



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10055

Date and time of decision: 22 December 2021 12:05:00

R Mikhail, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Ahwazi Arab citizen of Iran.
2. He arrived in Australia by boat in August 2013 with his sister and parents. His two other siblings remained in Iran.
3. On 25 July 2017 he lodged a combined application for Safe Haven Enterprise Visas (application for protection) with his parents and sister. In that application he did not raise individual claims for protection.
4. In May 2021 he was invited to lodge separate claims for protection by the Department of Home Affairs (the Department).
5. His sister was subsequently granted a protection visa on the basis of her membership of the family unit of a protection visa holder. His parents are the subject of a separate IAA decision.
6. On 12 July 2021 the applicant was interviewed by a delegate of the Minister for Immigration (the delegate) (PV interview).
7. On 8 October 2021 the delegate refused the grant of the visa.

Information before the IAA

8. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
9. The IAA received a submission in this matter. It includes legal argument in response to the delegate's decision and refers to some claims and evidence that were before the delegate. To the extent that it addresses concerns about the delegate's decision in relation to matters that were before the delegate I have had regard to it.
10. The submission also states that the applicant's details were leaked through the Department's data breach in 2014. I consider this a new claim as it was not raised before the delegate. The applicant was given the opportunity to raise his own claims for protection prior to the PV interview and this data breach occurred many years prior. I am not satisfied this claim could not have been raised before the delegate. It does not satisfy s.473DD(b)(i). In the application for protection, the father claims that his details had also been the subject of the data breach when he was in immigration detention. In his decision for the father, the delegate confirmed that was the case. In the circumstances, I find this new claim capable of being believed. I am also satisfied it may have affected consideration of the applicant's claims. As I have found the applicant is owed protection in regard to his claims relating to his political opinion, to which this new information does not relate, I am not satisfied there are exceptional circumstances to justify considering this new claim.
11. Also provided were a number of [Social media 1] profiles of certain individuals titled "Basiji". I am satisfied this is new information. It is submitted some of the applicant's [Social media 1] followers work with the Iranian authorities and have criticised his negative posts about the Iranian regime. I am not satisfied on the evidence that this new information could not have been provided to delegate before his decision and it does not satisfy s.473DD(b)(i) of the Act.

There is no indication, in the information in the profiles provided, that any of these individuals are members or linked to the Iranian authorities. I am also not satisfied this new information is capable of being believed and it does not satisfy s.473DD(b)(ii). I am also not satisfied there are exceptional circumstances to justify considering this new information.

12. Also provided were a number of screenshots purportedly of the applicant's political and religious views posted on his [Social media 2] page dated between 2013 and 2017. It is submitted the applicant's [Social media 2] account was made available to the delegate as well as screenshots from both accounts. During the PV interview the delegate noted that he looked at the applicant's (public) [Social media 2] account and, in his decision, he also said he looked at the applicant's [Social media 2] account after the interview. Although it is not apparent he saw these particular posts, given his observations about viewing the applicant's [Social media 2] account, I am prepared to accept these post were before him and are not new information.
13. Also provide was an image of the applicant with his sister at a protest where they are holding a caricature that insults the Supreme leader of Iran, Ayatollah Khamenei. This is also not new information as it was before the delegate.
14. The IAA also received, from the applicant's new representative, an undated (only the year 2021 is indicated) statutory declaration by the applicant. The representative noted that he received this document from the applicant's previous representative and wished to draw it to the IAA's attention. It is nearly identical to the summary of claims that were outlined in the delegate's decision, so I am satisfied it was before the delegate and is not new information.

Applicant's claims for protection

15. The applicant's claims can be summarised as follows:
 - He was born in [Year] in Ahwaz, Khuzestan Province and lived there until he departed Iran.
 - He departed Iran legally in July 2013. His passport was disposed of on the way to Australia.
 - He is no longer a Muslim and has no religion.
 - He holds a political opinion against the Iranian regime.
 - He attended the 2009 election protests in Iran and was arrested twice and released.
 - He was dismissed from university after making a speech.
 - He has attended protests against the Iranian regime in Australia and posted his religious and political views on social media.
 - He fears he will be arrested, imprisoned, tortured and prosecuted by the Iranian authorities because of his ethnicity as an Arab from Ahwaz and his religious and political beliefs which are against the Iranian regime.
 - He also fears harm in Iran because of his father's political activities.
 - He also fears harm as a failed asylum seeker from Australia.
 - He has a number of physical health issues and fears he will be denied adequate medical because of his ethnicity.
 - He also fears contracting COVID-19 in Iran.

Refugee assessment

16. 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

17. 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.

18. The applicant provided a certified copy and translation of his Iranian birth certificate confirming his birth in Ahwaz and his national identity card. I am satisfied the applicant is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.

19. Country information that was before the delegate indicates that between 1.5 million and 3 million Arabs live in Iran, predominantly in the south-western province of Khuzestan bordering Iraq (Bushehr and Hormozgan provinces also have large Arab communities). Iranian Arabs are often referred to as ‘Ahvazis’, after the capital city of Khuzestan Province (Ahvaz). Iranian Arabs speak Arabic.¹

20. The applicant has consistently claimed he is an Arab from Ahwaz. His birth certificate confirms his birth in Ahwaz.

21. I am satisfied the applicant was born, and resided, in Ahwaz and is of Arab ethnicity.

22. The applicant claims he took part in the 2009 presidential election protests before and after the elections. He claims once it became known that the election results were rigged, he took part in the street protests. He claims he was arrested, but because of his age and [Medical condition] he was released. He was arrested a second time a few weeks later when he was caught filming the police on his phone. He was put in a van with a soldier and ordered to delete the footage. At the police compound they confiscated his phone and beat him and took his

¹ Australian Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 14 April 2020, 20200414083132

details and held him in the compound. He told one of the officers that they would have trouble with him because of his [Medical condition] and he was released, and another arrested person was given his details.

23. The applicant attended two Irregular Maritime Arrival and Entry Interviews when he was being held in Australian immigration detention in 2013 and 2014 (arrival interview). During the applicant's arrival interview, he also referred to participating in a demonstration during the 2009 election and being arrested twice and being released as he was underage so has been consistent in this regard.
24. Country information that was before the delegate indicates that, following the June 2009 presidential election, up to 3 million supporters of reformist candidate Mir Hossein Mousavi took to the streets of Tehran to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had been re-elected in a landslide, in what became known as the 'Green Movement'. Green Movement protesters used public holidays and national commemorations as opportunities to rally, chanting slogans that challenged both the system and the Supreme Leader himself. In response, the government despatched security forces, including the Iranian Revolutionary Guard Corps, Basij units and plain-clothed paramilitary forces. These forces beat thousands of protesters and arrested hundreds, while snipers killed dozens.² The reports indicate that most of the protestors that were arrested were in Tehran, but several other arrests were recorded in Ahwaz.³
25. The applicant also gave a credible account of why he supported Mousavi during the PV interview and now claims Mousavi deceived him and the others and he realised he is not that different to the other leaders.
26. Although I find it difficult to believe the applicant was released on two occasions because of his age and [Medical condition], having considered the country information before me about how the Iranian authorities treat political prisoners,⁴ I am prepared to accept the applicant participated in the 2009 protests and was subsequently arrested on two occasions during the election protests and released.
27. The applicant has not claimed he was charged or remained of adverse interest to the authorities because of these events and I am not satisfied he did. In the most recent report on Iran published in April 2020 by the Australian Department of Foreign Affairs and Trade (DFAT 2020 report) that ordinary participants in the Green Movement are not of interest to the authorities. DFAT assesses that Green Movement participants who were arrested but then released without prosecution are unlikely to be of ongoing interest to the authorities.⁵ I am not satisfied the applicant will face a real chance of harm from any group or person in Iran because of these alleged incidents.
28. In his statement the applicant claims he was at [University], in Shustar Khuzestan studying a Diploma in [Subject] when they fled Iran. He claims he was involved in Arabic activities university and was kicked out of university because of his activities and could not even go back to get his diploma. In his arrival interview the applicant also referred to being expelled at

² Ibid.

³ Unrepresented Nations and Peoples Organization (UNPO), "Ahwazi Arabs", 1 June 2010, CIS20365

⁴ DFAT, "DFAT Country Information Report—Iran", 29 November 2013, CIS26780; Iran Human Rights Monitor (United States), "Iran: 15 Years Old Girl at Ahwaz's Sepidar Prison", 3 May 2018, CXBB8A1DA26546; DFAT, "DFAT Country Information Report – Iran, 7 June 2018", 7 June 2018

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

university for his political activities. During the PV interview he also noted he had been dismissed from his university because of his Arab activity, claiming he made a speech, several months before he departed Iran. The applicant has provided little detail and no corroborating evidence in regard to this claim. He has not indicated the exact reasons why he was expelled other than some general reference to a speech. He has otherwise not provided any detail or supporting evidence as to the nature of his activities or if he was involved in a political organisation. I do not accept the applicant was involved in political activities whilst at university and was dismissed from university for this reason.

29. The applicant has expressed that he holds a political opinion against the Iranian regime. He claims he wants to see change in Iran. He is serious about this and is still fighting for this. He claims he engages in many conversations in Australia about what is going on in the country and does not shy away from expressing his beliefs. He claims there is no room for this in Iran given the number of pro-regime informants and spies who would turn him in. He follows the social, political news and open media sources about what is going on. He wants regime change – whole and complete regime change. Politically he does not want Iran to be an Islamic country, but he cannot decide what it should be – this is an option for the people to decide on – but not an Islamic government. The laws should not be based on Islam.
30. During the PV interview he expressed the same opinion stating that “they” are murderers and harass the people and created a situation where he had to leave, and he left the country because of them and there is no freedom there. He claims they are doing things in the name of Islam, but they do not even have faith and belief and they use Islam to get more money and get richer and kill people. He also claimed Arabs do not have rights.
31. Having considered the evidence before me, I accept the applicant holds such an opinion.
32. The applicant claims he has active on behalf of Ahwazis and against the Iranian regime since he has been in Australia. He has provided evidence of attending a number of protests in support of Ahwazi Arabs and against the Iranian regime in Australia from approximately 2017 up and until 2021, which I accept he did.
33. Provided to the delegate was a copy of letter from [Mr A], the [Official] of the [Organisation 1] dated 27 May 2021. It states the applicant is an Ahwazi Arab and has been in contact with this organisation since it was founded in 2020. Also provided to the delegate was a letter from [Mr B], [Organisation 2] in Melbourne Vic dated 26 May 2021 which confirms the applicant is an active member of the community and regularly attends their community program services. During the PV interview the applicant also indicated he was a member of the [Organisation 3].
34. The applicant claims that in the past he used to be more active on [Social media 2], but he stopped as he cannot tolerate a lot of what is on [Social media 2] and does not want to engage with “stupid” people. He claims he does not want to block or delete these people altogether, so he chooses not to engage. During the PV interview the delegate noted that he looked at the applicant’s [Social media 2] account and found there no political posts about Iran. The applicant said he is not that active on [Social media] and posts such material on [Social media 1]. The applicant provided a number of screenshots from his [Social media 2] account to the IAA dated between 2013 and 2017 where he purportedly expressed his political opinion but, as they have not been translated, I have not been able to give them any weight. He also provided translated examples of post his religious views on [Social media 2] which I accept.
35. After the interview the applicant provided the delegate with a number of screenshots from his [Social media 1] account, some undated, some dated in 2018 and 2019. A number have not

been translated but I am satisfied the other posts in English are of a political nature against the Iranian government.

36. The applicant claims he has not done these activities to strengthen his case for protection but because he genuinely holds these beliefs, and he is free to express his opinion without fear of persecution as he would face in Iran. He claims he was not that active in recent years in Iran because he was afraid of the Iranian authorities. I am prepared to accept that was the case.
37. It has been submitted, and I accept, that the applicant undertook the above activities prior to being invited to lodge his own claims for protection in 2021. I accept the applicant did not raise his own claims for protection in his 2017 application for protection and only did so after he was invited by the Department in May 2021. Given this and, that I am satisfied the applicant holds a genuine political opinion against the Iranian regime and that he has a genuine desire to act on the opinion and that he did so in Iran when he attended the 2009 protests, I am satisfied s.5J(6) does not apply.
38. During the PV interview the applicant claimed that he has no responsibility in the Ahwazi groups he belongs to and he just attends some of their gatherings and protests and just wants to be a supporter and did not want to be a part of “big things” and thinks the responsibility is too much. I accept this and I am satisfied the applicant has provided a genuine and transparent account of his political opinion and activities in Australia without exaggeration.
39. The applicant claims he cannot live in hiding and does not want to hide his views. But in Iran if he expresses his religious or political views, he will face serious harm including arrest, imprisonment, torture or execution. It is submitted the applicant holds sincere pro-Ahwazi Arab political opinions. He expressed his views publicly that Ahwaz is an occupied territory and voiced his support for its independence from Iran and he is likely to continue to do so even if he were forced to return to Iran.
40. Having considered the applicant’s activities in Australia where he has attended a number of protests against the Iranian regime in Australia and that he attended the 2009 election protests in Iran, I am satisfied that if he were to return to Iran, there is more than a remote chance he will participate in protests again against the Iranian regime.
41. In its 2020 report DFAT has indicated that Arabs, more so than other ethnic minorities, who are active politically are likely to attract adverse attention from the authorities, particularly those in border provinces. Since the September 2018 terrorist attack against security forces in Ahwaz, the Arab population in Khuzestan Province has been a sensitive topic for the government. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment. Most recently, violent protests, including some deaths, followed the government’s announcement in November 2019 to reduce petrol subsidies, with at least 80 people arrested. Hundreds were also arrested in Khuzestan Province during 2018 protests relating to water shortages and poor water quality. In October 2018, the authorities launched a major security sweep in Khuzestan Province following a deadly terrorist attack on a military parade in Ahwaz. Freedom House claims up to 800 people were arrested in relation to the attack, some of whom were reportedly executed. DFAT is unable to verify these claims. DFAT understands some of those arrested were subsequently released. The Iran Human Rights Monitor also referred to 800 Ahwazis being

detained in 2019 on security related charges.⁶ Other reports that were before the delegate refer to the violent quelling of these protests by Iranian security forces in 2018 in Ahwaz, including the use of tear gas.⁷

42. In July 2021 Amnesty International reported that Iran's security forces deployed unlawful force, including by firing live ammunition and birdshot, to crush mostly peaceful protests that took place across the southern province of Khuzestan. Security forces used deadly automatic weapons, shotguns with inherently indiscriminate ammunition, and tear gas to disperse protesters. It reported since protests over severe water shortages erupted in Khuzestan on 15 July, security forces have killed at least eight protesters and bystanders, including a teenage boy, in seven different cities. Scores of people, including children, were injured, including by birdshot, and several are hospitalized in critical condition due to gunshot wounds. Security and intelligence swept up dozens of protesters and activists, including many from the Ahwazi Arab minority, in mass arrests.⁸
43. In its 2020 report DFAT also noted international human rights organisations report that torture and other mistreatment of detainees occurs in Iranian detention facilities, especially as a means to extract information. Allegations of forced confessions through torture, denial or delayed access to legal representation, and mistreatment while in detention are common in the case of individuals charged with national security offences.
44. Although this is a somewhat borderline case, I am satisfied that if the applicant were to attend protests in Iran in Ahwaz against the Iranian regime there is more than a remote chance he will be seriously physically mistreated, detained, and even tortured. I am satisfied that such harm amounts to serious harm. I accept that this harm is systematic and discriminatory conduct carried out by the Iranian authorities for reasons of his political opinion.
45. Country information indicates that an extensive network of police, security and intelligence services exercises effective control over most of the Iran and DFAT has assessed that the countrywide capacity of the centrally organised state security forces means that an individual facing adverse official attention is unlikely to escape this attention by relocating internally.¹⁸ For this reason, I am satisfied the real chance of persecution relates to all areas of the receiving country.
46. I am satisfied s.5J(1) of the Act is met.
47. As the harm emanates from the Iranian authorities, I do not consider there to be effective protection available to the applicant.
48. The applicant could avoid a well-founded fear of persecution if he were to avoid openly expressing his political opinion. Doing so would require him to conceal his true political beliefs. I consider that under s.5J(3) of the Act the applicant cannot be expected to modify his behaviour by concealing his true political beliefs to avoid a real chance of persecution.
49. I am satisfied that the applicant's fear of persecution in Iran is well-founded.

⁶ Iran Human Rights Monitor (United States), "2019 Iran Human Rights Monitor Annual Report", 6 January 2020, 20200420081401

⁷ "Iran Regime Violently Crushes Protest in Ahwaz", *Iran News Update*, 2 April 2018, CXBB8A1DA25054

⁸ Amnesty International, "Iran: Security forces use live ammunition and birdshot to crush Khuzestan protests", 23 July 2021, 20210726093414

50. As I have found the applicant has a well-founded fear of persecution in regard to his political opinion, I have not considered it necessary to consider his other claims for protection.

Refugee: conclusion

51. The applicant meets the requirements of the definition of refugee in s.5H(1) and satisfies the criterion in s.36(2)(a).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.