Iran he was subjected to insults and called a traitor by the Iranian government and officials. He was not allowed to wear his traditional dress, speak Arabic, use Arabic names or celebrate his customs and traditions. He developed a new [invention] and registered the patent but when he checked the patent it had been changed to another person.
71. The delegate asked the applicant to provide examples of how he suffered in Iran because of his ethnicity and political opinions and he responded that when he was on the street shopping with his mother in traditional Arabic clothing he would be told this was not his country. He was treated in a racist manner. The delegate clarified with the applicant that most of his issues related to verbal abuse and he responded that he would have been arrested and beaten if he retaliated.
72. It was submitted that the province of Khuzestan is deprived of essential needs like water and electricity and there are many arrests and executions in Ahvaz city.
73. I accept the applicant is an Ahwazi Arab who has participated in one protest in Australia. Ahwazi Arabs have a long history of political, economic and social discrimination by successive Iranian governments.⁹ Many Ahwazi Arabs live in poverty with limited or no access to employment, education, healthcare, or basic utilities.¹⁰ The US State Department reported in 2017 that the government continued to confiscate Ahwazi property to use for government project development without regard to title deeds.¹¹
74. There are reports in the material before me of ethnic minorities in Iran being arbitrarily arrested and detained in connection with a range of peaceful activities such as advocating for linguistic freedom, organizing or taking part in protests, being affiliated with oppositional parties, campaigning against environmental degradation in their areas; or simply participating

⁹ Iran Human Rights Documentation Center A Framework of Violence: Repression of the Arab Ethnic Minority in the Islamic Republic of Iran, 25 September 2014; Human Rights Watch, Iran, January 2017 (contained in review material); This is what happens to Arab activists in Iran (contained in review material); Iran's Ahwazi Arab minority, dissent against discrimination (contained in review material)

¹⁰ Global Voices, Iran's Ahwazis Continue to Suffer as Two More Disappeared Activists are Executed, 3 March 2018

¹¹ US Department of State, Country Reports on Human Rights Report, 3 March 2017

in religious or cultural activities.¹² Arabs have been targeted for expressing their ethnic identity through Arabic-language poetry and traditional clothing¹³ and in the past, the Iranian regime has conflated mere cultural activity with political activism and views expressions of Ahwazi Arab cultural activism as threats to national security.¹⁴ However, the more recent country information before me indicates that the Iranian government generally accepts the Ahwazi Arab culture and its activities, as long as they are kept within the community and are not perceived as political which could put them on the authorities' radar.¹⁵ Different cultural, social and political activities are accepted for all ages, but it depends on how they are framed.¹⁶

75. For the Iranian authorities the red line is crossed when activities conducted by ethnic minorities are interpreted as separatist.¹⁷ In early 2017 environmental conditions in Khuzestan led to mass protests and demonstrations by Ahwazi against the central government which in turn, led to the arrests of protesters.¹⁸ Environmental issues were also a key driver of largely peaceful protests which erupted across Iran in 2017-2018 involving an estimated 40,000 protesters.¹⁹ Those protests spanned ethnic, religious and party lines and focused on economic hardships but also had a virulent anti-government and anti-regime element and led to mass arrests, although the number of those detained varies significantly.²⁰ Notwithstanding the anti-government and anti-regime element, DFAT assesses that ordinary participants in the protests are unlikely to face action although those identified as having played a leading role are likely to face discrimination, including arrest, monitoring and continuing harassment.²¹ The most recent country information before me indicates that social, cultural and even some political activities among the Ahwazi community are unlikely to attract the interest of the Iranian authorities.

76. Based on the applicant's evidence about his circumstances, I do not accept he was subjected to a level of discrimination, as an Ahwazi Arab, so serious as to amount to persecution, in relation to employment, basic services, property, or in any dealings he had with the authorities. The applicant has completed an advanced level of schooling and I did not accept he was forced to leave tertiary education because he was an Ahwazi Arab. The detailed evidence provided by the applicant in his arrival interview indicated he was, except for a period of about three months, in regular employment. The applicant has lived in stable housing with his parents in Iran and his father and siblings continue to live there. The evidence does not indicate the applicant suffered any social or financial disadvantage amounting to serious harm because of his ethnicity in Iran. I find that there is no real chance the applicant would be subjected to serious harm now or in the reasonably foreseeable future as an Ahwazi Arab who attended one protest in Australia.

¹² Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom), Rights Denied: Violations against ethnic and religious minorities in Iran, 13 March 2018

¹³ Ibid

¹⁴ Iran Human Rights Documentation Center (United States), Framework of Violence: Repression of the Arab Ethnic Minority in the Islamic Republic of Iran, 25 September 2014

¹⁵ Ibid

¹⁶ Danish Immigration Service and Danish Refugee Council, Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs, February 2018

¹⁷ Danish Immigration Service and Danish Refugee Council, Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs, February 2018; Global Voices, Iran's Ahwazis Continue to Suffer as Two More Disappeared Activists are Executed, 3 March 2018; Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom), Rights Denied: Violations against ethnic and religious minorities in Iran, 13 March 2018

¹⁸ al-Arabiya (United Arab Emirates), Ahwaz's environmental woes at the epicenter of crisis in Iran, 16 February 2017

¹⁹ DFAT Country Information Report—Iran, 7 June 2018

²⁰ Ibid

²¹ DFAT Country Information Report – Iran, 14 April 2020

77. The applicant no longer has a passport and in order to return would need to obtain documentation to facilitate his travel. While officials provide assistance to Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.²² However, Iran and Australia signed a MOU on Consular Matters on 19 March 2018 to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.²³ The applicant does not fall into this category and I am satisfied there is not a real chance the applicant will be returned to Iran involuntarily.
78. If the applicant did return to Iran in the foreseeable future, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities. Those who return on temporary travel documents are questioned by the Immigration Police at the airport about the circumstances of their departure and the reasons for travelling on a temporary travel document. This questioning takes between 30 minutes and one hour but can take longer if the returnee gives evasive answers or is suspected of having a criminal history. Arrests and mistreatment are not common during this process. I accept the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. But I am not satisfied the applicant would face a real chance of serious harm from being questioned by the Immigration Police on his arrival in Iran.
79. Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.²⁴ People with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.²⁵ DFAT's more recent report states that Iranian authorities pay little attention to failed asylum seekers on their return and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.²⁶ This includes posting social media comments critical of the Iranian government (heavy Internet filtering means most Iranians will never see them), protesting outside an Iranian diplomatic mission, converting to Christianity or engaging in LGBTI activities. I have found that the applicant was of no adverse interest to the Iranian authorities when he left Iran. And, although I have accepted he has gone to church a few times, been baptised in Australia and attended one protest, I am not satisfied the Iranian authorities would have any adverse interest in those past activities. The applicant told the delegate he has not been convicted of any crimes in Australia. I am of the view that the applicant would be of no adverse interest to the Iranian authorities if he returned to Iran.
80. DFAT's most recent assessment is that Iranian authorities pay little attention to failed asylum seekers on their return and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.²⁷ Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists. The applicant does not fall into this category and I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return for any reason. I am not satisfied the applicant will face a real chance of any harm from the Iranian authorities or any other group or person due to being a failed asylum seeker from a western country.

²² DFAT Country Information Report – Iran, 14 April 2020

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ DFAT Country Information Report – Iran, 14 April 2020

81. I have considered the applicant's personal characteristics and circumstances against the country information before me. Taking into consideration those of his claims which I accept on a cumulative basis, I find that he would not face a real chance of serious harm amounting to persecution, now or in the reasonably foreseeable future.

Refugee: conclusion

82. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

83. 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

84. 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.

85. 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.

Qualifications to the real risk threshold

86. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

87. The applicant continues to have his father and siblings living in Iran who he remains in contact with. The applicant is educated, had accommodation and worked in Iran and I am not satisfied he would be unable to support himself if he decided to return.

88. I accepted that as an Ahwazi Arab the applicant could be subjected to a level of discrimination. I have accepted that the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. But, I was not satisfied that the applicant would be returning with an adverse profile and I am not satisfied that being subjected to a level of discrimination and/or being questioned by the Immigration Police would ever amount to suffering significant harm within the meaning of s.5(1) and s.36(2A) upon his return to Iran now or in the foreseeable future.
89. The “real risk” test in the complementary protection provisions imposes the same standard as the “real chance” test applicable to the assessment of “well-founded fear”.²⁸ I am not satisfied that, having regard to the applicant’s profile, that he will face a real risk of significant harm on his return to Iran because he is an Ahwazi Arab or for any of his other claimed reasons – including the potential separation from his partner and child.
90. I accept that the applicant will probably be identified as a failed asylum seeker should he choose to return to Iran but I am not satisfied he will face a real risk of any harm on that basis.
91. Considering the applicant’s claims for protection together, I am not satisfied he faces a real risk of significant harm for any of his claimed reasons should he return to Iran now or in the reasonably foreseeable future.

Complementary protection: conclusion

92. 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.

²⁸ *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

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.