



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN

IAA reference: IAA21/09632

Date and time of decision: 8 September 2021 09:37:00

S Kamandi, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim and of Pashtun ethnicity from the Sindh province of Pakistan. He arrived in Australia in June 2013 and on 13 July 2017, lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 3 August 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the applicant a visa on the basis that he was not a person in respect of whom Australia owed protection obligations. While the delegate accepted that the applicant's family may have been subjected to extortion attempts by criminal groups because they owned a transportation business, she did not accept that the applicant was kidnapped or personally targeted for extortion by the Nizamani group. The delegate was not satisfied that the applicant faced a real chance of serious harm or was at a real risk of significant harm at the hands of the Nizamani group or would be targeted for extortion by criminals because he would be perceived as wealthy due to his extended stay in Australia.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims as set out in his SHEV application/statement can be summarised as follows:
 - The applicant was born and resided in Sanghar, Sindh province in Pakistan. He is a Sunni Muslim and of Pashtun (Pathan) ethnicity. The applicant's mother, siblings, wife, and daughter all remain in Pakistan.
 - In 1997, after completing year [Number], the applicant joined his father's goods transportation business.
 - The Nizamani ethnic group were operating as a mafia in the applicant's area and were charging business owners protection money. The group was influential and had the support of the police and had connections with the Pakistan Muslim League Functional political group in Sindh.
 - In 2007, the Nizamani people took the applicant's family's vehicle, which was found without tyres and parts of the engine. The family lodged a First Information Report (FIR) with the police. The police did not charge anyone in relation to this incident.
 - In October 2011, the applicant was kidnapped. He was detained for 20 days and released after his family paid ransom money.
 - In November 2012, the applicant was shot at near the Mirpur Khas [Location]. He escaped without injury. After this incident, he received threatening calls demanding money to operate their business in the area. While the applicant's father and brothers decided to pay, the applicant refused to pay protection money and decided to sell his truck and use the money to escape the country.

- The applicant was in hiding from November 2012 until April 2013 and considered all options. He was unable to meet the ongoing demands for money and was left with no option but to depart the country in April 2013.
 - The Nizamani group do not spare anyone who does not obey them and make example of those who dare to speak against them.
 - The applicant fears that he would be killed by the group. The state authorities would not protect him.
5. At the SHEV interview, the applicant also claimed that because he has been living in Australia for eight years, he would be perceived as wealthy and would be targeted/extorted by the Nizamani group, if returned to Pakistan.

Refugee assessment

6. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

7. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. The applicant has consistently claimed that he was born and lived in Sanghar, Sindh province, in Pakistan. The delegate was provided with documents, including the applicant’s Pakistani passport, confirming his identity and nationality. I accept that the applicant was born and resided in Sanghar and that he is a national of Pakistan. Pakistan is the receiving country for the purposes of this review.
9. The applicant has also consistently claimed to be a Sunni Muslim and at the SHEV interview, confirmed that he is of Pashtun ethnicity. I accept that the applicant’s evidence in this regard and as noted in the delegate’s decision, apart from fearing the Nizamani group in his area, the applicant has not claimed to fear harm based on his religion or ethnicity if returned to Pakistan.

10. The applicant's primary claim is that his family, the owners of a goods transportation business in Sanghar, were the subject of extortion by the Nizamani group in the area and that he fears harm at the hands of this group if returned to Pakistan.
11. At the SHEV interview, the applicant confirmed that his father owned a transport business with three trucks with six drivers, delivering goods, such as vegetables. He also stated that after his father passed away, the business was transferred to his name and that he sold the business prior to coming to Australia. He stated that he left his family money and that while one brother owns his own business, the others do odd labouring jobs to support themselves.
12. The applicant has consistently claimed that the Nizamani people operated as a mafia in his area and charged all business owners protection money. His evidence does not indicate that his family were targeted for extortion for reasons of their religion or ethnicity and the information cited below does not indicate that the Nizamani ethnic group targeted people based on ethnicity or religion.
13. In his SHEV statement, the applicant claims that the Nizamani people had very strong ties with politicians, particularly the Pakistan Muslim League Factional, and worked with the politicians by keeping the people in fear. He claims that the Nizamani people were operating with complete immunity and without anyone checking their activities. Their modus operandi was to ask people to pay protection money or they would take the people's vehicles by force and charged them money for the return of their vehicles. The applicant states that in September 2007, the Nizamani people took his family's vehicle, which they found a few days later without tyres and the main parts of the engine. He claims that although they lodged an FIR, the police took no action. The applicant has not provided any evidence, such as the copy of the FIR, to substantiate this claim.
14. At the SHEV interview, the applicant was asked several questions about his claimed interactions with the Nizamani people, his reasons for departing Pakistan and why he feared returning to the country.
15. When asked why he left Pakistan, the applicant stated that after his father passed away, "people" were asking for money from him. The applicant stated that he remained in the area for one year after his father passed away and that for three months he lived underground. This seems to suggest that his father passed away sometime in 2012. When asked why he was asked for money, the applicant referred to monthly payments and when asked when the people started asking for money, the applicant stated that his father used to give them money and that after his father's death the people continued to ask him for money. The applicant stated that at the beginning he did give the people money, but as they continued to increase the monthly amounts, he refused to pay them as he could not afford their demands. He confirmed that the people he was referring to were the Nizamani people, a group well connected with the Pakistan Muslim League Functional who operated in the area. When asked how he knew that the Nizamani people were connected to this political group, the applicant stated "that" they used to hold protests and he used to see "them" there. He referred to the Nizamani people as thugs that asked all business owners in the area for money and that all business owners were required to pay monthly amounts of money in order to operate their businesses.
16. Regarding his personal interactions with the Nizamani group, in his SHEV statement, the applicant claims that in October 2011, he was kidnapped for 20 days and that his family paid ransom money to secure his release. He also claims that in 2012, he was fired at near Mirpur Khas [Location]. He escaped injury and returned home. After this incident, they received

threatening calls with demands for more money and although his father and brothers decided to pay, the applicant refused to pay as he had nothing to pay. He decided to sell his truck and from November 2012 he went into hiding until April 2013 when he departed the country.

17. As noted in the delegate's decision, at his arrival interview, the applicant stated that he was kidnapped in October 2012. At the SHEV interview, the applicant did not refer to having been kidnapped but indicated that he was shot at in his "own office" and that he was also attacked at a [Location] in the city, but the police closed their eyes and blamed him for the attack. When asked to clarify, the applicant stated that the police told him that he must have done something wrong or involved himself with the group to have been attacked and that after that he was living underground for two or three months in his own home and then his friend helped him to get out. When asked to explain how he lived underground, the applicant said that he was living in hiding. When asked how his family supported themselves while he was in hiding, the applicant stated that he sold his business to his friend and told him to look after his family. He also stated that his friend sold the business and that the business is no longer in operation. When asked how he managed to stay in the area with his friend, given his claims that the Nizamani people were influential and that he could not go elsewhere because they had connections and would find him, the applicant stated that his friend lived in the Nizamani area and lied to them that he did not know of the applicant's whereabouts.
18. Country information reports¹ before the delegate indicates that Sindh is a major centre of economic activity in Pakistan and has a highly diversified economy ranging from heavy industry to agriculture. While there are no reports of the Nizamani group extorting business owners in the Sanghar area as claimed by the applicant, there were a number of reports regarding extortion of transport business owners by local representatives in the Karachi area; reports of a clashes between Nizamani and Bugti tribes, which the applicant is not a member of, and the defeat of the Pakistan Muslim League party in the Sanghar area. In 2014, it was reported that there were clashes between the Nizamani and Bugti tribes in the Sanghar area with police raiding the Nizamani's residence in connection with the case. There was also a report of gun battle between the police and Nizamani clansman in Sanghar city regarding some criminal activity in the area resulting in arrest and warning of a Nizamani former advisor to the chief minister. This seems to be in contrast the applicant's claims that the Nizamani people were operating with immunity and that the police did not take any action against them. In 2017, it was reported that, apart from gangsters and criminals, local representatives also started collecting extortion in Lea Market and Kalakot areas in Karachi, resulting in transporters and bus owners staging a protest. It was reported that two councillors involving in extorting money from transporters belonged to the Pakistan Muslim League and that the police were aware of these activities but were working hand in glove with them. A further 2017 report indicating that the Pakistan Muslim League, operating in the Sanghar area was losing political ground and that after the 2013 elections, the party was unable to sustain its political strength, even in the stronghold district of Sanghar, and that in the Sanghar's local government elections held in January 2016, the party was defeated. I also note the 2015 United States Institute of Peace report² which indicates that criminal activity

¹Government of Pakistan, "Sindh, Pakistan", 1 January 2011, CX255853; News International -Pakistan, "How functional is the League", Zulfikar Kunbhar", 24 September 2017, 20210803133240; Express Tribune (Pakistan), "Councillors collecting extortion, allege transporters", 17 July 2017, CXC90406610491; Pakistan Today, "Clashes erupt over Nizamani, Bugti land dispute", 30 September 2014, CX1B9ECAB12843; Dawn, "Sanghar closed amid day-long gun battle between police, clansmen", 1 October 2014, CX1B9ECAB12842.

²Huma Yusuf and Syed Shoaib Hasan, United States Institute of Peace, "Conflict Dynamics in Sindh", 26 January 2015, CISEC96CF169.

by criminal gangs, particularly kidnapping for ransom, was an issue in some areas in Sindh, which I note did not include the applicant's home area of Sanghar.

19. Given the applicant's consistent evidence that his family, owners of a transportation business in the Sanghar area, were extorted and had to pay protection money to the local Nizamani group; considered together with the country information which indicates that Nizamani group, supporters of the Pakistan Muslim League party, were present in the applicant's area; and reports of local representatives extorting business owners in the Sindh province; I am willing to accept the applicant's claims that his family were paying protection money in order to operate their business. I also consider it plausible that after his father's death, the applicant who had carriage of the business, initially complied with the demands, but as the amount for protection money increased, he decided to sell the business. However, the applicant's evidence regarding his claimed targeting and attack by the Nizamani group is problematic and, in my view, unconvincing.
20. On the applicant's evidence, it appears that his father passed away sometime in 2012 (Possibly around April 2012 as the applicant claims that he remained in the area for about a year after his father's death). The information in his SHEV application indicates that he resided at his family residence in Sanghar and remained working in the family's transport business until June 2013, which I note is when he arrived in Australia, rather than when he departed Pakistan in April 2013. This information appears to be contrary to the applicant's evidence at the SHEV interview that he was in hiding from November 2012 to April 2013, residing at a friend's house who was living in the Nizamani area within Sanghar, and that he sold his business to his friend while in hiding.
21. There are also a number differences in the applicant's evidence regarding the attacks he claims to have endured at the hands of the Nizamani group. As noted above, at the arrival interview, the applicant stated that he was kidnapped by the Nizamani group in October 2011. In his SHEV statement he states that this occurred in October 2012 and at the SHEV interview, when asked about his experiences in Pakistan, he did not refer to having been kidnapped and held for 20 days by the Nizamani group. While I have had regard to the fact that this event is claimed to have occurred some years ago and the applicant may have had difficulty recalling the year in which this occurred, I consider that if true, the applicant would have mentioned having been kidnapped and detained for 20 days during his SHEV interview. In addition, although the applicant has consistently claimed that he was shot at by the Nizamani people and that the police did not assist him, his evidence about where he was shot at has not been consistent. For instance at the SHEV interview, the applicant stated that he was shot at "his own office" in the city, while in his SHEV statement he referred to having been attacked near Mirpur Khas [Location], when "they" opened fired on his truck. Furthermore, I found the applicant's evidence that he was in hiding prior to his departure from Pakistan problematic and implausible. The applicant's evidence about the period that he was in hiding is internally inconsistent. While in his SHEV statement he states that he was in hiding from November 2012 until April 2013, a period of about five months, at the SHEV interview he kept referring to having been in hiding for a period of two or three months prior to his departure from the country. His evidence at the SHEV interview that he sold his business to his friend and that he hid at his friend's house in a Nizamani area is not referred to in his SHEV statement and in my view was fabricated in response to the delegate's questions about how he managed to be in hiding in the area and how he managed to go to Karachi to depart the country while in hiding. When the delegate observed that the applicant started encountering problems with the Nizamani group in October 2011, yet he remained in the area until 2013, and asked why he did not leave the area, the applicant simply stated that

“they” had connections everywhere and that a friend told him that Australia is a country he can find help and refuge.

22. At the SHEV interview, the delegate asked if anything had happened to the applicant’s family since his departure from Pakistan. The applicant stated that “they” used to send threatening letters that they would find and kill him, but they stopped because they became aware of where the applicant is living. When asked how they know where the applicant is living, he stated that “I used to talk to my brothers and friends”. When asked if his family have been targeted by the Nizamani group, the applicant responded in the negative. The applicant stated that one of his brothers has his own truck which he drives. When asked if his brother had any problems with the Nizamani people, the applicant said, “maybe he is giving his share of money” and that his brother doesn’t tell him much.
23. In light of what is set out above, I accept that the applicant and his family were required to pay money to the local Nizamani group while operating their business and that he sold the business prior to departing the country in April 2013. I do not accept the applicant’s claim that their vehicle was taken and damaged by the Nizamani people in September 2007. Given his evidence that his family complied with protection money payments and that the group targeted those who did not make the payments, it is not apparent why the Nizamani people would have taken and damaged the applicant’s family’s vehicle. Furthermore, the applicant has not provided any evidence, such as the claimed FIR lodged with the police, to substantiate this claim. I am also not satisfied of the credibility of the applicant’s claims regarding having been kidnapped or shot at by the Nizamani group and do not accept that he was personally targeted or attacked as claimed. As noted by the delegate the applicant remained in the area and operated his business, and according to information in his SHEV application, up until his departure from the country. While I accept that the applicant sold the business, I am not satisfied that he was in hiding, sold his business while in hiding or that he had any issues, apart from paying protection money, as he was residing and operating his business in the area until his departure in April 2013. I do not accept that the applicant left Pakistan because of the claimed attacks by the Nizamani group or that he was a person of interest to the group for the reasons claimed or otherwise.
24. At the SHEV interview, the delegate also put to the applicant that he no longer owns a business and has been away from the country for eight years and asked why would the Nizamani group be interested in him if he returned to Pakistan. The applicant referred to his family telling him that “they” know where the applicant lives. When asked if he owed any money to the group, the applicant responded in the negative and that “they know that the applicant has been living abroad” and “they know the power of the dollar”. The delegate also put to the applicant that the Pakistan Muslim League are no longer in power and have been defeated as a political party and that country information indicates that serious crime across Pakistan has been reduced due to the government military operations. The applicant stated that the while “their” political power has reduced, “they’ are still there. In response to the delegate’s observation that criminal activity in Pakistan has reduced since his departure and that police and the rangers have arrested many people involved in crimes such as robbery and extortion, indicating that the authorities do provide protection and address criminal activity, the applicant stated that “they” would still be after him as they know that he has been living overseas for eight years and would think that he has money. Apart from what he stated at the SHEV interview, the applicant did not provide any further evidence to the delegate to support his claims that the Nizamani people or other criminals in his area are aware of his residence in Australia or that people returning from abroad are targeted because they are perceived as wealthy. Furthermore, the applicant has not provided any information or submissions in response to the delegate’s rejection of his claims that he would

face harm at the hands of the Nizamani group or other criminals given that he no longer owns a business, or that he would be perceived as wealthy and targeted after his return from Australia.

25. The 2019 DFAT report³ indicates that while security situation varies across the country and militant attacks, who are reported to also carry out crimes in the areas they operate, can occur anywhere, in 2018, there was a 62 percent decrease in attacks in Karachi and 57 percent reduction in Sindh province (excluding Karachi). Security forces have also sought to tackle violent and organised crime across the country, particularly in large urban centres such as Karachi. The Rangers and police have arrested large numbers of people allegedly involved in kidnap, robbery and extortion in Karachi in recent years. DFAT understands that serious crime across Pakistan, especially in Karachi, has reduced significantly since the implementation of military operations such as *Zarb-e-Azb*, *Radd-ul-Fasaad* and the NAP. The 2020 Kidnap for Ransom Insight report⁴ indicates that kidnapping for ransom is commonplace in Pakistan generally and that Pakistani expatriates who are perceived as wealthy and local NGOs are targeted by criminal and militant groups. The 2020 EASO report⁵ does not refer to such attacks and notes that violence against civilians mainly occur in Karachi district and there is no mention of criminal activity such as extortion or kidnapping in the area of Sanghar. The 2020 PIPS⁶ report indicates that there was a decrease in terrorist attack in the Sindh province with most terrorist attacks occurring in Karachi, mainly carried out by nationalist groups. The report does not include any information indicating the prevalence of criminal activity, such as extortion or kidnapping, in the Sanghar region.
26. On the applicant's evidence, I am not satisfied that he would be of interest or targeted for extortion by the Nizamani group or other criminal groups for the reasons claimed. I note that the applicant's siblings have remained in the area and one of his brother's is operating a business. At the SHEV interview the applicant confirmed that his family have not been targeted by the Nizamani group or otherwise prevented from working. The applicant has also not satisfied me that the Nizamani people know that he is residing in Australia or that he would be perceived as wealthy if returned to Pakistan. His evidence at the SHEV interview was that he had no money to take back to Pakistan and that he sold his family business, which was the subject of the extortion by the group, before coming to Australia. There is no evidence to substantiate his mere assertion that the group threatened his family or have become aware of his current residence in Australia. As noted above, the country information indicates that the security situation in Pakistan has improved since the applicant's departure in 2013 and while there are reports of extortion and kidnapping in Pakistan generally, the information indicates that violence and militant attacks have reduced due to government measures. While Karachi is noted as a problematic area for the authorities in terms of criminal groups and attacks by nationalist groups, the information does not support a conclusion that there is a prevalence of criminal activity in Sanghar region or that people returning from overseas are targeted due to perception of wealth or otherwise in the Sanghar area, where the applicant is very likely to return. Although the applicant, at one point in his interview, indicated that his wife and child reside in Peshawar with his father-in-law, I note that earlier in the interview, he confirmed that his whole family, including his mother, siblings, wife, and child all reside in the family home in Sanghar. The applicant has not indicated that he would not be returning to Sanghar, where his family reside.

³ DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409.

⁴ Constellis, "Kidnap for Ransom Insight Report - November 2020", 30 November 2020, 20201208122229.

⁵ European Asylum Support Office, "Pakistan: Security situation", October 2020, 20201102100212.

⁶ Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2020", 15 June 2021, 20210630123526.

27. Considering the applicant's circumstances, I am not satisfied that the applicant faces a real chance of any harm from the Nizamani group or other criminal groups for any of the claimed reasons if returned to Pakistan. While I note the applicant's evidence at his arrival interview that the political group Muttahida Qaumi Movement (MQM), operated in his area, the applicant has not provided any further details in his SHEV application or SHEV interview relating to MQM activities in his area, or that he faced any incidents involving this group nor has he claimed to fear any harm on this basis.
28. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J) of the Act.

Refugee: conclusion

29. 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

30. 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

31. 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.
32. 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.
33. I have found above that the applicant does not face a real chance of harm for any of the claimed reasons. The Federal Court⁷ has held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm.
34. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Pakistan.

⁷ MIAC v SZQRB (2013) 210 FCR 505.

Complementary protection: conclusion

35. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.