



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09953

Date and time of decision: 17 November 2021 15:16:00

G Ma, 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 Christian convert from Iran. On 18 August 2017 he lodged an application for a safe haven enterprise visa (SHEV).
2. On 21 September 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant is of Persian ethnicity, and he was born into Shia Islam. He is married with a daughter.
 - In 1996, he began working in his own shop where he sold women's clothing. Soon after, the authorities started to come to his shop regularly as they were not happy with the way he displayed the clothes on the mannequins in his shop window. They told him to dress or move the mannequins in certain ways. He obeyed them. Sometimes they told him not to sell certain kinds of clothes and they fined him for it.
 - In 2000, he was arrested and detained overnight by the authorities for playing music in his car too loudly. He was then taken to court and questioned by the judge on duty. He was released and given a notice not to play loud music again.
 - In 2004, after a TV report about shops selling inappropriate women's clothing, he received a larger fine from the authorities.
 - In 2007, he was arrested as his car had been modified. At the police station he was given a notice to remove the modifications. He was then released on the same day.
 - In 2012, he was fined again because of the clothing he was selling. He decided to close his shop. After closing his shop, he decided to travel to Australia.
 - On [date] March 2013, he left Iran.
 - In mid-2016, he began attending [Church 1] in [Suburb 1] and he attended bible study classes. On [date] February 2017, he was baptised.
 - He fears harm from the Iranian authorities because of his religion as a Christian, and membership of the social groups of those who have contravened social norms in Iran, and for being a returned failed asylum seeker who spent time in a Western country.

Refugee assessment

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

Well-founded fear of persecution

7. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. Based on his Iranian driver’s licence and other identity documents, I accept that the applicant was born in [year] in Tehran, Iran, and that he is a national of Iran. Iran is the relevant ‘receiving country’.
9. I accept that the applicant is of Persian ethnicity, and that he was born into a Shia family. On his evidence, his father and one half-brother are deceased. His mother, sister and four half-siblings are now living in Tehran. His wife and daughter are also living in Tehran. He was born and raised in Tehran. He also worked in Tehran as a [occupation] and as an owner of various [shops] for over 20 years. He has always lived in Tehran before he came to Australia. I consider that if the applicant returns to Iran, he is very likely to return to Tehran, where he has family ties, social network and support.
10. In the written statement, the applicant claimed that in 2000 he was arrested and detained overnight by the authorities for playing music in his car too loudly. The next morning, he was taken to court by the police and questioned by the judge. He was given a notice advising him not to play music loudly again, and that he would be fined and imprisoned if caught again. He was then released. He also claimed that in 2007, he was arrested because his car had been modified – with tinted windows, sports wheels and it had been lowered. At the police station, he was given a notice advising him to change his car and remove the modifications, or he would be arrested again and imprisoned. He was released on the same day.
11. The applicant also claimed that soon after he began working in his own clothing shop in 1996, the authorities started to regularly come to his shop – about once a month, as they were not happy with the way he displayed clothes on the mannequins in his shop window. They told

him to put headress on the mannequins, cover their bodies to hide the fact that they were female mannequins, or remove them from the windows. He obeyed whenever they asked him to do this. He claimed that sometimes the authorities told him not to sell clothes deemed inappropriate and fined him, and that he was fined a few times each year. For example, he was fined for selling [specified product] in his shop. He received a larger fine in 2004 from the authorities, after a TV report about shops selling inappropriate women's clothing. After another fine at the start of 2012 because of the clothing he was selling, he decided to close his shop. He was able to pay the fines. But he knew that if he kept his shop open, the authorities would continue to harass and fine him. He decided to leave Iran after closing his shop, and to travel to Australia to live in peace. He claimed to fear harm from the Iranian authorities. He stated that he has already experienced being harassed and forced to pay fines by the Iranian authorities for a number of years and he was arrested on two separate occasions.

12. At the SHEV interview, the delegate put to him that at his 2013 entry interview the applicant said that the main reason why he left Iran was because of economic reasons rather than a fear of persecution from the authorities. In response, the applicant said that from an economic point of view, he was having a good economic condition, but he became frustrated with government agencies such as the taxation department, and the increased amount of rent and other agencies that came to check on them, which made him think of leaving Iran. He also said that they were under pressure in their society and gave examples that if the music in their car were a bit loud or in relation to their hair style, the authorities would stop them at any time. When asked whether he feared persecution from the Iranian authorities immediately prior to his departure from Iran, he said no, and he added that he was stopped and taken to court as the music in his car was too loud and he was freed. He confirmed that he did not fear persecution and said that he left Iran as he became frustrated and tired of the system. When asked why he fears returning to Iran now, he said it was because he has converted to Christianity.
13. I am prepared to accept that the applicant was arrested, detained briefly, attended court once, issued with notices and then released in 2000 for playing music too loudly in his car and in 2007 for modifying his car as claimed. I am also prepared to accept that the authorities visited his clothing shops, told him to move or dress the mannequins in certain ways and not to sell certain kinds of clothes, that he was fined, and that he obeyed the orders and paid off the fines as claimed.
14. According to the applicant, he left Iran legally on his own passport via Imam Khomeini airport without any issues. He did not fear harm from the Iranian authorities at the time of his departure from Iran. After the abovementioned past incidents, he had to refrain from playing loud music again, to remove car modifications, and could not sell certain kinds of clothes. Apart from that, however, the evidence does not indicate that there was any ongoing consequence flowing from these past incidents. Nor is there evidence to indicate that he was or is of ongoing interest to the authorities or anyone because of these incidents. I am not satisfied that he faces a real chance of harm for reasons relating to these incidents if he returns to Iran now or in the reasonably foreseeable future.
15. In the written statement attached to his 2017 SHEV application, the applicant stated that he was born a Muslim and it was difficult to practise any other religion in Iran. He claimed that he had friends in Iran who practised Christianity. He used to talk to them about the differences between Islam and Christianity, but he was too scared to attend a Christian church. He feared that if he tried to attend a church or go to any Christian events and was caught by the authorities, he would have been labelled an infidel and executed as a result.

16. In the written statement, the applicant also stated that after coming to Australia, in mid-2016, he began attending [Church 1] in [Suburb 1]. He made the decision to begin practising as he was interested in Christianity. He had made friends with some people who were practising Christianity and he was impressed by their behaviour and friendliness. He started attending services on Sundays and around the beginning of 2017 he also started bible study classes. He attended services every Sunday and bible classes, [and] he has been learning about many aspects of Christianity. He claimed that when he thinks about God and Christianity, he thinks about peacefulness, music, laughter and happiness. Everyone in Christianity is considered a son of God and everyone is treated as equal. He stated that he did not support Islam, as he associated it with killing and bloodshed, and that he did not support a religion that promotes the killing of people who do not practise that religion. He was baptised on [date] February 2017. He claimed that if he were returned to Iran he would continue to practise Christianity. He felt a strong connection to God, he felt peaceful, tranquil and calm because of God and he showed this through his behaviour. If returned to Iran he would want to promote Christianity by providing the good news to people about God and his ability to save people. A copy of a Certificate of Baptism issued by Pastor [A] was attached. It relevantly states that the applicant was baptised on [date] February 2017 in [Church 1], [Suburb 1], NSW.
17. The applicant's evidence about his claimed Christian faith was inconsistent, lacked substance, and ultimately unconvincing.
18. At the SHEV interview, when discussing his claimed Christian faith, the applicant said that he left Iran and came to Australia because Christianity had "a lot of influence" in him, and that Christianity attracted him to come to Australia. When asked whether he was a practising Muslim before he left Iran, he responded that he did not pray or fast. He also said that he considered himself a Christian some eight to nine years before leaving Iran (2004 to 2005). When asked when he started attending church in Australia, he said about four to five years ago (around 2016). He added that the purpose of going to church was to know whether what he had observed in Iran was the same as what he had observed in Australia.
19. The delegate asked why he said earlier that he came to Australia because of Christianity, and he considered himself a Christian eight to nine years before leaving Iran, but he waited from 2013 to 2016 before he started going to church in Australia. In response, the applicant said after arriving in Australia, occasionally, he used to go to the church and have gatherings with friends. But at that time, he just wanted to get a better comprehension about Christianity by going to the church. He also said that his religion at birth was Muslim, which was not something that he selected, and he wanted to choose a religion, to give himself a chance to read, to study and to search for what he wanted to choose as a religion, and he is now happy with what he has chosen.
20. When asked, the applicant said that he attended church services on Sundays, and bible studies [classes]. When asked how often he attended the church, he responded that he did not remember. When asked why he could not remember how often he attended church, he said he did not say he could not remember how often he participated in the church, what he was saying was that he did not remember the dates of his participation. When asked again how often he attended the church, he replied that after he became baptised, for two to three years, but not always, and sometimes in relation to bible studies, he used to participate.
21. When asked about the reasons why he chose to go to [Church 1], the applicant said it was because he learnt to evangelise from that church, which was "marvellous" for him, and he was evangelised and then he decided to evangelise to others. When asked why he chose this

particular church, despite its significant distance from his home (over two hours each journey), instead of going to another church in his area, he said that this church attracted him and he had taken this church “in his heart” so he went there. The delegate observed that the Baptist faith was a specific denomination of Christianity with some unique principles specific to it and invited the applicant to talk about the Baptist faith. The applicant responded: “not lying”, “be kind to others”, “to repent”, “a new birth”, “salvation” and “sin”. When invited to give further evidence, he said well, baptising, and all these things means that you become a good human and to have Jesus Christ in your mind, and if you can use all these things in your mind you will become a good Christian.

22. When asked why he decided to be baptised in 2017, the applicant said that in 2017 he was feeling that “in one way or another” the holy spirit was approaching him, Jesus Christ was accepting him, he felt that he could enter “that sort of Christian life” and he could return himself to the Christian life that God has aimed for him. When asked, he said that he stopped going to church after an accident two years ago and he injured his back. When asked approximately how long ago he stopped going to the church, he replied that he cannot tell exactly and changed the topic by talking about the accident and that he was hospitalised for one month and was in a rehabilitation centre for three months. When the question was repeated, he said he has not been going to church for around two years and a few months. When asked how he was currently practising Christianity, he said that a couple of friends were visiting him, and he made some sort of donations at Christmas, and that he “likes it in this way” and “friends are coming to him”.
23. As the delegate put to him, the applicant’s evidence at the SHEV interview that he did not pray or fast and he considered himself a Muslim about eight or nine years before he left Iran, is inconsistent with his evidence at the entry interview that his religion was Shia Muslim. It is also at odds with the information in his case management plan where he said that he considered himself a religious man, he wished to go a mosque, and he required a halal diet prepared to Islamic principles.
24. It also does not sit well with the applicant’s story in the written statement, which suggested that his claimed association with Christianity in Iran was limited to talking to Christian friends, and that he began participating in Christian activities and became interested in Christianity in 2016 after he came to Australia.
25. The applicant’s evidence in the written statement that he was too scared to go to any Christian events or attend church in Iran, is in contrast to his evidence at the SHEV interview that “100 per cent” he was engaged in Christian activities in Iran, that he used to collect posters of Christians, that he saw the “beautiful work” of Christians in Iran, that when his Christian friends wanted him to do some (unspecified) thing he would accept, and that he had “some sort of” meetings with his Christian friends for a couple of times.
26. The applicant’s evidence that he was engaged in Christian activities in Iran, is also not easily reconciled with his own evidence at the SHEV interview that it was not possible for him even pray or to even look at the sky to do the rituals that relate to Christianity, because he came from a very religious Muslim family and he was under serious control by his family.
27. I am not persuaded by the applicant’s explanations that he feared that his claimed Christianity might be exposed to the Iranian authorities if he was deported so he did not mention it at the arrival interview, and that he denied having ever said that he was a religious man or he was after a mosque or thinking about where to pray. The entry interview was held [in] June 2013, one month after the applicant’s arrival in Australia by boat [in] May 2013. I am

mindful of the comments of the Federal Court in *MZZJO*¹ about the context and the circumstances in which evidence is given at the entry interviews. However, in this case, the applicant says that he came to Australia because of Christianity, he considered himself a Christian nine years before his arrival, and he came to Australia to seek protection for this very reason. I have difficulty accepting that he gave evidence at the 2013 entry interview that he was a Shia Muslim, despite claiming to identify as a Christian since 2004/2005, and made no mention of Christianity, which he now says was the reason why he came to Australia. Even leaving this aside, I also have other concerns with his evidence. I do not accept he never said that he was a religious man or that he wanted to go to mosque or required halal food. I give weight to the case management plan in the review material dated 26 June 2013, which states that the applicant “considers himself a religious man, he wish[es] to go mosque”, and he “requires a halal diet”. The applicant’s explanations also do not adequately explain the incongruent story regarding his claimed Christian activities and development of faith. He says he was engaged in Christian activities in Iran and identified himself as a Christian in around 2004/2005, some nine years before he came to Australia in 2013. But it took him another three years before he decided to attend church in 2016. His explanations for the delay in attending church here because he started going to church just to observe and see if his observations were the same as those in Iran and to research and study and take the time to choose his religion, are far from persuasive. This is especially given his claimed long-standing Christian identity and activities in Iran, and that he came here because of Christianity. After his delay in attending church in Australia was put to him at the SHEV interview, his evidence about when he began attending church in Australia shifted from 2016, to “occasionally” he attended church with friends after his arrival in 2013 to get a better comprehension of Christianity. He claims that he stopped attending church about two years ago due to an injury after an accident, but he has not provided medical evidence to substantiate this. Overall, I consider the applicant’s evidence regarding the duration and frequency of his church attendance and activities, his knowledge about the Baptist faith, why he chose [Church 1], why he decided to be baptised in 2017, the speed and development of his claimed conversion, what Christianity means to him, and how he currently practises his claimed faith, to be generic, lacking depth and unconvincing.

28. Based on the Certificate of baptism, I accept that the applicant was baptised on [date] February 2017 in [Church 1]. I am prepared to accept that he attended church from around mid-2016 and attended bible study classes from the start of 2017 until he was baptised in early 2017, and that he would occasionally go to church from 2017 after he was baptised, to around 2019. It is possible that he may have donated money at Christmas and that his friends visited him, but I am not satisfied that this demonstrates his sincere commitment or practise in Christianity. Considering the totality of the evidence, and given my concerns, I do not accept that he is a real Christian convert, or that he has a genuine and personal engagement with Christianity. I do not accept that he did not pray or fast in Iran, or that he was associated with Christians or involved in any Christian activities in Iran, or that he considered himself a Christian, or that he was perceived as such. I do not accept that he attended church or was involved in any Christian activities before 2016, or that he has ever evangelised or promoted Christianity. I also do not accept that he stopped going to church in Australia for the reasons claimed. I do not accept that he is a genuine Christian convert. I do not accept that he will attend church, practise Christianity, evangelise, or otherwise promote Christianity upon return, not due to fear of harm, but because he lacks interest or commitment to do so. I am not satisfied that he has been truthful in his claims regarding religion. I am willing to accept that he may have donated money in Australia as an act of kindness, and not for the purpose of strengthening his refugee claims, such that I am not required to disregard it under s.5J(6).

¹ *MZZJO v MIBP* [2014] FCAFC 80.

However, the applicant has not satisfied me that he engaged in the Christian related conduct in Australia (such as attending church and bible study classes and baptism) otherwise than for the sole purpose of strengthening his refugee claims. Hence, I must disregard such conduct pursuant to s.5J(6).

29. This information² is that the Iranian authorities have little interest in failed asylum seekers' activities conducted abroad, including in relation to protection claims, such as Christian conversion, social media activities or comments critical of the government, or protests conducted overseas by returnees.
30. Having considered all the materials, and for reasons given above, I do not accept that the applicant was associated with Christians or involved with Christian activities in Iran. I do not accept that he no longer follows or practises Islam. I consider that he will continue to follow and practise his Shia faith upon return. I do not accept that he will be perceived as an infidel, or having contravened social norms, or having an anti-Islamic opinion or behaviour. There is no credible evidence, and I am not satisfied that Iranians are targeted for harm because they may have donated money and have Christian friends overseas. I consider the chance of the applicant facing any harm on these bases upon return to be remote, and am not satisfied that he faces a real chance of harm on these bases.
31. Country information³ indicates that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. Under a more recent Memorandum of Understanding signed in 2018, Iran has agreed to facilitate the return of the Iranians who arrived after 19 March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia. Given that the applicant arrived before this date, I consider that if he returns to Iran, it would only be on a voluntary basis. The International Organisation for Migration (IOM) runs a program to assist voluntary returnees to Iran, and the Iranian authorities cooperate with the IOM in this regard. Millions of Iranians travel in and out of Iran each year without difficulty. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport about the circumstances of their departure and why they are traveling on a *laissez-passer*. The questioning usually takes between 30 minutes and one hour but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process.
32. Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left Iran in large numbers since the 1979 revolution, and the authorities accept that many Iranians will seek to live and work overseas for economic reasons. As noted above, Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted abroad or their protection claims. Those with an existing high profile, such as political activists, may face a higher risk of coming to official attention upon return. All Iranian citizens are entitled to basic health care coverage provided by the government. Both public and private health services are available, particularly in Tehran. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work, shelter or to return to their home region. Some countries offer failed asylum seekers financial packages to support their reintegration on return to Iran, and the IOM also provides some resettlement assistance to voluntary returnees. DFAT advises that unless they were the subject of adverse official

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132.

³ Ibid.

attention before departing Iran, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.⁴

33. I accept that the applicant was arrested and released in 2000 and 2007 respectively because the music in his car was too loud and because his car was modified. I also accept that he was fined, and the authorities visited his clothing shops for the reasons claimed. However, except not to play loud music again, to change his car and not to sell certain types of clothes, I find that there was no ongoing consequence arising from these past incidents. The applicant's own evidence was that he did not fear harm from the authorities when he left Iran. He passed through immigration control at Imam Khomeini airport using his own passport without any issues. I consider that he was of no adverse interest to the authorities or anyone when he departed Iran. I consider that he will continue to practise and adhere to his Shia faith upon return and I do not accept he will be viewed as having contravened social norms. The above country information is that the Iranian authorities have little interest in failed asylum seekers, or their activities conducted outside Iran. There is no credible evidence, and I do not accept that as a returned failed asylum seeker who have spent time in a Western country (including Iranians who were previously fined, arrested, attended court, released and subsequently left Iran without ongoing interest to anyone like the applicant), the applicant will face a real chance of being arrested, detained or otherwise harmed by the authorities.
34. I accept that the applicant will very likely face questioning at the airport on return. But I have found above that he is of no interest to the authorities, and I am not satisfied that he will have an adverse profile of interest due to the past incidents, his background, appearance, his religion, political opinion, or any particular social groups, or because of the environment or the system in Iran, or for any other reason or reasons. Having considered all the claims and evidence, I am not satisfied that the applicant will otherwise have an adverse profile on return. I am not satisfied that the applicant faces a real chance of any harm during any questioning.
35. I am not satisfied that there is a real chance of the applicant facing harm for any reasons now or in the reasonably foreseeable future if he returns to Iran.
36. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

37. 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

38. 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.

⁴ Ibid.

Real risk of significant harm

39. 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.
40. 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.
41. I have found above that the applicant would not be involved in Christianity upon return not because of a fear of harm. Rather, because he lacks real interest and commitment to do so.
42. I have disregarded the applicant's Christian conduct in Australia in determining whether he has a well-founded fear of persecution. I have taken account of such conduct in my complementary protection assessment. Having considered all the claims and evidence, his Christian conduct in Australia, combined with his accepted profile and his particular circumstances, I do not accept that he is a genuine Christian convert or that he would be perceived as an infidel, or anti-Islam, or having contravened social norms. Country information⁵ indicates that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes converting to Christianity, engaging in protests, or posting social media comments critical of the government. On the evidence, I am not satisfied there is a real risk of the applicant facing harm because of his Christian conduct in Australia, or for any other reasons.
43. In regard to the other claims, as the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons discussed above, I find that the applicant does not face a real risk of suffering harm if he were to return to Iran for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Iran, there is a real risk that the applicant will suffer significant harm for any reasons.

Complementary protection: conclusion

44. 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).

⁵ Ibid.

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.