



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA21/09802

Date and time of decision: 15 October 2021 14:16:00

I Sheck, 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) is an Iraqi national from Zubair in Basra governorate. He departed Iraq [in] June 2013 and arrived in Australia [in] July 2013. On 25 January 2017 he lodged an application for a protection visa (PV).
2. On 27 August 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate did not accept that the applicant was of any personal interest to militia groups including the Asaeb Ahl Al-Haq (AAH) in Iraq. The delegate concluded that the applicant would not face a real chance or a real risk of serious or significant harm in Iraq due to being a Bidoon, a Sunni Muslim with secular views, due to the security situation in Basra governorate, or for drinking alcohol.

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. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection on 9 August 2013. The applicant provided details of his claims for protection in a statement of claims lodged with his PV application. On 12 February 2021 the applicant attended an interview with the delegate by videoconference (the PV interview), at which his then representative [named] of [agency] was present. The applicant claims:
 - He was born in Kuwait to a Bidoon family but he and his family were expelled from Kuwait following the invasion by Iraq in 1991. The family resettled in Basra governorate, Iraq and were subsequently granted Iraqi citizenship by the Saddam regime. The applicant was subject to bullying, discrimination and racism due to being a Bidoon. He was mocked due to his accent and dialect and called a Kuwaiti;
 - He and his family are Sunni Muslims. He attended mosque regularly until Sunni mosques began to be targeted in the sectarian violence. He then met some secular young men and associated with them socially. From around 2007 he started drinking alcohol. If he had been caught by the militias he would have been shot on sight due to this;
 - In June 2013 there were two attempts on his life. He went to stay with a friend for a few days and then fled the country, travelling to Australia;
 - His cousin was kidnapped and killed by a militia group. There is still no safety in Iraq, there are still bombs and killings and mayhem. He is now married and has a [child]. His wife and [child] are Australian citizens. He cannot take them to live "in hell" in Iraq, he cannot live without his family therefore he cannot live in Iraq;
 - He holds political opinions adverse to the current Iraqi government.

Factual findings

5. The applicant's evidence regarding his family, education and background has been consistent and I am satisfied that it is as stated. Based on the information provided in his arrival and PV interviews, his PV application and identity documents, I find as follows: the applicant was born on [date] in Kuwait. He and his family relocated to Iraq around 1991 and were subsequently granted Iraqi citizenship. He is a Bidoon of Arab ethnicity and Sunni Muslim faith. He has [specified family members]. His parents and siblings all remain in Basra governorate. The applicant undertook primary schooling and ceased studies after [grade]. The applicant was employed in [Industry 1] and as [an Occupation 1] in Iraq, finally working in his father's shop from 2010 to June 2013. He has undertaken some [Industry 1] work in Australia. He married [in] May 2019 and his [child] was born on [date].
6. I have found above that the applicant is of Sunni Muslim faith. In her decision the delegate assessed whether the applicant faced a real chance of harm due to holding secular views. I am not of the view that the applicant claims to fear harm on this basis. Although he has said that he had secular friends, he also noted in his statement of claims: "Stopping from attending mosques did not stop the Shi'a militias from targeting me because of my faith." I conclude that the applicant remains a Sunni Muslim but did not attend mosque in Iraq due to the fear of sectarian violence. He also stated in his statement of claims that he does not pray and would be perceived as an apostate by Sunni militias. I conclude that the applicant is a non-practising Muslim.
7. The applicant has consistently stated that he departed Iraq due to two events that occurred in early June 2013. The first of these events occurred [in early] June 2013. In his arrival interview the applicant stated that he was coming home at night from a club, a hangout for young guys, when he was chased by a car. He thought that this had occurred because "they don't want any Sunni young men to hang out in a club". In his statement of claims the applicant stated that he was coming home from a friend's house at about 2pm when he was chased by the car. Someone called his name and asked him to stop but he ran home. The same night he heard shooting and was later told that Sunnis in his area had been killed. In the PV interview the applicant said that he had been to a meeting with other young men. He was walking home. It was about midnight. The people in the car knew that he walked home late at night so they knew he would be alone. They knew he used to go to the mosque and joined the secular group and they didn't like that. It was the AAH militia who targeted him, because he didn't like their sectarianism.
8. The second event occurred [later in] June 2013. In his arrival interview the applicant stated that he was hanging out at [a location] with two friends. A car pulled up and an armed masked man got out and began firing at the applicant and his friends. The applicant has at no point stated whether anyone was wounded or killed during this incident. In his statement of claims the applicant outlines the same event, adding that the gunman shouted anti-Sunni abuse at the applicant and his friends. The event as described by the applicant in the PV interview varied somewhat; the applicant stated that [an event] was in progress. There was a large crowd, not just Sunni but Shia, Christians, Yazidi. The gunman had his face covered and started shooting randomly. The delegate asked the applicant whether the gunman was looking for him and the applicant responded that he was: "he was shooting at me, he was looking for me, he was intent on killing me".
9. Although the applicant has been consistent in his claims that these two events occurred, and the dates that they occurred, there has been some variation to the applicant's narrative over time. In relation to the [first event in] June 2013, I accept that the applicant was briefly chased

by unknown parties in a car when walking home alone. The applicant has asserted that the people in the car were AAH militia and that they were targeting him. The Asaeb Ahl Al-Haq is a Shia militia group.¹ I do not accept as plausible that a Shia militia group would target a Sunni youth because he had become secular or that they would even know when a Sunni individual had ceased attending mosque. I note that by the time the applicant reached his home (on foot) the people in the car had given up the chase, which would not support that he was their specific target. Similarly, I accept as plausible that the applicant was with friends [later in] June 2013 when a firearm was discharged in their direction. I consider that this may be consistent with the type of actions militia members may undertake, as country information notes that they are accused of committing abuses against civilians and engaging in criminal activities.² I do not accept that the gunman was targeting the applicant and conclude that this is an embellishment made to further his claims for protection. I am not satisfied that the applicant was of adverse interest to any militia groups, including the AAH, prior to his departure from Iraq in 2013.

10. The applicant noted in his statement of claims that he started consuming alcohol in 2007 but this was risky, as the militias killed young men found drinking or carrying alcohol. In the PV interview the applicant stated that alcohol was sold by Christians. There were places in Basra where a person could drink but it was not safe to go to these places. The applicant obtained his alcohol from a local seller in his neighbourhood. His family did not know he drank as his father did not approve. The applicant was not asked whether he still drinks in Australia or if he would do so, if returned to Iraq. I will however consider whether he would face a real chance of serious harm, should he drink alcohol in Iraq.
11. The applicant also submits that he would not be able to return to Iraq as his family could not live there and he could not live without his family. The applicant married in 2019. His wife was born in Baghdad, Iraq, and the applicant states she is an Australian citizen. Their [child] were born [on date]. The applicant has provided no reasons why his family could not travel with him, should he be returned to Iraq. The applicant added at the PV interview that he holds political opinions adverse to the current Iraqi government and I accept that he does.

Refugee assessment

12. 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

13. 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

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iraq', 9 October 2018, CIS7B839419766; 2.36

² Ibid

- 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.
14. The applicant is a national of Iraq and Iraq is his receiving country. He holds political opinions adverse to the current Iranian government. The applicant has not claimed to have been politically active at any time or to have made public statements relating to his political views. I am not satisfied that the applicant faces a real chance of harm in Iraq due to his privately held political views against the Iraqi government.
15. The applicant is a Bidoon. In relation to whether he is at risk of serious harm due to this, some reports in the review material note that the Bidoon community faces a high rate of poverty and a precarious living situation, however this relates only to stateless Bidoons or those who do not hold Iraqi ID cards, nationality certificates or PDS (Public Distribution System) cards.³ The applicant and his family are Iraqi nationals therefore this assessment does not apply to them.
16. In relation to the applicant's situation, the country information does not indicate that Bidoon communities are subjected to any targeted violence,⁴ however societal discrimination against ethnic and religious minorities including Bidoon is widespread, resulting in difficulty in accessing employment, housing, and services, including education. This reflects nepotism, sectarian identity and societal prejudice rather than discriminatory government policies.⁵ The applicant has claimed to have had difficulties in accessing employment and was mainly self-employed as [an Occupation 1] or worked for his father in his father's shop. The applicant also worked on a casual basis in [Industry 1] in Iraq and reported at the PV interview that one of his brothers currently undertakes casual work in [similar jobs]. His [specified siblings] are unemployed. I note that unemployment is high in Iraq, at 11 per cent, and labour force participation, at 48.7 per cent, is among the lowest in the world.⁶ Although the applicant may continue to have some difficulties in this area, should he return to Iraq, the country information does not support that he would be denied all employment such that he would be unable to subsist.
17. The applicant has claimed that he was subject to verbal abuse in Iraq due to his accent or dialect and I accept that he may again be subject to such harm in the future. While I accept such treatment is discriminatory and may have been hurtful, I find that it is a low level of discrimination and does not constitute serious harm. The review material does not support the conclusion that the applicant would face a real chance of serious harm due to being a Bidoon, if returned to Iraq.

³ European Asylum Support Office (EASO), 'EASO Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019, 20190308091632; p149

⁴ DFAT, 'DFAT Country Information Report Iraq', 9 October 2018, CIS7B839419766; 3.85

⁵ Ibid; 3.2

⁶ DFAT, 'DFAT Country Information Report Iraq 17 August 2020', 202008171105936; 2.23

18. The applicant claimed that he left Iraq because of two attempts on his life by members of the militia group AAH. I have not accepted that the applicant was of any interest to militia groups in Iraq. The applicant also claims that he would not be able to return to Iraq due to sectarian violence and/or the overall security situation. The most recent country information in the review material indicates that the security situation in Iraq, while varying according to location, is highly unstable and fluid. Security incidents occur often and without warning, including rocket attacks, mortar attacks, attacks with improvised explosive devices (IEDs), grenade attacks, small arms fire, assassinations and kidnapping for ransom.⁷ Despite its territorial defeat in December 2017, ISIS/Da'esh remains a major perpetrator of abuses and atrocities.⁸ Over 2019 and 2020 however violence by ISIS/Da'esh continued to fall, and in particular the number and impact of bomb attacks with explosives (whether or not by suicide bombers) continued to decline. The number of incidents caused by ISIS/Da'esh per month is also recorded by Joel Wing of Musings on Iraq. The most recent monthly report included in the review material shows zero incidents for Basra governorate in the tables: "Security Incidents by Province" and "Casualties by Province".⁹ In terms of the seven provinces that ISIS/Da'esh operates in, these are provinces in the North, West and Centre of Iraq. They do not include Basra or any of its neighbouring governorates. Overall, I am not satisfied on the review material that civilian residents of Basra face a real chance of harm due to ISIS/Da'esh attacks.
19. Although violent crime, including bombings, kidnappings and killings, does still occur across Iraq, on the basis of the material before me I am not satisfied that it is at a level that would give rise to a real chance that the applicant would face serious harm, should he return. There is also nothing in the review material that indicates this will alter in the reasonably foreseeable future. I further note in any case that should the applicant be harmed due to security incidents such harm would not be due to his race, religion, nationality, membership of a particular social group or political opinion. I am therefore not satisfied that the applicant has a well-founded fear of persecution due to the security situation.
20. In considering whether the applicant would face a real chance of harm in Basra due to being a Sunni Muslim, the current country information indicates that sectarian violence between Sunni and Shia has reduced substantially since the mid to late-2000s, but still occurs occasionally. International observers attribute the reduction in sectarian violence to an increase in self-segregation by communities, and to conscious efforts by political leaders to remove sectarian slogans from public discourse after the military defeat of ISIS/Da'esh. It was reportedly common during the lead-up to the May 2018 election to hear politicians and commentators emphasising the need to rise above sectarianism and revenge to stabilise the country.¹⁰ I further note that the 2018 DFAT report included an assessment of whether Shia or Sunni Muslims face discrimination or harm due to their religions.¹¹ It noted that in areas other than those previously controlled by ISIS/Da'esh (Basra was not controlled by ISIS/Da'esh) Sunnis, including displaced persons, continue to report that militia groups harass them, accuse them of supporting ISIL and physically harm them. Sunnis also faced harassment and discrimination in the form of more intrusive inspections at checkpoints, and the provision of poorer quality services in Sunni areas.¹² In contrast to this, the 2020 DFAT report does not contain any assessment of Shia or Sunni Muslims in the "Refugee Convention Claims" chapter. From the country information overall, I conclude that being a Sunni Muslim is no longer of itself a basis

⁷ DFAT, 'DFAT Country Information Report Iraq 17 August 2020', 20200817105936; ; 2.54

⁸ Ibid; 2.56

⁹ Wing, J, Musings on Iraq, 'Violence Continues To Decline In Iraq Winter 2020-21', 4 February 2021, 20210209100327;

¹⁰ DFAT, 'DFAT Country Information Report Iraq 17 August 2020', 20200817105936; 2.60

¹¹ DFAT, 'DFAT Country Information Report – Iraq', 9 October 2018, CIS7B839419766; 3.32 to 3.37

¹² Ibid; 3.36

on which a person may face a real chance of serious harm. I am not satisfied that the applicant faces a real chance of harm in Basra due to being a Sunni Muslim or due to sectarian violence.

21. The applicant has also claimed that he did not attend mosque in Iraq and in his statement of claims that he no longer prays. I have concluded that he is a non-practising Muslim. Article 2(1) of the Iraqi Constitution states that Islam is the official religion of the State and is a foundation source of religion.¹³ Unlike its neighbour Iran, Iraq is not a theocracy. There is nothing in the review material to indicate that the Iraqi authorities monitor religious observance, such as attendance at mosque. I am not satisfied that there is a real chance the applicant would face punishment from the authorities on return to Iraq even if he were known not to practise Islam. The review material does not indicate that non-practising Muslims (either Sunni or Shia) are targeted for harm by the Popular Mobilization Units (PMUs) or the Iraqi Security Forces or that non-practising Muslims are subject to social discrimination. The applicant has claimed that he would be considered to be an apostate by Sunni militia groups. Country information confirms that this is the case, noting that ISIS/Da'esh does not tolerate any deviant religious practices within its own fundamentalist takfiri ideology. Any public worshipping outside the boundaries of the very narrow interpretation of Islam was suppressed by ISIS/Da'esh. Any others who are not in conformity with ISIS/Da'esh's ideological interpretation of Islam were declared *takfir* and therefore had to be destroyed.¹⁴ A non-practising Muslim would certainly be considered *takfir* by ISIS/Da'esh. As noted above, however, Basra governorate is not and has never been under the control of ISIS/Da'esh and there is no indication that this will alter in the reasonably foreseeable future. I am not satisfied that the applicant faces a real chance of harm in Basra governorate due to being a non-practising Muslim.
22. The applicant consumed alcohol while living in Iraq and I will consider whether he would have a well-founded fear of persecution, should he continue to do so on return to Iraq. The review material notes that in 2016 the government of Iraq passed a law banning the production, importation and sales of alcohol. Although this ban is implemented in many parts of the country, southern Iraqis from Basra, Dhi Qar, Maysan, and Muthanna were still allowed to legally consume and own alcohol. Although quite a lot of Iraqis do drink alcohol, the public practice of selling and buying it is widely seen as immoral.¹⁵ The applicant claims that Shia militias will kill young men found with alcohol. Country information on this is varied, noting that while some socially-conservative Shia PMU groups will punish anybody involved in the alcohol or drug trades, other groups reportedly run private nightclubs in which both alcohol and drugs are readily available. While it is clear that alcohol sellers or importers face a high risk violence, the country information does not support that this is the case for alcohol drinkers, as it appears that alcohol consumption is widespread in Iraq. I am not satisfied that the applicant faces a real chance of harm, should he continue to drink alcohol in Iraq.

Refugee: conclusion

23. 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).

¹³ DFAT, 'DFAT Country Information Report Iraq 17 August 2020', 20200817105936; 3.33

¹⁴ European Asylum Support Office (EASO), 'EASO Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019, 20190308091632; p109-110

¹⁵ Ibid; p.85

Complementary protection assessment

24. 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

25. 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.
26. 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.
27. I accept that the applicant was subject to verbal abuse and bullying in Iran due to his Bidoon accent and dialect and may again face actions such as racist slurs or verbal abuse in the future. I am not satisfied that such behaviour or its consequences constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, it does not amount to pain or suffering, severe pain or suffering or extreme humiliation. I have concluded above that the applicant does not face a real chance of harm on the basis that he is a non-practising Sunni Muslim, that he drinks alcohol or due to sectarian conflict. As 'real risk' and 'real chance' involve the application of the same standard,¹⁶ I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.
28. I have also found that although there is criminal activity by way of security incidents across Iraq it is not at such a level that would constitute a real chance, and therefore a real risk, that the applicant would be harmed. If this conclusion is wrong, I further note that s.36(2B) provides that there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally. As the risk of significant harm due to the security situation is one faced by Iraqis generally, the applicant does not face a real risk of significant harm due to the security situation in Iraq.

Complementary protection: conclusion

29. 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).

¹⁶ *MIAC v SZQRB* (2013) 210 FCR 505

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.