



s. 22(1)(a)(ii)  
**PROTECTION (CLASS XA) VISA DECISION RECORD**

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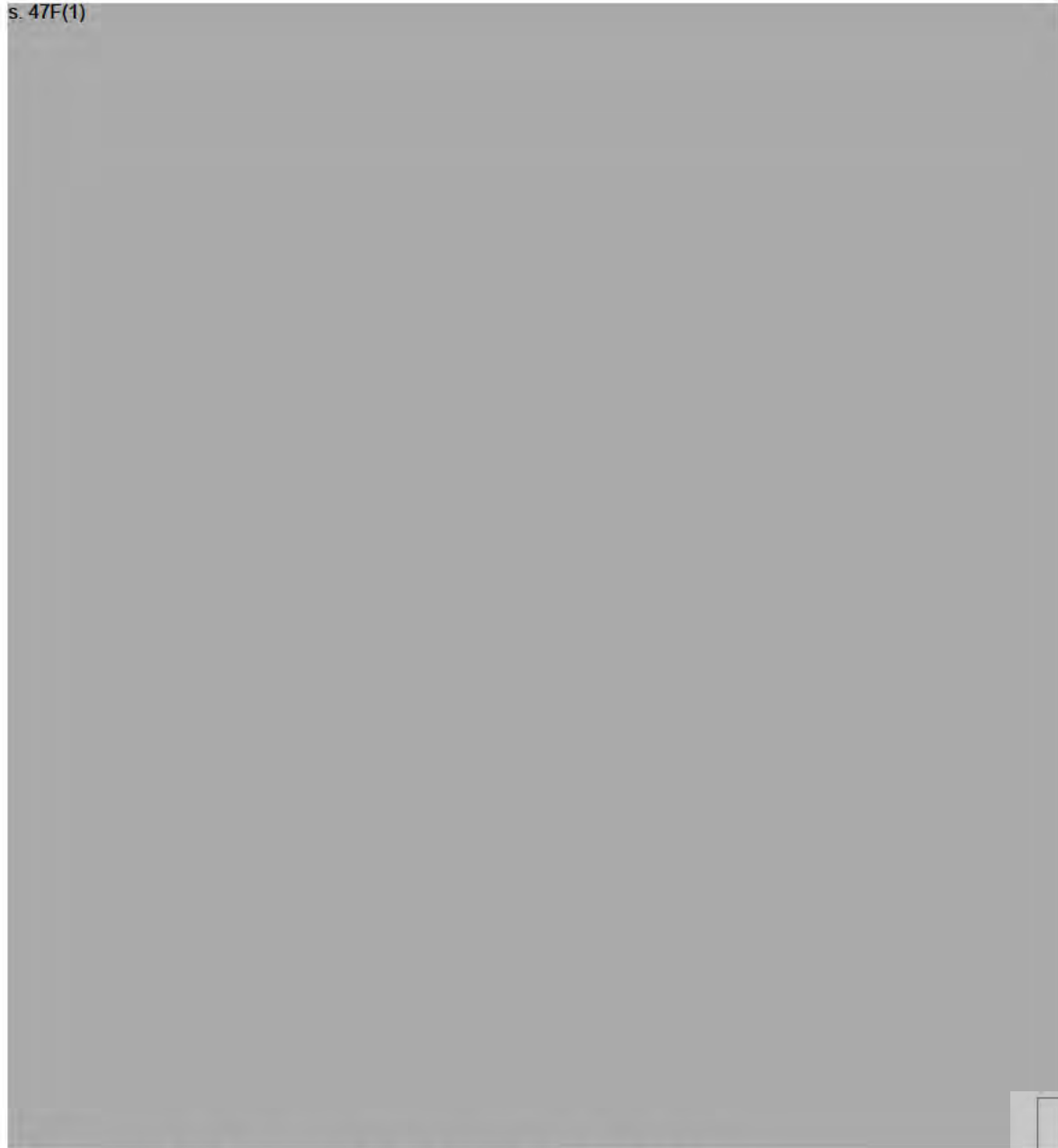
**1. APPLICANT DETAILS**s. 47F(1)  
**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994* (Regulations). I find the application is valid.

**3. CLIENT HISTORY/MIGRATION HISTORY**s. 47F(1)  
**4. CLAIMS FOR PROTECTION**s. 47F(1)  


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s. 47F(1)



## 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) s. 22(1)(a)(ii) relating to the applicant.
2. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).
3. Hathaway, James *The Law of Refugee Status*, 1991.
4. Chan vs Minister for Immigration and Ethnic Affairs (1989), 169 CLR 379 (*Chan's Case*).

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7. *WAGH v MIMA* [2003] FCAFC 194.
8. *Applicant C v MIMA* [2001] FCA 1332.
9. *SZGXX v MIAC* [2008] FCA 1891

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s. 47F(1)



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## 6. LEGAL FRAMEWORK

### Protection Obligations

Section 36 and later sections of the Migration Act require that in order for a protection visa to be granted to the applicant the Minister must be satisfied that Australia has protection obligations under the Refugees Convention. This requires an assessment as to whether the person is a refugee in accordance with Article 1 of the Refugees Convention.

Other relevant provisions include subsections 36(3)-(7) and Subdivision AL of Division 3, Part 2 of the Migration Act, incorporating sections 91R-91V, and relevant provisions of the Regulations.

### Definition of a Refugee – Article 1 of the Refugees Convention

Article 1A(2), of the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees (Refugees Convention), provides that a “refugee” is a person who:

*...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

## 7. REASONS AND FINDINGS

### Criteria To Be Met At The Time Of Decision -

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**Subclass 866 (Protection) visa****Migration Regulation 866.221**

866.221 *The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.*

**What is the applicant's country of nationality and reference?**

The applicant has submitted a certified copy of a <sup>s47F</sup> issued in <sup>s47F</sup> name.

**Finding**

I find that the applicant <sup>s47F</sup> is a citizen of <sup>s47F</sup> and that this is the country of reference.

**Does the applicant have the right to enter and reside in a safe third country?****Claims**

The applicant does not claim to have a legally enforceable right to enter and reside in <sup>s47F</sup>.

**Finding**

The balance of available case law indicates that a “*right to enter and reside*” in a country, as provided by section 36(3) of the Migration Act, must be a *legally enforceable right* <sup>s. 47F(1)</sup>. Where the courts have considered the rights of <sup>s47F</sup> citizens to enter and reside in <sup>s47F</sup>, opinions have varied as to whether ‘legally enforceable right to enter and reside’ exists <sup>s. 47F(1)</sup>.

A significant amount of country information indicates that <sup>s. 47F(1)</sup>

<sup>s. 47F(1)</sup>

Based on this advice, I am satisfied that while <sup>s47F</sup> nationals are generally able to enter and reside in <sup>s47F</sup> in practice, they do not have a legally enforceable right to do so. Consequently, I find that the applicant does not have effective protection in <sup>s47F</sup> or any safe third country under section 36(3) of the Migration Act.

**Does a cessation clause apply (Article 1C)?**

I find that the cessation clauses in Article 1C does not apply to the applicant.

**Does the applicant come within one of the exclusion clauses in Article 1D, 1E or 1F?**

I find that the applicant does not come within Articles 1D, 1E and 1F of the Refugees Convention. I find that s91T of the Migration Act as it relates to Article 1F does not apply to the applicant.

**Is the harm feared for a Convention reason?****Claims**

The applicant claims to s. 47F(1)

**Finding:**

I find that the Convention ground membership of a particular social group is the essential and significant reasons for the harm feared as outlined in subdivision AL of the Migration Act.

**Does the harm feared amount to persecution?****Claims**

s. 47F(1)

**Finding**

I find that the harm which the applicant claims to fear involves serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

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## Is the fear of Convention-based persecution well-founded?

### Reasons

#### *Country Information:*

Available country information indicates that there have been improvements in law and societal attitudes towards s. 47F(1) since the applicant s. 47F departed in s. 47F. The available information suggests that s. 47F(1) organisations operate in s. 47F s. 47F is the largest s. 47F(1) organisation in s. 47F. Excerpts from an interview with s. 47F s. 47F(1) of s. 47F, conducted in s. 47F(1) is indicative of the positive trend in relation to the changing attitudes towards s. 47F(1) within s. 47F society.

s. 47F(1)

s. 47F(1)



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s. 47F(1)



With regard to <sup>s. 47F(1)</sup> the following information supports a finding that <sup>s. 47F(1)</sup> in <sup>s. 47F(1)</sup>, and <sup>s. 47F(1)</sup>, have experienced a significant improvement in relation to their legal and social standing. Available country information indicates that:

s. 47F(1)



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s. 47F(1)



Human Rights Watch has also reported on improvements in law and societal attitudes towards s. 47F(1), but has noted that incidents of discrimination and harassment still occur and that further reform is required:

s. 47F(1)



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s. 47F(1)



Despite incidents of discrimination and harassment, reports indicate that acts of serious harm against s. 47F(1) are not common. s. 47F(1)

s. 47F(1)



s. 47F(1)



Whilst s. 47F(1) may continue to experience discrimination and harassment from some members of the authorities and society generally, including their own families, there is no evidence before me to suggest that s. 47F(1) are being subjected to serious harm amounting to persecution as a result of systematic and discriminatory conduct.

*Delay in lodgement:*

The applicant's delay in lodging s. 47F(1) Protection Visa applicant does raise concerns about s. 47F(1) claim to have a subjective fear of persecution in s. 47F(1) s. 47F(1)

The delay in seeking protection raises doubts about s. 47F(1) claim to have a subjective fear of Convention based persecution, and suggests that the Protection Visa application has been lodged simply to extend s. 47F(1) stay in Australia.

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Nevertheless, for the purposes of this assessment I accept the applicant's claim to have a subjective fear of persecution on the basis of s. 47F(1) at face value.

s. 47F(1)

I have some reservations about the applicant's claims concerning s. 47F(1)

- The applicant was not consistent with regard to the timing of s. 47F(1)
- The applicant has presented a s. 47F(1) issued by s. 47F(1) on s. 47F(1). This certificate identifies the applicant as a s. 47F(1) of the s. 47F(1). This certificate contradicts the applicant's claim to have been s. 47F(1).

Despite these concerns, I am prepared to accept that the applicant was in a relationship with s. 47F(1) and that s. 47F(1) was s. 47F(1) in the circumstances claimed. I am not satisfied, however, that the harm or mistreatment experienced by the applicant in the past amounted to persecution.

#### *Well-foundedness:*

In the absence of any evidence to the contrary, I accept that the applicant is s. 47F(1) as claimed. The applicant claims to fear harm and mistreatment from s. 47F(1) family, s. 47F(1) fundamentalists, s. 47F(1) the general population and the s. 47F(1) authorities.

#### *Family:*

The applicant claimed that s. 47F(1). Whilst the applicant's family may pressure s. 47F(1) to marry s. 47F(1), I do not find that this would be Convention based persecution. I am satisfied that any pressure put on the applicant to marry would be for personal reasons and not directly related to s. 47F(1). Indeed based on the applicant's testimony the applicant fears that s. 47F(1) would be expelled by s. 47F(1) family if s. 47F(1) became known to them. Whilst expulsion from s. 47F(1) family may be traumatic for the applicant, I do not find that this would of itself constitute serious harm. Nevertheless, the withdrawal of support from s. 47F(1) family will be taken into account when considering the applicant's ability to subsist in s. 47F(1), and the reasonableness of internal relocation below.

#### *s. 47F(1) society:*

The applicant indicated that s. 47F(1) would also face discrimination from the general population and would be ostracised by s. 47F(1) society. The applicant had some difficulty articulating the nature of any discrimination that would arise, but mentioned that s. 47F(1) would not be allowed to attend social functions or contribute to



society. [REDACTED] also said that [REDACTED] would have difficulty obtaining employment and housing.

With regard to the applicant's fear of social ostracism, I do not find that this constitutes serious harm amounting to persecution. Whilst the applicant's social life may be adversely affected, I do not find that this constitutes persecution. Although the applicant may lose the support of family, friends and some members of the broader community, available information indicates that [REDACTED] would be able to establish new social relationships if [REDACTED] chooses to live [REDACTED].

With regard to the applicant's claims concerning difficulties in securing employment and housing, I do not find that this would be serious enough to amount to persecution. Whilst it is plausible that the applicant could experience some discrimination when seeking employment or housing, available information does not indicate that as [REDACTED] would be prevented from obtaining housing or employment. I am satisfied that groups, including [REDACTED], would be able to assist the applicant in securing housing and employment if this became an issue upon return to [REDACTED].

[REDACTED] *fundamentalists and [REDACTED] – State Protection and relocation:*

The applicant also claimed that [REDACTED]

Available information does not indicate that [REDACTED] fundamentalists or [REDACTED] have engaged in systematic abduction, assault or murder of [REDACTED]. As such, I do not find that there is a real chance of the applicant being targeted and subjected to such harm upon return to [REDACTED].

To meet the requirements for the grant of a Protection visa there must be an official quality in the sense that it is official or officially tolerated or uncontrollable by the authorities of the country of nationality. While country information indicates that sometimes government authorities, especially the police, abused [REDACTED], the country information does not indicate that as a whole the applicant would be prevented from being able to rely on the legal system if need be.

Available information does suggest that [REDACTED] are subjected to greater levels of discrimination and harassment in rural areas of [REDACTED]. If the applicant genuinely fears that local authorities in [REDACTED], would not provide a suitable level of protection against [REDACTED], I am satisfied that [REDACTED] would be able to avoid such harm and access state protection by relocating to another part of [REDACTED]. I am also satisfied that relocation would be a reasonable option for the applicant. In reaching this conclusion, I have given weight to the following:

- There is no evidence before me which suggests that relocation is not a reasonable option for the applicant;
- [REDACTED] is educated and able to communicate in both [REDACTED];



- s47F has shown s47F to be a resourceful person by residing in Australia for s. 47F(1)
- s47F previously lived in s47F for s. 47F(1);
- Available information indicates that s47F provides support services to s. 47F(1) in many locations in s47F, including s47F.
- Available information indicates that major cities, including s47F, provide an opportunity for s. 47F(1) to survive financially without family support s. 47F(1).

### Finding

I find that the applicant does not have a genuine fear of harm and that there is not a real chance of persecution occurring. I therefore find that the applicant's fear of persecution, as defined under the Refugees Convention, is not well founded.

### Does the applicant come within Article 33(2) of the Refugees Convention, in respect of its express exception to the prohibition on refoulement?

I find that the applicant does not come within Article 33(2) of the Refugees Convention further to its application relative to s91U of the Migration Act.

### Assessment Finding

I am not satisfied that the applicant, s47F, is a person to whom Australia has protection obligations for the grant of a Protection (Class XA) visa. Accordingly, I am not required to consider other criteria prescribed in Part 866 in Schedule 2 of Migration Regulations.

## 8. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION

I am not satisfied that s47F is owed protection obligations for the purposes of section 36 of the Migration Act and regulation 866.221 of the Migration Regulations. I find that s47F has not met criteria 866.221 of the Migration Regulations and therefore has not met the prescribed criteria for the grant of a Protection (Class XA) visa. Accordingly, I refuse to grant s47F a Protection (Class XA) visa.

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Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act.

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s. 22(1)(a)(ii)

## PROTECTION (CLASS XA) VISA DECISION RECORD

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Claims for Protection – Material Before the Decision Maker – Country of Reference – Statutory Effective Protection – Claims for Protection**

**FINDING**

For the reasons outlined below, I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations), and meets all other applicable requirements for the grant of a Protection (Class XA) visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The applicant presented a s. 47F(1) Passport issued in the name s. 47F(1). In the absence of any evidence to the contrary, I am satisfied that this is the applicant's true identity.

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. Therefore, I find that the application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

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#### 4. LEGAL FRAMEWORK

##### *Criteria To Be Met at the Time of Decision:*

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Citizenship (the Minister) is satisfied that the applicant is a person to whom Australia has protection obligations.

##### **Protection Obligations**

One criterion for a Protection visa (paragraph 36(2)(a) of the Migration Act) is that a person is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that a person is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) to 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. In this decision record, this alternative criterion is known as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen who is a member of the same family unit as an applicant who meets one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file <sup>s. 22(1)(a)(ii)</sup> relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).

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16. *Win v MIMA* [2001] FCA 132  
 17. *Appellant S395/2002 v MIMA* [2003] HCA 71 and  
 18. *Applicant NABD of 2002 v MIMA* [2005] HCA 29

## 6. COUNTRY OF REFERENCE

### *Evidence and Reasons*

The applicant presented a s. 47F(1) issued in the name s. 47F(1). There is no evidence before me to suggest that this passport is not genuine.

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***Finding***

For the reasons stated above, I am satisfied the applicant, s. 47F(1), is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

**7. STATUTORY EFFECTIVE PROTECTION*****Evidence and Reasons***

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F does not hold any other citizenship or have a current right to enter and reside in a third country.

There is no evidence before me indicating that the applicant has a right to enter and reside in a safe third country.

***Finding***

I find that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

**8. CLAIMS FOR PROTECTION**

s. 47F(1)



**Part B - Assessment of Protection Obligations under the Refugees Convention**

## 1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

## 2. IS THE HARM FEARED FOR A REFUGEES CONVENTION REASON?

### *Evidence and Reasons*

The applicant claims to fear persecution in s. 47F(1) because s. 47F(1).

In relation to the question of a particular social group, the UNHCR guidelines (5.2, par.77-79) state:

*"A 'particular social group' normally comprises persons of similar background, habits or social status... Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution."*

A test for determining whether a group falls within the definition of a 'particular social group' in Article 1A(2) of the Convention was formulated in the High Court case of *Applicant S v MIMA* (2004) HCS 25. This was summarized by Gleeson CJ, Gummow and Kirby JJ at (36):

*'First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.'*

The common characteristic of s. 47F(1)

s. 47F(1) There are religious and legislative prohibitions against s. 47F(1), an aspect that distinguishes them from society as a whole; however the persecution that they fear is not the sole defining characteristic of the group. I find that the Convention ground of Membership of a Particular Social Group is the essential and significant reason for the harm feared as outlined in subdivision AL of the Migration Act. I therefore find that the applicant fears persecution for a Convention reason.

### ***Finding***

I am satisfied the Refugees Convention ground of membership of a particular social group is the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

### **3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?**

#### ***Evidence and Reasons***

The applicant claims that s. 47F(1)

s. 47F(1)

The applicants claims relate to persecution of serious harm under The Migration Act section 91R(2):

- (a) a threat to a person's life or liberty.
- (b) significant physical harassment of the person
- (c) significant physical ill - treatment of the person

I consider that the harm which the applicant fears amounts to persecution involving 'serious harm' as required by paragraph 91R(1)(b) of the Act in that it involves at least significant physical harassment or ill-treatment.

### ***Finding***

In addition to paragraph 91R(1)(a) of the Migration Act being met, I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by paragraphs 91R(1)(b) and (c) of the Migration Act. Therefore, I am satisfied the harm feared amounts to persecution.

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#### 4. IS THE FEAR WELL-FOUNDED?

##### Country Information

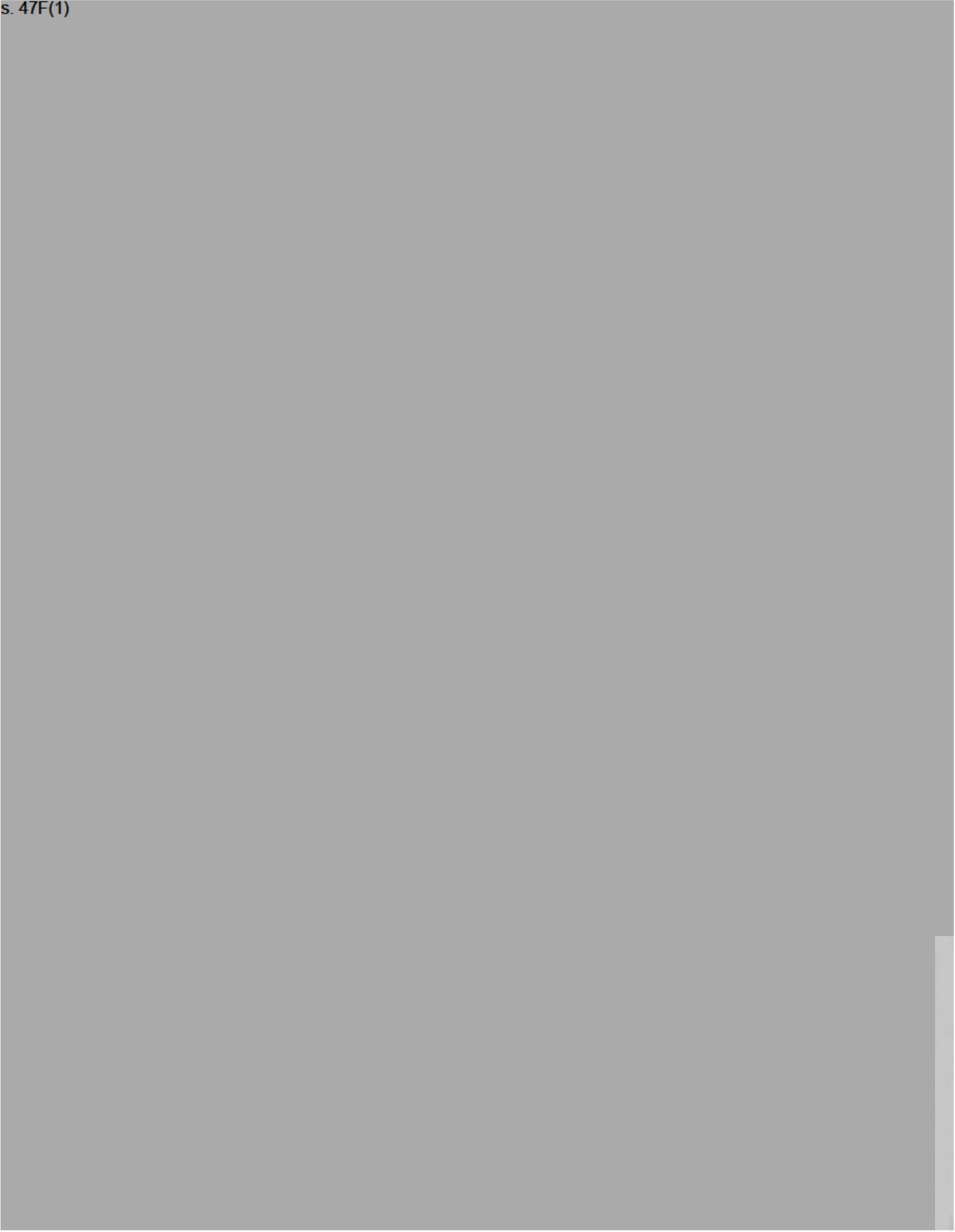
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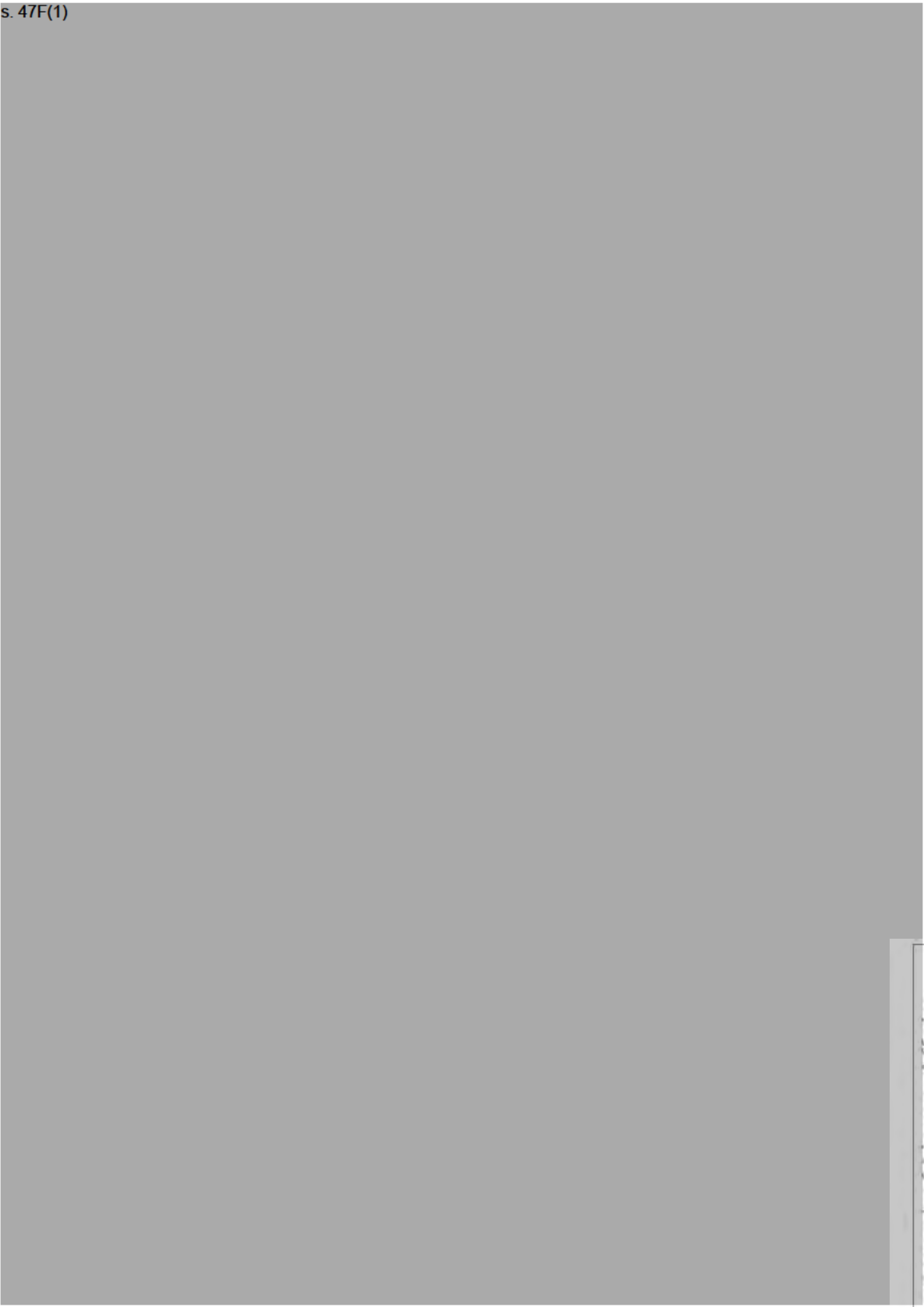
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***Evidence and Reasons***

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

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At interview, the applicant presented § 47F(1) claims in an open and forthright manner, and answered all questions in a direct and believable way. The applicant provided a convincing account of § 47F(1). The applicant was able to provide two statutory declarations made by friends which supported § 47F(1) claim § 47F(1). I am satisfied that the information contained in these statutory declarations is true and correct. 194

The applicant has provided a coherent, consistent and plausible account of § 47F(1) growing awareness and experiences as § 47F(1). There was nothing in the applicant's demeanour or responses which would give me reason to believe that the applicant was lying or exaggerating. At times, the applicant appeared to find it painful to recount § 47F(1) experiences and became upset. I find that the applicant's claim § 47F(1) is plausible and I am satisfied that § 47F(1) seeks an § 47F(1).

I accept that the applicant initially hoped to avoid returning to § 47F(1) by undertaking studies in Australia. I am also satisfied that § 47F(1) involvement in § 47F(1), including § 47F(1), is genuine. I also found convincing the applicant's account of § 47F(1) growing realisation that § 47F(1) faced a bleak future in § 47F(1). Furthermore, the applicant's account of § 47F(1) friendship with § 47F(1) and § 47F(1) subsequent decision to lodge a Protection Visa application to avoid returning to § 47F(1) was plausible and convincing. As such, I make no adverse finding due to the applicant's delay in lodging § 47F(1) Protection Visa application.

Whilst the applicant claims to have become more open about § 47F(1) in Australia, it appears § 47F(1) has only § 47F(1) friends. It is evident that § 47F(1) still tries to conceal § 47F(1) and is particularly reticent about revealing it to members of the § 47F(1) community in Australia. As such, I am of the opinion that it is likely that the applicant would continue to conduct § 47F(1) in a discreet manner if § 47F(1) were to return to § 47F(1).

The available country information suggests that the applicant would be able to avoid harm and mistreatment in § 47F(1) by concealing § 47F(1) and acting in a discreet manner. The High Court in the case of *Appellant S395/2002 v MIMA* [2003] HCA 71 and *Applicant NABD of 2002 v MIMIA* [2005] HCA 29, however, has stated:

*'that where it is determined that an applicant would act in a way which would not attract persecution, decision makers must ask whether this is a voluntary choice on the part of the applicant, or is it motivated by fear of persecution.'*



Whilst the applicant continues to be discreet about s. 47F(1) in Australia, I am satisfied that this is due to the fact that s. 47F(1) was raised in a religious family in s. 47F(1) and is concerned that members of the broader s. 47F(1) community in Australia would not be accepting of s. 47F(1) and/or may inform s. 47F(1) family in s. 47F(1) about s. 47F(1). I am satisfied that the applicant would prefer to live an s. 47F(1) but remains reluctant to do so because of the uncertainty about s. 47F(1) future in Australia and a genuine fear of returning to s. 47F(1). If the applicant were to return to s. 47F(1), I am of the opinion that s. 47F(1) would continue to conceal s. 47F(1). Having carefully considered the applicant's testimony, however, I am satisfied that if the applicant were to return to s. 47F(1) would be motivated by fear of persecution to act in a way that would not attract harm or mistreatment.

After interviewing the applicant, I am also of the opinion that s. 47F(1) demeanour could also lead people to speculate that s. 47F(1). Indeed, in talking about s. 47F(1) experiences at interview the applicant indicated that several friends have asked s. 47F(1) whether s. 47F(1) on the basis of s. 47F(1) behaviour and demeanour. Whilst the applicant continues to be reluctant to openly express s. 47F(1), I am satisfied that s. 47F(1) is to some extent expressed through the way s. 47F(1) carries s. 47F(1) and that it may be difficult for the applicant to conceal it. It appears that the applicant is still in the process of establishing s. 47F(1) identity. Whilst it appears unlikely that the applicant would purposefully act in a manner that would attract harm or mistreatment upon return to s. 47F(1) I am satisfied s. 47F(1) demeanour could bring s. 47F(1) to the attention of s. 47F(1) within s. 47F(1) society.

Having carefully considered the applicant's testimony, I am satisfied that the applicant has a genuine desire to live an s. 47F(1). As such, I am satisfied that the applicant would be motivated by a fear of persecution to act in a discreet manner if s. 47F(1) were to return to s. 47F(1). I am of the opinion that living in this manner would be in opposition to s. 47F(1) right to live in dignity according to s. 47F(1). I do not consider that it is a reasonable option for s. 47F(1) to return to s. 47F(1) and to attempt to keep s. 47F(1) secret.

As such, I must consider whether there is a real chance of the applicant facing harm and mistreatment amounting to persecution, s. 47F(1) were to s. 47F(1).

Based on the available information, I am satisfied that:

- physical attacks on s. 47F(1) do occur in s. 47F(1);
- there is a strong social stigma in relation to s. 47F(1) and there is significant societal discrimination against s. 47F(1) individuals;
- whilst incidents of overt discrimination against s. 47F(1) appear to be rare, it appears that this partly due to the fact that few individuals s. 47F(1);
- state protection is not available for s. 47F(1) who experience discrimination or violence from members of society.

Based on the available information, I am satisfied that there is a real chance that the applicant will suffer serious harm if s. 47F(1).

**State Protection:**

Country information held by the department indicates that s. 47F(1) may face treatment which can amount to persecution by state and non state agents. While the law criminalising s. 47F(1) is not enforced in s. 47F(1) I am satisfied that the effect of the law is that state protection is not available for s. 47F(1) who experience discrimination or violence from members of society.

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**Relocation:**

Given that available evidence indicates that societal prejudice against s. 47F(1) occurs throughout s. 47F(1) I am not satisfied that the applicant could reasonably be expected to relocate to a place where s. 47F(1) would be safe from the persecution which s. 47F(1) fears.

**Finding on relocation**

Based on the evidence cited above, I am not satisfied that relocation is either safe or reasonable for the applicant.

**Finding on well-foundedness**

I am satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I therefore find the applicant's fear of persecution, as defined under the Refugees Convention, is well-founded.

**5. DOES A CESSATION CLAUSE APPLY? (ARTICLE 1C)**

I am satisfied that the cessation clauses in Article 1C of the Refugees Convention do not apply to the applicant.

**6. DO THE EXCLUSION CLAUSES APPLY? (ARTICLE 1D, 1E OR 1F)**

I am satisfied the exclusion clauses in Articles 1D, 1E or 1F of the Refugees Convention do not apply to the applicant.

**7. DOES THE APPLICANT COME WITHIN ARTICLE 33(2) OF THE REFUGEES CONVENTION, IN RESPECT OF ITS EXPRESS EXCEPTION TO THE PROHIBITION ON REFOULEMENT?**

I find that the applicant does not come within either of the exceptions in Article 33(2) of the Refugees Convention.

**8. FINDING UNDER THE REFUGEES CONVENTION**

I am satisfied that the applicant, s. 47F(1), is a person to whom Australia has protection obligations, under the Refugees Convention as amended by the Refugees Protocol, as prescribed by paragraph 36(2)(a) of the Migration Act, and subclause 866.221(2) of Schedule 2 to the Migration Regulations.



**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

As I am satisfied that Australia has protection obligations to the applicant, s. 47F(1) [REDACTED], under the Refugees Convention as amended by the Refugees Protocol and, therefore, under paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations, I have not made an assessment as to whether the applicant, s. 47F(1) [REDACTED] is owed protection obligations under paragraph 36(2)(aa) of the Migration Act and the associated complementary protection provisions in the Migration Regulations.

**Part D – Time of Decision Criteria and Decision on Protection (Class XA) visa application**

**1. TIME OF DECISION CRITERIA**

Time of Decision Criteria - Migration Regulations 866.22

I am also satisfied that the applicant s. 47F(1) [REDACTED] has:

- undergone medical examinations carried out by a Medical Officer of the Commonwealth or another medical practitioner approved by the Minister or a medical officer employed by an organisation approved by the Minister;
- undergone a chest x-ray by a medical practitioner who is qualified as a radiologist in Australia, or is under 12 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination or is a person who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time;
- satisfied public interest criteria 4001, 4002 and 4003A;
- satisfied the Australian Values Statement requirement, public interest criterion 4019;
- satisfied the Minister that the grant of a visa is in the national interest; and
- Not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.

I am also satisfied the applicant is in Australia.

Accordingly, I find that s. 47F(1) [REDACTED] has met all prescribed Time of Decision criteria for the grant of a Subclass 866 (Protection) visa.

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## 2. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION

I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations for the purposes of paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations. I am also satisfied that the applicant meets all other applicable requirements for the grant of a visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

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Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)

s

s. 22(1)(a)(ii)

**PROTECTION (CLASS XA) VISA DECISION RECORD**

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Claims for Protection – Material Before the Decision Maker – Country of Reference – Statutory Effective Protection – Claims for Protection**

**FINDING**

For the reasons outlined below, I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations), and meets all other applicable requirements for the grant of a Protection (Class XA) visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The applicant presented a s. 47F(1) Passport issued in the name s. 47F(1). In the absence of any evidence to the contrary, I am satisfied that this is the applicant's true identity.

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. Therefore, I find that the application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

s. 47F(1)

#### 4. LEGAL FRAMEWORK

##### *Criteria To Be Met at the Time of Decision:*

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Citizenship (the Minister) is satisfied that the applicant is a person to whom Australia has protection obligations.

##### **Protection Obligations**

One criterion for a Protection visa (paragraph 36(2)(a) of the Migration Act) is that a person is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that a person is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) to 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. In this decision record, this alternative criterion is known as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

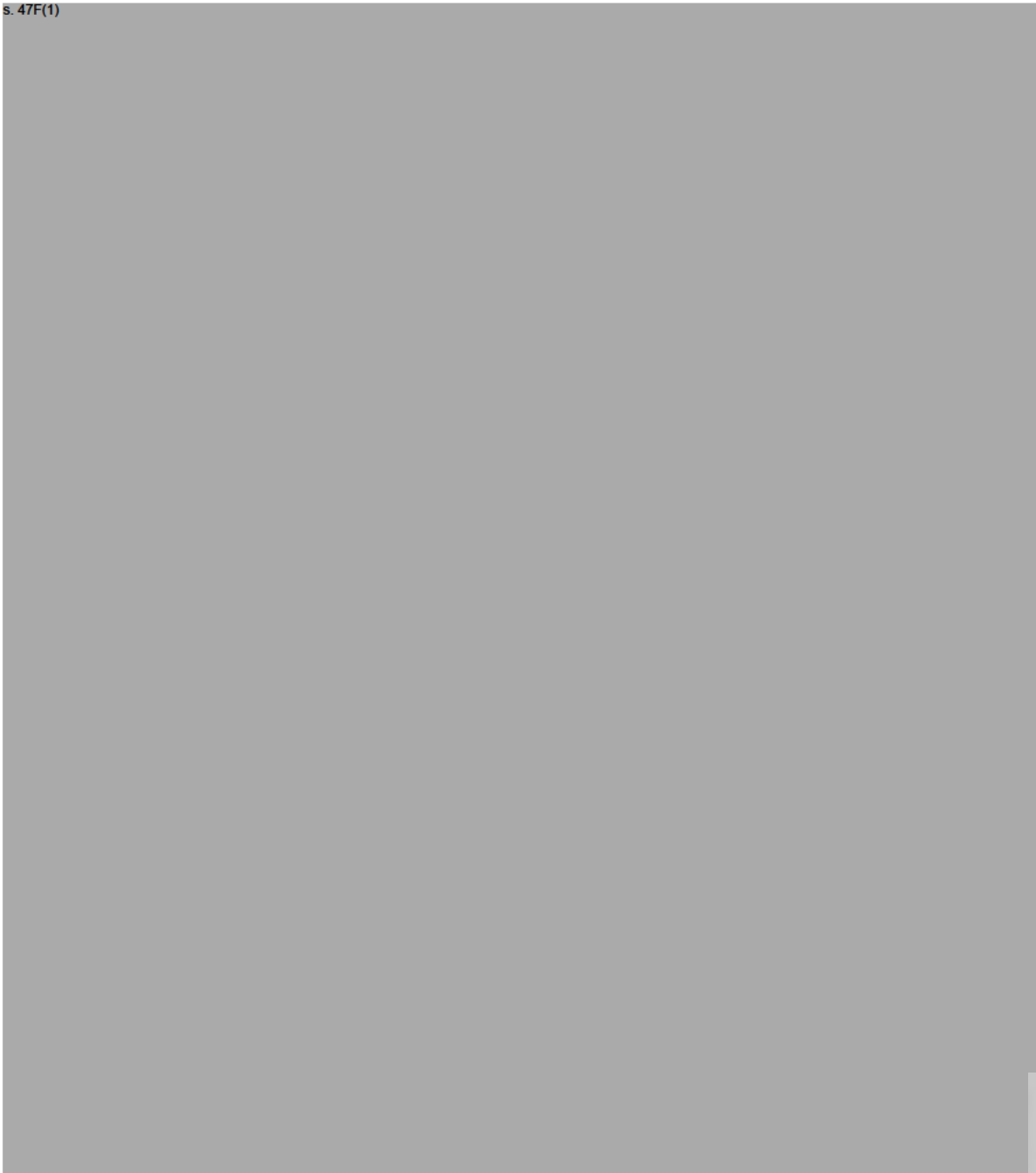
Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen who is a member of the same family unit as an applicant who meets one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).

s. 47F(1)

s. 47F(1)

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16. *Win v MIMA* [2001] FCA 132
  17. *Appellant S395/2002 v MMLA* [2003] HCA 71 and
  18. *Applicant NABD of 2002 v MIMLA* [2005] HCA 29

## 6. COUNTRY OF REFERENCE

### *Evidence and Reasons*

The applicant presented a s. 47F(1) Passport s. 47F(1) issued in the name s. 47F(1). There is no evidence before me to suggest that this passport is not genuine.

### *Finding*

For the reasons stated above, I am satisfied the applicant, s. 47F(1), is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1). s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country.

There is no evidence before me indicating that the applicant has a right to enter and reside in a safe third country.

### *Finding*

I find that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)



s. 47F(1)

**Part B - Assessment of Protection Obligations under the Refugees Convention****1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION**

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

**2. IS THE HARM FEARED FOR A REFUGEES CONVENTION REASON?*****Evidence and Reasons***

The applicant claims to fear persecution in s. 47F(1) because s. 47F(1) ..



In relation to the question of a particular social group, the UNHCR guidelines (5.2, par.77-79) state:

*"A 'particular social group' normally comprises persons of similar background, habits or social status... Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution."*

A test for determining whether a group falls within the definition of a 'particular social group' in Article 1A(2) of the Convention was formulated in the High Court case of *Applicant S v MIMA* (2004) HCS 25. This was summarized by Gleeson CJ, Gummow and Kirby JJ at (36):

*'First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.'*

The common characteristic of s. 47F(1)

s. 47F(1) There are religious and legislative prohibitions against s. 47F(1), an aspect that distinguishes them from society as a whole; however the persecution that they fear is not the sole defining characteristic of the group. I find that the Convention ground of Membership of a Particular Social Group is the essential and significant reason for the harm feared as outlined in subdivision AL of the Migration Act. I therefore find that the applicant fears persecution for a Convention reason.

### ***Finding***

I am satisfied the Refugees Convention ground of membership of a particular social group is the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

## **3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?**

### ***Evidence and Reasons***

The applicant claims that s. 47F(1)

s. 47F(1)

s. 47F(1)

The harm and mistreatment feared by the applicant may constitute serious harm under The Migration Act section 91R(2):

- (a) a threat to a 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; and
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

I consider that the harm which the applicant fears amounts to persecution involving 'serious harm' as required by paragraph 91R(1)(b) of the Act in that it involves at least significant physical harassment or ill-treatment.

### ***Finding***

In addition to paragraph 91R(1)(a) of the Migration Act being met, I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by paragraphs 91R(1)(b) and (c) of the Migration Act. Therefore, I am satisfied the harm feared amounts to persecution.


## **4. IS THE FEAR WELL-FOUNDED?**

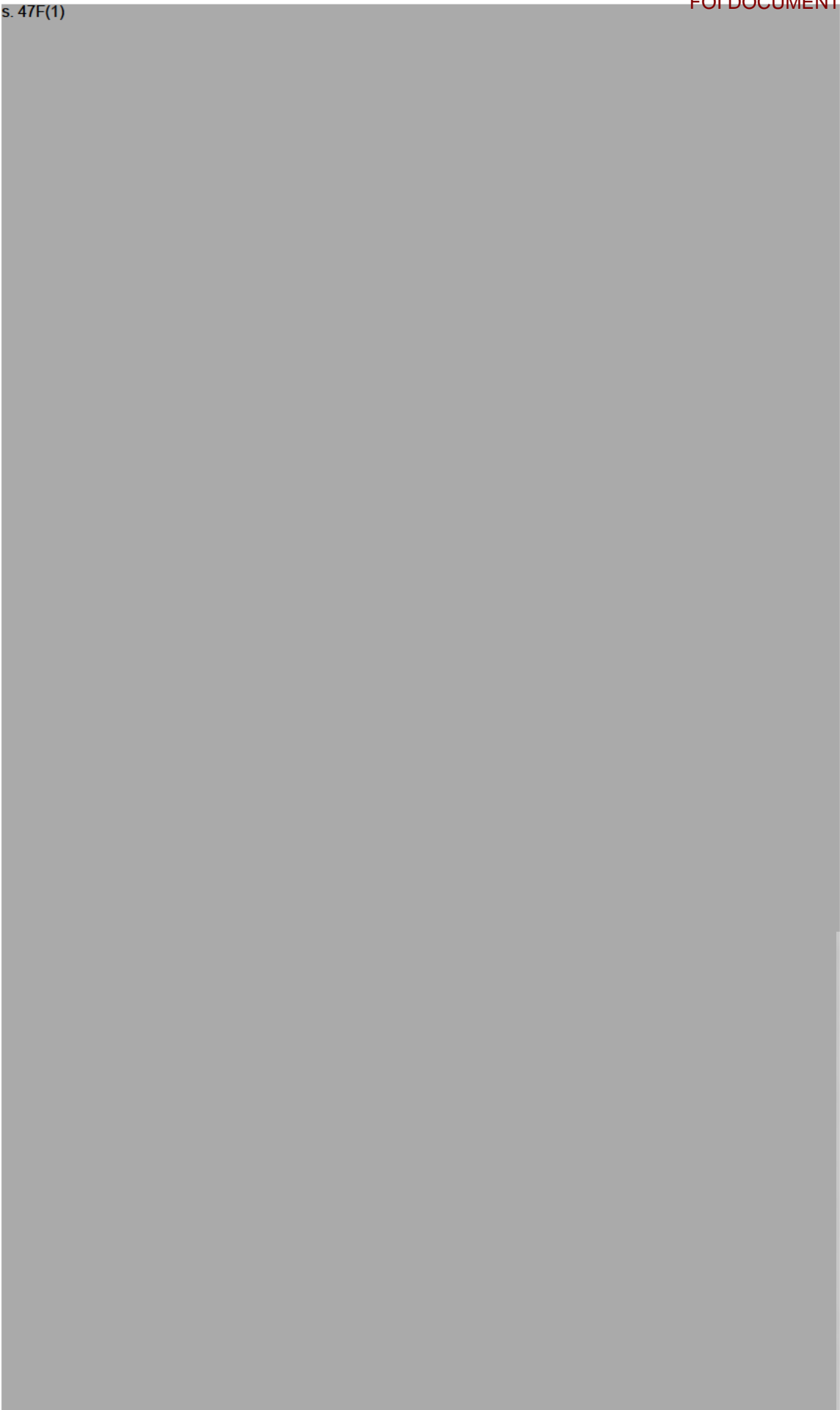
### Country Information

s. 47F(1)

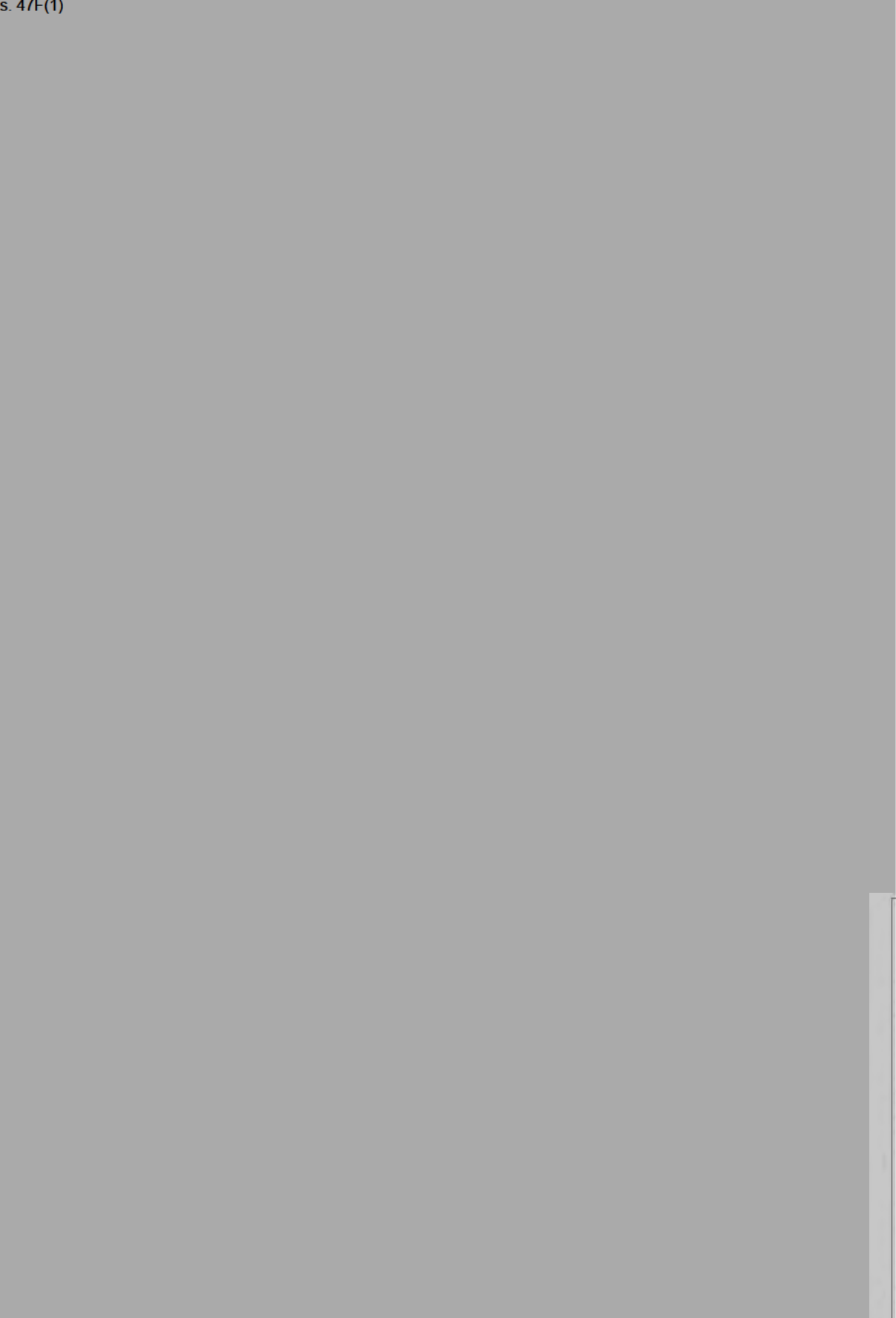


s. 47F(1)





s. 47F(1)



*Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

At interview, the applicant presented <sup>s. 47F(1)</sup> claims in an open and forthright manner, and answered all questions in a direct and believable way. The applicant provided a convincing account of <sup>s. 47F(1)</sup>. The applicant was able to provide several statutory declarations made by friends which supported <sup>s. 47F(1)</sup> claim <sup>s. 47F(1)</sup>. I am satisfied that the information contained in these statutory declarations is true and correct.

The applicant has provided a coherent, consistent and plausible account of <sup>s. 47F(1)</sup> growing awareness and experiences as <sup>s. 47F(1)</sup>. There was nothing in the applicant's demeanor or responses which would give me reason to believe that the applicant was lying or exaggerating. I find that the applicant's claim <sup>s. 47F(1)</sup> is plausible and I am satisfied that the applicant has <sup>s. 47F(1)</sup> since arriving in Australia. I am also satisfied that <sup>s. 47F(1)</sup> involvement <sup>s. 47F(1)</sup> in Australia, including <sup>s. 47F(1)</sup>, is genuine.

The available country information suggests that the applicant would be able to avoid harm and mistreatment in <sup>s. 47F(1)</sup> by concealing <sup>s. 47F(1)</sup> and acting in a discreet manner. Indeed, the applicant has claimed that <sup>s. 47F(1)</sup> developed a network of <sup>s. 47F(1)</sup> friends in <sup>s. 47F(1)</sup> and was able to discreetly socialise and engage in <sup>s. 47F(1)</sup>. The High Court in the case of *Appellant S395/2002 v MMIA* [2003] HCA 71 and *Applicant NABD of 2002 v MIMIA* [2005] HCA 29, however, has stated:

*'that where it is determined that an applicant would act in a way which would not attract persecution, decision makers must ask whether this is a voluntary choice on the part of the applicant, or is it motivated by fear of persecution.'*

Having carefully considered the applicant's testimony, I am satisfied that the applicant has a genuine desire to live an <sup>s. 47F(1)</sup>. As such, I am satisfied that the applicant would be motivated by a fear of persecution to act in a discreet manner if <sup>s. 47F(1)</sup> were to return to <sup>s. 47F(1)</sup>. I am of the opinion that living in this manner would be in opposition to <sup>s. 47F(1)</sup> right to live in dignity according to <sup>s. 47F(1)</sup>. I do not consider that it is a reasonable option for <sup>s. 47F(1)</sup> to return to <sup>s. 47F(1)</sup> and to attempt to keep <sup>s. 47F(1)</sup> secret.

As such, I must consider whether there is a real chance of the applicant facing harm and mistreatment amounting to persecution, if <sup>s. 47F(1)</sup> were to <sup>s. 47F(1)</sup>.

Based on the available information, I am satisfied that:

- physical attacks on <sup>s. 47F(1)</sup> do occur in <sup>s. 47F(1)</sup>



- there is a strong social stigma in relation to s. 47F(1) and there is significant societal discrimination against s. 47F(1) individuals;
- whilst incidents of overt discrimination against s. 47F(1) appear to be rare, it appears that this partly due to the fact that few individuals s. 47F(1) s. 47F(1).
- state protection is not available for s. 47F(1) who experience discrimination or violence from members of society. Indeed, the police infringe the rights of sexual minorities, especially s. 47F(1).

Based on the available information, I am satisfied that there is a real chance that the applicant will suffer serious harm if s. 47F(1).

### ***State Protection:***

Country information held by the department indicates that s. 47F(1) may face treatment which can amount to persecution by state and non state agents. While the law criminalising s. 47F(1) is not enforced in s. 47F(1) I am satisfied that the effect of the law is that state protection is not available for s. 47F(1) who experience discrimination or violence from members of society.

### ***Relocation:***

Given that available evidence indicates that societal prejudice against s. 47F(1) occurs throughout s. 47F(1) I am not satisfied that the applicant could reasonably be expected to relocate to a place where s. 47F(1) would be safe from the persecution which s. 47F(1) fears.

### ***Finding on relocation***

Based on the evidence cited above, I am not satisfied that relocation is either safe or reasonable for the applicant.

### ***Finding on well-foundedness***

I am satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I therefore find the applicant's fear of persecution, as defined under the Refugees Convention, is well-founded.

## **5. DOES A CESSATION CLAUSE APPLY? (ARTICLE 1C)**

I am satisfied that the cessation clauses in Article 1C of the Refugees Convention do not apply to the applicant.

## **6. DO THE EXCLUSION CLAUSES APPLY? (ARTICLE 1D, 1E OR 1F)**

I am satisfied the exclusion clauses in Articles 1D, 1E or 1F of the Refugees Convention do not apply to the applicant.



**7. DOES THE APPLICANT COME WITHIN ARTICLE 33(2) OF THE REFUGEES CONVENTION, IN RESPECT OF ITS EXPRESS EXCEPTION TO THE PROHIBITION ON REFOULEMENT?**

I find that the applicant does not come within either of the exceptions in Article 33(2) of the Refugees Convention.

**8. FINDING UNDER THE REFUGEES CONVENTION**

I am satisfied that the applicant, s. 47F(1), is a person to whom Australia has protection obligations, under the Refugees Convention as amended by the Refugees Protocol, as prescribed by paragraph 36(2)(a) of the Migration Act, and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

As I am satisfied that Australia has protection obligations to the applicant, s. 47F(1) under the Refugees Convention as amended by the Refugees Protocol and, therefore, under paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations, I have not made an assessment as to whether the applicant, s. 47F(1), is owed protection obligations under paragraph 36(2)(aa) of the Migration Act and the associated complementary protection provisions in the Migration Regulations.

**Part D – Time of Decision Criteria and Decision on Protection (Class XA) visa application**

**1. TIME OF DECISION CRITERIA**

Time of Decision Criteria - Migration Regulations 866.22

I am also satisfied that the applicant s. 47F(1) has:

- undergone medical examinations carried out by a Medical Officer of the Commonwealth or another medical practitioner approved by the Minister or a medical officer employed by an organisation approved by the Minister;
- undergone a chest x-ray by a medical practitioner who is qualified as a radiologist in Australia, or is under 12 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination or is a person who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time;
- satisfied public interest criteria 4001, 4002 and 4003A;
- satisfied the Australian Values Statement requirement, public interest criterion 4019;
- satisfied the Minister that the grant of a visa is in the national interest; and
- Not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.

I am also satisfied the applicant is in Australia.


Accordingly, I find that s. 47F(1) has met all prescribed Time of Decision criteria for the grant of a Subclass 866 (Protection) visa.

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## 2. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION

I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations for the purposes of paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations. I am also satisfied that the applicant meets all other applicable requirements for the grant of a visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

s. 22(1)(a)(ii)



Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act.

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

## PROTECTION (CLASS XA) VISA DECISION RECORD

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Claims for Protection – Material Before the Decision Maker – Country of Reference – Statutory Effective Protection – Claims for Protection**

### FINDING

For the reasons outlined below, I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations), and meets all other applicable requirements for the grant of a Protection (Class XA) visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

### 1. APPLICANT DETAILS

s. 47F(1)

#### Identity Finding

The applicant presented a s. 47F(1) Passport issued in the name s. 47F(1) s. 47F(1). In the absence of any evidence to the contrary, I am satisfied that this is the applicant's true identity.

### 2. APPLICATION VALIDITY

The application complies with the validity requirements of the Migration Act and Migration Regulations. Therefore, I find that the application is valid.

### 3. APPLICANT HISTORY/MIGRATION HISTORY

s. 47F(1)

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s. 47F(1)

#### 4. LEGAL FRAMEWORK

##### *Criteria To Be Met at the Time of Decision:*

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Citizenship (the Minister) is satisfied that the applicant is a person to whom Australia has protection obligations.

##### **Protection Obligations**

One criterion for a Protection visa (paragraph 36(2)(a) of the Migration Act) is that a person is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that a person is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) to 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. In this decision record, this alternative criterion is known as ‘complementary protection’. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen who is a member of the same family unit as an applicant who meets one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental ‘Refugee Law Guidelines’ and ‘Complementary Protection Guidelines’.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).

s. 47F(1)



s. 47F(1)



16. *Win v MIMA* [2001] FCA 132
17. *Appellant S395/2002 v MMIA* [2003] HCA 71 and
18. *Applicant NABD of 2002 v MIMIA* [2005] HCA 29

## 6. COUNTRY OF REFERENCE

### *Evidence and Reasons*

The applicant presented a s. 47F(1) issued in the name s. 47F(1). There is no evidence before me to suggest that this passport is not genuine.

### *Finding*

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For the reasons stated above, I am satisfied the applicant, s. 47F(1), is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country.

There is no evidence before me indicating that the applicant has a right to enter and reside in a safe third country.

### *Finding*

I find that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)



s. 47F(1)



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s. 47F(1)

## Part B - Assessment of Protection Obligations under the Refugees Convention

### 1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol provides that a ‘refugee’ is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

### 2. IS THE HARM FEARED FOR A REFUGEES CONVENTION REASON?

#### *Evidence and Reasons*

The applicant claims to fear persecution in s. 47F(1) because s. 47F(1).

In relation to the question of a particular social group, the UNHCR guidelines (5.2, par.77-79) state:

*“A ‘particular social group’ normally comprises persons of similar background, habits or social status... Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution.”*

A test for determining whether a group falls within the definition of a ‘particular social group’ in Article 1A(2) of the Convention was formulated in the High Court case of *Applicant S v MIMA* (2004) HCS 25. This was summarized by Gleeson CJ, Gummow and Kirby JJ at (36):



*'First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.'*

The common characteristic of s. 47F(1) [REDACTED]. There are religious and legislative prohibitions s. 47F(1) [REDACTED], an aspect that distinguishes them from society as a whole; however the persecution that they fear is not the sole defining characteristic of the group. I find that the Convention ground of Membership of a Particular Social Group is the essential and significant reason for the harm feared as outlined in subdivision AL of the Migration Act. I therefore find that the applicant fears persecution for a Convention reason.

### ***Finding***

I am satisfied the Refugees Convention ground of membership of a particular social group is the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

### **3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?**

#### ***Evidence and Reasons***

The applicant claims that s. 47F(1) [REDACTED]

s. 47F(1) [REDACTED]

The harm and mistreatment feared by the applicant may constitute serious harm under The Migration Act section 91R(2):

- (a) a threat to a 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; and
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

I consider that the harm which the applicant fears amounts to persecution involving 'serious harm' as required by paragraph 91R(1)(b) of the Act in that it involves at least significant physical harassment or ill-treatment.

### ***Finding***

In addition to paragraph 91R(1)(a) of the Migration Act being met, I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by paragraphs 91R(1)(b) and (c) of the Migration Act. Therefore, I am satisfied the harm feared amounts to persecution.

## **4. IS THE FEAR WELL-FOUNDED?**

### Country Information

s. 47F(1)



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s. 47F(1)



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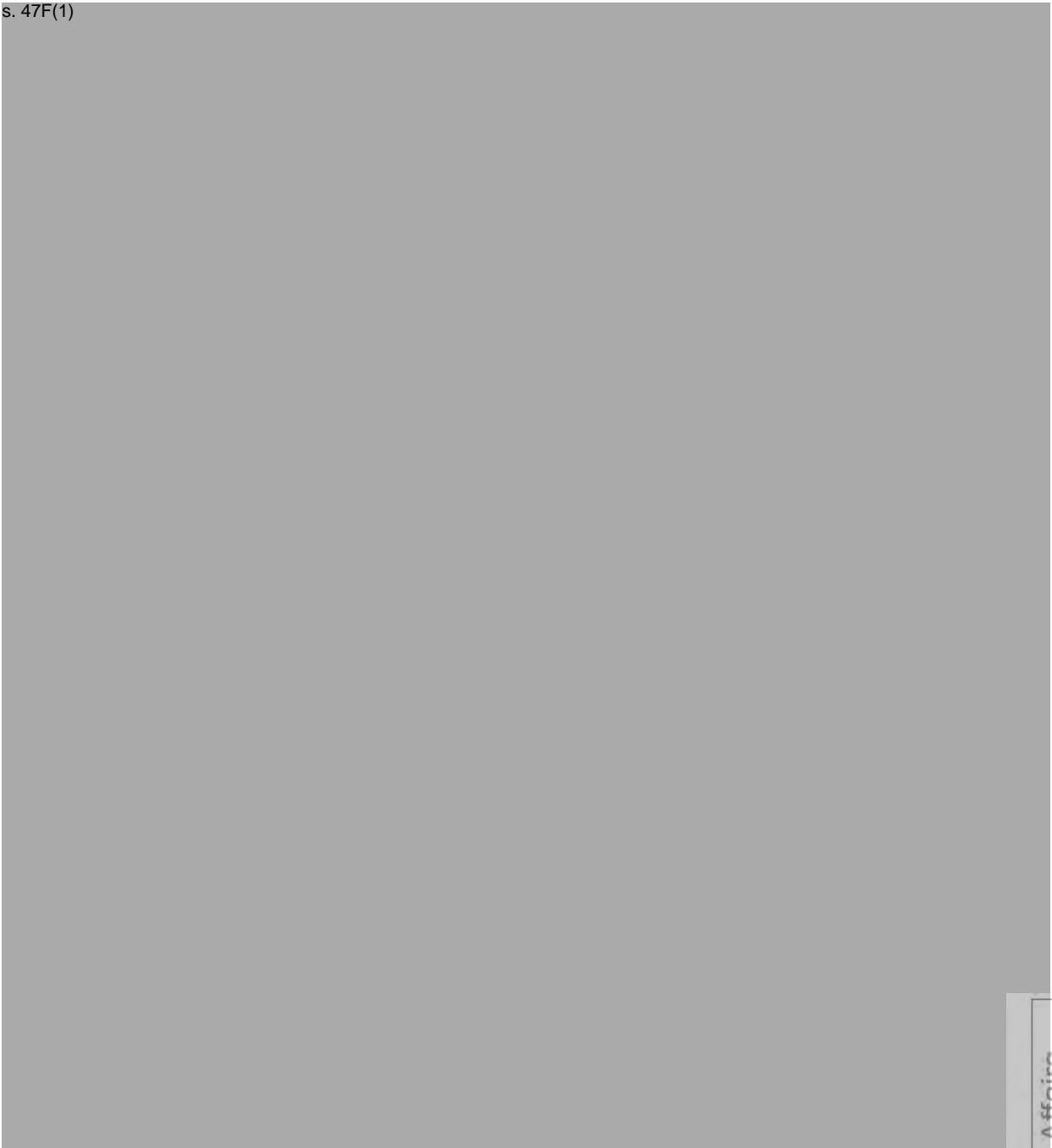
s. 47F(1)



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s. 47F(1)



### ***Evidence and Reasons***

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

At interview, the applicant presented s. 47F(1) claims in an open and forthright manner, and answered all questions in a direct and believable way. The applicant provided a convincing account of s. 47F(1). The applicant was able to provide several statutory declarations made by friends which supported s. 47F(1) claim s. 47F(1). On s. 47F(1) three of the statutory declarants were contacted by telephone. Each

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confirmed that they had signed a Statutory Declaration and answered questions in an open and forthright manner. I am satisfied that the information contained in these statutory declarations is true and correct.

The applicant has provided a coherent, consistent and plausible account of <sup>s. 47F(1)</sup> growing awareness and experiences as <sup>s. 47F(1)</sup>. There was nothing in the applicant's demeanor or responses which would give me reason to believe that the applicant was lying or exaggerating. I find that the applicant's claim <sup>s. 47F(1)</sup> is plausible and the applicant displayed a number of photographs at interview which show <sup>s. 47F(1)</sup> participating at a wide variety <sup>s. 47F(1)</sup> functions. <sup>s. 47F(1)</sup> submitted two photographs of <sup>s. 47F(1)</sup> published in <sup>s. 47F(1)</sup>. I am satisfied that the applicant has lived an <sup>s. 47F(1)</sup> since arriving in Australia.

The available country information suggests that the applicant would be able to avoid harm and mistreatment in <sup>s. 47F(1)</sup> by concealing <sup>s. 47F(1)</sup> and acting in a discreet manner. The High Court in the case of *Appellant S395/2002 v MIMA* [2003] HCA 71 and *Applicant NABD of 2002 v MIMA* [2005] HCA 29, however, has stated:

*'that where it is determined that an applicant would act in a way which would not attract persecution, decision makers must ask whether this is a voluntary choice on the part of the applicant, or is it motivated by fear of persecution.'*

Having carefully considered the applicant's testimony, I am satisfied that the applicant has a genuine desire to live an <sup>s. 47F(1)</sup>. As such, I am satisfied that the applicant would be motivated by a fear of persecution to act in a discreet manner <sup>s. 47F(1)</sup> were to return to <sup>s. 47F(1)</sup>. I am of the opinion that living in this manner would be in opposition to <sup>s. 47F(1)</sup> right to live in dignity according to <sup>s. 47F(1)</sup>. I do not consider that it is a reasonable option for <sup>s. 47F(1)</sup> to return to <sup>s. 47F(1)</sup> and to attempt to keep <sup>s. 47F(1)</sup> secret.

As such, I must consider whether there is a real chance of the applicant facing harm and mistreatment amounting to persecution, <sup>s. 47F(1)</sup> were to <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>.

Based on the available information, I am satisfied that:

- physical attacks on <sup>s. 47F(1)</sup> do occur in <sup>s. 47F(1)</sup>;
- there is a strong social stigma in relation to <sup>s. 47F(1)</sup> and there is significant societal discrimination against <sup>s. 47F(1)</sup> individuals;
- whilst incidents of overt discrimination against <sup>s. 47F(1)</sup> appear to be rare, it appears that this partly due to the fact that few individuals <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>.
- State protection is not available for <sup>s. 47F(1)</sup> who experience discrimination or violence from members of society.

Based on the available information, I am satisfied that there is a real chance that the applicant will suffer serious harm if <sup>s. 47F(1)</sup>.

#### **State Protection:**

Country information held by the department indicates that s. 47F(1) may face treatment which can amount to persecution by state and non state agents. While the law criminalising s. 47F(1) is not enforced in s. 47F(1) I am satisfied that the effect of the law is that state protection is not available for s. 47F(1) who experience discrimination or violence from members of society.

### ***Relocation:***

Given that available evidence indicates that societal prejudice against s. 47F(1) occurs throughout s. 47F(1), I am not satisfied that the applicant could reasonably be expected to relocate to a place where s. 47F(1) would be safe from the persecution which s. 47F(1) fears.

### ***Finding on relocation***

Based on the evidence cited above, I am not satisfied that relocation is either safe or reasonable for the applicant.

### ***Finding on well-foundedness***

I am satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I therefore find the applicant's fear of persecution, as defined under the Refugees Convention, is well-founded.

## **5. DOES A CESSATION CLAUSE APPLY? (ARTICLE 1C)**

I am satisfied that the cessation clauses in Article 1C of the Refugees Convention do not apply to the applicant.

## **6. DO THE EXCLUSION CLAUSES APPLY? (ARTICLE 1D, 1E OR 1F)**

I am satisfied the exclusion clauses in Articles 1D, 1E or 1F of the Refugees Convention do not apply to the applicant.

## **7. DOES THE APPLICANT COME WITHIN ARTICLE 33(2) OF THE REFUGEES CONVENTION, IN RESPECT OF ITS EXPRESS EXCEPTION TO THE PROHIBITION ON REFOULEMENT?**

I find that the applicant does not come within either of the exceptions in Article 33(2) of the Refugees Convention.

## **8. FINDING UNDER THE REFUGEES CONVENTION**

I am satisfied that the applicant, s. 47F(1) is a person to whom Australia has protection obligations, under the Refugees Convention as amended by the Refugees Protocol, as prescribed by paragraph 36(2)(a) of the Migration Act, and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

As I am satisfied that Australia has protection obligations to the applicant, s. 47F(1) [REDACTED], under the Refugees Convention as amended by the Refugees Protocol and, therefore, under paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations, I have not made an assessment as to whether the applicant, s. 47F(1) [REDACTED], is owed protection obligations under paragraph 36(2)(aa) of the Migration Act and the associated complementary protection provisions in the Migration Regulations.

**Part D – Time of Decision Criteria and Decision on Protection (Class XA) visa application**

**1. TIME OF DECISION CRITERIA**

Time of Decision Criteria - Migration Regulations 866.22

I am also satisfied that the applicant s. 47F(1) [REDACTED] has:

- undergone medical examinations carried out by a Medical Officer of the Commonwealth or another medical practitioner approved by the Minister or a medical officer employed by an organisation approved by the Minister;
- undergone a chest x-ray by a medical practitioner who is qualified as a radiologist in Australia, or is under 12 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination or is a person who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time;
- satisfied public interest criteria 4001, 4002 and 4003A;
- satisfied the Australian Values Statement requirement, public interest criterion 4019;
- satisfied the Minister that the grant of a visa is in the national interest; and
- Not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.

I am also satisfied the applicant is in Australia.

Accordingly, I find that s. 47F(1) [REDACTED] has met all prescribed Time of Decision criteria for the grant of a Subclass 866 (Protection) visa.

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## 2. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION

I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations for the purposes of paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations. I am also satisfied that the applicant meets all other applicable requirements for the grant of a visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

s. 22(1)(a)(ii)

Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act.

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

## PROTECTION (CLASS XA) VISA DECISION RECORD

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Claims for Protection – Material Before the Decision Maker – Legal Framework - Country of Reference / Receiving Country – Statutory Effective Protection - Findings of Fact (Credibility)**

### FINDING

For the reasons outlined below, I am not satisfied that s. 47F(1) is a person to whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).

For the reasons outlined below, I am not satisfied that s. 47F(1) is a member of the same family unit as s. 47F(1).

### 1. APPLICANT DETAILS

**Applicant making claims under the Refugees Convention and/or Complementary Protection provisions:**

**Principal Applicant (“the applicant”)**

s. 47F(1)

**Applicant who claims to be a member of the family unit and is making s. 47F(1) own specific protection claims**

s. 47F(1)

## Assessment of "Member of the Family Unit"

"A member of the family unit" is defined in clause 1.12(1) of the Migration Regulations 1994 (the Migration Regulations) as follows:

1.12 (1) For the definition of member of the family unit in subsection 5(1) of the Act, and subject to subregulations (2), (2A), (6) and (7), a person is a member of the family unit of another person (in this subregulation called the family head) if the person is:

- (a) a spouse or de facto partner of the family head; or
- (b) a dependent child of the family head or of a spouse or de facto partner of the family head; or
- (c) a dependent child of a dependent child of the family head or of a spouse or de facto partner of the family head; or
- (e) a relative of the family head or of a spouse or de facto partner of the family head who:
  - (i) does not have a spouse or de facto partner; and
  - (ii) is usually resident in the family head's household; and
  - (iii) is dependent on the family head.

s. 47F(1) (the applicant) and s. 47F(1) submitted a combined *Application for a Protection (Class XA) visa* (Form 866B), and both submitted an individual *Application for an applicant who wishes to submit their own claims to be a refugee* (Form 866C).

s. 47F(1) (the applicant) and s. 47F(1) claim to be de facto partners on the basis of a genuine and ongoing s. 47F(1) relationship. For the reasons outlined in *Section 9: Findings of Fact (Credibility)*, I am not satisfied that the applicants s. 47F(1) or in a defacto relationship. Consequently, I am not satisfied that s. 47F(1) is a member of the same family unit of the applicant.

This decision record assesses the protection claims advanced by s. 47F(1) (the applicant). The protection claims advanced by s. 47F(1), are assessed in a separate decision record.

## 2. APPLICATION VALIDITY

The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find that the application is valid.

## 3. APPLICANT HISTORY/MIGRATION HISTORY

s. 47F(1)



s. 47F(1)

#### 4. LEGAL FRAMEWORK

##### *Criteria To Be Met At The Time Of Decision:*

##### **Subclass 866 (Protection) visa**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Citizenship (the Minister) is satisfied that the applicant is a person to whom Australia has protection obligations.

##### **Protection Obligations**

One criterion for a Protection visa (paragraph 36(2)(a) of the Migration Act) is that a person is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that a person is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) to 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. In this decision record, this alternative criterion is known as ‘complementary protection’. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen who is a member of the same family unit as an applicant who meets one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant s. 47F(1)
2. Departmental file s. 22(1)(a)(ii) relating to the applicant s. 47F(1)

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s. 47F(1)

3. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
4. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).

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s. 47F(1)

## 6. COUNTRY OF REFERENCE / RECEIVING COUNTRY

### *Evidence and Reasons*

The applicant submitted a certified copy of a s. 47F(1) passport issued in the name s. 47F(1). In the absence of any evidence to the contrary, I am satisfied that the applicant is a national of s. 47F(1) as claimed.

### *Finding*

For the reasons stated above, I am satisfied that the applicant is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is that the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act for the purpose of assessing the complementary protection criteria.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be citizen of s. 47F(1) does not claim to hold any other citizenship or have a current right to enter and reside in a third country.

There is no evidence before me indicating that the applicant has a right to enter and reside in a safe third country.

### *Finding*

I find that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)



s. 47F(1)

## 9. FINDINGS OF FACT (CREDIBILITY)

I am not satisfied that the applicant s. 47F(1), or that s. 47F(1) is in a genuine and ongoing relationship with s. 47F(1). Furthermore, I am not satisfied that the applicant has a genuine and ongoing commitment to s. 47F(1). In reaching these conclusions, I have carefully examined the claims advanced by the applicant and s. 47F(1): at the time of application; at the interviews held on s. 47F(1) and in the further submission dated s. 47F(1). I have given weight to the matters outlined below.

### Claims concerning dealings with a person named s. 47F(1)

Despite arriving in Australia on s. 47F(1) did not lodge a Protection Visa application until s. 47F(1). Both applicants have maintained that they did not know that lodging a protection visa application was an option for them until after they had met a person named s. 47F(1) at s. 47F(1). Having carefully considered s. 47F(1) claims in relation to their dealings with s. 47F(1), I am of the opinion that these claims are fabricated and were included in their narratives in an attempt to justify their delay in lodging Protection Visa applications.

In the statutory declaration submitted in support of s. 47F(1) Protection Visa application, s. 47F(1) stated:

s. 47F(1)

s. 47F(1)

At interview, s. 47F(1) was questioned at length about s. 47F(1) dealings with s. 47F(1). s. 47F(1) stated that s. 47F(1) met s. 47F(1) a s. 47F(1) and indicated that the applicant was with s. 47F(1) at the time. When asked if s. 47F(1) could recall the date s. 47F(1) met



s. 47F(1) initially responded that it was in the beginning of  
 s. 47F(1) or s. 47F(1) in s. 47F(1) When it was put to s. 47F(1) that s. 47F(1)  
 original statement indicated that s. 47F(1) did not meet s. 47F(1) in s. 47F(1), s. 47F(1)  
 s. 47F(1) said that s. 47F(1) had made a mistake. s. 47F(1) then claimed  
 that s. 47F(1) met s. 47F(1) in the s. 47F(1) of s. 47F(1).

When asked to elaborate on s. 47F(1) conversation with s. 47F(1) said  
 that s. 47F(1) and the applicant talked to s. 47F(1) when some food and refreshments were being  
 served after s. 47F(1) said that they told s. 47F(1) that they s. 47F(1) and had  
 changed their s. 47F(1) claimed that s. 47F(1) told  
 them that s. 47F(1) is s. 47F(1) and suggested that they go to a solicitor for help with their  
 problem. s. 47F(1) clearly stated that s. 47F(1) had not met s. 47F(1) before s. 47F(1)  
 s. 47F(1). When asked to explain why s. 47F(1) had not met s. 47F(1),  
 s. 47F(1) said that s. 47F(1) had not noticed s. 47F(1)  
 s. 47F(1). When it was put to s. 47F(1) that it was  
 surprising that s. 47F(1) had not met s. 47F(1) at s. 47F(1) prior to s. 47F(1) - given that they  
 are both s. 47F(1) and s. 47F(1) had been attending s. 47F(1) since s. 47F(1) s. 47F(1)  
 claimed that a lot of s. 47F(1) attend s. 47F(1) and it was not easy to identify other  
 s. 47F(1) by sight. When asked if s. 47F(1) still saw s. 47F(1) s. 47F(1)  
 s. 47F(1) confirmed that s. 47F(1) occasionally saw s. 47F(1) s. 47F(1) advised  
 that s. 47F(1) does not socialise with s. 47F(1) because s. 47F(1) is a busy person.

s. 47F(1) account of their contact with s. 47F(1) was not consistent with  
 that provided by the applicant. When asked to provide further information about  
 s. 47F(1) the applicant said that they first came to know s. 47F(1) at s. 47F(1) s. 47F(1) said that s. 47F(1)  
 s. 47F(1) shared their problems with s. 47F(1) who subsequently provided  
 them with the names of two lawyers. The applicant said that s. 47F(1) first met s. 47F(1) in  
 s. 47F(1) but then corrected s. 47F(1) and said that it was s. 47F(1). The applicant  
 said that s. 47F(1) did not know how long s. 47F(1) had s. 47F(1) prior to their  
 meeting. The applicant said that s. 47F(1) told them s. 47F(1) after they told s. 47F(1) about  
 their problem. s. 47F(1) said that s. 47F(1) was the one who had actually  
 talked to s. 47F(1) s. 47F(1) indicated that s. 47F(1) conducted the conversation  
 because s. 47F(1) had already met s. 47F(1) and knew that s. 47F(1) was from s. 47F(1). When  
 asked to confirm that s. 47F(1) was saying that s. 47F(1) had previously met  
 s. 47F(1), The applicant confirmed that this was s. 47F(1) understanding, but indicated that s. 47F(1)  
 did not know how long they had known each other. When it was put to the applicant  
 that s. 47F(1) had indicated that they first met s. 47F(1) together in s. 47F(1)  
 s. 47F(1) said that s. 47F(1) agreed with s. 47F(1) account. s. 47F(1) suggested  
 that s. 47F(1) had only assumed that they had met before.

When asked if s. 47F(1) could explain why s. 47F(1) was comfortable telling  
 s. 47F(1) that they s. 47F(1), the applicant indicated that s. 47F(1) thinks s. 47F(1)  
 s. 47F(1) already knew that s. 47F(1) was s. 47F(1) When asked to explain why s. 47F(1)  
 s. 47F(1) was comfortable telling a person from s. 47F(1) that they are a

s. 47F(1) - given their reticence to be open about s. 47F(1) to other people and particularly those from the s. 47F(1) community s. 47F(1) indicated that s. 47F(1) might have already known that s. 47F(1). This was not consistent with s. 47F(1) earlier statement which indicated that s. 47F(1) did not tell them s. 47F(1) until after they had revealed their s. 47F(1) to s. 47F(1).

At a further interview on s. 47F(1), the applicants were asked if they could provide a supporting statement from s. 47F(1) as s. 47F(1) appeared to be the only person they had willingly revealed their s. 47F(1) to in Australia. s. 47F(1) sought to diminish s. 47F(1) relationship with s. 47F(1) by stating that they did not have a "proper connection with s. 47F(1) s. 47F(1) claimed that they didn't know when s. 47F(1) attended s. 47F(1), and said that their initial meeting with s. 47F(1) had been a coincidence and unexpected. s. 47F(1) claimed that s. 47F(1) had simply told them to go to an agent. s. 47F(1) reiterated that they do not have a social relationship with s. 47F(1). When it was put to s. 47F(1) that they had previously indicated that they continued to see s. 47F(1) s. 47F(1) acknowledged that they sometimes saw s. 47F(1) at s. 47F(1), but reiterated that there are 200-300 people at s. 47F(1) each time and it would be hard to find s. 47F(1).

When it was put to s. 47F(1) that s. 47F(1) had initially stated at interview that s. 47F(1) continued to see s. 47F(1) occasionally s. 47F(1) suggested that it was not a regular occurrence because s. 47F(1) was sometimes busy or sick. When asked if someone else from s. 47F(1) could help them to get in contact with s. 47F(1) s. 47F(1) indicated that it could be difficult because there may be a lot of people named s. 47F(1) at s. 47F(1) due to the large number s. 47F(1) in attendance. At the end of the interview, the applicants undertook to try to obtain a supporting letter from s. 47F(1). On s. 47F(1) advised the Delegate that they would not be submitting a supporting letter from s. 47F(1).

Having considered the vague and inconsistent nature of the claims advanced by the applicants concerning their dealings with a person named s. 47F(1) I am not satisfied that s. 47F(1) is a real person and conclude that the alleged meetings with s. 47F(1) are fabricated.

The applicants' accounts of their meetings and conversations with s. 47F(1) were unconvincing and inconsistent. Both applicants consistently stated that they did not wish to tell other people about s. 47F(1) and also claimed that they did not tell people at s. 47F(1) about their s. 47F(1) because they feared being ridiculed. Despite these assertions, the applicants claim that they told s. 47F(1) that they s. 47F(1) on their first encounter with s. 47F(1). Neither applicant was able to provide a convincing explanation as to why s. 47F(1) would have s. 47F(1) to a stranger in the circumstances described.

When asked to obtain a supporting statement from s. 47F(1) the applicants were notably evasive and sought to distance themselves from s. 47F(1) and suggest that they rarely saw



s. 47F(1) This position is not consistent with their original claim to occasionally see s. 47F(1) at s. 47F(1). I am of the opinion that the applicants sought to distance themselves from s. 47F(1) because s. 47F(1) is not a real person and they knew that they were unable to obtain a supporting letter from s. 47F(1).

A finding that the applicant has fabricated claims concerning dealings with a person named s. 47F(1) damages s. 47F(1) overall credibility. If the applicant s. 47F(1) and/or had an ongoing and genuine commitment to s. 47F(1) I am of the opinion that s. 47F(1) would not have fabricated claims concerning a person named s. 47F(1).

**Claims s. 47F(1) and in a genuine and ongoing relationship:**

The applicant has sought to frame s. 47F(1) within the context of a genuine and ongoing relationship with s. 47F(1). As a result, findings in relation to the genuineness of their relationship are relevant to my assessment of their claims s. 47F(1). For the reasons outlined below, I am not satisfied that the applicants s. 47F(1), or that they are in a genuine and ongoing relationship.

Whilst the applicants were able to provide a consistent account of their initial meeting, I am not satisfied that they s. 47F(1) or that they are in a genuine and ongoing relationship.

*Supporting documents:*

Apart from membership cards from s. 47F(1) and s. 47F(1) membership cards, the applicants have been unable to provide any evidence in support of their claims s. 47F(1) and in a genuine and ongoing relationship. Furthermore, they have been unable to nominate anyone who could attest that they are in a genuine and ongoing relationship.

Whilst I accept that the applicants have obtained membership of s. 47F(1) s. 47F(1) I do not find these documents to be compelling evidence upon which to base a finding that they s. 47F(1). The act of obtaining membership of s. 47F(1), does not of itself establish that the applicants s. 47F(1).

At interview, s. 47F(1) claimed that they go s. 47F(1) on s. 47F(1) s. 47F(1) indicated that they do not socialise with anyone at s. 47F(1) and simply talk to each other and drink beer. When asked to clarify why they go to s. 47F(1) if they are not socialising with other people, s. 47F(1) indicated that they went there because they like it. When asked to articulate what they like about s. 47F(1) said that they go there for enjoyment and to talk. s. 47F(1) also said that they sometimes watch special programmes s. 47F(1).

When questioned about their attendance at s. 47F(1) the applicant maintained that they attended s. 47F(1) on a s. 47F(1). The applicant also mentioned that s. 47F(1) went to s. 47F(1) on s. 47F(1) with s. 47F(1). When asked what time they go to the s. 47F(1), The applicant initially indicated that it was s. 47F(1) and s. 47F(1). When asked to clarify, s. 47F(1) indicated that they went to the s. 47F(1) between s. 47F(1).

The applicants' claims concerning attendance at s. 47F(1), was not consistent with their claim to attend s. 47F(1) every s. 47F(1) at s. 47F(1). When this inconsistency was put to the applicant, s. 47F(1) indicated that due to s. 47F(1) work commitments they have only been visiting s. 47F(1) every s. 47F(1) this year s. 47F(1) claimed that last year they attended a s. 47F(1) every s. 47F(1). I am not satisfied that the applicant's response adequately explains this inconsistency. Given that both applicants clearly indicated that they had been attending s. 47F(1) every s. 47F(1) at s. 47F(1) this year, it is not possible that they were also attending a s. 47F(1) every second s. 47F(1) at the same time. In light of this significant inconsistency, I am of the opinion that their claims to regularly attend s. 47F(1) have been fabricated for the purposes of strengthening their claims s. 47F(1).

s. 47F(1) *claims concerning* s. 47F(1)

At the time of application, s. 47F(1) indicated that s. 47F(1) lived with s. 47F(1) at s. 47F(1), and became s. 47F(1). At interview, s. 47F(1) was asked when s. 47F(1) realised that s. 47F(1). In response, s. 47F(1) indicated that it was after meeting a s. 47F(1) that s. 47F(1) lived with in s. 47F(1). s. 47F(1) advised that the s. 47F(1) were s. 47F(1) named s. 47F(1). When asked if s. 47F(1) had thoughts about s. 47F(1) before meeting s. 47F(1), s. 47F(1) indicated that s. 47F(1) had, but claimed that it was only after seeing s. 47F(1) together that s. 47F(1) decided that s. 47F(1) also wanted to pursue s. 47F(1).

I am not satisfied that s. 47F(1) lived with a s. 47F(1) named s. 47F(1). In reaching this conclusion, I have given weight to the following:

- s. 47F(1) also claimed to have lived with a s. 47F(1) named s. 47F(1) at s. 47F(1). s. 47F(1) indicated that s. 47F(1) was not comfortable with s. 47F(1) and identified s. 47F(1) as the person responsible for informing s. 47F(1) parents about s. 47F(1) attendance at a s. 47F(1). Within the context of this narrative, I find it implausible that s. 47F(1) would have allowed s. 47F(1) to reside in s. 47F(1) unit. As such, I am not satisfied that s. 47F(1) resided with s. 47F(1) named s. 47F(1). I am of the opinion that s. 47F(1) claim to have lost contact with s. 47F(1) was designed to cover the fact that they do not exist.



- The applicants were unable to provide a consistent set of claims concerning s. 47F(1) named s. 47F(1). At interview, the applicant was asked whether s. 47F(1) had developed any friendships at s. 47F(1) claimed to have developed a friendship with s. 47F(1) named s. 47F(1) claimed that s. 47F(1) talked to them at s. 47F(1), but said that s. 47F(1) did not socialise with them at any other times. s. 47F(1) indicated that s. 47F(1) first met s. 47F(1) at s. 47F(1). The applicant said that s. 47F(1) were s. 47F(1) only friends at s. 47F(1). When asked if s. 47F(1) were a couple, the applicant said that s. 47F(1) was not sure. When it was put to the applicant that s. 47F(1) had not identified s. 47F(1) as friends from s. 47F(1) claimed that s. 47F(1) does not know them. When asked how it was possible that s. 47F(1) did not know s. 47F(1), the applicant claimed that s. 47F(1) hardly talked to anyone at s. 47F(1). When asked to confirm if s. 47F(1) was claiming that s. 47F(1) does not know s. 47F(1) the applicant indicated that although s. 47F(1) sits next to s. 47F(1) when s. 47F(1) is talking to s. 47F(1) at s. 47F(1) does not talk to them.

I do not accept that the applicant has friends named s. 47F(1) at s. 47F(1). If the applicant had developed a friendship with these s. 47F(1), I am satisfied that s. 47F(1) would also know them. The applicant's claim that s. 47F(1) did not know s. 47F(1) because s. 47F(1) does not talk to them was unconvincing.

At interview, the applicant was advised that s. 47F(1) had also mentioned two other people named s. 47F(1). When asked if s. 47F(1) knew anyone else called s. 47F(1), the applicant mentioned that s. 47F(1) had once told s. 47F(1) that s. 47F(1) had lived with a couple with those names. Having carefully considered this matter, I am of the opinion that the applicant's use of the names s. 47F(1) is evidence of the misappropriation of claims fabricated by s. 47F(1).

s. 47F(1) :

s. 47F(1) claimed to have been attending s. 47F(1) since s. 47F(1) has submitted a number of documents in support of this claim s. 47F(1). Based on the documentation provided by s. 47F(1), I am satisfied that s. 47F(1) was s. 47F(1) at s. 47F(1) on s. 47F(1), and that s. 47F(1) has attended s. 47F(1). Nevertheless, I am not satisfied that s. 47F(1) has a genuine interest and commitment s. 47F(1). Having carefully considered the claims advanced by s. 47F(1), I am of the opinion that s. 47F(1) has attended s. 47F(1) in bad faith and solely for the

purpose of establishing claims of refugee status. In reaching this conclusion, I have considered the following:

- s. 47F(1) was s. 47F(1). Given that s. 47F(1) only claims to have started attending s. 47F(1) in s. 47F(1) s. 47F(1). I find the speed with which s. 47F(1) was s. 47F(1) supports a finding that it was not based on a genuine desire for s. 47F(1), but rather a desire to establish s. 47F(1) claims for a Protection Visa application.
- s. 47F(1) has indicated that s. 47F(1) does not have any substantial links with people at s. 47F(1). This leads me to conclude that s. 47F(1) attendance at s. 47F(1) is superficial and does not reflect a genuine commitment and interest in s. 47F(1).
- s. 47F(1) did not demonstrate a level of knowledge and understanding of s. 47F(1) commensurate with a person who has had a genuine and ongoing commitment to s. 47F(1) since s. 47F(1).
- At interview, s. 47F(1) was asked about s. 47F(1) position on s. 47F(1). The applicants did not provide a consistent and coherent response.

When asked about the views of s. 47F(1) in relation to s. 47F(1) s. 47F(1) said that there was a discussion about s. 47F(1) at a conference s. 47F(1) said: s. 47F(1). When asked why s. 47F(1) believed s. 47F(1) had a positive view about s. 47F(1) s. 47F(1) contradicted s. 47F(1) earlier comment by stating: s. 47F(1) s. 47F(1) said that s. 47F(1) talked about s. 47F(1) at a s. 47F(1) s. 47F(1) indicated that s. 47F(1) had said that s. 47F(1) are also human beings. When put to s. 47F(1) that s. 47F(1) had been vague about what was said by s. 47F(1) about s. 47F(1) reiterated that s. 47F(1) understood s. 47F(1) to say that s. 47F(1) suggested that s. 47F(1) views were s. 47F(1) s. 47F(1) reiterated that s. 47F(1) had said that s. 47F(1) human beings and are welcome to attend s. 47F(1). When asked if there were any s. 47F(1) people at s. 47F(1) said that s. 47F(1) did not know if there are any. This comment is not consistent with s. 47F(1) claim that s. 47F(1) had told s. 47F(1) that s. 47F(1).

It was put to s. 47F(1) that available information about s. 47F(1) indicates that s. 47F(1) is viewed as unnatural act which s. 47F(1) is s. 47F(1) was referred to a

s. 47F(1) article from s. 47F(1), which suggested that s. 47F(1) were not welcome at s. 47F(1). In response, s. 47F(1) suggested that the information was not current and observed that it is now s. 47F(1). When it was put to s. 47F(1) that a s. 47F(1) indicated that s. 47F(1) taught that s. 47F(1) ] , s. 47F(1) did not respond. When it was put to s. 47F(1) that s. 47F(1) attendance at s. 47F(1) appeared to be inconsistent with s. 47F(1) claimed s. 47F(1), s. 47F(1) said that s. 47F(1) did not prevent s. 47F(1), but did expect them to change. When put to s. 47F(1) that s. 47F(1) had initially said that s. 47F(1) had a favourable view of s. 47F(1) said that s. 47F(1) believed that s. 47F(1) had a positive attitude because they did not s. 47F(1) from attending s. 47F(1) s. 47F(1) indicated that s. 47F(1) did not feel that s. 47F(1) is against s. 47F(1)

At interview, the applicant claimed that s. 47F(1) had discussed s. 47F(1) for 5 – 10 minutes at s. 47F(1). s. 47F(1) claimed that s. 47F(1) had stated that s. 47F(1) indicated that s. 47F(1) did not pursue it further because some people had reacted negatively to the comments s. 47F(1) made. When it was put to the applicant that available information indicated that s. 47F(1) does not approve of s. 47F(1), s. 47F(1) initially agreed with this assessment. When presented with reports which indicated that s. 47F(1) has a negative attitude to s. 47F(1), the applicant claimed that it was s. 47F(1) understanding that there are s. 47F(1) and they are able to s. 47F(1) in their own way and style.

The applicant's inability to provide a consistent account of s. 47F(1) position on s. 47F(1) leads me to conclude that the applicant has not explored this issue. The applicant's apparent lack of any genuine interest in this issue appears to contradict the applicant's claim s. 47F(1). If the applicant was s. 47F(1) and had an s. 47F(1), I am of the opinion that s. 47F(1) would have taken a greater interest in s. 47F(1) position on s. 47F(1) and been more knowledgeable about it.

Furthermore, if s. 47F(1) was s. 47F(1) and believed that s. 47F(1) expected s. 47F(1) it is reasonable to conclude that this issue would have been discussed with the applicant. The fact that their understanding about this issue is not consistent, leads me to conclude that they have never discussed the issue in any detail. The apparent lack of interest in this issue, leads me to



conclude that they are not s. 47F(1) with a genuine and ongoing commitment to s. 47F(1)

The adverse findings in relation to s. 47F(1) outlined above, support a finding that the applicant does not have a genuine and ongoing interest in s. 47F(1) and that they have fabricated claims in an attempt to mislead the Department. In reaching this conclusion, I have also considered the matters outlined below.

I accept that the applicant started to s. 47F(1) in s. 47F(1) around s. 47F(1). I also accept that s. 47F(1) was s. 47F(1). I am not satisfied, however, that the applicant's s. 47F(1) has been undertaken in good faith, or that s. 47F(1) has a genuine and ongoing commitment to s. 47F(1). In reaching this conclusion, I have considered the following:

- The applicant claims to have been introduced to s. 47F(1) by s. 47F(1). The applicant's decision to s. 47F(1) was clearly placed within the context of s. 47F(1) relationship with s. 47F(1). For the reasons outlined elsewhere in this decision, I do not accept that the applicant is in a genuine s. 47F(1). As such, I do not accept the explanation provided by the applicant for s. 47F(1) initial attendance at s. 47F(1). In the absence of a plausible explanation for s. 47F(1) interest in s. 47F(1), I am of the opinion that s. 47F(1) attendance was motivated by a desire to fabricate protection claims based on s. 47F(1).
- The applicant was s. 47F(1). Given that the applicant only claims to have become interested in s. 47F(1) after meeting s. 47F(1) s. 47F(1), and to have only started s. 47F(1) in s. 47F(1) s. 47F(1), I find the speed with which s. 47F(1) was s. 47F(1) supports a finding that s. 47F(1) was not motivated by a genuine desire for s. 47F(1). I am of the opinion that s. 47F(1) expedited s. 47F(1) for the sole purpose of lodging a Protection Visa application.
- The applicant was asked to submit a letter from s. 47F(1) in support of s. 47F(1) claims. Despite being given ample time, the applicant has failed to provide a letter of support from s. 47F(1) attesting to s. 47F(1) regular attendance and commitment to s. 47F(1). If the applicant had been s. 47F(1) on a weekly basis since s. 47F(1) and was genuinely committed to s. 47F(1) I am satisfied that s. 47F(1) would have been able to obtain a letter of support from a s. 47F(1) member. Given that s. 47F(1) has a vested interest in the outcome of this application, I give no weight to s. 47F(1) testimony in relation to the applicant's s. 47F(1) attendance.

At interview, the applicant was asked whether s. 47F(1) had developed any friendships at s. 47F(1). As outlined above the applicant claimed to have developed a friendship with s. 47F(1) named s. 47F(1) s. 47F(1). For the reasons outlined elsewhere, I am not satisfied that these s. 47F(1) actually exist and conclude that the applicant fabricated this claim in an



attempt to establish a level of engagement with s. 47F(1) that does not exist.

- The applicant did not demonstrate knowledge of s. 47F(1) commensurate with someone who had been in regular attendance s. 47F(1) since s. 47F(1). The applicant was only able to speak in vague terms about the content of s. 47F(1) given at s. 47F(1). This leads me to conclude that the applicant has not been s. 47F(1) to the extent claimed and/or that s. 47F(1) does not fully engage in s. 47F(1) when in attendance at s. 47F(1). Either interpretation leads me to conclude that the applicant is not genuinely interested in or committed to s. 47F(1).
- I accept that the applicant does not attend a s. 47F(1) as s. 47F(1) has work commitments on s. 47F(1). Whilst I accept that s. 47F(1) has attended a s. 47F(1) on s. 47F(1), I do not accept that s. 47F(1) discusses what is learnt at these meetings with the applicant on a regular basis. When asked what s. 47F(1) had shared with s. 47F(1) after s. 47F(1) last s. 47F(1), the applicant did not provide a direct response and mentioned that s. 47F(1) worked s. 47F(1). When asked a second time to explain what s. 47F(1) had shared with s. 47F(1) from s. 47F(1) last s. 47F(1), the applicant said that s. 47F(1) could not recall. When pressed, s. 47F(1) said that they had discussed s. 47F(1). When asked if that was the extent of the conversation with s. 47F(1), s. 47F(1) said that s. 47F(1) was unable to recollect. The applicant's inability to explain what s. 47F(1) had learnt at s. 47F(1) last s. 47F(1) leads me to conclude that they do not discuss these meetings at s. 47F(1) as claimed and that neither applicant has a genuine interest in the s. 47F(1) content discussed at these meetings. This leads me to conclude that s. 47F(1) does not have a genuine interest in s. 47F(1).
- At interview, the applicant was also asked why s. 47F(1) was drawn to s. 47F(1). s. 47F(1) initially suggested that it was because there is no discrimination in s. 47F(1). s. 47F(1) also indicated that the friendly social environment at s. 47F(1) appealed to s. 47F(1) because everyone at s. 47F(1) had been nice and friendly to them. When asked what the people at s. 47F(1) thought about s. 47F(1), however, the applicant indicated that they had only told a s. 47F(1) named s. 47F(1) about s. 47F(1). In explaining why they had not told anyone else at s. 47F(1), the applicant contradicted s. 47F(1) earlier claims about the absence of discrimination in s. 47F(1) by claiming that s. 47F(1) feared they would be embarrassed and humiliated if they revealed s. 47F(1) to s. 47F(1). For the reasons outlined earlier in this decision, I do not accept that the applicants met a person named s. 47F(1). As such, it appears that the applicants have not told anyone at s. 47F(1) that they s. 47F(1).



The applicant has submitted numerous samples of email correspondence received from members of s. 47F(1) in support of s. 47F(1) application s. 47F(1). Whilst this correspondence indicates that s. 47F(1) has contacted s. 47F(1) it does not provide any evidence concerning the nature and extent of the applicant's involvement in s. 47F(1). It is noted that all the email correspondence provided by the applicant is one-way communication from s. 47F(1) members. There is no evidence that the applicant responded to these emails or initiated any contact with s. 47F(1) in response to them. As such, I do not give any weight to this material in determining whether the applicant has an ongoing and genuine commitment to s. 47F(1).

### **Conclusion:**

Overall, and for the reasons outlined above, I am not satisfied that s. 47F(1) and the applicant are credible witnesses. There are serious deficiencies in their claims and testimony. Considered cumulatively, they are so serious that I cannot be satisfied as to the credibility of s. 47F(1) and the applicant. These doubts in relation to their claims are not marginal or irrelevant matters but lie at the heart of an assessment of whether the applicants s. 47F(1) and genuine s. 47F(1). I am not satisfied that the central facts in this case as presented by s. 47F(1) and the applicant are consistent, coherent or plausible. As such I do not accept that the applicant s. 47F(1) and/or s. 47F(1).

## **Part B - Assessment of Protection Obligations under the Refugees Convention**

### **1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION**

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

### **2. IS THE HARM FEARED FOR A CONVENTION REASON?**



*Evidence and Reasons*

The applicant claims to fear being harmed in s. 47F(1) because s. 47F(1) and has s. 47F(1). For the purposes of this assessment, I am satisfied that s. 47F(1) constitute a particular social group.

*Finding*

I am satisfied the Refugees Convention grounds of membership of a particular social group and religion are the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

**3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?***Evidence and Reasons*

The applicant claims to fear being arbitrarily killed and/or subjected to serious physical harm because s. 47F(1) and s. 47F(1). I am satisfied that this constitutes a threat to the applicant's life or liberty and/or significant physical harassment or ill-treatment.

*Finding*

I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by paragraphs 91R(1)(a)(b) and (c) of the Migration Act. Therefore I am satisfied the harm feared amounts to persecution.

**4. IS THE FEAR WELL-FOUNDED?***Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

Available country information indicates that discrimination, mistreatment and violence against s. 47F(1) and s. 47F(1) does occur in s. 47F(1). There is also evidence to suggest that the s. 47F(1) government has failed to punish perpetrators of such harm and mistreatment, because law enforcement and the judicial systems are vulnerable to corruption, intimidation, and political interference s. 47F(1) s. 47F(1). As outlined above, however, I am not satisfied that the applicant s. 47F(1) or has a genuine and ongoing commitment to s. 47F(1).



As I am not satisfied that the applicant <sup>s. 47F(1)</sup> [REDACTED], I do not find that there is a real chance <sup>s. 47F(1)</sup> [REDACTED] would be subjected to any harm or mistreatment on the basis of <sup>s. 47F(1)</sup> [REDACTED] upon return to <sup>s. 47F(1)</sup> [REDACTED].

I am of the opinion that applicant has attended <sup>s. 47F(1)</sup> [REDACTED] in bad faith and solely for the purpose of creating claims of refugee status. I find that the applicant has engaged in this conduct in Australia for the purpose of strengthening <sup>s. 47F(1)</sup> [REDACTED] claims to be a refugee (subsection 91R(3) of the Migration Act) and, as such, I have disregarded this conduct for the purposes of assessing <sup>s. 47F(1)</sup> [REDACTED] claims under the Refugees Convention criteria.

### *Finding on well-foundedness*

I am not satisfied that the applicant has a real chance of being persecuted for a Refugees Convention reason. I therefore find the <sup>s. 47F(1)</sup> [REDACTED] fear of persecution, as defined under the Refugees Convention, is not well-founded.

## **5. FINDING UNDER THE REFUGEES CONVENTION**

I am not satisfied that Australia has protection obligations to the applicant under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol. As a result, the applicant does not meet the criteria for the grant of a Protection visa under paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to <sup>s. 47F(1)</sup> [REDACTED], under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, I have not made an assessment in relation to whether Articles 1C-1F and Article 33(2) of the Refugees Convention apply to <sup>s. 47F(1)</sup> [REDACTED].

### **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

## **1. COMPLEMENTARY PROTECTION CRITERION**

If an applicant is not found to be a person to whom Australia has protection obligations under the 1951 Refugees Convention, they may nonetheless meet the criterion for a Protection visa in paragraph 36(2)(aa) of the Migration Act. That paragraph provides that the Minister (or delegate) must be satisfied that Australia has protection obligations to a non-citizen in Australia because the Minister (or delegate) 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.

Section 36(2A) of the Migration Act defines significant harm as:

- (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.

**2. DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?**

*Evidence and Reasons*

The applicant claims to <sup>s. 47F(1)</sup>

I am satisfied that such harm may constitute: a threat to the applicant's life or liberty; torture, cruel or inhuman treatment or punishment and/or degrading treatment or punishment as outlined in Section 36(2A)

*Finding*

I am satisfied the harm claimed by <sup>s. 47F(1)</sup> is significant harm for the purposes of subsection 36(2A) of the Migration Act.

**3. ARE THERE SUBSTANTIAL GROUNDS FOR BELIEVING THAT THERE IS A REAL RISK OF SIGNIFICANT HARM?**

*Evidence and Reason*

As outlined in Part B of this record, I have assessed the applicant's claims and found that the applicant does not have a well founded fear that <sup>s. 47F</sup> will be persecuted for a Refugees Convention reason in <sup>s. 47F(1)</sup>. I put weight on the following issues/findings:

- I do not accept that the applicant <sup>s. 47F(1)</sup>, or that <sup>s. 47F</sup> is in a genuine and ongoing relationship with <sup>s. 47F(1)</sup>.
- I do not accept that <sup>s. 47F</sup> has a genuine and ongoing commitment to <sup>s. 47F(1)</sup>.
- I find that the applicant's evidence has been fabricated to convince the Department that <sup>s. 47F</sup> should be a recipient of a Protection visa and for no other reason.

In order for a person to be at real risk of suffering significant harm, the risk that the harm will occur must be 'probable' or 'more likely than not'.

On the basis of the assessment conducted in Part B, I have also found that there is not a real risk that the applicant will be killed or physically assaulted on the basis of <sup>s. 47F</sup> <sup>s. 47F(1)</sup>, if <sup>s. 47F</sup> were removed from Australia to <sup>s. 47F(1)</sup>

*Finding*

I am not satisfied that Australia has protection obligations to s. 47F(1) because there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk s. 47 will suffer significant harm.

#### 4. FINDING UNDER THE COMPLEMENTARY PROTECTION PROVISIONS IN THE MIGRATION ACT

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1), under paragraph 36(2)(aa) of the Migration Act. As a result, the applicant does not meet the criteria for the grant of a Protection visa under paragraph 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1), under paragraph 36(2)(aa) of the Migration Act, I have not assessed whether the ineligibility provisions in subsection 36(2C) of the Migration Act apply to s. 47F(1).

#### Part D – Decision on Protection (Class XA) visa application

I am not satisfied that s. 47F(1) is a person to whom Australia has protection obligations under section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations.

s. 22(1)(a)(ii)

Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)

Released by Department of Home Affairs  
under the Freedom of Information Act 1982



s. 22(1)(a)(ii)

## PROTECTION (CLASS XA) VISA DECISION RECORD

**Part A – Finding – Applicant Details – Application Validity – Applicant History / Migration History – Claims for Protection – Material Before the Decision Maker – Country of Reference – Statutory Effective Protection – Claims for Protection**

### FINDING

For the reasons outlined below, I am satisfied that s. 47F(1) is a person to whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations), and meets all other applicable requirements for the grant of a Protection (Class XA) visa. Accordingly, I grant s. 47F(1) a Protection (Class XA) visa.

### 1. APPLICANT DETAILS

s. 47F(1)

#### Identity Finding

The applicant presented a s. 47F(1) Passport issued in the name s. 47F(1). A copy of s. 47F(1) is on s. 47F(1). At interview, the applicant claimed that s. 47F(1) was actually born on s. 47F(1). When asked to explain why s. 47F(1) passport identifies s. 47F(1) date of birth as s. 47F(1), the applicant claimed s. 47F(1).

Available information<sup>44</sup> does indicate that the registration of births<sup>44</sup> was not commonly done at the time of the applicant's birth s. 47F(1). Within this context, I find the applicant's explanation concerning the disparity in s. 47F(1) dates of birth to be plausible. In the absence of any evidence to the contrary, I am satisfied that this is the applicant's true identity.

### 2. APPLICATION VALIDITY

The application complies with the validity requirements of the Migration Act and

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Migration Regulations. Therefore, I find that the application is valid.

### 3. APPLICANT HISTORY/MIGRATION HISTORY

s. 47F(1)

### 4. LEGAL FRAMEWORK

#### *Criteria To Be Met at the Time of Decision:*

#### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Citizenship (the Minister) is satisfied that the applicant is a person to whom Australia has protection obligations.

#### **Protection Obligations**

One criterion for a Protection visa (paragraph 36(2)(a) of the Migration Act) is that a person is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that a person is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) to 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. In this decision record, this alternative criterion is known as ‘complementary protection’. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen who is a member of the same family unit as an applicant who meets one of the two criteria described above.

### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).

s. 47F(1)



16. *Win v MIMA* [2001] FCA 132
17. *Appellant S395/2002 v MIMA* [2003] HCA 71 and
18. *Applicant NABD of 2002 v MIMA* [2005] HCA 29

s. 47F(1)



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s. 47F(1)

## 6. COUNTRY OF REFERENCE

### *Evidence and Reasons*

The applicant presented a s. 47F(1) issued in the name s. 47F(1). There is no evidence before me to suggest that this passport is not genuine.

### *Finding*

For the reasons stated above, I am satisfied the applicant, s. 47F(1), is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country.

There is no evidence before me indicating that the applicant has a right to enter and reside in a safe third country.

### *Finding*

I find that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)



s. 47F(1)

**Part B - Assessment of Protection Obligations under the Refugees Convention****1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION**

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol provides that a ‘refugee’ is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

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## 2. IS THE HARM FEARED FOR A REFUGEES CONVENTION REASON?

### *Evidence and Reasons*

The applicant has claimed to be a member of a particular social group on four grounds:

- Social Group (1): s. 47F(1)
- Social Group (2): People who are in a relationship outside the accepted norms of s. 47F(1).
- Social Group (3): s. 47F(1) facing forced marriage in s. 47F(1)
- Social Group (4): s. 47F(1) practicing s. 47F(1).

In relation to the question of a particular social group, the UNHCR guidelines (5.2, par.77-79) state:

*“A ‘particular social group’ normally comprises persons of similar background, habits or social status... Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution.”*

A test for determining whether a group falls within the definition of a ‘particular social group’ in Article 1A(2) of the Convention was formulated in the High Court case of *Applicant S v MIMA* (2004) HCS 25. This was summarized by Gleeson CJ, Gummow and Kirby JJ at (36):

*‘First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.’*

The common characteristic of s. 47F(1) There are religious and legislative prohibitions against s. 47F(1) s. 47F(1), an aspect that distinguishes them from society as a whole; however the persecution that they fear is not the sole defining characteristic of the group. I find that the Convention ground of Membership of a Particular Social Group is the essential and significant reason for the harm feared as outlined in subdivision AL of the Migration Act. I therefore find that the applicant fears persecution as the member of a particular social group, namely s. 47F(1).

### *Finding*

I am satisfied the Refugees Convention ground of membership of a particular social group is the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

### 3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?

#### *Evidence and Reasons*

The applicant claims that s. 47F(1)

s. 47F(1)

The harm and mistreatment feared by the applicant may constitute serious harm under The Migration Act section 91R(2):

- (a) a threat to a 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; and
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

#### *Finding*

In addition to paragraph 91R(1)(a) of the Migration Act being met, I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by paragraphs 91R(1)(b) and (c) of the Migration Act. Therefore, I am satisfied the harm feared amounts to persecution.

### 4. IS THE FEAR WELL-FOUNDED?

#### Country Information

s. 47F(1)

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s. 47F(1)



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s. 47F(1)



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s. 47F(1)



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s. 47F(1)

### *Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

At interview, the applicant presented s. 47F(1) claims in an open and forthright manner, and answered all questions in a direct and believable way. The applicant provided a convincing account of s. 47F(1). The applicant has submitted 5 statutory declarations and 3 letters from friends and associates which attest that the applicant s. 47F(1). One of the Statutory Declarant's, s. 47F(1) attended the interview on s. 47F(1). s. 47F(1) answered questions in an open and honest manner and I am satisfied that s. 47F(1).

On s. 47F(1), a statutory declarant named s. 47F(1) was contacted by telephone s. 47F(1) confirmed that s. 47F(1) signed a Statutory Declaration in relation to s. 47F(1) confirmed s. 47F(1) works with s. 47F(1) at s. 47F(1). s. 47F(1) responded to questions in a forthright manner and provided information that was consistent with the contents of the Statutory Declaration. I am satisfied that the Statutory Declaration is genuine.

On s. 47F(1), I contacted s. 47F(1), the owner of s. 47F(1). A letter of support from s. 47F(1) was submitted by the applicant s. 47F(1) confirmed that s. 47F(1) wrote the letter, s. 47F(1) responded to questions in an open and forthright manner and confirmed that s. 47F(1) had many conversations with the applicant about s. 47F(1) over the years. s. 47F(1) also advised that the Manager of s. 47F(1), s. 47F(1) and has provided support to the applicant. It is noted that s. 47F(1) provided at Statutory Declaration dated s. 47F(1).

At interview, the applicant was questioned about s. 47F(1) relationship with a statutory declarant named s. 47F(1). The applicant indicated that s. 47F(1) had s. 47F(1) with s. 47F(1) since approximately s. 47F(1). The applicant had previously submitted a Statutory Declaration in support of s. 47F(1) Protection Visa application. This Statutory Declaration, dated s. 47F(1) made no reference to the applicant s. 47F(1) with s. 47F(1). On s. 47F(1), a further submission was received from the applicant's Migration Agent s. 47F(1). The submission stated that the applicant had made an error at interview and that s. 47F(1) with s. 47F(1) did not occur until after s. 47F(1). Whilst the applicant's testimony concerning the commencement of s. 47F(1) s. 47F(1) with s. 47F(1) has not been consistent, I am willing to give the applicant the benefit of doubt and find any inconsistencies to have been a simple error

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in s. 47F(1) recollection. I am satisfied that the applicant does have a s. 47F(1) with s. 47F(1). In reaching this conclusion, I have also given weight to the overwhelming evidence in support of the applicant's claims.

The applicant has provided a coherent, consistent and plausible account of s. 47F(1). There was nothing in the applicant's demeanor or responses which would give me reason to believe that the applicant was lying or exaggerating. I find that the applicant's claim s. 47F(1) is plausible and the applicant displayed a number of photographs at interview which show s. 47F(1) participating at a wide variety of s. 47F(1). I am satisfied that the applicant has lived an s. 47F(1) since arriving in Australia.

The available country information suggests that the applicant would be able to avoid harm and mistreatment in s. 47F(1) by concealing s. 47F(1) and acting in a discreet manner. The High Court in the case of *Appellant S395/2002 v MMIA* [2003] HCA 71 and *Applicant NABD of 2002 v MIMIA* [2005] HCA 29, however, has stated:

*'that where it is determined that an applicant would act in a way which would not attract persecution, decision makers must ask whether this is a voluntary choice on the part of the applicant, or is it motivated by fear of persecution.'*

Having carefully considered the applicant's testimony, I am satisfied that the applicant has a genuine desire to live an s. 47F(1). As such, I am satisfied that the applicant would be motivated by a fear of persecution to act in a discreet manner s. 47F(1) were to return to s. 47F(1). I am of the opinion that living in this manner would be in opposition to s. 47F(1) right to live in dignity according to s. 47F(1). I do not consider that it is a reasonable option for s. 47F(1) to return to s. 47F(1) and to attempt to keep s. 47F(1) secret.

As such, I must consider whether there is a real chance of the applicant facing harm and mistreatment amounting to persecution, s. 47F(1) were to s. 47F(1) s. 47F(1).

Based on the available information, I am satisfied that:

- physical attacks on s. 47F(1) do occur in s. 47F(1);
- there is a strong social stigma in relation to s. 47F(1) and there is significant societal discrimination against s. 47F(1) individuals;
- whilst incidents of overt discrimination against s. 47F(1) appear to be rare, it appears that this partly due to the fact that few individuals s. 47F(1) s. 47F(1).
- State protection is not available for s. 47F(1) who experience discrimination or violence from members of society.

Based on the available information, I am satisfied that there is a real chance that the applicant will suffer serious harm s. 47F(1).

#### **State Protection:**



Country information held by the department indicates that s. 47F(1) may face treatment which can amount to persecution by state and non state agents. While the law criminalising s. 47F(1) is not enforced in s. 47F(1), I am satisfied that the effect of the law is that state protection is not available for s. 47F(1) who experience discrimination or violence from members of society.

### ***Relocation:***

Given that available evidence indicates that societal prejudice against s. 47F(1) occurs throughout s. 47F(1) I am not satisfied that the applicant could reasonably be expected to relocate to a place where s. 47F(1) would be safe from the persecution which s. 47F(1) fears.

### ***Finding on relocation***

Based on the evidence cited above, I am not satisfied that relocation is either safe or reasonable for the applicant.

### ***Finding on well-foundedness***

I am satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I therefore find the applicant's fear of persecution, as defined under the Refugees Convention, is well-founded.

## **5. DOES A CESSATION CLAUSE APPLY? (ARTICLE 1C)**

I am satisfied that the cessation clauses in Article 1C of the Refugees Convention do not apply to the applicant.

## **6. DO THE EXCLUSION CLAUSES APPLY? (ARTICLE 1D, 1E OR 1F)**

I am satisfied the exclusion clauses in Articles 1D, 1E or 1F of the Refugees Convention do not apply to the applicant.

## **7. DOES THE APPLICANT COME WITHIN ARTICLE 33(2) OF THE REFUGEES CONVENTION, IN RESPECT OF ITS EXPRESS EXCEPTION TO THE PROHIBITION ON REFOULEMENT?**

I find that the applicant does not come within either of the exceptions in Article 33(2) of the Refugees Convention.

## **8. FINDING UNDER THE REFUGEES CONVENTION**

I am satisfied that the applicant, s. 47F(1), is a person to whom Australia has protection obligations, under the Refugees Convention as amended by the Refugees Protocol, as prescribed by paragraph 36(2)(a) of the Migration Act, and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

As I am satisfied that Australia has protection obligations to the applicant, s. 47F(1) under the Refugees Convention as amended by the Refugees Protocol and, therefore, under paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations, I have not made an assessment as to whether the applicant, s. 47F(1), is owed protection obligations under paragraph 36(2)(aa) of the Migration Act and the associated complementary protection provisions in the Migration Regulations.

**Part D – Time of Decision Criteria and Decision on Protection (Class XA) visa application**

**1. TIME OF DECISION CRITERIA**

Time of Decision Criteria - Migration Regulations 866.22

I am also satisfied that the applicant s. 47F(1) has:

- undergone medical examinations carried out by a Medical Officer of the Commonwealth or another medical practitioner approved by the Minister or a medical officer employed by an organisation approved by the Minister;
- undergone a chest x-ray by a medical practitioner who is qualified as a radiologist in Australia, or is under 12 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination or is a person who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time;
- satisfied public interest criteria 4001, 4002 and 4003A;
- satisfied the Australian Values Statement requirement, public interest criterion 4019;
- satisfied the Minister that the grant of a visa is in the national interest; and
- Not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.

I am also satisfied the applicant is in Australia.

Accordingly, I find that s. 47F(1) has met all prescribed Time of Decision criteria for the grant of a Subclass 866 (Protection) visa.

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## 2. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION

I am satisfied that s. 47F(1) [REDACTED] is a person to whom Australia has protection obligations for the purposes of paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations. I am also satisfied that the applicant meets all other applicable requirements for the grant of a visa. Accordingly, I grant s. 47F(1) [REDACTED] a Protection (Class XA) visa.

s. 22(1)(a)(ii) [REDACTED]  
[REDACTED]

Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act.

s. 22(1)(a)(ii) [REDACTED]

Decision record – Refusal under Refugees Convention and CP

s. 22(1)(a)(ii)

**PROTECTION (CLASS XA) VISA DECISION RECORD**

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Legal Framework - Material Before the Decision Maker – Country of Reference / Receiving Country – Statutory Effective Protection – Claims for Protection - Findings of Fact (Credibility)**

**FINDING**

For the reasons outlined below, I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations). Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The applicant claims to be s. 47F(1), born s. 47F(1). At interview the applicant presented s. 47F(1) passport, a certified copy of which is on file s. 47F(1) s. 47F(1).

As stated above, the applicant claimed s. 47F(1) name was s. 47F(1), and that s. 47F(1) was s. 47F(1) years old. Without evidence to the contrary, and for the purposes of this decision, I accept the applicant's name and age as stated above.

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find the Protection visa application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

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s. 47F(1)

#### 4. LEGAL FRAMEWORK

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Border Protection (the Minister) is satisfied that the applicant is a person in respect of whom Australia has protection obligations.

##### **Protection Obligations**

Paragraph 36(2)(a) of the Migration Act provides that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that the applicant is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) 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. In this decision record, this alternative criterion is known as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who has been granted a Protection visa as a result of meeting one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).
4. Australian case law as relevant.

## 6. COUNTRY OF REFERENCE / RECEIVING COUNTRY

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) and has submitted s. 47F(1) passport in support of these claims. There is no evidence to indicate that the applicant may be a citizen of any country other than s. 47F(1). I accept the evidence before me relating to the applicant's nationality.

### *Finding*

For the reasons stated above, I am satisfied the applicant is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act, for the purpose of assessing the complementary protection criteria.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

### *Finding*

I find that the applicant does not have statutory effective protection in a third country as set out in subsection 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)



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s. 47F(1)

## 9. FINDINGS OF FACT (CREDIBILITY)

### *Findings and reasons and material evidence put to the applicant for comment:*

The assessment of whether or not an asylum seeker is a refugee as defined by the 1951 Convention and 1967 Protocol relating to the Status of Refugees may require a PV officer to assess the credibility of an applicant's testimony. When assessing credibility, a PV officer must be sensitive to the difficulties often faced by asylum seekers and the benefit of the doubt should be given to those who are generally credible. However, a PV officer is not required to accept uncritically assertions made by an applicant, nor is a PV officer required to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality.

Based on the applicant's testimony and demeanour at interview, I accept that the applicant <sup>s. 47F(1)</sup> [REDACTED].

The applicant's account of <sup>s. 47F(1)</sup> [REDACTED] was presented in a forthright and convincing manner without any evidence of fabrication or embellishment. For the purposes of this assessment, I accept that the applicant has been subjected to <sup>s. 47F(1)</sup> [REDACTED] in the past. I also accept that on several occasions <sup>s. 47F(1)</sup> [REDACTED] on the basis of <sup>s. 47F(1)</sup> [REDACTED].

I do not accept that the applicant was subjected to <sup>s. 47F(1)</sup> [REDACTED]. In reaching this conclusion, I have considered the applicant's original application <sup>s. 47F(1)</sup> [REDACTED] testimony at interview, and available country information. The applicant's inability to provide a consistent and plausible set of claims in relation to these incidents leads me to conclude that they have been fabricated to establish protection claims. In reaching this conclusion, I have given weight to the following:

- At interview, the applicant initially claimed <sup>s. 47F(1)</sup> [REDACTED]



s. 47F(1)

- I did not find the applicant's responses to questioning about incidents of s. 47F(1) to be frank and spontaneous. The applicant was hesitant and not forthcoming in providing detailed information. Whilst I acknowledge that the trauma of being subjected to s. 47F(1) may in some cases explain an applicant's reluctance to talk about such matters in an open manner, I am of the opinion that in this case it is explained by the fact that the claims are fabricated. In recounting the incidents the applicant gave the impression that s. 47F(1) was creating the claims as s. 47F(1) was presenting them.
- The applicant's accounts of s. 47F(1) dealings with police after s. 47F(1) were inconsistent and unconvincing. The applicant claimed that s. 47F(1)

s. 47F(1)

- The applicant's claims concerning who and what s. 47F(1) told people about s. 47F(1) experienced were vague, inconsistent and contradictory.<sup>1</sup> Despite initially claiming to s. 47F(1)

by



s. 47F(1)

- If the applicant had been subjected to s. 47F(1), I am satisfied that s. 47F(1) would have been able to obtain greater assistance and support from non-governmental organisations that advocate the rights of s. 47F(1). Whilst the applicant claimed to s. 47F(1)

- At the time of application, the applicant claimed that s. 47F(1) left s. 47F(1) because s. 47F(1) life was in danger. At interview, however, the applicant claimed that s. 47F(1) travelled to Australia in s. 47F(1) to attend s. 47F(1) in s. 47F(1). When asked if s. 47F(1) had left with the intention of seeking asylum in Australia, the applicant indicated that s. 47F(1) had not. s. 47F(1) claimed that it was not until after s. 47F(1) arrival in Australia that s. 47F(1) decided to try to stay. The applicant's contradictory statements concerning s. 47F(1) reasons for coming to Australia, and the delay in lodging a Protection Visa application following s. 47F(1) arrival, lead me to conclude that s. 47F(1) had not s. 47F(1) and has fabricated claims concerning s. 47F(1).
- The applicant does not claim to have experienced s. 47F(1) prior to s. 47F(1). Nevertheless, the applicant claims that s. 47F(1) was subsequently subjected s. 47F(1) following s. 47F(1) return from Australia in s. 47F(1). I find the timing of the alleged incidents of s. 47F(1) have been contrived to explain why the applicant had not sought protection in Australia during s. 47F(1) visit from s. 47F(1).

### Conclusion:

The false and misleading statements identified above are not inconsequential, trivial, or immaterial. Having carefully considered the claims advanced by the applicant, I am of the opinion that the deficiencies and doubts about the applicant's claims concerning s. 47F(1) are so serious that I cannot be satisfied as to the credibility of those claims.

I am not satisfied that the central facts in this case presented by the applicant are consistent, coherent or plausible. Consequently, I do not accept that the applicant was

the subject of s. 47F(1)

s. 47F(1) Nevertheless, I do accept that the applicant s. 47F(1) and has experienced verbal and low level physical abuse, including being s. 47F(1), in the past.

## Part B - Assessment of Protection Obligations under the Refugees Convention

### 1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) of the Refugees Convention for the purposes of the application of the Act and the regulations to a Protection visa applicant.

### 2. IS THE HARM FEARED FOR A CONVENTION REASON?

#### *Evidence and Reasons*

The applicant claims s. 47F(1) fears persecution because s. 47F(1). Therefore, the applicant wishes to rely on the claim s. 47F(1) faces persecution for reasons of being a member of the particular social group s. 47F(1).

The UNHCR Guidelines on International Protection, 'Membership of a particular social group', HCR/GIP/02/02, 7 May 2002 defines a particular social group as:

*"...a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights."*<sup>1</sup>

In contrast, Australian courts have adopted the social perception approach in determining the existence of a particular social group. This approach examines whether or not a group shares a common characteristic which makes them a cognisable group or sets them apart from society at large.

The test for determining whether a group falls within the definition of a particular social group in Article 1A(2) of the Convention was formulated in the High Court

<sup>1</sup> UNHCR Guidelines on International Protection



case of *Applicant S v MIMA* (2004). This was summarised by Gleeson CJ, Gummow and Kirby JJ at [36]:

*"First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group".<sup>2</sup>*

Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

The available evidence indicates there is an identifiable § 47F(1) community in § 47F(1) that is defined within that country by their § 47F(1). The characteristics of the applicant's § 47F(1) and § 47F(1) unwillingness to follow § 47F(1) cultural and religious prohibitions against § 47F(1) would appear to set the applicant apart as a member of a group that is separate to the rest of § 47F(1) society. The available information relating to § 47F(1) also suggests that the applicant may be viewed by the § 47F(1) community as a member of a separate group within their society.

I consider that the applicant's claim regarding § 47F(1) relates to the Convention ground of particular social group.

### ***Finding***

I am satisfied the Refugees Convention ground of particular social group is the essential and significant reason for the harm feared as required by subsection 91R(1)(a) of the Migration Act.

## **3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?**

### ***Evidence and Reasons***

The applicant is claiming that § 47F(1)

Significant physical harassment and ill-treatment of a person is serious harm, as noted in s91R(2)(b) of the Migration Act. I find that the harm feared involves serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

### ***Finding***

<sup>2</sup> Gleeson CJ, Gummow and Kirby JJ at [36]

I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by subsections 91R(1)(b) and (c) of the Migration Act. Therefore I am satisfied the harm feared amounts to persecution.

#### 4. IS THE FEAR WELL-FOUNDED?

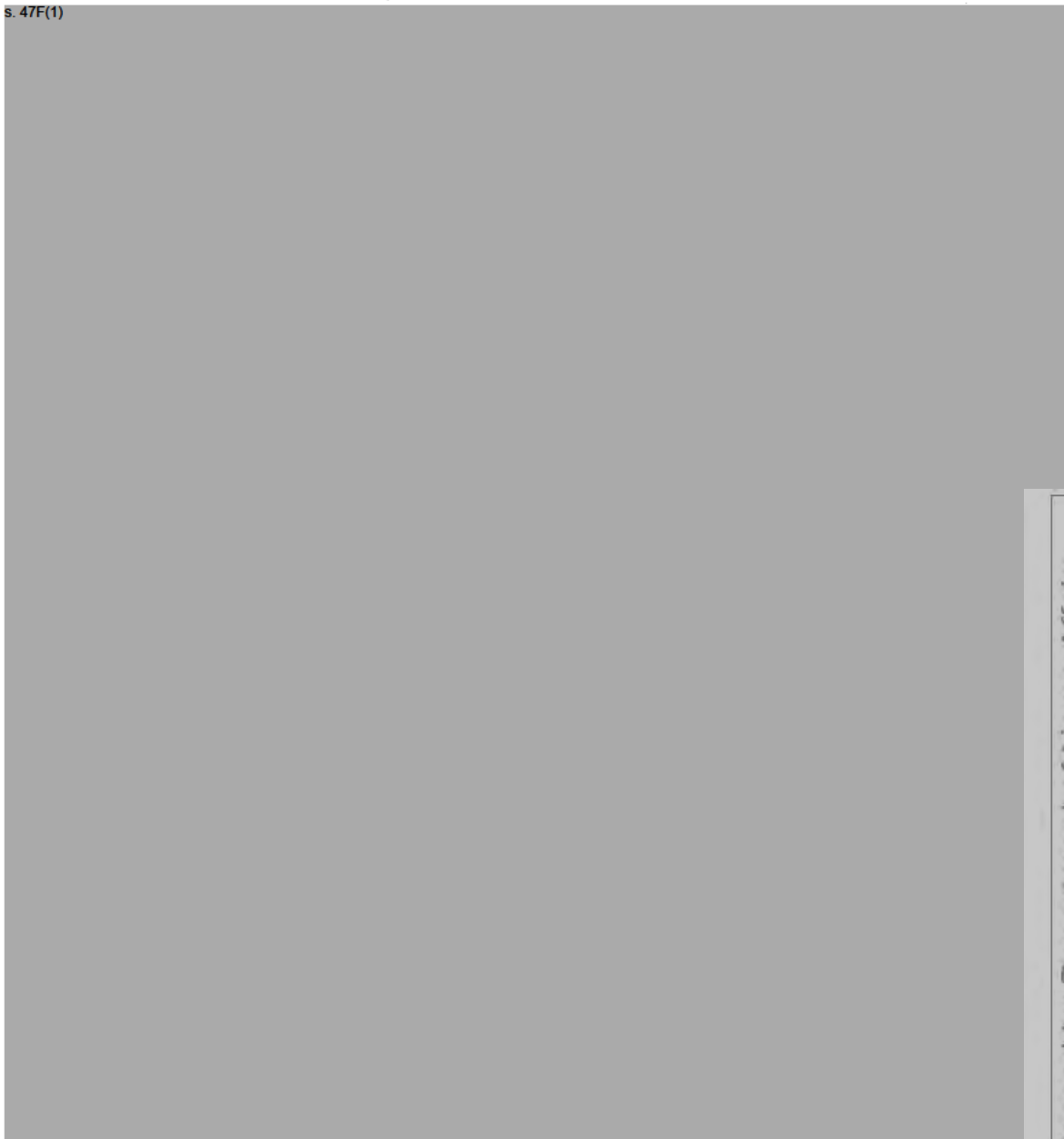
##### *Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

s. 47F(1) , The Department of Foreign Affairs and Trade provided s. 47F(1)

:

s. 47F(1)



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s. 47F(1)



Various reports over recent years have indicated that whilst s. 47F(1) may experience a higher level of intolerance than are those living in Australia, the level of intolerance does not necessarily translate into serious instances of harm against s. 47F(1)

s. 47F(1) DFAT advised that:

s. 47F(1)



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Decision record – Refusal under Refugees Convention and CP

s. 47F(1)

With regard to s. 47F(1), DFAT advised:

s. 47F(1)

In assessing s. 47F(1) from since s. 47F(1), DFAT advised:

s. 47F(1)

In s. 47F(1), the US Department of State made the following observation in relation to s. 47F(1):

s. 47F(1)

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s. 22(1)(a)(ii)

## Decision record – Refusal under Refugees Convention and CP

s. 47F(1)

In <sup>s.</sup><sub>47F(1)</sub>, a UK Foreign and Commonwealth Office Report on <sup>s.</sup><sub>47F(1)</sub>, stated:

s. 47F(1)

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s. 47F(1), s. 47C(1)

In summary, while there appears to be some societal discrimination against persons in s. 47F(1) based on s. 47F(1), there is no evidence to suggest that the s. 47F(1) authorities systemically target s. 47F(1) for harm and mistreatment.

In light of the available country information:

- I accept that the applicant may be subjected to verbal assault or taunts in s. 47F(1) because of s. 47F(1). However, I am not satisfied that such acts of discrimination are serious enough to amount to persecution within the Convention definition.
- I accept that the applicant may be subjected to minor forms of physical harassment, including being pushed or slapped. However, I am not satisfied that such acts are serious enough to amount to persecution within the Convention definition.
- I accept that the applicant may have had s. 47F(1). However, I am not satisfied that such acts are serious enough to amount to persecution within the Convention definition.
- As outlined in my credibility findings, I do not accept that the applicant was s. 47F(1). Given that there is no credible evidence that the applicant has been s. 47F(1), I find that the likelihood of it happening in the future is remote. Even if the applicant was the subject of s. 47F(1), I am of the opinion that this would be a criminal act that is not condoned by the authorities.

s. 47F(1)



- I am not satisfied that there is a real chance that the applicant will be subjected to prosecution under s. 47F(1) Penal Code for the reason of s. 47F(1). As outlined above, available evidence clearly indicates that s. 47F(1) has been decriminalised in s. 47F(1).

As outlined in my findings on credibility, I do not accept that the applicant was s. 47F(1)

Nevertheless, I will consider whether it is likely that the applicant could be subjected to such harm in the future. Based on the available evidence, I am not satisfied that s. 47F(1) are responsible for the systematic targeting and s. 47F(1) of s. 47F(1). If this were the case, I am satisfied that it would be reported by local NGO's that advocate for s. 47F(1) and that it would be included in human rights reports s. 47F(1). As such, I find the likelihood of the applicant being targeted by the authorities for s. 47F(1) to be remote.

Furthermore, I am of the opinion that if the applicant were to be s. 47F(1) upon return to s. 47F(1) it would constitute a criminal act committed by individual(s) rather than systematic targeting by the s. 47F(1) authorities. Furthermore, based on the available evidence, which indicates that police and military personnel tend to have a conservative attitude towards s. 47F(1), I am of the opinion that allegations of s. 47F(1) would be taken seriously and investigated. Based on the available evidence, I am not satisfied that the applicant would be denied state protection if s. 47F(1) was subjected to s. 47F(1) in the foreseeable future.

Based upon the evidence before me I am not satisfied that the applicant faces a real chance of serious harm for the reason of s. 47F(1) upon return to s. 47F(1) in the reasonably foreseeable future.

#### ***Finding on well-foundedness***

I am not satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I am therefore not satisfied the applicant's fear is well founded.

### **5. FINDING UNDER THE REFUGEES CONVENTION**

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant s. 47F(1) under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, I have not made an assessment in relation to whether Articles 1C-1F and Article 33(2) of the Refugees Convention apply to the applicant.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

**1. COMPLEMENTARY PROTECTION CRITERION**

If an applicant is not found to be a person in respect of whom Australia has protection obligations under the Refugees Convention, they may nonetheless meet the criterion for a Protection visa in subsection 36(2)(aa) of the Migration Act. That provides that the Minister (delegate) must be satisfied the applicant is a non-citizen in respect of whom Australia has protection obligations because the Minister (delegate) 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 (the applicant) will suffer significant harm.

Subsection 36(2A) of the Migration Act defines significant harm as:

- (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.

**2. DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?**

*Evidence and Reasons*

The applicant is claiming that s. 47F(1)

Significant physical harassment and ill-treatment of a person is serious harm, as noted in s91R(2)(b) of the Migration Act. I find that the harm feared involves serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

*Finding*

I am satisfied the harm claimed by the applicant is significant harm for the purposes of subsection 36(2A) of the Migration Act.

**3. ARE THERE SUBSTANTIAL GROUNDS FOR BELIEVING THAT THERE IS A REAL RISK OF SIGNIFICANT HARM?**

*Evidence and Reasons*

As stated above, s36(2)(aa) of the Migration Act provides that the relevant risk threshold is that there are 'substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant's] removal, there is a real risk that a non-citizen will suffer significant harm if removed to the receiving country.' The phrase 'necessary and foreseeable consequence' requires decision-makers to be satisfied there is a real as opposed to a speculative causal link between the applicant's removal from Australia and their exposure to a 'real risk'.

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In determining if the applicant faces a real risk of significant harm, I am guided by *MIAC v SZORB* [2013] FCAFC 33 (20 March 2013), Lander and Gordon JJ, which stated (in part):

*In our opinion, the [real risk] test is as for s36(2)(a) [of the Act]...is there a real chance that SZORB will suffer significant harm...were he to return to Afghanistan. [246]*

The 'real chance' test was applied earlier in this decision when it was considered whether the applicant has a well-founded fear of persecution for a Refugee Convention reason. In part B of this decision, I provided an analysis of the applicant's claims and have considered relevant country information and I found that the applicant's fear of harm is not well founded, as I was not satisfied that s. 47F(1) has a real chance of being subjected to persecution. I am reliant on the same evidence in determining whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of s. 47F(1) removal from Australia to s. 47F(1), there is a real risk that the applicant will suffer significant harm. As the threshold for a 'real risk' of harm is commensurate to that of a 'real chance' test, I have concluded that the applicant does not stand a real risk of being harmed on return to s. 47F(1) for the reasons offered in s. 47F(1) protection visa application.

Having considered the matters above, I am not satisfied that the applicant has a real chance of being subjected to significant harm should s. 47F(1) be returned to s. 47F(1). Accordingly, I am not satisfied the applicant is a person in respect of whom Australia has protection obligations.

I am not satisfied that there are 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 (the applicant) will suffer significant harm in their home region.

#### 4. FINDING UNDER THE COMPLEMENTARY PROTECTION PROVISIONS IN THE MIGRATION ACT

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) s. 47F(1) under subsection 36(2)(aa) of the Migration Act. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) s. 47F(1) under subsection 36(2)(aa) of the Migration Act, I have not assessed whether the ineligibility provisions in subsection 36(2C) of the Migration Act apply to the applicant.

#### Part D – Decision on Protection (Class XA) visa application

I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the Migration Act and subclause

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866.221 of Schedule 2 to the Migration Regulations. Accordingly, I refuse to grant s. 47F(1) [REDACTED] a Protection (Class XA) visa.

s. 22(1)(a)(ii) [REDACTED]

Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii) [REDACTED]

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s. 22(1)(a)(ii) [REDACTED]



s. 22(1)(a)(ii)

**PROTECTION (CLASS XA) VISA DECISION RECORD**

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Legal Framework - Material Before the Decision Maker – Country of Reference / Receiving Country – Statutory Effective Protection – Claims for Protection - Findings of Fact (Credibility)**

**FINDING**

For the reasons outlined below, I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations). Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find the Protection visa application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

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s. 22(1)(a)(ii)

s. 47F(1)

#### 4. LEGAL FRAMEWORK

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Border Protection (the Minister) is satisfied that the applicant is a person in respect of whom Australia has protection obligations.

##### **Protection Obligations**

Paragraph 36(2)(a) of the Migration Act provides that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that the applicant is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) 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. In this decision record, this alternative criterion is known as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who has been granted a Protection visa as a result of meeting one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).
4. Australian case law as relevant.
5. Country information as cited in this decision.

s. 22(1)(a)(ii)



## 6. COUNTRY OF REFERENCE / RECEIVING COUNTRY

### *Evidence and Reasons*

The applicant provided a certified copy of s. 47F(1) passport from s. 47F(1) and the original copy of s. 47F(1) passport was sighted at s. 47F(1) PV interview.

### *Finding*

For the reasons stated above, I am satisfied the applicant is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act, for the purpose of assessing the complementary protection criteria.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

### *Finding*

I find that the applicant does not have statutory effective protection in a third country as set out in subsection 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)

## 9. FINDINGS OF FACT (CREDIBILITY)

The assessment of whether or not an asylum seeker is a refugee as defined by the 1951 Convention and 1967 Protocol relating to the Status of Refugees may require a PV officer to assess the credibility of an applicant's testimony. When assessing credibility, a PV officer must be sensitive to the difficulties often faced by asylum seekers and the benefit of the doubt should be given to those who are generally credible. However, a PV officer is not required to accept uncritically assertions made by an applicant, nor is a PV officer required to accept claims that are inconsistent with

the independent evidence regarding the situation in the applicant's country of nationality.

The applicant claims <sup>s. 47F(1)</sup> [REDACTED]

<sup>s. 47F(1)</sup> [REDACTED]

For the reasons outlined below, I am not satisfied that the <sup>s. 47F(1)</sup> [REDACTED] is a credible witness. There are serious deficiencies in the applicant's claims. Considered cumulatively, they are so serious that I cannot be satisfied as to the credibility of the applicant. These doubts in relation to the applicant's claims are not marginal or irrelevant matters but lie at the heart of an assessment of whether the applicant <sup>s. 47F(1)</sup> [REDACTED] and has a subjective fear of being harmed on this basis, if <sup>s. 47F(1)</sup> [REDACTED] returns to <sup>s. 47F(1)</sup> [REDACTED].

#### ***Credibility issues:***

The applicant provided a detailed outline of the development of <sup>s. 47F(1)</sup> [REDACTED]. In <sup>s. 47F(1)</sup> [REDACTED] original statement the applicant advanced conflicting claims about <sup>s. 47F(1)</sup> [REDACTED]. Despite initially stating that <sup>s. 47F(1)</sup> [REDACTED], the applicant subsequently stated that <sup>s. 47F(1)</sup> [REDACTED]. In reference to <sup>s. 47F(1)</sup> [REDACTED], the applicant claimed:

<sup>s. 47F(1)</sup> [REDACTED]

At the start of <sup>s. 47F(1)</sup> [REDACTED] interview, the applicant mentioned that there was an error in <sup>s. 47F(1)</sup> [REDACTED] original statement. The applicant sought to explain why <sup>s. 47F(1)</sup> [REDACTED] original statement <sup>s. 47F(1)</sup> [REDACTED]. By way of explanation, the applicant claimed that <sup>s. 47F(1)</sup> [REDACTED].

Whilst it is acknowledged that the applicant did identify this error at the beginning of <sup>s. 47F(1)</sup> [REDACTED] interview, I do not find the applicant's explanation for mentioning <sup>s. 47F(1)</sup> [REDACTED] in <sup>s. 47F(1)</sup> [REDACTED] statement to be convincing. Having carefully considered the applicant's statement and testimony at interview, I am of the opinion that the contradictory statements concerning <sup>s. 47F(1)</sup> [REDACTED] are due to the fact that the applicant has fabricated the claims concerning <sup>s. 47F(1)</sup> [REDACTED] relationship with <sup>s. 47F(1)</sup> [REDACTED]. In reaching this conclusion, I have also given weight to the following inconsistencies and implausibility outlined below.



The applicant's testimony concerning <sup>s. 47F(1)</sup> [REDACTED] was vague, inconsistent and unconvincing. At interview, the applicant claimed <sup>s. 47F(1)</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Later in the interview, however, the applicant made claims which contradicted <sup>s. 47F(1)</sup> [REDACTED] initial testimony concerning <sup>s. 47F(1)</sup> [REDACTED]. At interview, the applicant claimed <sup>s. 47F(1)</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>s. 47F(1)</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Whilst it is acknowledged that the alleged events occurred in <sup>s. 47F(1)</sup> [REDACTED], I am not satisfied that the applicant's inability to provide a consistent and coherent account of these events is adequately explained by the length of time that has elapsed. Having carefully considered the applicant's testimony at interview, I am of the opinion that the applicant's inability to provide a coherent outline of <sup>s. 47F(1)</sup> [REDACTED] indicates that <sup>s. 47F(1)</sup> [REDACTED] was fabricating claims concerning these events in the course of the interview.

In addition to the inconsistent testimony provided by the applicant concerning <sup>s. 47F(1)</sup> [REDACTED], I did not find <sup>s. 47F(1)</sup> [REDACTED] account of the development of their relationship

following § 47F(1) be plausible. Despite claiming to § 47F(1) § 47F(1) in early § 47F(1) the applicant unconvincingly claimed that § 47F(1) until they § 47F(1) on § 47F(1). The applicant's claim that they were too frightened to act on their feelings during this period because they had no privacy was unconvincing.

In addition to the adverse findings above, I do not find that applicant's claims concerning the agent and timing of § 47F(1) injury to be convincing. Having carefully examined the applicant's testimony, I do not accept that § 47F(1) § 47F(1) in response to a question § 47F(1) posed about § 47F(1) in early § 47F(1). In reaching this conclusion, I have given weight to the following:

- Given the applicant claims to have been aware that § 47F(1) was a taboo topic, and that § 47F(1) who had spoken against § 47F(1) I find it implausible that the applicant would have posed this question to § 47F(1) in the manner described. I am of the opinion that this scenario has been contrived to strengthen § 47F(1) protection claims.
- The applicant was unable to provide a consistent testimony about the events alleged to have occurred after § 47F(1) assaulted § 47F(1). Despite initially indicating § 47F(1) after this incident § 47F(1) subsequently retracted this claim and asserted that § 47F(1).
- The applicant's testimony concerning the treatment of the § 47F(1) allegedly sustained on this day was vague and implausible. At interview, the applicant initially indicated that § 47F(1) was reluctant to § 47F(1). Whilst the applicant subsequently revised this claim, stating that the § 47F(1) § 47F(1), I do not find either claim to be plausible. When put to the applicant that that § 47F(1) § 47F(1), the applicant unconvincingly asserted that § 47F(1) attended regular § 47F(1), but maintained that the § 47F(1). If the applicant had received § 47F(1), I do not accept that they would not have been § 47F(1). Consequently, I do not accept that the applicant has given an open and honest account of how the § 47F(1) was received.

In light of the adverse findings above, I do not accept that the applicant has provided an open and honest account of § 47F(1) relationship with § 47F(1). In the absence of any compelling evidence to support § 47F(1) claim to be in an ongoing and genuine relationship with § 47F(1) I have given weight to my adverse credibility findings above. Consequently, I do not accept that the applicant is in a genuine and ongoing § 47F(1) relationship with § 47F(1). Given the adverse finding in relation to the genuineness of this relationship, I do not accept that the applicant § 47F(1).



A finding that the applicant has fabricated protection claims and is not <sup>s. 47F(1)</sup> is further supported by adverse credibility findings concerning allegations that <sup>s. 47F(1)</sup> was physically assaulted and received death threats from <sup>s. 47F(1)</sup>. The applicant claims that <sup>s. 47F(1)</sup>

The applicant also claimed <sup>s. 47F(1)</sup>

Having carefully considered the applicant's claims concerning <sup>s. 47F(1)</sup>, I am of the opinion that the applicant has fabricated these claims. In reaching this conclusion, I have given weight to the following:

- As outlined elsewhere, the applicant failed to provide a convincing account of <sup>s. 47F(1)</sup> and relationship with <sup>s. 47F(1)</sup>. This leads me to conclude that the applicant's <sup>s. 47F(1)</sup> had no basis for believing that the applicant <sup>s. 47F(1)</sup>
- I do not find the applicant's claim <sup>s. 47F(1)</sup> to be convincing. I do not find this claim to be consistent with other claims advanced by the applicant concerning <sup>s. 47F(1)</sup> personal conduct in <sup>s. 47F(1)</sup>. In <sup>s. 47F(1)</sup> statement of claims, and in testimony at interview, the applicant claimed that <sup>s. 47F(1)</sup> relationship <sup>s. 47F(1)</sup>. The applicant had indicated <sup>s. 47F(1)</sup>.  
The applicant's claim that <sup>s. 47F(1)</sup> is not consistent with <sup>s. 47F(1)</sup> claim to have <sup>s. 47F(1)</sup>. The applicant's claim that <sup>s. 47F(1)</sup> had become less careful about <sup>s. 47F(1)</sup> was not convincing.
- I find the applicant's claim concerning <sup>s. 47F(1)</sup> to be contrived and unconvincing. Whilst the applicant suggested that <sup>s. 47F(1)</sup> too was also unable to comprehend why or how <sup>s. 47F(1)</sup> I do not find that this overcomes the inherent implausibility of this claim.
- At interview, the applicant advised that <sup>s. 47F(1)</sup> was still in contact with <sup>s. 47F(1)</sup> immediate family in <sup>s. 47F(1)</sup> at least once a month. <sup>s. 47F(1)</sup> indicated that <sup>s. 47F(1)</sup> continued to pay for <sup>s. 47F(1)</sup> university fees and continued to provide <sup>s. 47F(1)</sup> with some financial support.

If the applicant's <sup>s. 47F(1)</sup> had discovered that <sup>s. 47F(1)</sup> was in a <sup>s. 47F(1)</sup> relationship with <sup>s. 47F(1)</sup> is claimed, I am of the opinion that <sup>s. 47F(1)</sup> would have told <sup>s. 47F(1)</sup> parents about <sup>s. 47F(1)</sup> discovery. I find it implausible that the applicant's <sup>s. 47F(1)</sup> would have felt compelled to withhold this information from <sup>s. 47F(1)</sup> parents. Furthermore, I find the applicant's claim that <sup>s. 47F(1)</sup> kept this knowledge to <sup>s. 47F(1)</sup> in order not to damage <sup>s. 47F(1)</sup> health to be unconvincing.

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- At interview, the applicant claimed that s. 47F(1) s. 47F(1). It was put to the applicant that whilst s. 47F(1) statement of claims was very emotive, s. 47F(1) presented s. 47F(1) claim at interview in a very matter of fact way. It was put to s. 47F(1) had been smiling throughout the interview, and actually appeared to be smirking in response to questioning. The applicant claimed s. 47F(1) was happy to be finally talking about s. 47F(1) past experiences. s. 47F(1) said that s. 47F(1) could easily pretend to cry, but did not want to. I did not find this a convincing explanation for the applicant's demeanour during questioning about a s. 47F(1). I do not find that the applicant presented compelling or plausible testimony concerning these alleged s. 47F(1).

Overall, the applicant's evidence at interview in regard to s. 47F(1) and harm experienced in s. 47F(1) was insufficiently cogent and persuasive to lead me to an uncritical acceptance s. 47F(1) claims. Therefore I was not persuaded that s. 47F(1) claims were genuine and reflected a fundamental aspect of s. 47F(1) personal identity. Apart from a letter purported to be obtained from s. 47F(1), there was no other evidence before me attesting to the applicant's claimed s. 47F(1). Given the adverse credibility findings outlined above, I do not given any weight to the letter from s. 47F(1). Consequently I do not accept that the applicant belongs to the particular social group comprised s. 47F(1).

In s. 47F(1) the Federal Court stated that credibility is largely a matter of impression based on demeanour, inconsistencies or implausibility's. With this and other case law referred to above in mind, the applicant's evidence considered as a whole, there is not enough consistent evidence in this matter for me to find that the applicant's claims to be s. 47F(1) are credible. In summary, I do not accept that the applicant's claims to be s. 47F(1) are credible.

## Part B - Assessment of Protection Obligations under the Refugees Convention

### 1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) of the Refugees Convention for the purposes of the application of the Act and the regulations to a Protection visa applicant.



## 2. IS THE HARM FEARED FOR A CONVENTION REASON?

The applicant has claimed <sup>s. 47F(1)</sup> [REDACTED]

*Particular Social Group*, <sup>s. 47F(1)</sup> [REDACTED]

The applicant claimed to fear harm because as <sup>s. 47F(1)</sup> [REDACTED] thus belonged to a "particular social group" (PSG). *Applicant S v MIMA [2004] HCA 25; (2004) 217 CLR 387* remains the leading judgment on particular social groups. After reviewing statements made in that case, Gleeson CJ, Gummow and Kirby JJ, in a joint judgment in *Applicant S v MIMA*, summarised the determination of whether a group falls within the Article 1A(2) definition of particular social group as follows [36]:

First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a 'social group' and not a 'particular social group'.

In the case of the proposed group <sup>s. 47F(1)</sup> [REDACTED], the group is recognisable by their <sup>s. 47F(1)</sup> [REDACTED] and the country reports which indicated that there are civil, cultural and religious prohibitions against <sup>s. 47F(1)</sup> [REDACTED] which would set the applicant apart as a member of a group that is distinguishable from the rest of <sup>s. 47F(1)</sup> [REDACTED] society. Furthermore the proposed particular social group <sup>s. 47F(1)</sup> [REDACTED] is not defined by a shared fear of persecution; rather their <sup>s. 47F(1)</sup> [REDACTED] distinguishes members of the group from <sup>s. 47F(1)</sup> [REDACTED] society in general.

### *Finding*

I am satisfied the Refugees Convention ground of particular social group is the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

## 3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?

### *Evidence and Reasons*

The applicant fears <sup>s. 47F(1)</sup> [REDACTED] will be physically harmed or killed by <sup>s. 47F(1)</sup> [REDACTED] family or the community in <sup>s. 47F(1)</sup> [REDACTED]

### *Finding*

I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by subsections 91R(1)(b) and (c) of the Migration Act. Therefore I am satisfied the harm feared amounts to persecution.

## 4. IS THE FEAR WELL-FOUNDED?

### *Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

***Finding on well-foundedness***

Country information indicates that s. 47F(1) is not illegal under the s. 47F(1). Furthermore, while s. 47F(1) relations are forbidden under s. 47F(1), under the s. 47F(1) system there is no fine or other penalty for 'crimes' under s. 47F(1) unless these are covered separately by s. 47F(1).

The social environment for s. 47F(1) is considered to be more tolerant than in many other parts of s. 47F(1). That said, reports indicate that it would be difficult to s. 47F(1) as social views on s. 47F(1) remain conservative even in cities such as s. 47F(1).

s. 47F(1)



s. 47F(1)

However after considering the applicant's written statement and interview responses, I am not satisfied that s. 47F(1) would face a "real chance" of being persecuted as s. 47F(1). The mere fact that a person claims fear of persecution for a particular reason will not establish the genuineness of the asserted fear, or that it is well-founded, or that it is for the reason claimed. It remains for the applicant to satisfy the decision maker that all of the statutory elements are made out (*MIEA v Guo Wei Rong Anor* (1997) HCA 22). The relevant facts of the individual case will have to be supplied by the applicant in as much detail as is necessary to enable the examiner to establish the relevant facts, as a decision maker is not required to make the applicant's case for him or her (*Prasad v MIEA* (1985)).

The UNHCR Guidelines has advised that "[g]iven the difficulties of providing proof in s. 47F(1) claims, the assessment of such claims often rests on the credibility of the applicant.." and that decision-makers should "lean towards giving the applicant the benefit of the doubt" (5.5). However on balance, there was insufficient detailed, consistent and compelling testimony to satisfy me that the applicant's claims were genuine. Based on the applicant's evidence, as detailed in the Findings of Fact (Credibility), I have not accepted as credible s. 47F(1) claim of membership of a particular social group, s. 47F(1). In this regard, I do not find that the applicant has a well-founded fear of persecution.

I am not satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I am therefore not satisfied the applicant's fear is well founded.

## 5. FINDING UNDER THE REFUGEES CONVENTION

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(a) of the Migration Act and

s. 47F(1)

subclause 866.221(2) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> ~~s. 47F(1)~~ under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, I have not made an assessment in relation to whether Articles 1C-1F and Article 33(2) of the Refugees Convention apply to the applicant.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

**1. COMPLEMENTARY PROTECTION CRITERION**

If an applicant is not found to be a person in respect of whom Australia has protection obligations under the Refugees Convention, they may nonetheless meet the criterion for a Protection visa in subsection 36(2)(aa) of the Migration Act. That provides that the Minister (delegate) must be satisfied the applicant is a non-citizen in respect of whom Australia has protection obligations because the Minister (delegate) 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 (the applicant) will suffer significant harm.

Subsection 36(2A) of the Migration Act defines significant harm as:

- (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.

**2. DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?**

*Evidence and Reasons*

Section 36(2A) of the Migration Act sets out the criterion for a Protection visa on complementary protection grounds and lists the types of significant harm.

The applicant claims that <sup>s. 47F(1)</sup> ~~s. 47F(1)~~

*Finding*

I am satisfied the harm claimed by the applicant is significant harm for the purposes of subsection 36(2A) of the Migration Act.

**3. ARE THERE SUBSTANTIAL GROUNDS FOR BELIEVING THAT THERE IS A REAL RISK OF SIGNIFICANT HARM?**

*Evidence and Reasons*



In determining if the applicant faces a real risk of significant harm, I am guided by *MIAC v SZQRB* [2013] FCAFC 33 (20 March 2013), Lander and Gordon JJ, which stated (in part):

In our opinion, the [real risk] test is as for s36(2)(a) [of the Act]...is there a real chance that SZQRB will suffer significant harm...were he to return to Afghanistan. [246]

For the same reasons outlined above, I am not satisfied that there is a real chance that the applicant would experience significant harm on return to s. 47F(1) because I am not satisfied that the applicant is s. 47F(1) as claimed.

Therefore, in the present case, I am not satisfied the applicant has a real chance of being subject to significant harm should s. 47F(1) returned to s. 47F(1). Accordingly, I am not satisfied the applicant is a person in respect of whom Australia has protection obligations.

### ***Finding***

I am not satisfied there are 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 be subject to significant harm.

## **4. FINDING UNDER THE COMPLEMENTARY PROTECTION PROVISIONS IN THE MIGRATION ACT**

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) s. 47F(1), under subsection 36(2)(aa) of the Migration Act. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) s. 47F(1) under subsection 36(2)(aa) of the Migration Act, I have not assessed whether the ineligibility provisions in subsection 36(2C) of the Migration Act apply to the applicant.

### **Part D – Decision on Protection (Class XA) visa application**

I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the Migration Act and subclause 866.221 of Schedule 2 to the Migration Regulations. Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

s. 22(1)(a)(ii)

Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

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s. 22(1)(a)(iii)

**PROTECTION (CLASS XA) VISA DECISION RECORD**

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Legal Framework - Material Before the Decision Maker – Country of Reference / Receiving Country – Statutory Effective Protection – Claims for Protection - Findings of Fact (Credibility)**

**FINDING**

For the reasons outlined below, I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations). Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The applicant has submitted a certified copy of a s. 47F(1) Passport in the name s. 47F(1) s. 47F(1). The passport number is not legible on the copy.

Without evidence to the contrary, and for the purposes of this decision, I accept the applicant's name and age as stated above.

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find the Protection visa application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

s. 22(1)(a)(iii)

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s. 47F(1)

#### 4. LEGAL FRAMEWORK

**Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Citizenship (the Minister) is satisfied that the applicant is a person in respect of whom Australia has protection obligations.

**Protection Obligations**

Paragraph 36(2)(a) of the Migration Act provides that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that the applicant is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) 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. In this decision record, this alternative criterion is known as ‘complementary protection’. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who has been granted a Protection visa as a result of meeting one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental ‘Refugee Law Guidelines’ and ‘Complementary Protection Guidelines’.
3. The United Nations High Commissioner for Refugees Handbook on Procedures

s. 22(1)(a)(ii)



and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).

4. Australian case law as relevant.

## 6. COUNTRY OF REFERENCE / RECEIVING COUNTRY

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) and not to hold any other nationality. s. 47F(1) has provided a certified copy of s. 47F(1) passport with s. 47F(1) protection visa application. There is no evidence before me that disputes the applicant's assertion that s. 47F(1) is a citizen of s. 47F(1). Nor is there any evidence before me that indicates the applicant is a citizen of any country other than s. 47F(1).

### *Finding*

For the reasons stated above, I am satisfied the applicant is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act, for the purpose of assessing the complementary protection criteria.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

### *Finding*

I find that the applicant does not have statutory effective protection in a third country as set out in subsection 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)

s. 47F(1)

## 9. FINDINGS OF FACT (CREDIBILITY)

### *Findings and reasons and material evidence put to the applicant for comment:*

The assessment of whether or not an asylum seeker is a refugee as defined by the 1951 Convention and 1967 Protocol relating to the Status of Refugees may require a PV officer to assess the credibility of an applicant's testimony.

As the applicant has failed to attend the scheduled interview, I have been unable to make a finding in regards to the credibility of the applicant's claims for protection.

### **Part B - Assessment of Protection Obligations under the Refugees Convention**

## 1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and*

*being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) of the Refugees Convention for the purposes of the application of the Act and the regulations to a Protection visa applicant.

## 2. IS THE HARM FEARED FOR A CONVENTION REASON?

### *Evidence and Reasons*

The applicant has indicated in <sup>s. 47F(1)</sup> written statement that <sup>s. 47F(1)</sup> fears being harmed by <sup>s. 47F(1)</sup> family, community or the <sup>s. 47F(1)</sup> authorities because <sup>s. 47F(1)</sup>.

As the applicant has failed to attend an interview, I have not had an opportunity to verify <sup>s. 47F(1)</sup> claims. Nevertheless, for the purpose of this decision record, I will accept that the applicant claims to fear harm <sup>s. 47F(1)</sup>.

### *Finding*

I am satisfied the Refugees Convention ground of membership of a particular social group is the essential and significant reason for the harm feared as required by subsection 91R(1)(a) of the Migration Act.

## 3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?

### *Evidence and Reasons*

The applicant has indicated in <sup>s. 47F(1)</sup> written statement that <sup>s. 47F(1)</sup> claims to fear being jailed or killed because of <sup>s. 47F(1)</sup>.

As the applicant has failed to attend an interview, I have not had an opportunity to verify <sup>s. 47F(1)</sup> claims. Nevertheless, for the purpose of this decision record, I will accept that the applicant claims to fear harm amounting to persecution.

### *Finding*

I am not satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by subsections 91R(1)(b) and (c) of the Migration Act. Therefore I am not satisfied the harm feared amounts to persecution.

## 4. IS THE FEAR WELL-FOUNDED?

### *Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.



On s. 47F(1) a letter was sent to the applicant's agent inviting s. 47F(1) to attend an interview on s. 47F(1) at the Department of Immigration and Citizenship's s. 47F(1) office. In this invitation letter the applicant was advised that if s. 47F(1) did not attend the interview, the Protection visa application may be decided based on the information already provided. As this letter was mailed to an Australian address from within Australia, the applicant was taken to have received it seven (7) working days from the date of this letter. On s. 47F(1) the applicant's Migration Agent notified the Department that s. 47F(1) had attempted to contact the applicant about the interview on "numerous occasions" but had been unable to speak to s. 47F(1). The Migration Agent explained that s. 47F(1) had also advised the applicant that a decision on s. 47F(1) case can be made if s. 47F(1) failed to attend the interview s. 47F(1).

The applicant did not attend the interview on s. 47F(1) nor has any information been received from the applicant to indicate any reasons s. 47F(1) did not attend the interview.

As a decision-maker, I am not required to accept uncritically all claims made by an applicant. In *Randhawa v MIEA* (1994) 52 FCR 437, Beaumont J observed that a liberal attitude concerning proof of persecution in the context of an application for refugee status should not, however, lead to an uncritical acceptance of any and all allegations made by applicants. The mere fact that a person claims a fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is well-founded or that it is for the reason claimed. It remains for the applicant to satisfy the decision maker that all of the statutory elements are made out (*MIEA v Guo Wei Rong Anor* (1997) HCA 22). The relevant facts of the individual case will have to be supplied by the applicant in as much detail as is necessary to enable the examiner to establish the relevant facts, as a decision maker is not required to make the applicant's case for him or her (*Prasad v MIEA* (1985)).

Furthermore, the Office of the UNHCR states that the applicant must make an effort to support his statements by any available evidence and that he must supply all pertinent information concerning himself and his past experience in as much detail as necessary [5.3]

As the applicant has failed to attend the scheduled interview, it has not been possible to talk to s. 47F(1) about matters that are relevant to s. 47F(1) application for a Protection Visa. In particular, I am unable to verify the written claims put forward by the applicant in support of s. 47F(1) application for a Protection Visa. I have been unable to verify the applicant's claim s. 47F(1) and to have experienced harm and mistreatment in s. 47F(1).

Had the applicant attended the Departmental interview, I would have elicited further information from s. 47F(1) and checked all the available evidence relating to s. 47F(1) claims, in order to determine whether these claims establish that s. 47F(1) has a well-founded fear of persecution in s. 47F(1). Since the applicant did not attend the interview I have had no opportunity to do this. Consequently, I am not able to be satisfied that there is a real chance of the applicant being persecuted within the reasonably foreseeable future of s. 47F(1) return to s. 47F(1) for reasons of s. 47F(1) or any of the other reasons set out in Article 1A(2) of the Refugees Convention (as amended by the Refugees Protocol).



***Finding on well-foundedness***

I am not satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I am therefore not satisfied the applicant's fear is well founded.

**5. FINDING UNDER THE REFUGEES CONVENTION**

I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, I have not made an assessment in relation to whether Articles 1C-1F and Article 33(2) of the Refugees Convention apply to the applicant.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act****1. COMPLEMENTARY PROTECTION CRITERION**

If an applicant is not found to be a person in respect of whom Australia has protection obligations under the Refugees Convention, they may nonetheless meet the criterion for a Protection visa in subsection 36(2)(aa) of the Migration Act. That provides that the Minister (delegate) must be satisfied the applicant is a non-citizen in respect of whom Australia has protection obligations because the Minister (delegate) 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 (the applicant) will suffer significant harm.

Subsection 36(2A) of the Migration Act defines significant harm as:

- (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.

**2. DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?*****Evidence and Reasons***

The applicant has indicated in <sup>s. 47F(1)</sup> written statement that <sup>s. 47F(1)</sup> claims to fear being jailed or killed because of <sup>s. 47F(1)</sup>. As the applicant has failed to attend an interview, I

have not had an opportunity to verify <sup>s. 47F(1)</sup> claims. Nevertheless, for the purpose of this decision record, I will accept that the applicant claims to fear being subjected to significant harm.

### ***Finding***

I am satisfied the harm claimed by the applicant is significant harm for the purposes of subsection 36(2A) of the Migration Act.

### **3. ARE THERE SUBSTANTIAL GROUNDS FOR BELIEVING THAT THERE IS A REAL RISK OF SIGNIFICANT HARM?**

#### ***Evidence and Reasons***

In determining if the applicant faces a real risk of significant harm, I am guided by *MIAC v SZQRB* [2013] FCAFC 33 (20 March 2013), Lander and Gordon JJ, which stated (in part):

In our opinion, the [real risk] test is as for s36(2)(a) [of the Act]...is there a real chance that SZQRB will suffer significant harm...were he to return to Afghanistan. [246]

In assessing whether the applicant is at a real risk of significant harm I note my findings in Part B above. In the absence of the applicant attending an interview I was not able to be satisfied that there is a real chance of the applicant being seriously harmed within the reasonably foreseeable future of <sup>s. 47F(1)</sup> return to <sup>s. 47F(1)</sup>. For the same reasons, I am not able to accept that the applicant has a real chance of being subject to significant harm should <sup>s. 47F(1)</sup> be returned to <sup>s. 47F(1)</sup>.

Accordingly, I am not satisfied the applicant is a person in respect of whom Australia has protection obligations.

### ***Finding***

I am not satisfied there are 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 be subject to significant harm.

### **4. FINDING UNDER THE COMPLEMENTARY PROTECTION PROVISIONS IN THE MIGRATION ACT**

I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> under subsection 36(2)(aa) of the Migration Act. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.




As I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) under subsection 36(2)(aa) of the Migration Act, I have not assessed whether the ineligibility provisions in subsection 36(2C) of the Migration Act apply to the applicant.

**Part D – Decision on Protection (Class XA) visa application**

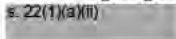
I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the Migration Act and subclause 866.221 of Schedule 2 to the Migration Regulations. Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

s. 22(1)(a)(ii)




Delegate of the Minister of Immigration and Border Protection  
for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)



Released by Department of Home Affairs  
under the Freedom of Information Act 1982

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

**PROTECTION (CLASS XA) VISA DECISION RECORD**

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Legal Framework - Material Before the Decision Maker – Country of Reference / Receiving Country – Statutory Effective Protection – Claims for Protection - Findings of Fact (Credibility)**

**FINDING**

For the reasons outlined below, I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations). Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The applicant claims to be s. 47F(1), born s. 47F(1) in s. 47F(1). At interview the applicant presented certified copies of s. 47F(1) passport and Birth Certificate s. 47F(1).

As stated above, the applicant claimed s. 47F(1) name was s. 47F(1) s. 47F(1) and that s. 47F(1) was s. 47F(1) years old. Without evidence to the contrary, and for the purposes of this decision, I accept the applicant's name and age as stated above.

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find the Protection visa application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

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#### 4. LEGAL FRAMEWORK

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Border Protection (the Minister) is satisfied that the applicant is a person in respect of whom Australia has protection obligations.

##### **Protection Obligations**

Paragraph 36(2)(a) of the Migration Act provides that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that the applicant is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) 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. In this decision record, this alternative criterion is known as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who has been granted a Protection visa as a result of meeting one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the



1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).

4. Australian case law as relevant.

## 6. COUNTRY OF REFERENCE / RECEIVING COUNTRY

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) and has submitted s. 47F(1) passport in support of these claims. There is no evidence to indicate that the applicant may be a citizen of any country other than s. 47F(1). I accept the evidence before me relating to the applicant's nationality.

### *Finding*

For the reasons stated above, I am satisfied the applicant is a citizen of s. 47F(1).

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act, for the purpose of assessing the complementary protection criteria.

## 7. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

### *Finding*

I find that the applicant does not have statutory effective protection in a third country as set out in subsection 36(3) of the Migration Act.

## 8. CLAIMS FOR PROTECTION

s. 47F(1)

PV officer to assess the credibility of an applicant's testimony. When assessing credibility, a PV officer must be sensitive to the difficulties often faced by asylum seekers and the benefit of the doubt should be given to those who are generally credible. However, a PV officer is not required to accept uncritically assertions made by an applicant, nor is a PV officer required to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality.

FOI DOCUMENT #19

Based on the applicant's testimony and demeanour at interview, I accept that the applicant <sup>s. 47F(1)</sup> [REDACTED]. The applicant's account of harm and mistreatment experienced in <sup>s. 47F(1)</sup> [REDACTED] however, was not presented in a forthright and convincing manner and included evidence of fabrication or embellishment. I have addressed these concerns below:

***Claims concerning employment:***

The applicant claimed that <sup>s. 47F(1)</sup> [REDACTED]. The applicant claimed <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> [REDACTED]. The applicant claimed that <sup>s. 47F(1)</sup> [REDACTED]. I accept that the applicant may have been denied <sup>s. 47F(1)</sup> [REDACTED] on the basis of <sup>s. 47F(1)</sup> [REDACTED].

<sup>s. 47F(1)</sup> [REDACTED]

I accept that the applicant was <sup>s. 47F(1)</sup> [REDACTED].

***Claims concerning*** <sup>s. 47F(1)</sup> [REDACTED] :

<sup>s. 47F(1)</sup> [REDACTED]

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s. 47F(1)

At interview, the applicant was questioned about some of these incidents. The applicant's responses raised some concerns about the credibility of these claims. These concerns are outlined below:

- At interview, when questioned about the incident in s. 47F(1), the applicant indicated that s. 47F(1).  
In relation to the s. 47F(1) incident, the applicant claimed s. 47F(1). This testimony is not consistent with the applicant's Statutory Declaration which indicated that s. 47F(1) were responsible for these s. 47F(1).
- At interview, when questioned about the incident purported to have occurred on s. 47F(1) the applicant claimed s. 47F(1). s. 47F(1) claimed that s. 47F(1). This is not consistent with the applicant's original Statutory Declaration which indicated that s. 47F(1) had been s. 47F(1).
- When questioned about the incident of s. 47F(1) at interview, the applicant had difficulty recalling where this incident occurred. The applicant initially stated, albeit with a great degree of hesitation, that s. 47F(1). This is not consistent with the applicant's statutory declaration which stated that s. 47F(1) had also been s. 47F(1) on this occasion.



*Claims concerning* s. 47F(1)

FOI DOCUMENT #10

:

At the time of application, the applicant claimed that s. 47F(1)

s. 47F(1). The applicant failed to elaborate on this claim at the time of application, but did indicate that a comprehensive statutory declaration would follow. In a further statement received s. 47F(1) s. 47F(1) the applicant

s. 47F(1)

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Whilst the applicant's testimony concerning this incident was somewhat vague and inconsistent, I accept that the applicant may have been s. 47F(1). I accept that this may have included being being s. 47F(1). Based on the applicant's testimony it appears that the applicant s. 47F(1).

***Claims concerning incident at the s. 47F(1) on s. 47F(1)***

In s. 47F(1) original Statutory Declaration, received s. 47F(1) the applicant claimed s. 47F(1).

s. 47F(1)

When questioned about this incident at interview, the applicant's testimony was not consistent with the claims contained in s. 47F(1) Statutory Declaration. At interview, the applicant claimed that the s. 47F(1). The applicant indicated that the s. 47F(1). The applicant said that s. 47F(1). When asked to clarify whether s. 47F(1) had experienced any other problems with the police, the applicant indicated that s. 47F(1) had not. When asked if s. 47F(1) had ever been arrested or detained by the police, the applicant initially responded "no". It was put to

time of the s. 47F(1) incident, the applicant said that s. 47F(1) could not recall.

FOI DOCUMENT #10

Having carefully considered the applicant's claims concerning the s. 47F(1) incident, I do not accept that s. 47F(1) has provided an open and honest account of it. The applicant's failure to mention that the s. 47F(1) when questioned about the incident at interview constitutes a serious and significant omission. The fact that the applicant did not mention that the police were involved until prompted by reference to s. 47F(1) Statutory Declaration leads me to conclude that the involvement of police in the incident has been fabricated. Despite the adverse findings in relation to the involvement of police in this incident, I am prepared to accept for the purposes of this assessment that the applicant was involved in a physical altercation with patrons at the s. 47F(1) which was broken up by security working at the establishment. I also accept that the applicant feels that s. 47F(1)

***Claims concerning incidents at s. 47F(1) :***

In the Statutory Declaration received on s. 47F(1), the applicant claimed that s. 47F(1)

s. 47F(1)

At interview, the applicant reiterated that s. 47F(1) had been abused and prevented from shopping at the s. 47F(1) vendor. The applicant also mentioned that s. 47F(1) had been mocked on another occasion and had s. 47F(1). I accept that these incidents occurred as claimed.

***Claims concerning being beaten by s. 47F(1) on s. 47F(1) :***

In a Statutory Declaration submitted by the applicant s. 47F(1) claimed to s. 47F(1)

s. 47F(1). The applicant's failure to provide consistent testimony concerning the date of this incident does raise concerns that it is fabricated. Nevertheless, for the purposes of this assessment, I accept that the applicant may have had a dispute with s. 47F(1) which escalated into a physical assault. I also accept that the applicant may have s. 47F(1) during this dispute.

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**Part B - Assessment of Protection Obligations under the Refugees Convention****1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION**

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) of the Refugees Convention for the purposes of the application of the Act and the regulations to a Protection visa applicant.

**2. IS THE HARM FEARED FOR A CONVENTION REASON?*****Evidence and Reasons***

The applicant claims that <sup>s. 47F(1)</sup> fears persecution because <sup>s. 47F(1)</sup>. Therefore, the applicant wishes to rely on the claim that <sup>s. 47F(1)</sup> faces persecution for reasons of being a member of the particular social group <sup>s. 47F(1)</sup>.

The UNHCR Guidelines on International Protection, 'Membership of a particular social group', HCR/GIP/02/02, 7 May 2002 defines a particular social group as:

*"...a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights." <sup>1</sup>*

In contrast, Australian courts have adopted the social perception approach in determining the existence of a particular social group. This approach examines whether or not a group shares a common characteristic which makes them a cognisable group or sets them apart from society at large.

The test for determining whether a group falls within the definition of a particular social group in Article 1A(2) of the Convention was formulated in the High Court case of *Applicant S v MIMA* (2004). This was summarised by Gleeson CJ, Gummow and Kirby JJ at [36]:

*"First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the*

FOI DOCUMENT #19  
whether a supposed group is a particular social group in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

The available evidence indicates there is an identifiable s. 47F(1) community in s. 47F(1) that is defined within that country by their s. 47F(1). The characteristics of the applicant's s. 47F(1) and s. 47F(1) unwillingness to follow s. 47F(1) cultural and religious prohibitions against s. 47F(1) would appear to set the applicant apart as a member of a group that is separate to the rest of s. 47F(1) society. The available information relating to s. 47F(1) also suggests that the applicant may be viewed by the s. 47F(1) community as a member of a separate group within their society.

I consider that the applicant's claim regarding s. 47F(1) relates to the Convention ground of particular social group.

### ***Finding***

I am satisfied the Refugees Convention ground of particular social group is the essential and significant reason for the harm feared as required by subsection 91R(1)(a) of the Migration Act.

## **3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?**

### ***Evidence and Reasons***

The applicant claims that s. 47F(1) will be denied employment on the basis of s. 47F(1). I accept that in some cases s. 47F(1) denial of employment may constitute a restriction on the person's capacity to subsist and amount to persecution.

The applicant is claiming s. 47F(1)

Whilst verbal abuse may fall short of persecution, I find that physical harm and death constitute serious harm. For the purposes of this assessment, I also accept that in some circumstances verbal abuse may reach levels where it causes psychological damage that may constitute serious harm.

Significant physical harassment and ill-treatment of a person is serious harm, as noted in s91R(2)(b) of the Migration Act. I find that the harm feared involves serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

### ***Finding***

<sup>2</sup> Gleeson CJ, Gummow and Kirby JJ at [36]



Decision record – Refusal under Refugees Convention and CP

I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by subsections 91R(1)(b) and (c) of the Migration Act. Therefore I am satisfied the harm feared amounts to persecution.

#### 4. IS THE FEAR WELL-FOUNDED?

##### *Evidence and Reasons*

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

In <sup>s. 47F(1)</sup>, The Department of Foreign Affairs and Trade provided the following advice:

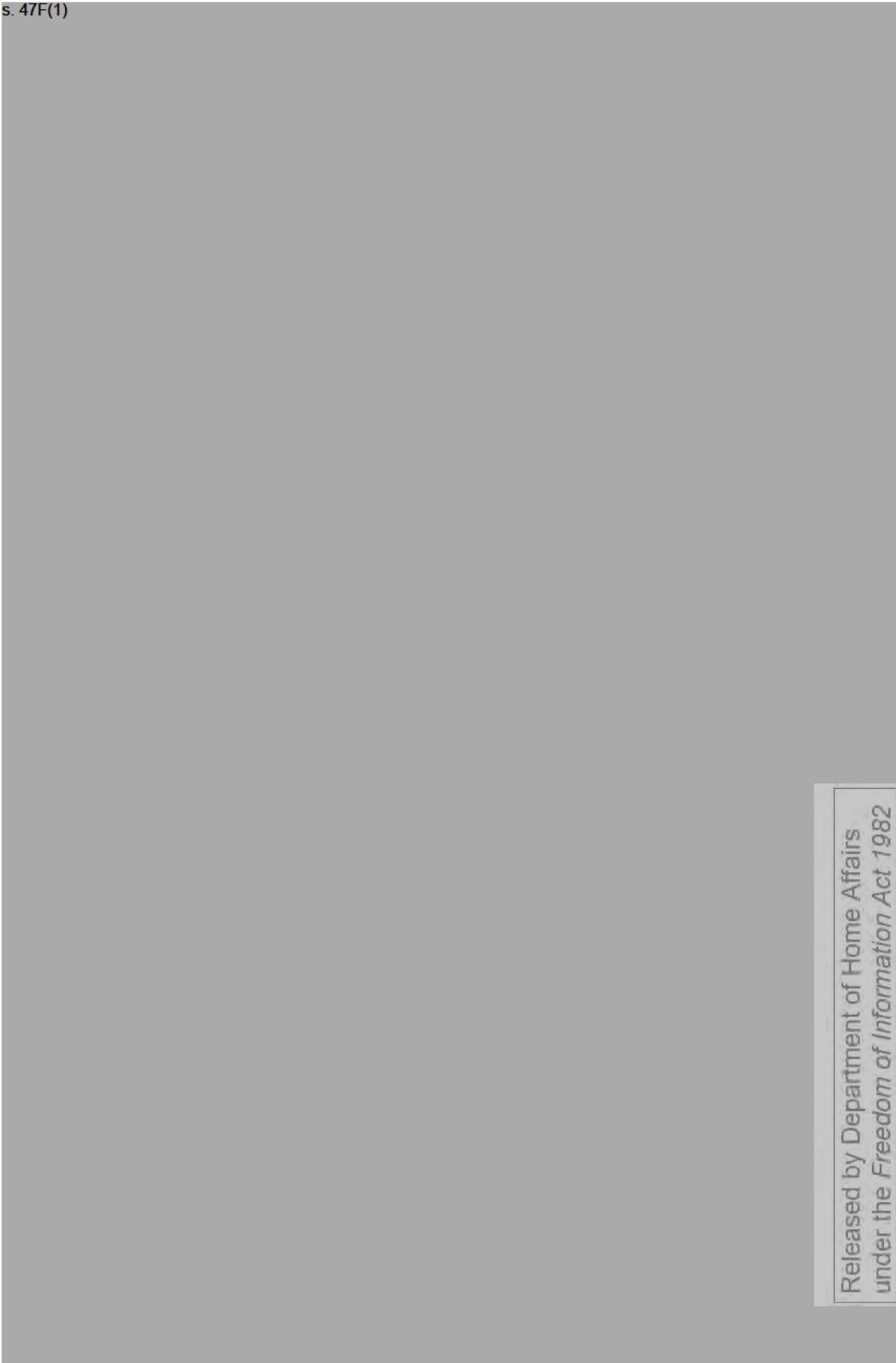
s. 47F(1)

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s. 47F(1)



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s. 47F(1)

In summary, while there appears to be some societal discrimination against persons in s. 47F(1) based on s. 47F(1), there is no evidence to suggest that the s. 47F(1) authorities systemically target s. 47F(1) for harm and mistreatment.

In light of the available country information:

- I accept that the applicant may be subjected to verbal assault or taunts in s. 47F(1) because of s. 47F(1). However, I do not find that the verbal taunts experienced in the past constituted persecution within the Convention definition. As such, I find the likelihood of the applicant being subjected to verbal abuse on the basis of s. 47F(1) to the extent that it would constitute persecution is a remote possibility.
- Whilst I accept that the applicant may have been subjected to discrimination on the basis of s. 47F(1) in the past, there is no evidence to suggest that such discrimination is pervasive throughout s. 47F(1). As such, I am not satisfied that the applicant would be denied employment in s. 47F(1) to an extent that s. 47F(1) capacity to subsist is threatened.
- Whilst I accept that the applicant has been subjected to verbal and physical abuse from members of s. 47F(1) extended family, I note that these incidents have occurred when the applicant has visited the homes of these relatives. There is no evidence before me to suggest that members of the applicant's extended family have pursued the applicant. As such, it appears that the applicant would be able to avoid harm from s. 47F(1) by ceasing to visit them.

s. 47F(1)

amount to persecution within the Convention definition. If the applicant were subjected to more serious forms of physical harm, I am satisfied that such harm would criminal act that is not condoned by the authorities. As such, I am of the opinion that the applicant would be able to obtain protection from the s. 47F(1) authorities if s. 47F(1) was threatened with or subjected to serious physical harm or mistreatment.

- As outlined in the credibility findings above, I am of the opinion that the applicant fabricated claims concerning s. 47F(1). Whilst I am prepared to accept that the applicant may have been s. 47F(1), I am satisfied that this was an isolated incident. Furthermore, it would appear that the s. 47F(1) after the applicant s. 47F(1). Whilst I am not suggesting that this legitimises the s. 47F(1), it does appear that the applicant's comments exacerbated the situation and gave rise to the s. 47F(1). Based on the available evidence, I am not satisfied that police or military personnel are responsible for the systematic targeting and s. 47F(1). If this were the case, I am satisfied that it would be reported by local NGO's that advocate for s. 47F(1) and that it would be included in human rights reports on s. 47F(1). As such, I find the likelihood of the applicant being targeted by the authorities in a similar manner in the future to be remote.

Based upon the evidence before me I am not satisfied that the applicant faces a real chance of serious harm for the reason of s. 47F(1) upon return to s. 47F(1) in the reasonably foreseeable future.

#### *Finding on well-foundedness*

I am not satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I am therefore not satisfied the applicant's fear is well founded.

### **5. FINDING UNDER THE REFUGEES CONVENTION**

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant s. 47F(1) under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, I have not made an assessment in relation to whether Articles 1C-1F and Article 33(2) of the Refugees Convention apply to the applicant.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

**1. COMPLEMENTARY PROTECTION CRITERION**

If an applicant is not found to be a person in respect of whom Australia has protection obligations under the Refugees Convention, they may nonetheless meet the criterion for a Protection visa in subsection 36(2)(aa) of the Migration Act. That provides that the Minister (delegate) must be satisfied the applicant is a non-citizen in respect of whom Australia has protection obligations because the Minister (delegate) 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 (the applicant) will suffer significant harm.

Subsection 36(2A) of the Migration Act defines significant harm as:

- (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.

**2. DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?**

*Evidence and Reasons*

The applicant claims that s. 47F(1) will be denied employment on the basis of s. 47F(1). I accept that in some cases denial of employment may constitute a restriction on the person's capacity to subsist and amount to significant harm.

The applicant is claiming that s. 47F(1)

Whilst verbal abuse may fall short of persecution, I find that physical harm and death constitute significant harm. For the purposes of this assessment, I also accept that in some circumstances verbal abuse may reach levels where it causes psychological damage that may constitute significant harm.

Significant physical harassment and ill-treatment of a person is serious harm, as noted in s91R(2)(b) of the Migration Act. I find that the harm feared involves serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

*Finding*

I am satisfied the harm claimed by the applicant is significant harm for the purposes of subsection 36(2A) of the Migration Act.

**3. ARE THERE SUBSTANTIAL GROUNDS FOR BELIEVING THAT THERE IS A REAL RISK OF SIGNIFICANT HARM?**



citizen will suffer significant harm if removed to the receiving country. The phrase 'necessary and foreseeable consequence' requires decision-makers to be satisfied there is a real as opposed to a speculative causal link between the applicant's removal from Australia and their exposure to a 'real risk'.

FOI DOCUMENT #10

In determining if the applicant faces a real risk of significant harm, I am guided by *MIAC v SZQRB* [2013] FCAFC 33 (20 March 2013), Lander and Gordon JJ, which stated (in part):

*In our opinion, the [real risk] test is as for s36(2)(a) [of the Act] ...is there a real chance that SZQRB will suffer significant harm...were he to return to Afghanistan. [246]*

The 'real chance' test was applied earlier in this decision when it was considered whether the applicant has a well-founded fear of persecution for a Refugee Convention reason. In part B of this decision, I provided an analysis of the applicant's claims and have considered relevant country information and I found that the applicant's fear of harm is not well founded, as I was not satisfied that s. 47F(1) has a real chance of being subjected to persecution. I am reliant on the same evidence in determining whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of s. 47F(1) removal from Australia to s. 47F(1) there is a real risk that the applicant will suffer significant harm. As the threshold for a 'real risk' of harm is commensurate to that of a 'real chance' test, I have concluded that the applicant does not stand a real risk of being harmed on return to s. 47F(1) for the reasons offered in s. 47F(1) protection visa application.

Having considered the matters above, I am not satisfied that the applicant has a real chance of being subjected to significant harm should s. 47F(1) be returned to s. 47F(1). Accordingly, I am not satisfied the applicant is a person in respect of whom Australia has protection obligations.

I am not satisfied that there are 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 (the applicant) will suffer significant harm in their home region.

#### **4. FINDING UNDER THE COMPLEMENTARY PROTECTION PROVISIONS IN THE MIGRATION ACT**

I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) under subsection 36(2)(aa) of the Migration Act. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, s. 47F(1) under subsection 36(2)(aa) of the Migration


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Act, I have not assessed whether the ineligibility provisions in subsection 36(2C) of the Migration Act apply to the applicant.

**Part D – Decision on Protection (Class XA) visa application**

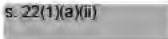
I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the Migration Act and subclause 866.221 of Schedule 2 to the Migration Regulations. Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

s. 22(1)(a)(ii)



Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

**PROTECTION (CLASS XA) VISA RECOMMENDATION**

**Part A – Recommendation - Applicant Details - Applicant History / Migration History – Legal Framework– Material Before the Recommender – Country of Reference – Statutory Effective Protection – Claims for Protection – Findings of Fact (Credibility)**

**RECOMMENDATION**

For the reasons outlined below, I recommend that s. 47F(1) is a person in respect of whom Australia has protection obligations under Article 1 of the Refugees Convention considering section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).

This recommendation is not an exercise of the power under section 65 of the Migration Act.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The Applicant claims to be s. 47F(1) born s. 47F(1). The applicant presented s. 47F(1) original s. 47F(1) passport s. 47F(1) at interview as evidence of s. 47F(1) identity s. 47F(1).

As stated above, the applicant claimed s. 47F(1) name was s. 47F(1) and that was born on s. 47F(1). Without evidence to the contrary, and for the purposes of this decision, I accept the applicant's name and age as stated above.

**2. APPLICANT HISTORY/MIGRATION HISTORY**

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The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find the Protection visa application is valid.

### 3. LEGAL FRAMEWORK

#### Protection Obligations

Paragraph 36(2)(a) of the Migration Act provides that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that the applicant is a non-citizen in Australia 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. In this recommendation, this alternative criterion will be referred to as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who has been granted a Protection visa as a result of meeting one of the two criteria described above.

### 4. MATERIAL BEFORE THE RECOMMENDER

1. Departmental file **s. 22(1)(a)(ii)** relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).
4. Australian case law as relevant.

### 5. COUNTRY OF REFERENCE

#### *Evidence and Reasons*

The applicant claims to be a national of **s. 47F(1)** and presented **s. 47F(1)** passport in support of this claim.

#### *Finding*

For the reasons stated above, I am satisfied the applicant is a citizen of s. 47F(1)

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act, for the purpose of assessing the complementary protection criteria.

## 6. STATUTORY EFFECTIVE PROTECTION

### *Evidence and Reasons*

The applicant claims to be a citizen of s. 47F(1) claims that s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

### *Finding*

I accept that, as the applicant does not have a current right to enter and reside in a country other than s. 47F(1) country of citizenship, section 36(3) of the Migration Act does not apply to s. 47F(1).

## 7. CLAIMS FOR PROTECTION

s. 47F(1)

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s. 47F(1)

## 8. FINDINGS OF FACT (CREDIBILITY)

The applicant was interviewed in relation to s. 47F(1) claims for protection on s. 47F(1)

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At interview the applicant was questioned in relation s. 47F(1) s. 47F(1), self-identity and s. 47F(1) personal relationships. The applicant was also questioned in relation to s. 47F(1) lifestyle and relationships in Australia. Whilst the applicant s. 47F(1), I am persuaded by the applicant's testimony concerning s. 47F(1) reluctance to engage publicly in an s. 47F(1) s. 47F(1) due to s. 47F(1) links with the s. 47F(1) community in Australia and s. 47F(1). Furthermore, I am also persuaded by the three Statutory Declarations and a letter which support the applicant's claim s. 47F(1) and are consistent with the claims provided at interview s. 47F(1) In

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general, the applicant's responses were plausible, coherent, lacked any obvious exaggeration and were consistent with <sup>s. 47F(1)</sup> written claims. The applicant has given straightforward and open testimony in relation to <sup>s. 47F(1)</sup> and I accept <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>

*Claims concerning* <sup>s. 47F(1)</sup>

Having carefully assessed the applicant's testimony, I do have some concerns about the applicant's claims concerning harm feared at the hands of <sup>s. 47F(1)</sup> on the basis of <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> I found the applicant's claims about how <sup>s. 47F(1)</sup> came to know about <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> to be vague and unpersuasive. <sup>s. 47F(1)</sup>

<sup>s. 47F(1)</sup>

I found the applicant's testimony concerning the <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> to be inconsistent with <sup>s. 47F(1)</sup> claim to have been careful not to draw attention to <sup>s. 47F(1)</sup>. If as the applicant asserted at interview, the <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> is unacceptable, and by implication strongly indicates that an individual <sup>s. 47F(1)</sup>, it appears unlikely that the applicant would have <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>. I also find the applicant's claims concerning <sup>s. 47F(1)</sup> discovery of the <sup>s. 47F(1)</sup> to be unconvincing. Given the applicant's claim that <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>, it appears unlikely that the applicant's <sup>s. 47F(1)</sup> would have put <sup>s. 47F(1)</sup> at risk by showing <sup>s. 47F(1)</sup> that would raise questions about the applicant's <sup>s. 47F(1)</sup>. Furthermore, I found the

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applicant's claims concerning the s. 47F(1) to appear contrived. If the applicant had s. 47F(1) as claimed, it appears unlikely that the applicant's s. 47F(1) would only be shown the photograph some s. 47F(1) years later. In light of these issues, I am of the opinion that the claims concerning s. 47F(1) discovery of s. 47F(1) have been contrived to strengthen s. 47F(1) protection claims and better explain the significant delay in seeking asylum. I do not accept that the applicant's s. 47F(1) has threatened to violently assault or kill s. 47F(1), if s. 47F(1) returns to s. 47F(1). Nevertheless, I do accept that the applicant has felt compelled to hide s. 47F(1) from s. 47F(1) family and that s. 47F(1) genuinely fears encountering hostility and s. 47F(1) violence from s. 47F(1) and the broader society as this is consistent with country information in relation to the treatment of s. 47F(1).

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I accept that the applicant is of an age where may be required to s. 47F(1) upon return to s. 47F(1). In light of available country information (see well-foundedness section below) I also accept that the applicant genuinely fears being subjected to harm and mistreatment on the basis of s. 47F(1) if s. 47F(1) s. 47F(1). I also accept that the applicant genuinely fears being subjected to s. 47F(1) attempts to s. 47F(1) s. 47F(1).

### *Delay in Application*

I find that the applicant's delay in submitting a Protection Visa application does raise some doubts about the immediacy, gravity and credibility of s. 47F(1) claims to fear harm amounting to persecution in s. 47F(1). Whilst the applicant has claimed that s. 47F(1) did not realise that it was possible to apply for protection on the basis of s. 47F(1) until s. 47F(1) and then further delayed lodging an application because s. 47F(1) did not believe that the process would be confidential s. 47F(1), I do not find these claims to be entirely convincing. Given that the applicant had known how to apply for other visa categories in order to prolong s. 47F(1) stay in Australia, it is difficult to accept s. 47F(1) would not have researched s. 47F(1) visa options and not known about the ability to claim protection in Australia, if s. 47F(1) was genuinely driven by a fear of returning to s. 47F(1) particularly given that s. 47F(1) s. 47F(1). The s. 47F(1) year delay in applying for a Protection Visa leads me to speculate that the applicant did not have a subjective fear of serious or significant harm on the basis of s. 47F(1) s. 47F(1) throughout this period. Nevertheless, as available information (refer to Well-foundedness section below) indicates that acceptance of s. 47F(1) accompanied by a rise in discrimination, harassment and violence against s. 47F(1) appears to

s. 47F(1)



have increased in <sup>s. 47F(1)</sup> in recent years, I accept that the applicant now genuinely fears harm and mistreatment on the basis of <sup>s. 47F(1)</sup>.

*91R(3) of the Migration Act*

The issue is whether the applicant has only one reason for <sup>s. 47F(1)</sup> conduct in Australia, that is, to strengthen <sup>s. 47F(1)</sup> refugee claims. Having interviewed the applicant and considered <sup>s. 47F(1)</sup> evidence, I am satisfied that <sup>s. 47F(1)</sup> has a motive for <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> conduct in addition to that of strengthening <sup>s. 47F(1)</sup> refugee claims. I find that the applicant has not engaged in conduct in Australia otherwise than for the purpose of strengthening <sup>s. 47F(1)</sup> claim to be a refugee under subsection 91R(3) of the Migration Act. Therefore, I have not disregarded that conduct for the purposes of assessing the claims under the Refugees Convention criteria.

**Conclusion:**

Having considered the applicant's testimony, I also accept that the applicant has genuine and subjective fears about returning to <sup>s. 47F(1)</sup> and living <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>. I also accept that the applicant subjectively fears the following harm and mistreatment:

- Degrading treatment at the hands of <sup>s. 47F(1)</sup> if <sup>s. 47F(1)</sup> seeks <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> on the basis of <sup>s. 47F(1)</sup>;
- Discrimination in employment which may lead to significant financial hardship;
- Verbal insults and physical violence directed at <sup>s. 47F(1)</sup> by <sup>s. 47F(1)</sup> members of <sup>s. 47F(1)</sup> extended family, the public and/or the <sup>s. 47F(1)</sup> authorities.

**Part B - Assessment of Protection Obligations under the Refugees Convention**

**1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION**

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) of the Refugees Convention for the purposes of the application of the Act and the regulations to a Protection visa applicant.



## 2. IS THE HARM FEARED FOR A REFUGEES CONVENTION REASON?

### *Evidence and Reasons*

The applicant claims to fear returning to s. 47F(1) because s. 47F(1)

I am not satisfied that the harm feared by the applicant could be considered to have a nexus to the Convention grounds of Race, Religion, Nationality or Political Opinion, and accordingly will consider whether the applicant fears being harmed for reasons of s. 47F(1) Membership of a Particular Social Group.

I note that *Applicant S v MIMA* [2004] HCA 25; remains the leading judgment on particular social groups. In that case, Gleeson CJ, Gummow and Kirby JJ, summarised the determination of whether a group falls within the Article 1A(2) definition of particular social group in the following way:

First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a 'social group' and not a 'particular social group'.

Whether the applicant is a member of a group that is a PSG must be determined from s. 47F(1) circumstances and from relevant country information in relation to s. 47F(1). The s. 47F(1) of the applicant is a distinctive factor. Given the civil, cultural and s. 47F(1) against s. 47F(1), the applicant may be seen as part of an identifiable group which is distinguishable from the rest of s. 47F(1) society. Further, the persecution feared by s. 47F(1) is not the sole defining characteristic of that group of people in that country.

Accordingly I accept that the applicant's fear of being targeted in s. 47F(1) because s. 47F(1) constitutes a fear of being harmed for reasons of s. 47F(1) membership of a particular social group of s. 47F(1)

### *Finding*

I find that the Refugees Convention ground of Membership of a Particular Social Group is the essential and significant reason for the harm feared as required by paragraph 91R(1)(a) of the Migration Act.

## 3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?

### *Evidence and Reasons*

The applicant fears s. 47F(1)

s. 47F(1) claims to fear harm s. 47F(1)

The Australian legislation relevant to this aspect of protection obligations is found in sections 91R(1)(b), (c) and 91R(2) of the Migration Act:

**91R.** (1) *For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:*

- (b) the persecution involves serious harm to the person; and*
- (c) the persecution involves systematic and discriminatory conduct.*

(2) *Without limiting what is serious harm for the purposes of paragraph (1)(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.*

The applicant's claims may come within these examples of serious harm.

### ***Finding***

In addition to paragraph 91R(1)(a) of the Migration Act being met, I find that the harm feared involves serious harm and systematic and discriminatory conduct as required by paragraphs 91R(1)(b) and (c) of the Migration Act. Therefore, I find the harm feared amounts to persecution.

## **4. IS THE FEAR WELL-FOUNDED?**

### ***Evidence and Reasons***

A fear of being persecuted is well-founded if there is a 'real chance' that an applicant may be persecuted (see *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at p.389, Toohey J at pp.406-7, Dawson J at pp.396-8, McHugh J at pp.428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well-founded.

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

As discussed earlier in this decision, I accept that the applicant <sup>s. 47F(1)</sup> [REDACTED]. In considering the risk faced by the applicant on <sup>s. 47F(1)</sup> return to <sup>s. 47F(1)</sup> [REDACTED] I have considered independent country information in relation to the treatment of <sup>s. 47F(1)</sup> [REDACTED].

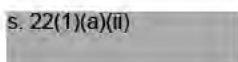
s. 47F(1)



s. 47F(1)



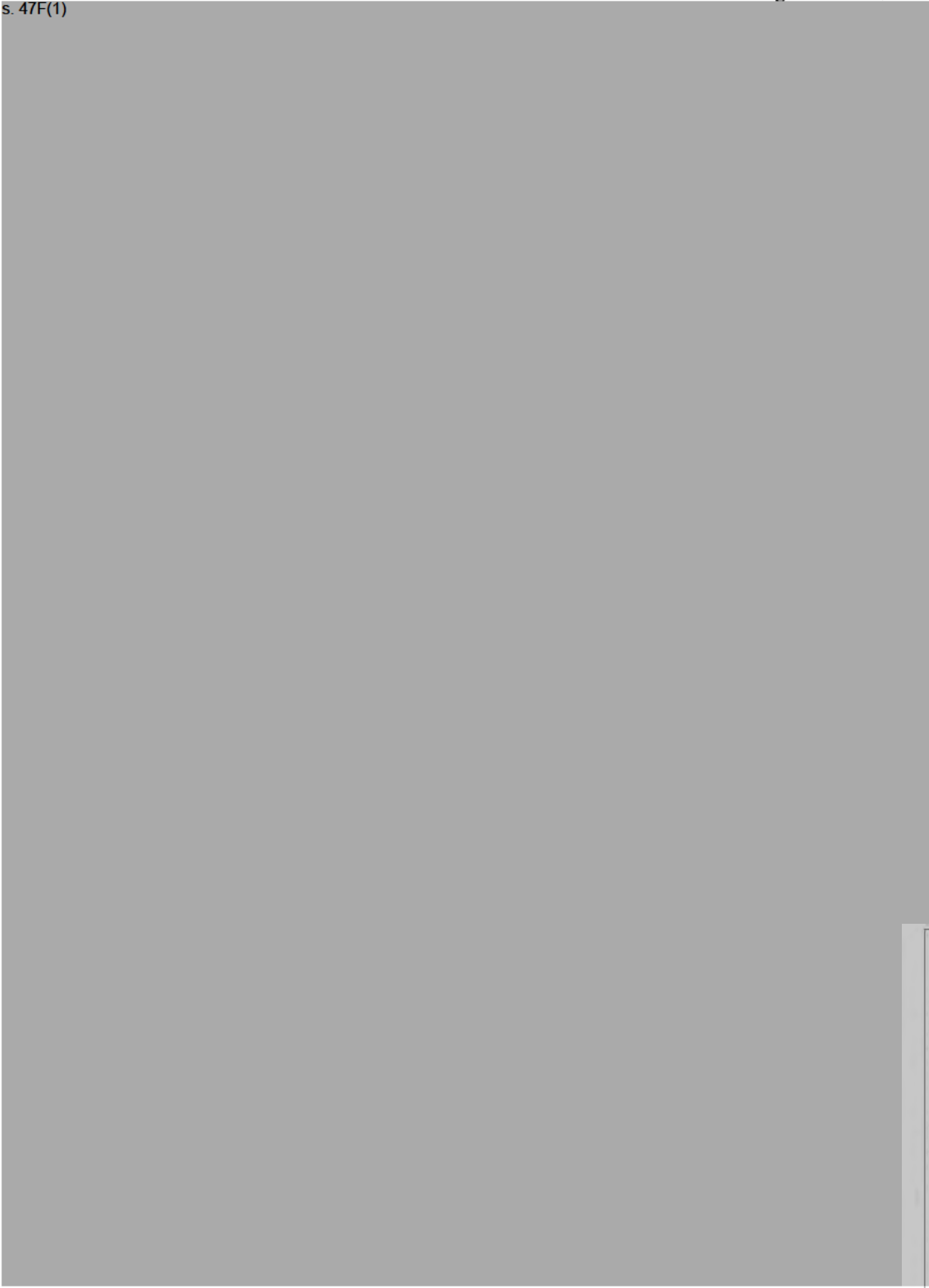
s. 22(1)(a)(ii)



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s. 47F(1)



s. 22(1)(a)(ii)

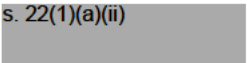
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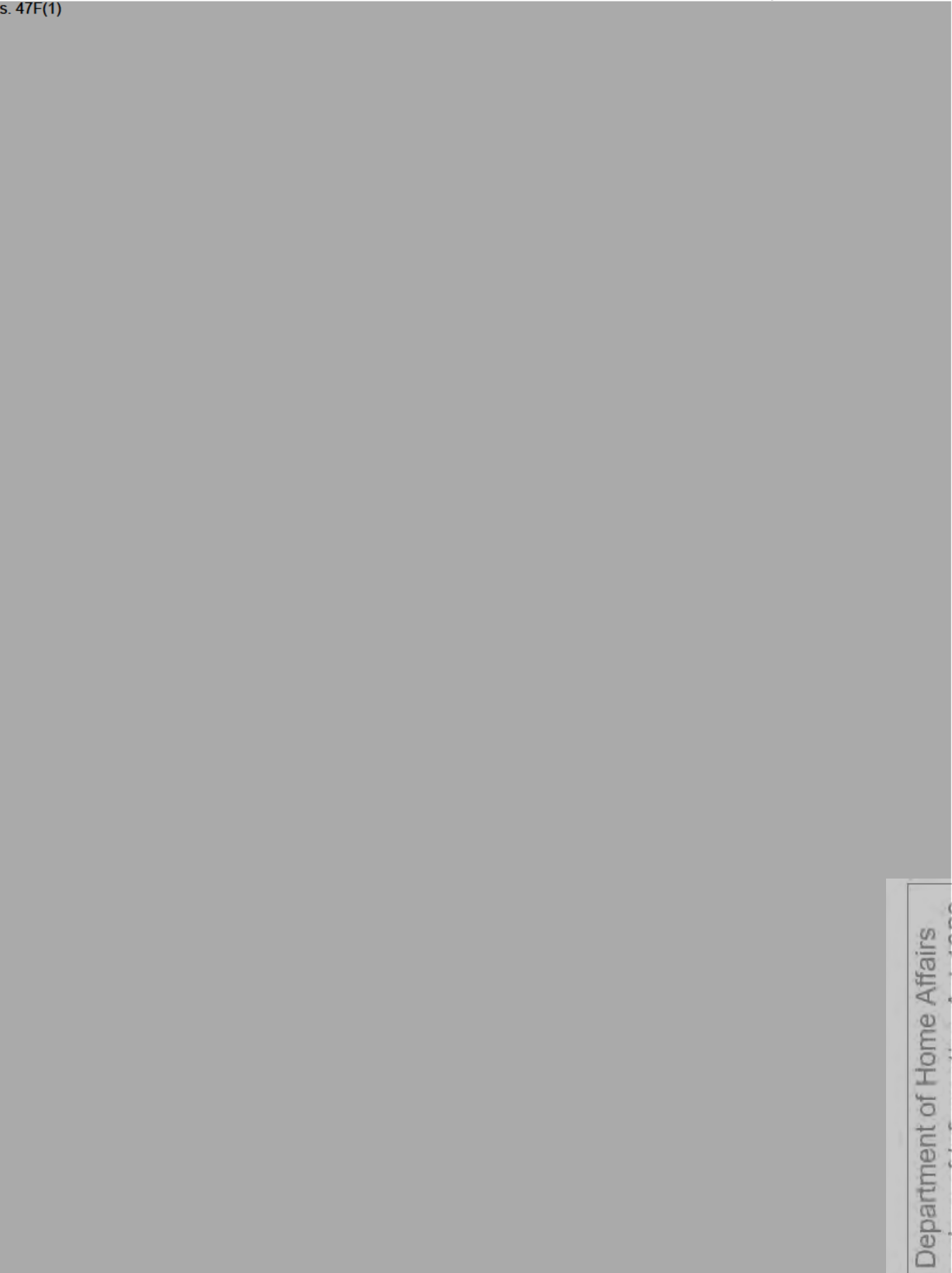


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s. 47F(1)



s. 47F(1)



s. 22(1)(a)(ii)



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### **CONCLUSION**

Country information cited in this decision indicates a generally hostile climate towards s. 47F(1) with s. 47F(1) subjected to violence, discrimination and intimidation as well as negative stereotyping, including from high-level public figures and law enforcement agents. Having considered the applicant's claims and relevant country information I am satisfied that there is a more than remote chance of the applicant being subjected to serious harm if s. 47F(1) returns to s. 47F(1).

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Country reports indicate that the discrimination, harassment and legal penalties faced by s. 47F(1) because of their s. 47F(1) may singularly or cumulatively amount to persecution. I am also satisfied that it would be unreasonable to expect s. 47F(1) to conceal s. 47F(1) or to act in a discreet manner in order to avoid "serious harm" in s. 47F(1). Available information indicates that if the applicant was open about s. 47F(1) if called upon to undertake s. 47F(1), the likelihood of being subjected to s. 47F(1) constituting persecution could not be said to be remote.

Therefore I am satisfied that were the applicant to return to s. 47F(1) and s. 47F(1) within the social and cultural environment described by the country reports, the chance of s. 47F(1) being persecuted is more than remote.

### ***Finding on well-foundedness***

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I find the applicant has a real chance of being persecuted for a Refugees Convention reason. I therefore find the applicant's fear of persecution for a Refugees Convention reason, is well-founded.

**5. DO THE EXCLUSION CLAUSES APPLY? (ARTICLE 1D, 1E AND 1F)**

Based on the evidence before me, I find the exclusion clauses in Articles 1D, 1E and 1F of the Refugees Convention do not apply to the applicant.

**6. DOES THE APPLICANT COME WITHIN ARTICLE 33(2) OF THE REFUGEES CONVENTION, IN RESPECT OF ITS EXPRESS EXCEPTION TO THE PROHIBITION ON REFOULEMENT?**

Based on the evidence before me, I find that the applicant does not come within either of the exceptions in Article 33(2) of the Refugees Convention.

**7. FINDING UNDER THE REFUGEES CONVENTION**

I find that the applicant, s. 47F(1) is a person in respect of whom Australia has protection obligations, under the Refugees Convention as amended by the Refugees Protocol, as prescribed by paragraph 36(2)(a) of the Migration Act, and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

As I find that Australia has protection obligations in respect of the applicant, s. 47F(1) under the Refugees Convention as amended by the Refugees Protocol, therefore I find that the requirements of paragraph 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations have been met.

Therefore, it is not necessary for me to make an assessment as to whether the applicant, s. 47F(1) is a non-citizen in Australia in respect of whom Australia has protection obligations within the meaning of paragraph 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.

**Part D – Recommendation Regarding Protection Obligations under the Refugees Convention**

I recommend that the applicant, s. 47F(1), is a person in respect of whom Australia has protection obligations, under the Refugees Convention as amended by the Refugees Protocol, as prescribed by paragraph 36(2)(a) of the Migration Act, and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

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s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

**PROTECTION (CLASS XA) VISA DECISION RECORD**

**Part A – Finding - Applicant Details - Application Validity – Applicant History / Migration History – Legal Framework - Material Before the Decision Maker – Country of Reference / Receiving Country – Statutory Effective Protection – Claims for Protection - Findings of Fact (Credibility)**

**FINDING**

For the reasons outlined below, I am not satisfied that s. 47F(1) is a person in respect of whom Australia has protection obligations under section 36 of the *Migration Act 1958* (Migration Act) and clause 866.221 of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations). Accordingly, I refuse to grant s. 47F(1) a Protection (Class XA) visa.

**1. APPLICANT DETAILS**

s. 47F(1)

**Identity Finding**

The applicant claims to be s. 47F(1), born s. 47F(1) in s. 47F(1). s. 47F(1) has presented a certified copy of s. 47F(1) passport bio data page as evidence of s. 47F(1) identity s. 47F(1). At interview the applicant presented s. 47F(1) original passport and it appeared to be genuine.

As stated above, the applicant claimed s. 47F(1) name was s. 47F(1) and that s. 47F(1) years old. Without evidence to the contrary, and for the purposes of this decision, I accept the applicant's name and age as stated above.

**2. APPLICATION VALIDITY**

The application complies with the validity requirements of the Migration Act and Migration Regulations. I therefore find the Protection visa application is valid.

**3. APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

#### 4. LEGAL FRAMEWORK

##### **Subclass 866 (Protection) visa:**

An applicant for a Protection visa must meet certain criteria at the time of their application for a Protection visa (set out in division 866.21 of Schedule 2 to the Migration Regulations), and also criteria at the time of a decision on their Protection visa application, (set out in division 866.22 of Schedule 2 to the Migration Regulations). Relevantly, one criterion to be met at the time of decision relates to whether the Minister for Immigration and Border Protection (the Minister) is satisfied that the applicant is a person in respect of whom Australia has protection obligations.

##### **Protection Obligations**

Paragraph 36(2)(a) of the Migration Act provides that the applicant is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Refugees Convention as amended by the Refugees Protocol. (see **Part B – Assessment of Protection Obligations under the Refugees Convention**)

An alternative criterion for a Protection visa (paragraph 36(2)(aa) of the Migration Act) is that the applicant is a non-citizen in Australia (other than a non-citizen who meets the criterion in paragraph 36(2)(a) of the Migration Act) 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. In this decision record, this alternative criterion is known as 'complementary protection'. (see **Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**)

Section 36 of the Migration Act and clause 866.221 of Schedule 2 to the Migration Regulations also provide criteria for a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who has been granted a Protection visa as a result of meeting one of the two criteria described above.

#### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file s. 22(1)(a)(i) relating to the applicant.
2. Departmental 'Refugee Law Guidelines' and 'Complementary Protection Guidelines'.
3. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-edited, Geneva, January 1992 (the UNHCR Handbook).
4. Australian case law as relevant.

#### 6. COUNTRY OF REFERENCE / RECEIVING COUNTRY



***Evidence and Reasons***

The applicant claims to be a national of s. 47F(1) and has presented s. 47F(1) passport as evidence.

***Finding***

For the reasons stated above, I am satisfied the applicant is a citizen of s. 47F(1)

I am therefore satisfied that s. 47F(1) is the applicant's country of reference for the purpose of assessing protection obligations under the Refugees Convention.

I am also satisfied that s. 47F(1) is the applicant's receiving country as defined in section 5 of the Migration Act, for the purpose of assessing the complementary protection criteria.

**7. STATUTORY EFFECTIVE PROTECTION*****Evidence and Reasons***

The applicant claims to be a citizen of s. 47F(1) s. 47F(1) claims s. 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

***Finding***

I find that the applicant does not have statutory effective protection in a third country as set out in subsection 36(3) of the Migration Act.

**8. CLAIMS FOR PROTECTION**

s. 47F(1)

**9. FINDINGS OF FACT (CREDIBILITY)**

***Findings and reasons and material evidence put to the applicant for comment:***

**Claim** s. 47F(1) |:

I do not accept that the applicant s. 47F(1). In reaching this conclusion, I have given weight to the following:



- In <sup>s. 47F(1)</sup> Form 866C, the applicant provided scant information about <sup>s. 47F(1)</sup> FOI DOCUMENT #12

<sup>s. 47F(1)</sup> the applicant did not claim to have been harmed or mistreated on the basis of <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> by <sup>s. 47F(1)</sup> family or the broader community. It was not until the applicant submitted a Statutory Declaration, dated <sup>s. 47F(1)</sup>, that the applicant advanced claims concerning past harm and mistreatment linked to <sup>s. 47F(1)</sup>. Given the serious and extensive <sup>s. 47F(1)</sup> outlined by the applicant in <sup>s. 47F(1)</sup> Statutory Declaration, I find it implausible that this would not have been mentioned at the time of application if it had genuinely occurred. Consequently, I am of the opinion that the applicant has fabricated claims that <sup>s. 47F(1)</sup> had been verbally abused and physically assaulted on the basis of <sup>s. 47F(1)</sup> in the past.

- In <sup>s. 47F(1)</sup> Statutory Declaration, the applicant claimed that <sup>s. 47F(1)</sup>

<sup>s. 47F(1)</sup> In light of the adverse findings above, I do not accept that the photograph supports a finding that the applicant was <sup>s. 47F(1)</sup> on the basis of <sup>s. 47F(1)</sup>. Consequently, I do not give any weight to this photograph as evidence supporting the applicant's claim <sup>s. 47F(1)</sup>.

- In <sup>s. 47F(1)</sup> Statutory Declaration, the applicant stated

<sup>s. 47F(1)</sup>

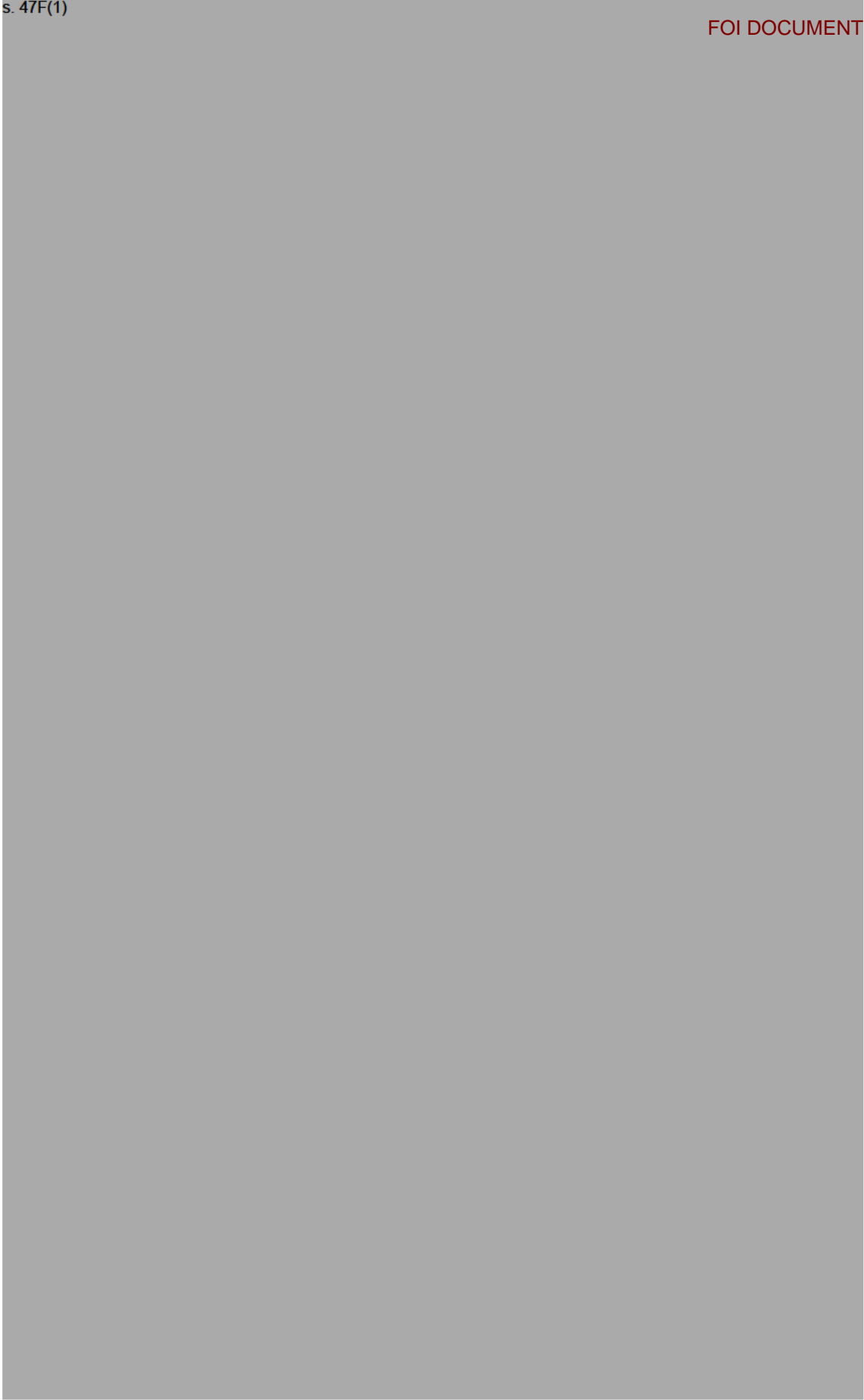


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I find the applicant's testimony and supporting evidence related to the argument with s. 47F(1) to be belated, vague, unsubstantiated, inconsistent and implausible. In light of the applicant's claim s. 47F(1) in Australia, I do not find it plausible that the applicant would have posted s. 47F(1) that would clearly raise doubts about s. 47F(1) at this time. I find the applicant's claims s. 47F(1)

s. 47F(1). I am of the opinion that the letter of support purported to have been provided by s. 47F(1) contains false and misleading information and give it no weight. Consequently, I do not accept that the applicant is estranged from s. 47F(1) family on the basis of s. 47F(1) or (as outlined further below) s. 47F(1)

- In s. 47F(1) Statutory Declaration, the applicant s. 47F(1)





s. 47F(1)

Having considered the applicant's testimony and available evidence, I am of the opinion that the applicant was in an intimate personal relationship with s. 47F(1). I did not find the applicant's claim that s. 47F(1) had erroneously believed that they were a couple to be plausible. I am of the opinion that this finding contradicts the applicant's claim s. 47F(1).

- At interview, the applicant said that by s. 47F(1) feared that s. 47F(1) would be killed if s. 47F(1) went back to s. 47F(1). When asked to explain why s. 47F(1) did not apply for a Protection Visa until s. 47F(1), the applicant claimed that s. 47F(1). I do not find this explanation to be plausible. If the applicant genuinely believed s. 47F(1) life was at risk, I am of the opinion s. 47F(1) would have taken steps to seek protection in Australia at an earlier opportunity.
- At interview, it was put to the applicant that s. 47F(1) indicated that s. 47F(1) was still in contact with a lot of people with the name s. 47F(1). The applicant acknowledged that s. 47F(1) continued to be in contact with s. 47F(1), s. 47F(1). At interview, the applicant was shown a list of friends recorded on s. 47F(1). It was put to the applicant that the friends listed on the page were predominantly s. 47F(1). The applicant acknowledged s. 47F(1). At this point, the applicant displayed s. 47F(1) and identified a number of different friends. The applicant indicated that this constituted evidence that the people recorded at s. 47F(1) were not s. 47F(1) friends. I did not find the applicant's explanation to be credible. I find it implausible that s. 47F(1) would have been posted against s. 47F(1) in error, yet s. 47F(1) would happen to be the only genuine s. 47F(1) friend included in that list. The applicant's attempt to deny any knowledge of

- At the time of application, the applicant did not submit any evidence in support of <sup>s.</sup><sub>47F(1)</sub> claim <sup>s.</sup><sub>47F(1)</sub>. At <sup>s.</sup><sub>47F(1)</sub> Protection Visa interview, however, the applicant submitted the following documents in support of <sup>s.</sup><sub>47F(1)</sub> claim <sup>s.</sup><sub>47F(1)</sub>:

<sup>s.</sup><sub>47F(1)</sub>

Following <sup>s. 47F(1)</sup> interview, the applicant submitted further evidence in support of <sup>s. 47F(1)</sup> claim <sup>s. 47F(1)</sup>.

<sup>s. 47F(1)</sup>



In light of the adverse findings concerning the applicant's <sup>s. 47F(1)</sup> outlined elsewhere in this decision, I do not give these supporting documents any weight as evidence in support of the applicant's claim <sup>s. 47F(1)</sup>. In reaching this conclusion, I have given weight to the following:

- Whilst the applicant may have <sup>s. 47F(1)</sup> after lodging <sup>s. 47F(1)</sup> Protection Visa application, I do not find that this constitutes compelling evidence as to the applicant's <sup>s. 47F(1)</sup>. The timing of the applicant's involvement with this group leads me to conclude that it was done in an attempt to strengthen <sup>s. 47F(1)</sup> claims for protection.
- Whilst I accept that the applicant may have attended <sup>s. 47F(1)</sup>, I do not find that this constitutes compelling evidence as to the applicant's <sup>s. 47F(1)</sup>.
- Whilst I accept that the applicant may have established accounts <sup>s. 47F(1)</sup>, I do not find that this constitutes compelling evidence as to the applicant's <sup>s. 47F(1)</sup>.



- I am of the opinion that the letter from s. 47F(1) is self-serving, false and misleading.
- Whilst I accept that the applicant may have told s. 47F(1), I do not find that this constitutes compelling evidence in support of the applicant's claimed s. 47F(1)
- An untranslated letter purported to be from s. 47F(1) states that the applicant had been s. 47F(1). In the letter s. 47F(1) claims that s. 47F(1). As outlined elsewhere, I do not accept that the applicant was s. 47F(1) and conclude that this letter contains false and misleading information.
- An undated letter purported to be signed by a person named s. 47F(1). This letter states that s. 47F(1) first met the applicant at s. 47F(1). In light of the other adverse findings in relation to the applicant's credibility, I do not give this unsigned and undated compelling evidence that the applicant s. 47F(1) and conclude that the information is false and misleading.

**Claim** s. 47F(1) :

s. 47F(1)

s. 47F(1)

s. 47F(1)

## Decision record – Refusal under Refugees Convention and CP

s. 47F(1)

Following the applicant's Protection Visa interview, the applicant submitted a number of documents in support of <sup>s. 47F(1)</sup> claim <sup>s. 47F(1)</sup>:

- s. 47F(1)

- s. 47F(1)

Having considered the applicant's claims and supporting documents, I am not satisfied that the applicant is <sup>s. 47F(1)</sup> has been subjected to harm and mistreatment. In reaching this conclusion, I have given weight to the following:

- The applicant has not provided clear, plausible and consistent testimony about <sup>s. 47F(1)</sup>.
- The applicant's claim to have been <sup>s. 47F(1)</sup>. If the applicant had

experienced such harm and mistreatment on the s. 47F(1) I am of the opinion that s. 47F(1) would have raised this issue at the time of application. FOI DOCUMENT #12

- s. 47F(1) , the applicant has failed to provide any evidence to suggest that s. 47F(1) has had any significant involvement with a s. 47F(1) . If the applicant had genuinely converted to the s. 47F(1) , I am of the opinion that s. 47F(1) would be part of a s. 47F(1) in Australia.
- I do not give any weight to the supporting letter purported s. 47F(1) I find the assertion that the applicant had been a s. 47F(1) contradicts the applicant's claim to have been unable to express and explore s. 47F(1) until s. 47F(1) arrived in Australia s. 47F(1) Furthermore, as outlined elsewhere in this decision, I do not accept that the applicant was physically assaulted in s. 47F(1) As such, I do not accept that s. 47F(1) was a witness to two physical assaults on the applicant.
- I do not give any weight to the supporting letter purported s. 47F(1) I find the assertion that the applicant is s. 47F(1) is implausible and unsubstantiated by any other independent evidence.

## Part B - Assessment of Protection Obligations under the Refugees Convention

### 1. DEFINITION OF A REFUGEE – ARTICLE 1A OF THE REFUGEES CONVENTION

Article 1A(2) of the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, provides that a 'refugee' is a person who:

*...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) of the Refugees Convention for the purposes of the application of the Act and the regulations to a Protection visa applicant.

### 2. IS THE HARM FEARED FOR A CONVENTION REASON?

#### *Evidence and Reasons*

The applicant claims to fear being physically harmed or killed by the family and/or the general population because s. 47F(1) .



***Finding***

I am satisfied that the Refugees Convention grounds of religion and membership of a particular social group are the essential and significant reason for the harm feared as required by subsection 91R(1)(a) of the Migration Act.

**3. DOES THE HARM FEARED AMOUNT TO PERSECUTION?*****Evidence and Reasons***

The applicant claims to fear being physically harmed and killed.

***Finding***

I am satisfied the harm feared is serious harm and systematic and discriminatory conduct as required by subsections 91R(1)(b) and (c) of the Migration Act. Therefore I am not satisfied the harm feared amounts to persecution.

**4. IS THE FEAR WELL-FOUNDED?*****Evidence and Reasons***

A fear of being persecuted is well-founded if there is a 'real chance' that a claimant may be persecuted (see *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well founded.

As outlined in the Findings of Fact (Credibility) section above, I do not accept that the applicant <sup>s. 47F(1)</sup> [REDACTED]. Consequently, I am not satisfied that there is a real chance that the applicant will be persecuted for a Refugees Convention reason.

***Finding on well-foundedness***

I am not satisfied the applicant has a real chance of being persecuted for a Refugees Convention reason. I am therefore not satisfied the applicant's fear is well founded.

**5. FINDING UNDER THE REFUGEES CONVENTION**

I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> [REDACTED] <sup>s. 47F(1)</sup> [REDACTED] under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(a) of the Migration Act and subclause 866.221(2) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> [REDACTED], under the 1951 Refugees Convention as amended by the 1967 Refugees Protocol, I have not made an assessment in relation to whether Articles 1C-1F and Article 33(2) of the Refugees Convention apply to the applicant.

**Part C – Assessment of Protection Obligations under the Complementary Protection provisions in the Migration Act**

**1. COMPLEMENTARY PROTECTION CRITERION**

If an applicant is not found to be a person in respect of whom Australia has protection obligations under the Refugees Convention, they may nonetheless meet the criterion for a Protection visa in subsection 36(2)(aa) of the Migration Act. That provides that the Minister (delegate) must be satisfied the applicant is a non-citizen in respect of whom Australia has protection obligations because the Minister (delegate) 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 (the applicant) will suffer significant harm.

Subsection 36(2A) of the Migration Act defines significant harm as:

- (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.

**2. DOES THE CLAIMED HARM AMOUNT TO SIGNIFICANT HARM?**

***Evidence and Reasons***

The applicant claims to fear <sup>s. 47F(1)</sup> [REDACTED]

***Finding***

I am satisfied the harm claimed by the applicant is significant harm for the purposes of subsection 36(2A) of the Migration Act.

**3. ARE THERE SUBSTANTIAL GROUNDS FOR BELIEVING THAT THERE IS A REAL RISK OF SIGNIFICANT HARM?**

***Evidence and Reasons***

In determining if the applicant faces a real risk of significant harm, I am guided by *MIAC v SZQRB* [2013] FCAFC 33 (20 March 2013), Lander and Gordon JJ, which stated (in part):

In our opinion, the [real risk] test is as for s36(2)(a) [of the Act]...is there a real chance that SZQRB will suffer significant harm...were he to return to Afghanistan. [246]

Taking *MIAC v SZQRB* into account, it is reasonable to conclude that the threshold for a 'real risk' of harm is commensurate to that of a 'real chance'. The real chance test was applied earlier in this decision at part B, section 4 when the applicant's claims against the 'Refugees convention' were assessed. It was found that the applicant's claim <sup>s. 47F(1)</sup> were not credible.

The applicant has not advanced any complimentary protection specific claims and all of the applicant's claims have been assessed under the real chance test. No claims were dismissed as not having a convention nexus. It was found that the applicant does not face a real chance of being harmed for the reasons offered in the written application or advanced at interview. As the real chance test is commensurate to the 'real risk' test, then I conclude that the applicant does not stand a real risk of being harmed on return to <sup>s. 47F(1)</sup> for the reasons offered in the written application or advanced at interview.

In regards to the applicant facing a real risk of significant harm for any other reasons on return to <sup>s. 47F(1)</sup> can find no evidence that the applicant would face a real risk of harm, that is personal or otherwise, that amounts to significant harm on return to <sup>s. 47F(1)</sup>

After considering all the information before me, I am not satisfied that there are substantial grounds to believe that the applicant may be significantly harmed as defined by Section 36(2A) of the Migration Act by any individual or groups in the foreseeable future.

In the present case, I am not satisfied the applicant has a real chance of being subject to significant harm should <sup>s. 47F</sup> be returned to <sup>s. 47F(1)</sup>

Accordingly, I am not satisfied the applicant is a person in respect of whom Australia has protection obligations.

### ***Finding***

I am not satisfied there are 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 be subject to significant harm

## **4. FINDING UNDER THE COMPLEMENTARY PROTECTION PROVISIONS IN THE MIGRATION ACT**

I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> under subsection 36(2)(aa) of the Migration Act. As a result, the applicant does not meet the criteria for the grant of a Protection visa under subsection 36(2)(aa) of the Migration Act and subclause 866.221(4) of Schedule 2 to the Migration Regulations.

As I am not satisfied that Australia has protection obligations to the applicant, <sup>s. 47F(1)</sup> under subsection 36(2)(aa) of the Migration Act, I have not



assessed whether the ineligibility provisions in subsection 36(2C) of the Migration Act apply to the applicant. FOI DOCUMENT #12

**Part D – Decision on Protection (Class XA) visa application**

I am not satisfied that <sup>s. 47F(1)</sup> [REDACTED] is a person in respect of whom Australia has protection obligations under section 36 of the Migration Act and subclause 866.221 of Schedule 2 to the Migration Regulations. Accordingly, I refuse to grant <sup>s. 47F(1)</sup> [REDACTED] a Protection (Class XA) visa.

<sup>s. 22(1)(a)(ii)</sup> [REDACTED]

Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

<sup>s. 22(1)(a)(ii)</sup> [REDACTED]

<sup>s. 22(1)(a)(ii)</sup> [REDACTED]

**PROTECTION VISA ASSESSMENT**

s. 22(1)(a)(ii)

**PART 1 – APPLICATION SUMMARY**

**MAIN APPLICANT DETAILS** – *details (as accepted in identity finding below) for all applicants*

s. 47F(1)

**ASSESSMENT FINDING****NEGATIVE DECISION**

For the reasons outlined below, I find that s. 47F(1) (the applicant) is not a person in respect of whom Australia has protection obligations as outlined in paragraphs 36(2)(a) or (aa) and is not a member of the same family unit as a non-citizen in respect of whom the Minister is satisfied Australia has protection obligations and who holds a protection visa of the same class as that applied for by the applicant (paragraphs 36(2)(b) and 36(2)(c) of the *Migration Act 1958* (the Act). Accordingly I refuse to grant s. 47F(1)

s. 47F(1) a protection visa. As s. 47F(1) does not satisfy any of the criteria referred to in paragraph 36(1A)(b) of the Act, I have not considered the criteria referred to in paragraph 36(1A)(a).

**APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

## APPLICATION VALIDITY

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The application complies with the validity requirements for a under the Act and Migration Regulations.

I therefore consider that the protection visa application is valid.

## MATERIAL BEFORE THE CASE OFFICER

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1. Departmental file s. 22(1)(a)(ii) relating to the applicant
2. Departmental file s. 22(1)(a)(ii) relating to the applicant
3. Departmental file s. 22(1)(a)(ii) relating to the applicant.
4. Australian case law as footnoted throughout the decision record.
5. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook).
6. Procedures Advice Manual 3: Refugee Law Guidelines
7. Procedures Advice Manual 3: Complementary Protection Guidelines
8. Protection Visa Common Processing Guidelines
9. All information provided by or on behalf of the applicant.

## SUMMARY OF PROTECTION CLAIMS

s. 47F(1)

## PART 2 FINDINGS

### IDENTITY

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#### *Identity assessment*



The applicant's claimed identity is: s. 47F(1), born s. 47F(1).

The applicant has provided the following personal identifiers to the department:

- Fingerprint
- Digital Photograph

The applicant has provided the following narrative in support of their claimed identity:

The applicant has maintained the same identity throughout all dealings with the department.

I have cross referenced the following systems to verify the information I have in front of me in regards to the applicant's claimed identity:

- ICSE
- TRIM

In addition, I have taken into account the evidence provided in support of their claimed identity:

- Certified copy of s. 47F(1). The original passport was presented at interview and appeared to be genuine.

The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems revealed no information that raises concerns that the applicant has given a false identity.

### Identity Finding

For the reasons provided above, and for the purposes of this assessment, I find the applicant to be s. 47F(1), born on s. 47F(1), and to be a national of s. 47F(1).

## AUSTRALIA'S PROTECTION OBLIGATIONS

Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of a protection visa.

Under paragraph 36(2)(a), a criterion for the grant of a protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the applicant is a refugee as defined by section 5H of the Act.

Under paragraph 36(2)(aa), a criterion for the grant of a protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Section 36 of the Act also sets out criteria which must be satisfied for the grant of a protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who holds a protection visa and meets one of the two criteria described above.

**RECEIVING COUNTRY**

In the identity assessment I have found the applicant to be a national of § 47F(1). For the purposes of this assessment § 47F(1) is § 47F(1) receiving country.

**PROTECTION IN ANOTHER COUNTRY – SECTION 36(3)-36(7)**

The applicant claims to be a citizen of § 47F(1). § 47F(1) claims that § 47F(1) does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

I find that based on the evidence before me, the applicant does not have a right to enter and reside in a third country.

**Part 3 - REFUGEE CRITERION ASSESSMENT – paragraph 36(2)(a)****Persecution**

- a) **Does the applicant fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion? - subsection 5J(1)(a)**

The applicant claims to fear harm and mistreatment because § 47F(1).

In accordance with s5J(1)(a), I am satisfied that the applicant fears persecution for reasons of membership of a particular social group.

- b) **Is the reason established in a) the essential and significant reason for the persecution he fears? - subsection 5J(4)(a)**

The applicant claims that § 47F(1) is the essential and significant reason for the harm feared.

I am satisfied that the reason of membership of a particular social group is the essential and significant reason for the feared persecution.

- c) **Does the persecution feared involve serious harm to the applicant – s5J(4)(b), and subsection 5J(5) which lists instances of serious harm?**

The applicant claims to fear being physically harmed, gaoled and killed because § 47F(1) § 47F(1)

I am satisfied the feared persecution involves serious harm to the applicant as required under paragraph 5J(4)(b) of the Act.

- d) Does the persecution feared involve systematic and discriminatory conduct - subsection 5J(4)(c)?

I am satisfied the feared persecution involves systematic and discriminatory conduct.

**Is the fear of persecution well-founded?**

- a) In accordance with paragraph 5J(1)(b), is there a real chance that if the applicant returned to the receiving country, they would be persecuted for one or more of the reasons mentioned in paragraph 5J(1)(a)?

The applicant claims s. 47F(1) and to fear being killed if s. 47F(1) returns to s. 47F(1)

s. 47F(1)

In considering the applicant's claims, I acknowledge the need for particular care in assessing claims about s. 47F(1). It may be easy to assert such claims, yet difficult for applicants to substantiate and decision makers to evaluate them. Such claims intrinsically involve private issues of self-identity, sexual conduct and other personal issues that may be stressful or unresolved. Social, cultural and religious attitudes to s. 47F(1) in an applicant's society may exacerbate such problems, and the country information cited above indicates that s. 47F(1) is not condoned in s. 47F(1) society. After noting the above, I have given careful consideration to the written application and all testimony and supporting evidence provided at interview. After considering all the information before me, I am not satisfied that the claims for protection are based on fact and I am not satisfied that the applicant was a reliable witness at interview. I do not accept that the applicant s. 47F(1) or that s. 47F(1) experienced the harm and mistreatment claimed. The reasons for my findings are outlined below.

**Claims concerning harm and mistreatment experienced s. 47F(1) :**

s. 47F(1)

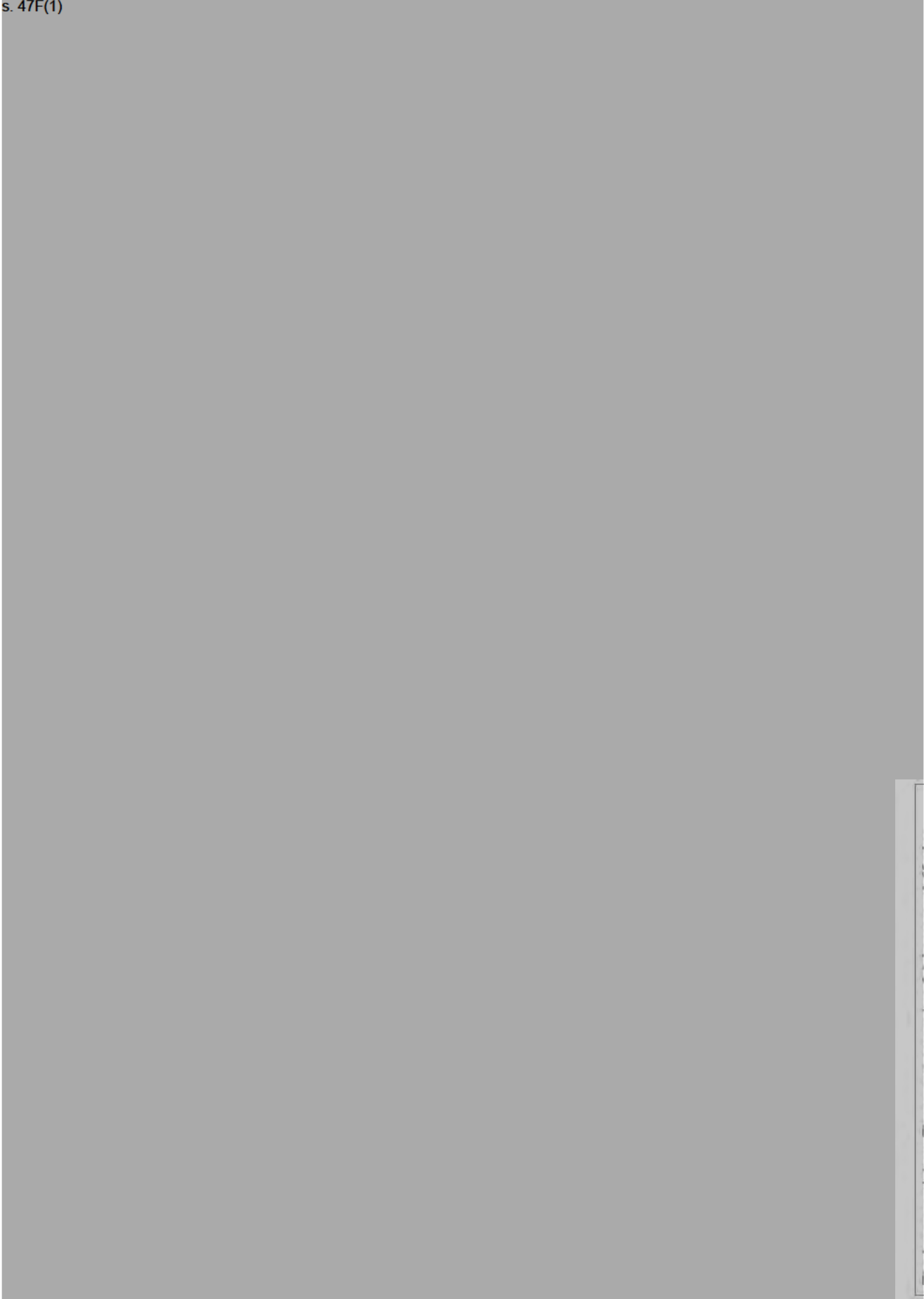
s. 47F(1)



s. 47F(1)

Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*

s. 47F(1)



Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*

Having considered the applicant's written claims, testimony, and supporting documents, I do not accept that the applicant has given an open and honest account of <sup>s. 47F(1)</sup> experiences in <sup>s. 47F(1)</sup>. In reaching this conclusion, I have given weight to the following:

- I find the applicant's claim to have <sup>s. 47F(1)</sup> to be implausible. Given that the applicant characterised <sup>s. 47F(1)</sup> family as <sup>s. 47F(1)</sup> and intolerant of <sup>s. 47F(1)</sup>, I find it implausible that <sup>s. 47F(1)</sup> would have returned to <sup>s. 47F(1)</sup> family home and <sup>s. 47F(1)</sup>.
- I find that applicant's claim to have been attacked by <sup>s. 47F(1)</sup> to be implausible. In particular, I find it implausible that the applicant would have been able to escape from <sup>s. 47F(1)</sup>; if <sup>s. 47F(1)</sup> had sustained serious and life threatening injuries whilst being savagely attacked by <sup>s. 47F(1)</sup>.
- The applicant failed to provide consistent testimony about the timing of this incident. As outlined above, the applicant's statement of claims indicated that the assault occurred during <sup>s. 47F(1)</sup>. As outlined above, this claim is not consistent with available evidence that indicates that <sup>s. 47F(1)</sup> was celebrated in <sup>s. 47F(1)</sup> in <sup>s. 47F(1)</sup> and <sup>s. 47F(1)</sup> was celebrated in <sup>s. 47F(1)</sup>.
- The applicant's inability to provide consistent testimony about the amount of time that <sup>s. 47F(1)</sup> stayed in <sup>s. 47F(1)</sup>.
- I am of the opinion that the medical report purported to have been issued by <sup>s. 47F(1)</sup> public hospital is not genuine. In reaching this conclusion, I have given weight to the following:
  - The date of the document is not consistent with the timeframes provided by the applicant.
  - I do not find the content of the document to be consistent with information that would usually be contained in a medical report produced by a Public Hospital. Rather than providing important information about the length of admission and treatment administered to the applicant (including the fact that <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>), the report contains speculation about scenarios that did not actually eventuate. For example, I do not find it plausible that a genuine medical report would omit important information about the actual damage sustained, but speculate that <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>, or that a <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>.
- Given the serious nature of the injuries that the applicant claims to have sustained <sup>s. 47F(1)</sup>, I find it implausible that the applicant would have been in a position to return to work only two days after being released from hospital.
- At the time of application, the applicant claimed to have returned to <sup>s. 47F(1)</sup> in <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>. Whilst claiming that this decision was against <sup>s. 47F(1)</sup> the applicant



claimed that <sup>s.</sup> <sub>47F(1)</sub> returned home to convince <sup>s.</sup> <sub>47F(1)</sub> that <sup>s.</sup> <sub>47F(1)</sub> had changed. In <sup>s.</sup> <sub>47F(1)</sub> statement of claims, the applicant asserted:

<sup>s.</sup> <sub>47F(1)</sub>

Having carefully considered the applicant's claims, I find it implausible that the applicant would have returned to <sup>s.</sup> <sub>47F(1)</sub> in <sup>s.</sup> <sub>47F(1)</sub>, if <sup>s.</sup> <sub>47F(1)</sub> and <sup>s.</sup> <sub>47F(1)</sub> had <sup>s.</sup> <sub>47F(1)</sub>. Furthermore, I find it implausible that the applicant would have remained in <sup>s.</sup> <sub>47F(1)</sub> for the next <sup>s.</sup> <sub>47F(1)</sub> if <sup>s.</sup> <sub>47F(1)</sub>

**Applicant's claim to have been**

<sup>s.</sup> <sub>47F(1)</sub>

<sup>s.</sup> <sub>47F(1)</sub>

Having carefully considered the available information, I am not satisfied that the applicant responded to questioning about s. 47F(1) in an open and honest manner. I do not find it plausible that the applicant's s. 47F(1) and s. 47F(1) would have arranged for s. 47F(1) if they knew that s. 47F(1) and they were helping s. 47F(1) to leave s. 47F(1). Furthermore, in the absence of any plausible explanation as to why s. 47F(1) had previously described s. 47F(1) as s. 47F(1), I am of the opinion that the applicant was s. 47F(1), had been romantically linked to s. 47F(1) during s. 47F(1).

### Claims related to harm and mistreatment experienced s. 47F(1)

At the time of application, the applicant claimed that s. 47F(1)

s. 47F(1)

s. 47F(1)

s. 47F(1). Having carefully considered the applicant's claims, I do not accept that the applicant was arrested by s. 47F(1) in s. 47F(1) or that s. 47F(1) was subsequently harmed and mistreated by s. 47F(1). In reaching this conclusion, I have given weight to the following:

- The applicant's claim to have had s. 47F(1), when s. 47F(1) was just about to turn s. 47F(1) was inconsistent with s. 47F(1) date of birth. The applicant was s. 47F(1) years of age in s. 47F(1). Given that s. 47F(1) was born on s. 47F(1), s. 47F(1) did not turn s. 47F(1) until s. 47F(1).
- I find the applicant's claims in relation to s. 47F(1) meeting with s. 47F(1) and subsequent arrest to be contrived. In particular, I do not find it plausible that the s. 47F(1) would have raided the s. 47F(1) hotel and targeted s. 47F(1) in the manner described.
- As outlined above, I am of the opinion that the applicant has fabricated other key claims in s. 47F(1) statement, and in particularly claims of harm and mistreatment in s. 47F(1).

In the absence of any compelling testimony or evidence, I am of the opinion that the claims related to harm and mistreatment experienced in s. 47F(1) are also fabricated.

Claim s. 47F(1) l:

Having carefully considered the applicant's claims, I do not accept that the applicant <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> In reaching this conclusion, I have given weight to the following:

- The applicant's testimony concerning <sup>s. 47F(1)</sup> was vague, inconsistent and unpersuasive. At the time of application, the applicant indicated that despite being <sup>s. 47F(1)</sup> to <sup>s. 47F(1)</sup> from the age of <sup>s. 47F(1)</sup> did not understand what <sup>s. 47F(1)</sup> was feeling because <sup>s. 47F(1)</sup> did not know anything about <sup>s. 47F(1)</sup> until after <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>. At interview, however, the applicant contradicted this claim by stating that <sup>s. 47F(1)</sup> had discovered that <sup>s. 47F(1)</sup> were denounced in the <sup>s. 47F(1)</sup> at <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>.
- As outlined above, I am of the opinion that the applicant has fabricated claims and documents related to harm and mistreatment experienced in <sup>s. 47F(1)</sup> in <sup>s. 47F(1)</sup> and <sup>s. 47F(1)</sup>. These claims were solely based on an unsubstantiated claim that the applicant was targeted as <sup>s. 47F(1)</sup>. A finding that the applicant fabricated claims of harm and mistreatment in <sup>s. 47F(1)</sup> supports a finding that the applicant has also attempted to mislead the Department about <sup>s. 47F(1)</sup>.
- The applicant has not provided any independent evidence to support <sup>s. 47F(1)</sup> claim <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup>. Despite claiming to have openly discussed <sup>s. 47F(1)</sup> with <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> in Australia, the applicant claimed that <sup>s. 47F(1)</sup> has lost contact with this individual who has travelled overseas.

Having considered the applicant's claims, I do not find the applicant's claim <sup>s. 47F(1)</sup> to be credible. I am of the opinion that the applicant has sought to mislead the Department about <sup>s. 47F(1)</sup> and experiences in <sup>s. 47F(1)</sup>. I do not accept that the applicant experienced any of the harm or mistreatment claimed.

I am not satisfied that there is a real chance of persecution for one or more of the reasons mentioned in subsection 5J(1)(a) in the receiving country. Therefore the applicant is not a refugee as defined in section 5H and the criterion in paragraph 36(2)(a) of the Act is not satisfied for this reason.

## **FINDING ON REFUGEE CRITERION – s36(2)(a)**

### ***Finding on subsection 5H(1)***

I am not satisfied that <sup>s. 47F(1)</sup> is a refugee as defined by section 5H(1) of the Act.

Therefore, I am also not satisfied <sup>s. 47F(1)</sup> is a person in respect of whom Australia has protection obligations as outlined in paragraph 36(2)(a) of the Act

As I am satisfied <sup>s. 47F(1)</sup> is not a refugee as defined by section 5H(1) of the Act an assessment in relation to section 5H(2) has not been made.



## Part 4 - COMPLEMENTARY PROTECTION CRITERION ASSESSMENT – paragraph 36(2)(aa)

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Section 36(2)(aa) of the Act sets out the criterion for the grant of a protection visa on complementary protection grounds. The criterion is that the decision maker is satisfied that the applicant is a non-citizen in Australia in respect of whom Australia has protection obligations because:

*there are 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.*

### Significant harm

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#### a) Does the claimed harm constitute significant harm—subsection 36(2A)?

The applicant claims to fear being physically harmed, gaoled and killed.

I find that the claimed harm is significant harm within the meaning of subsection 36(2A).

### Real risk of significant harm

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#### a) Are there substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to a receiving country, there is a real risk the non-citizen will suffer the harm? s36(2)(aa)

As outlined in Part 3, I do not accept that the applicant <sup>s. 47F(1)</sup> [REDACTED], or that <sup>s. 47F(1)</sup> [REDACTED] has experienced any of the harm and mistreatment claimed. I am of the opinion that the applicant has sought to mislead the Department about <sup>s. 47F(1)</sup> [REDACTED] and experiences in <sup>s. 47F(1)</sup> [REDACTED]. The applicant has not advanced any other complimentary protection specific claims. Consequently, I do not find that there is a real risk that the applicant will suffer significant harm.

### Finding

I find there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to <sup>s. 47F(1)</sup> [REDACTED] there is a real risk the applicant will suffer significant harm as required by s36(2)(aa).

### FINDING ON COMPLEMENTARY PROTECTION CRITERION

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I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to <sup>s. 47F(1)</sup> [REDACTED] there is a real risk <sup>s. 47F(1)</sup> [REDACTED] will suffer significant harm.

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Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in paragraph 36(2)(aa) of the Act.

**INELIGIBILITY FOR GRANT OF A PROTECTION VISA – Subsection 36(2C)**

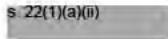
As I am not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as assessment in relation to section 36(2C) has not been made.

s. 22(1)(a)(ii)



Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)



**PROTECTION VISA ASSESSMENT TEMPLATE**

s. 22(1)(a)(ii)

**PART 1 – APPLICATION SUMMARY****MAIN APPLICANT DETAILS**

s. 47F(1)

**ASSESSMENT FINDING****NEGATIVE DECISION**

For the reasons outlined below, I find that s. 47F(1) (the applicant) is not a person in respect of whom Australia has protection obligations as outlined in paragraphs 36(2)(a) or (aa) and is not a member of the same family unit as a non-citizen in respect of whom the Minister is satisfied Australia has protection obligations and who holds a protection visa of the same class as that applied for by the applicant (paragraphs 36(2)(b) and 36(2)(c) of the *Migration Act 1958* (the Act). Accordingly I refuse to grant s. 47F(1) a protection visa. As s. 47F(1) does not satisfy any of the criteria referred to in paragraph 36(1A)(b) of the Act, I have not considered the criteria referred to in paragraph 36(1A)(a).

**APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

**APPLICATION VALIDITY**

s. 22(1)(a)(ii)

1

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The application complies with the validity requirements for a subclass 866 visa under the Act and Migration Regulations.

I therefore consider that the protection visa application is valid.

#### **MATERIAL BEFORE THE CASE OFFICER**

1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Australian case law as footnoted throughout the decision record.
3. Country information as footnoted throughout the decision record.
4. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook).
5. Procedures Advice Manual 3: Refugee Law Guidelines
6. Procedures Advice Manual 3: Complementary Protection Guidelines
7. Protection Visa Common Processing Guidelines
8. All information provided by or on behalf of the applicant.

#### **SUMMARY OF PROTECTION CLAIMS**

The applicant's detailed written claims are on the Department of Immigration and Border Protection (department) file s. 22(1)(a)(ii).

The applicant's protection claims are summarised below:

s. 47F(1)



s. 47F(1)

The applicant attended a protection visa interview on s. 47F(1)

## PART 2 FINDINGS

### IDENTITY

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#### *Identity assessment*

The applicant's claimed identity is: s. 47F(1)

The applicant has provided the following personal identifiers to the department:

- Fingerprints
- Digital photograph

The applicant has provided the following narrative in support of their claimed identity:

The applicant has maintained the same identity throughout all dealings with the department.

I have cross referenced the following systems to verify the information I have in front of me in regards to the applicant's claimed identity:

- ICSE
- TRIM

In addition, I have taken into account the evidence provided in support of their claimed identity:

- Certified copy of s. 47F(1) [REDACTED] The original passport was presented at interview and appeared to be genuine.

### Identity Finding

For the reasons provided above, and for the purposes of this assessment, I find the applicant to be s. 47F(1) [REDACTED], and to be a national of s. 47F(1) [REDACTED]

## FINDINGS OF FACT

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Refer to assessment in Part 3.

## AUSTRALIA'S PROTECTION OBLIGATIONS

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Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of a protection visa.

Under paragraph 36(2)(a), a criterion for the grant of a protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the applicant is a refugee as defined by section 5H of the Act.

Under paragraph 36(2)(aa), a criterion for the grant of a protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Section 36 of the Act also sets out criteria which must be satisfied for the grant of a protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who holds a protection visa and meets one of the two criteria described above.

## RECEIVING COUNTRY

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In the identity assessment I have found the applicant to be a national of s. 47F(1) [REDACTED]. For the purposes of this assessment s. 47F(1) [REDACTED] is their receiving country.

## PROTECTION IN ANOTHER COUNTRY – SECTION 36(3)-36(7)

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The applicant claims to be a citizen of s. 47F(1) [REDACTED] claims that s. 47F(1) [REDACTED] does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

I find that based on the evidence before me, the applicant does not have a right to enter and reside in a third country.



**Part 3 - REFUGEE CRITERION ASSESSMENT – paragraph 36(2)(a)****Persecution**

- a) **Does the applicant fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion? - subsection 5J(1)(a)**

The applicant claims s. 47F(1). The applicant claims to fear persecution on the basis of s. 47F(1).

In accordance with s5J(1)(a), I am satisfied that the applicant fears persecution for reason of membership of a particular social group.

- b) **Is the reason established in a) the essential and significant reason for the persecution they fear? - subsection 5J(4)(a)**

The applicant claims that s. 47F(1) is the essential and significant reason for the harm feared.

I am satisfied that the reason of membership of a particular social group is the essential and significant reason for the feared persecution.

- c) **Does the persecution feared involve serious harm to the applicant – s5J(4)(b), and subsection 5J(5) which lists instances of serious harm?**

The applicant claims to fear being physically harmed, gaoled and killed because s. 47F(1) s. 47F(1)

I am satisfied the feared persecution involves serious harm to the applicant as required under paragraph 5J(4)(b) of the Act.

- d) **Does the persecution feared involve systematic and discriminatory conduct - subsection 5J(4)(c)?**

I am satisfied the feared persecution involves systematic and discriminatory conduct.

**Is the fear of persecution well-founded?**

- a) **In accordance with paragraph 5J(1)(b), is there a real chance that if the applicant returned to the receiving country, they would be persecuted for one or more of the reasons mentioned in paragraph 5J(1)(a)?**

For the purposes of this assessment s. 47F(1) will be referred to as Applicant 2, and s. 47F(1) as Applicant 1, in this assessment.

In considering Applicant 2's claims, I acknowledge the need for particular care in assessing claims about s. 47F(1). It may be easy to assert such claims, yet difficult for applicants

to substantiate and decision makers to evaluate them. Such claims intrinsically involve private issues of self-identity, sexual conduct and other personal issues that may be stressful or unresolved. After noting the above, I have given careful consideration to the written application and all testimony and supporting evidence provided at interview. After considering all the information before me, I am not satisfied that the claims for protection are based on fact and I am not satisfied that Applicant 1 and Applicant 2 were reliable witnesses at interview. I do not accept that Applicant 2 <sup>s. 47F(1)</sup> that <sup>s. 47F(1)</sup> experienced the harm and mistreatment claimed. The reasons for my findings are outlined below.

*Claims concerning the beginning of their relationship:*

s. 47F(1)



Having carefully considered the applicants' testimony, I am of the opinion that their claim to have been in a relationship is fabricated. In reaching this conclusion, I have given weight to the following:

- As outlined above, the applicants did not know important details about each other. Whilst Applicant 2 claimed to have worked for an s. 47F(1) company at the time they became friends, Applicant 1 claimed that s. 47F(1) was working at a s. 47F(1). Furthermore, Applicant 1 claimed that their relationship was facilitated by the proximity of Applicant 2's workplace to s. 47F(1).
- As outlined above, they provided inconsistent testimony as to when Applicant 2 first visited Applicant 1's house and met members of s. 47F(1) family.

*Claim to have been* s. 47F(1) :

At the time of application, Applicant 1 claimed:

s. 47F(1)

At the time of application, Applicant 2 claimed:

s. 47F(1)

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s. 47F(1)

Having carefully considered the claims and evidence presented by the applicants, I do not find that they have provided a credible account of the s. 47F(1). I am of the opinion that the applicants have fabricated these claims in an attempt to mislead the Department about their experiences in s. 47F(1). In reaching this conclusion, I have given weight to the following:

- The applicants were unable to give consistent accounts concerning the number and timing of the s. 47F(1) during s. 47F(1). According to Applicant 2's Statement of Claims, s. 47F(1). Applicant 2 also indicated that they did s. 47F(1) until after s. 47F(1). At interview, however, Applicant 1 claimed that the s. 47F(1). Furthermore, Applicant 1 indicated that s. 47F(1).

§ 47F(1). At interview, Applicant 2 contradicted Applicant 1 by claiming that § 47F(1).

- The applicants provided different accounts of where they went after they § 47F(1). Applicant 1 claimed that that they returned to § 47F(1) house together. Furthermore, Applicant 1 claimed that Applicant 2's § 47F(1) came and collected Applicant 2 from § 47F(1) house and then took § 47F(1) to a doctor. In contrast, Applicant 2 claimed that they only walked together for 5 minutes before each going their separate ways. Applicant 2 claimed that § 47F(1) returned to § 47F(1) own house and denied going to Applicant 1's house.
- I am of the opinion that the undated letter, purported to have been prepared by § 47F(1) § 47F(1) is fabricated. In reaching this conclusion, I have given weight to the following:
  - I am of the opinion that this letter has been fabricated solely to support their Protection Visa application. I am of the opinion that the report is written in English instead of § 47F(1) for this reason.
  - I find the language used in the report to be vague and lacking in appropriate medical terminology. I do not find that the report contains language that is of a level commensurate with a medical professional.

*Claim to have been* § 47F(1):

§ 47F(1)

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s. 47F(1)



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s. 22(1)(a)(ii)



s. 47F(1)

s. 47F(1)

Having carefully considered the claims and evidence presented by the applicants, I do not find that they have provided a credible account of s. 47F(1) and subsequent detention. For the reasons outlined below, I am of the opinion that the applicants have fabricated these claims in an attempt to mislead the Department about their experiences in s. 47F(1).

- As outlined above, the applicant's failed to provide consistent testimony concerning s. 47F(1). The applicants were unable to provide consistent evidence related to who was s. 47F(1) first; whether they were s. 47F(1); whether they were s. 47F(1).
- In s. 47F(1) original Statement of Claims, Applicant 2 indicated that s. 47F(1) had had no recollection of s. 47F(1). Nevertheless, at interview, Applicant 2 contradicted this claim by stating that s. 47F(1) lost consciousness during s. 47F(1).
- In relation to the medical report purported to be signed by s. 47F(1) I am of the opinion that this document has been fabricated in order to mislead the Department. In reaching this conclusion, I have given weight to the following:
  - The document is dated s. 47F(1), but refers to the patient being discharged on s. 47F(1).
  - I find the language used in the report to be vague and lacking in appropriate medical terminology. I do not find that the report contains language that is of a level commensurate with a medical profession.
  - I am of the opinion that this letter has been fabricated solely to support the applicants' Protection Visa applications. I am of the opinion that the report is written in English instead of s. 47F(1) for this reason.
  - The report refers to an s. 47F(1), whereas Applicant 2 had claimed that the surgery was done to s. 47F(1).
  - s. 47F(1) is identified as a s. 47F(1). I do not find it plausible that a s. 47F(1) would have been responsible for operating on the applicant.
- As outlined above, Applicant 2 claimed that s. 47F(1) did not s. 47F(1) until after s. 47F(1) from s. 47F(1). This indicates that the applicant was s. 47F(1). I do not find it plausible that Applicant 2 would have had s. 47F(1) without first being consulted by the treating physician.

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**Claim to have relocated to** s. 47F(1) :

At the time of application, Applicant 1 claimed s. 47F(1)

[REDACTED]

At the time of application, Applicant 2 stated s. 47F(1)

[REDACTED]

At interview, Applicant 2 claimed s. 47F(1)

[REDACTED]

Having carefully considered these claims, I do not accept that the applicants fled to s. 47F(1). In reaching this conclusion, I have given weight to the following:

- As outlined above, I am of the opinion that the applicants have fabricated claims related to harm and mistreatment in s. 47F(1). Consequently, I do not accept that they needed to flee to s. 47F(1).
- The applicants have failed to provide consistent testimony concerning their period of residence in s. 47F(1). At the time of application Applicant 1 indicated s. 47F(1) had resided in s. 47F(1) up until s. 47F(1) and Applicant 2 claimed to have resided in s. 47F(1) from s. 47F(1). Neither claim is consistent with their account of s. 47F(1) and subsequent detention. Given that the applicant's claimed that they had been s. 47F(1), detained on s. 47F(1), and then released after s. 47F(1) days, this would mean that they arrived in s. 47F(1).
- The applicants were unable to provide a consistent testimony about the height of the building in which their apartment was located. Given that the applicants claimed to have resided in the building for s. 47F(1) months, I find it implausible that one would believe that it was 3 stories high and the other ten stories high.

#### **Claims concerning** s. 47F(1)

Having carefully considered the claims and evidence submitted by the applicants, I do not accept that s. 47F(1) or in a genuine relationship. In reaching this conclusion, I have given weight to the following:



- At interview, both applicant's affirmed that the information that they had provided, or would provide, regarding their claims for protection was true and complete in every respect. As outlined above, I am not satisfied that the applicants were subjected to any of the harm and mistreatment they claimed. A finding that the applicants fabricated claims of harm and mistreatment in s. 47F(1) supports a finding that they have also attempted to mislead the Department about s. 47F(1).
- As outlined above, I do not accept that the applicants are in a genuine relationship as the account of their first meeting was not consistent or credible.

s. 47F(1)

Neither applicant presented an account of their growing s. 47F(1) in a detailed or convincing manner. Based on their testimony, I am not satisfied that either applicant s. 47F(1).

- The applicants have not provided any independent evidence to support their claim s. 47F(1). Despite submitting evidence that they have consulted mental health professionals in Australia, I do not find that this provides compelling evidence in support of their claim s. 47F(1).

Having considered the applicant's claims, I do not find Applicant 2's claim s. 47F(1) is credible. I am of the opinion that Applicant 2 has sought to mislead the Department about s. 47F(1) and experiences in s. 47F(1) in order to establish protection claims. I do not accept that Applicant 2 genuinely fears being persecuted s. 47F(1) returns to s. 47F(1).

I am not satisfied that there is a real chance of persecution for one or more of the reasons mentioned in subsection 5J(1)(a) in the receiving country. Therefore the applicant is not a refugee as defined in section 5H and the criterion in paragraph 36(2)(a) of the Act is not satisfied for this reason.

#### FINDING ON REFUGEE CRITERION – s36(2)(a)



**Finding on subsection 5H(1)**

I am not satisfied that s. 47F(1) is a refugee as defined by section 5H(1) of the Act.

Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in paragraph 36(2)(a) of the Act

As I am satisfied s. 47F(1) is not a refugee as defined by section 5H(1) of the Act an assessment in relation to section 5H(2) has not been made.

**Part 4 - COMPLEMENTARY PROTECTION CRITERION ASSESSMENT –  
paragraph 36(2)(aa)**

Section 36(2)(aa) of the Act sets out the criterion for the grant of a protection visa on complementary protection grounds. The criterion is that the decision maker is satisfied that the applicant is a non-citizen in Australia in respect of whom Australia has protection obligations because:

*there are 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.*

**Significant harm****a) Does the claimed harm constitute significant harm—subsection 36(2A)?**

The applicant claims to fear being physically harmed, gaoled and killed.

I find that the claimed harm is significant harm within the meaning of subsection 36(2A).

**Real risk of significant harm**
**a) Are there substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to a receiving country, there is a real risk the non-citizen will suffer the harm? s36(2)(aa)**

As outlined in Part 3, I do not accept that Applicant 2 s. 47F(1), or that s. 47F has experienced any of the harm and mistreatment claimed. I am of the opinion that the applicant has sought to mislead the Department about s. 47F(1) and experiences in s. 47F(1). The applicant has not advanced any other complimentary protection specific claims. Consequently, I do not find that there is a real risk that the applicant will suffer significant harm.

**Finding**

I find there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to s. 47F(1) there is a real risk the applicant will suffer significant harm as required by s36(2)(aa).

## **FINDING ON COMPLEMENTARY PROTECTION CRITERION**

I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to s. 47F(1) there is a real risk s. 47F(1) will suffer significant harm.

Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in paragraph 36(2)(aa) of the Act.

## **INELIGIBILITY FOR GRANT OF A PROTECTION VISA – Subsection 36(2C)**

As I am not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as assessment in relation to section 36(2C) has not been made.

## **MEMBER OF THE SAME FAMILY UNIT (MSFU) AND IDENTITY ASSESSMENT**

### *Member of the Same Family Unit (MSFU) Assessment*

As outlined in Part 3 of this decision record, I do not accept that s. 47F(1), or that s. 47F(1) is a genuine relationship with s. 47F(1).

### *Finding*

I find that s. 47F(1) is not a member of the same family unit, as defined in section 5(1) of the Act, as s. 47F(1) because s. 47F(1) is not a member of the family unit, as defined in Regulation 1.12 of the Regulations, of s. 47F(1) has raised claims for protection. s. 47F(1) decision record is located in TRIM file s. 22(1)(a)(ii).

s. 22(1)(a)(ii)

Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)



**PROTECTION VISA ASSESSMENT TEMPLATE**

s. 22(1)(a)(ii)

**PART 1 – APPLICATION SUMMARY****MAIN APPLICANT DETAILS**

s. 47F(1)

**ASSESSMENT FINDING****NEGATIVE DECISION**

For the reasons outlined below, I find that s. 47F(1) (the applicant) is not a person in respect of whom Australia has protection obligations as outlined in paragraphs 36(2)(a) or (aa) and is not a member of the same family unit as a non-citizen in respect of whom the Minister is satisfied Australia has protection obligations and who holds a protection visa of the same class as that applied for by the applicant (paragraphs 36(2)(b) and 36(2)(c) of the *Migration Act 1958* (the Act). Accordingly I refuse to grant s. 47F(1) a protection visa. As s. 47F(1) does not satisfy any of the criteria referred to in paragraph 36(1A)(b) of the Act, I have not considered the criteria referred to in paragraph 36(1A)(a).

**APPLICANT HISTORY/MIGRATION HISTORY**

s. 47F(1)

**APPLICATION VALIDITY**

The application complies with the validity requirements for a subclass 866 visa under the Act and Migration Regulations.

s. 22(1)(a)(ii)



I therefore consider that the protection visa application is valid.

## **MATERIAL BEFORE THE CASE OFFICER**

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1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Australian case law as footnoted throughout the decision record.
3. Country information as footnoted throughout the decision record.
4. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook).
5. Procedures Advice Manual 3: Refugee Law Guidelines
6. Procedures Advice Manual 3: Complementary Protection Guidelines
7. Protection Visa Common Processing Guidelines
8. All information provided by or on behalf of the applicant.

## **SUMMARY OF PROTECTION CLAIMS**

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The applicant's detailed written claims are on the Department of Immigration and Border Protection (department) file s. 22(1)(a)(ii).

The applicant's protection claims are summarised below:

s. 47F(1)



s. 47F(1)

The applicant attended a protection visa interview on s. 47F(1)

## PART 2 FINDINGS

### IDENTITY

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#### *Identity assessment*

The applicant's claimed identity is: s. 47F(1), born s. 47F(1), in s. 47F(1)

The applicant has provided the following personal identifiers to the department:

- Fingerprints
- Digital photograph

The applicant has provided the following narrative in support of their claimed identity:

The applicant has maintained the same identity throughout all dealings with the department.

I have cross referenced the following systems to verify the information I have in front of me in regards to the applicant's claimed identity:

- ICSE
- TRIM

In addition, I have taken into account the evidence provided in support of their claimed identity:

- Certified copy of s. 47F(1) The original passport was presented at interview and appeared to be genuine.

#### **Identity Finding**

For the reasons provided above, and for the purposes of this assessment, I find the applicant to be s. 47F(1), born on s. 47F(1), and to be a national of s. 47F(1)

### FINDINGS OF FACT

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Refer to assessment in Part 3.

### AUSTRALIA'S PROTECTION OBLIGATIONS

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Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of a protection visa.



Under paragraph 36(2)(a), a criterion for the grant of a protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the applicant is a refugee as defined by section 5H of the Act.

Under paragraph 36(2)(aa), a criterion for the grant of a protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Section 36 of the Act also sets out criteria which must be satisfied for the grant of a protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who holds a protection visa and meets one of the two criteria described above.

## RECEIVING COUNTRY

In the identity assessment I have found the applicant to be a national of <sup>s. 47F(1)</sup> [REDACTED]. For the purposes of this assessment <sup>s. 47F(1)</sup> [REDACTED] is their receiving country.

## PROTECTION IN ANOTHER COUNTRY – SECTION 36(3)-36(7)

The applicant claims to be a citizen of <sup>s. 47F(1)</sup> [REDACTED] claims that <sup>s. 47F(1)</sup> [REDACTED] does not hold any other citizenship or have a current right to enter and reside in a third country. There is no material evidence presently before me that contradicts these claims.

I find that based on the evidence before me, the applicant does not have a right to enter and reside in a third country.

## Part 3 - REFUGEE CRITERION ASSESSMENT – paragraph 36(2)(a)

*Only complete Part 3 if not refused under 36(3)*

### Persecution

- a) **Does the applicant fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion?** - subsection 5J(1)(a)

The applicant claims <sup>s. 47F(1)</sup> [REDACTED]. The applicant claims to fear persecution on the basis of <sup>s. 47F(1)</sup> [REDACTED].

In accordance with s5J(1)(a), I am satisfied that the applicant fears persecution for reason of membership of a particular social group.

- b) **Is the reason established in a) the essential and significant reason for the persecution they fear?** - subsection 5J(4)(a)

The applicant claims that <sup>s. 47F(1)</sup> [REDACTED] is the essential and significant reason for the harm feared.



I am satisfied that the reason of membership of a particular social group is the essential and significant reason for the feared persecution.

- c) **Does the persecution feared involve serious harm to the applicant – s5J(4)(b), and subsection 5J(5) which lists instances of serious harm?**

The applicant claims to fear being physically harmed, gaoled and killed because s. 47F(1) [REDACTED]

I am satisfied the feared persecution involves serious harm to the applicant as required under paragraph 5J(4)(b) of the Act.

- d) **Does the persecution feared involve systematic and discriminatory conduct - subsection 5J(4)(c)?**

I am satisfied the feared persecution involves systematic and discriminatory conduct.

#### **Is the fear of persecution well-founded?**

- a) **In accordance with paragraph 5J(1)(b), is there a real chance that if the applicant returned to the receiving country, they would be persecuted for one or more of the reasons mentioned in paragraph 5J(1)(a)?**

For the purposes of this assessment s. 47F(1) [REDACTED] will be referred to as Applicant 1, and s. 47F(1) [REDACTED] will be referred to as Applicant 2.

In considering Applicant 1's claims, I acknowledge the need for particular care in assessing claims about s. 47F(1) [REDACTED]. It may be easy to assert such claims, yet difficult for applicants to substantiate and decision makers to evaluate them. Such claims intrinsically involve private issues of self-identity, sexual conduct and other personal issues that may be stressful or unresolved. After noting the above, I have given careful consideration to the written application and all testimony and supporting evidence provided at interview. After considering all the information before me, I am not satisfied that the claims for protection are based on fact and I am not satisfied that Applicant 1 and Applicant 2 were reliable witnesses at interview. I do not accept that Applicant 1 s. 47F(1) [REDACTED] experienced the harm and mistreatment claimed. The reasons for my findings are outlined below.

#### ***Claims concerning the beginning of their relationship:***

s. 47F(1) [REDACTED]

s. 47F(1)

Having carefully considered the applicants' testimony, I am of the opinion that their claim to have been in a relationship is fabricated. In reaching this conclusion, I have given weight to the following:

- As outlined above, the applicants did not know important details about each other. Whilst Applicant 2 claimed to have worked for an s. 47F(1) company at the time they became friends, Applicant 1 claimed that s. 47F(1) was working at a s. 47F(1). Furthermore, Applicant 1 claimed that their relationship was facilitated by the proximity of Applicant 2's workplace to s. 47F(1).
- As outlined above, they provided inconsistent testimony as to when Applicant 2 first visited Applicant 1's house and met members of s. 47F(1) family.

*Claim to have been* s. 47F(1) :

At the time of application, Applicant 1 claimed:

s. 47F(1)



At the time of application, Applicant 2 claimed:

s. 47F(1)



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s. 22(1)(a)(ii)



s. 47F(1)

Having carefully considered the claims and evidence presented by the applicants, I do not find that they have provided a credible account of the s. 47F(1) I am of the opinion that the applicants have fabricated these claims in an attempt to mislead the Department about their experiences in s. 47F(1) In reaching this conclusion, I have given weight to the following:

- The applicants were unable to give consistent accounts concerning s. 47F(1) timing of the s. 47F(1) during s. 47F(1). According to Applicant 2's Statement of Claims, s. 47F(1) s. 47F(1). Applicant 2 also indicated that they s. 47F(1) until after s. 47F(1) At interview, however, Applicant 1 claimed that the s. 47F(1). Furthermore, Applicant 1 indicated that s. 47F(1) s. 47F(1). At interview, Applicant 2 contradicted Applicant 1 by claiming that they s. 47F(1)
- The applicants provided different accounts of where they went after they s. 47F(1) s. 47F(1) Applicant 1 claimed that that they returned to s. 47F(1) house together. Furthermore, Applicant 1 claimed that Applicant 2's s. 47F(1) came and collected Applicant 2 from s. 47F(1) house and then took s. 47F(1) to a doctor. In contrast, Applicant 2 claimed that they only walked together for 5 minutes before each going their separate ways. Applicant 2 claimed that s. 47F(1) returned to s. 47F(1) own house and denied going to Applicant 1's house.
- I am of the opinion that the undated letter, purported to have been prepared by s. 47F(1) s. 47F(1) is fabricated. In reaching this conclusion, I have given weight to the following:

- I am of the opinion that this letter has been fabricated solely to support their Protection Visa application. I am of the opinion that the report is written in English instead of s. 47F(1) for this reason.
- I find the language used in the report to be vague and lacking in appropriate medical terminology. I do not find that the report contains language that is of a level commensurate with a medical professional.

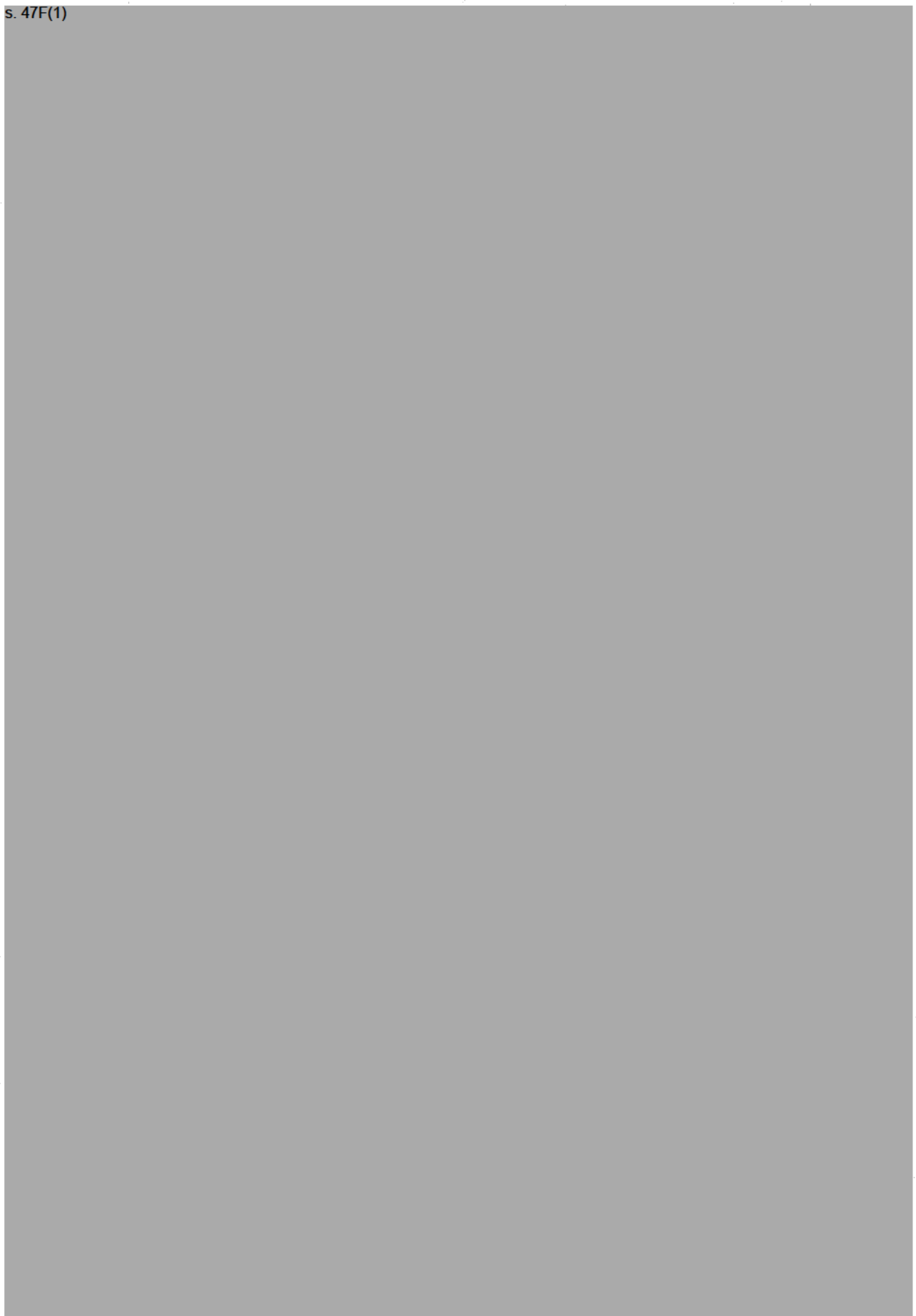
*Claim to have been* s. 47F(1) :

s. 47F(1)



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s. 47F(1)



s. 22(1)(a)(ii)



Having carefully considered the claims and evidence presented by the applicants, I do not find that they have provided a credible account of s. 47F(1) and subsequent detention. For the reasons outlined below, I am of the opinion that the applicants have fabricated these claims in an attempt to mislead the Department about their experiences in s. 47F(1).

- As outlined above, the applicant's failed to provide consistent testimony concerning s. 47F(1). The applicants were unable to provide consistent evidence related to who was s. 47F(1) first; whether they were s. 47F(1); whether they were s. 47F(1).
- In s. 47F(1) original Statement of Claims, Applicant 2 indicated that s. 47F(1) had had no recollection of s. 47F(1). Nevertheless, at interview, Applicant 2 contradicted this claim by stating that s. 47F(1) lost consciousness during s. 47F(1).
- In relation to the medical report purported to be signed by s. 47F(1), I am of the opinion that this document has been fabricated in order to mislead the Department. In reaching this conclusion, I have given weight to the following:
  - The document is dated s. 47F(1) but refers to the patient being discharged on s. 47F(1).
  - I find the language used in the report to be vague and lacking in appropriate medical terminology. I do not find that the report contains language that is of a level commensurate with a medical profession.
  - I am of the opinion that this letter has been fabricated solely to support the applicants' Protection Visa applications. I am of the opinion that the report is written in English instead of s. 47F(1) for this reason.
  - The report refers to an s. 47F(1), whereas Applicant 2 had claimed that the surgery was done to s. 47F(1).
  - Dr s. 47F(1) is identified as a s. 47F(1). I do not find it plausible that a s. 47F(1) would have been responsible for operating on the applicant.
- As outlined above, Applicant 2 claimed that s. 47F(1) did not s. 47F(1) until after s. 47F(1) from s. 47F(1). This indicates that the applicant was s. 47F(1). I do not find it plausible that Applicant 2 would have had s. 47F(1) without first being consulted by the treating physician.

***Claim to have relocated to s. 47F(1):***

At the time of application, Applicant 1 claimed s. 47F(1)

[REDACTED]

At the time of application, Applicant 2 stated § 47F(1)

At interview, Applicant 2 claimed § 47F(1)

Having carefully considered these claims, I do not accept that the applicant's fled to § 47F(1). In reaching this conclusion, I have given weight to the following:

- As outlined above, I am of the opinion that the applicants have fabricated claims related to harm and mistreatment in § 47F(1). Consequently, I do not accept that they needed to flee to § 47F(1).
- The applicants have failed to provide consistent testimony concerning their period of residence in § 47F(1). At the time of application Applicant 1 indicated § 47F(1) had resided in § 47F(1) up until § 47F(1) and Applicant 2 claimed to have resided in § 47F(1) from § 47F(1). Neither claim is consistent with their account of § 47F(1) and subsequent detention. Given that the applicant's claimed that they had been § 47F(1) detained on § 47F(1), and then released after § 47F(1) days, this would mean that they arrived in § 47F(1).
- The applicants were unable to provide a consistent testimony about the height of the building in which their apartment was located. Given that the applicants claimed to have resided in the building for § 47F(1) months, I find it implausible that one would believe that it was 3 stories high and the other ten stories high.

#### Claims concerning § 47F(1) :

Having carefully considered the claims and evidence submitted by the applicants, I do not accept that § 47F(1) or in a genuine relationship. In reaching this conclusion, I have given weight to the following:

- At interview, both applicant's affirmed that the information that they had provided, or would provide, regarding their claims for protection was true and complete in every respect. As outlined above, I am not satisfied that the applicants were subjected to any of the harm and mistreatment they claimed. A finding that the applicants fabricated claims of harm and mistreatment in § 47F(1) supports a finding that they have also attempted to mislead the Department about § 47F(1).
- As outlined above, I do not accept that the applicants are in a genuine relationship as the account of their first meeting was not consistent or credible.

§ 47F(1)



s. 47F(1)

Neither applicant presented an account of their growing s. 47F(1) in a detailed or convincing manner. Based on their testimony, I am not satisfied that either applicant s. 47F(1).

- The applicants have not provided any independent evidence to support their claim s. 47F(1) s. 47F(1). Despite submitting evidence that they have consulted mental health professionals in Australia, I do not find that this provides compelling evidence in support of their claim s. 47F(1).

Having considered the applicant's claims, I do not find s. 47F(1) claim s. 47F(1) is credible. I am of the opinion that the applicant has sought to mislead the Department about s. 47F(1) and experiences in s. 47F(1) in order to establish protection claims. I do not accept that the applicant genuinely fears being persecuted s. 47F(1) returns to s. 47F(1).

I am not satisfied that there is a real chance of persecution for one or more of the reasons mentioned in subsection 5J(1)(a) in the receiving country. Therefore the applicant is not a refugee as defined in section 5H and the criterion in paragraph 36(2)(a) of the Act is not satisfied for this reason.

## **FINDING ON REFUGEE CRITERION – s36(2)(a)**

### ***Finding on subsection 5H(1)***

I am not satisfied that s. 47F(1) is a refugee as defined by section 5H(1) of the Act.

Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in paragraph 36(2)(a) of the Act

As I am satisfied s. 47F(1) is not a refugee as defined by section 5H(1) of the Act an assessment in relation to section 5H(2) has not been made.

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#### **Part 4 - COMPLEMENTARY PROTECTION CRITERION ASSESSMENT – paragraph 36(2)(aa)**

Section 36(2)(aa) of the Act sets out the criterion for the grant of a protection visa on complementary protection grounds. The criterion is that the decision maker is satisfied that the applicant is a non-citizen in Australia in respect of whom Australia has protection obligations because:

*there are 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.*

#### **Significant harm**

##### **a) Does the claimed harm constitute significant harm—subsection 36(2A)?**

The applicant claims to fear being physically harmed, gaoled and killed.

I find that the claimed harm is significant harm within the meaning of subsection 36(2A).

#### **Real risk of significant harm**

##### **a) Are there substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to a receiving country, there is a real risk the non-citizen will suffer the harm? s36(2)(aa)**

As outlined in Part 3, I do not accept that the applicant <sup>s. 47F(1)</sup> or that <sup>s. 47F(1)</sup> has experienced any of the harm and mistreatment claimed. I am of the opinion that the applicant has sought to mislead the Department about <sup>s. 47F(1)</sup> and experiences in <sup>s. 47F(1)</sup>. The applicant has not advanced any other complimentary protection specific claims. Consequently, I do not find that there is a real risk that the applicant will suffer significant harm.

#### **Finding**

I find there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to <sup>s. 47F(1)</sup> there is a real risk the applicant will suffer significant harm as required by s36(2)(aa).

#### **FINDING ON COMPLEMENTARY PROTECTION CRITERION**

I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to <sup>s. 47F(1)</sup> there is a real risk <sup>s. 47F(1)</sup> will suffer significant harm.

Therefore, <sup>s. 47F(1)</sup> is not a person in respect of whom Australia has protection obligations as outlined in paragraph 36(2)(aa) of the Act.

#### **INELIGIBILITY FOR GRANT OF A PROTECTION VISA – Subsection 36(2C)**

As I am not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as assessment in relation to section 36(2C) has not been made.

## MEMBER OF THE SAME FAMILY UNIT (MSFU) AND IDENTITY ASSESSMENT

### *Member of the Same Family Unit (MSFU) Assessment*

As outlined in Part 3 of this decision record, I do not accept that s. 47F(1) or that s. 47F(1) is a genuine relationship with s. 47F(1)

### *Finding*

I find that s. 47F(1) is not a member of the same family unit, as defined in section 5(1) of the Act, as s. 47F(1) because s. 47F(1) is not a member of the family unit, as defined in Regulation 1.12 of the Regulations, of s. 47F(1) s. 47F(1) has raised claims for protection. s. 47F(1) decision record is located in TRIM file

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Delegate of the Minister for Immigration and Border Protection for the purposes of section 65 of the Migration Act

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

# **PROTECTION VISA ASSESSMENT**

s. 22(1)(a)(ii)

## **APPLICATION SUMMARY**

### **Applicant details**

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s. 47F(1)

### **Assessment finding**

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For the reasons outlined below, I recommend that s. 47F(1) (the applicant) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the *Migration Act 1958* (the Act).

As I recommend the person is a refugee, I have not considered s36(2)(aa) of the Act, the criterion for the grant of a Protection visa on complementary protection grounds.

I have not considered the criteria referred to in s 36(1A)(a) of the Act or the criteria in Schedule 2 of the Migration Regulations for a Protection (class XA, subclass 866) visa, therefore I have not yet made a decision in relation to whether the applicant meets the criteria for a grant of a Protection visa.

This finding is not an exercise of the power under s65 of the Act.

### **Applicant history/migration history**

s. 47F(1)

s. 22(1)(a)(ii)

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## Summary of protection claims

s. 47F(1)

## FINDINGS PRELIMINARY TO ASSESSMENT OF PROTECTION CLAIMS

### Identity assessment

The applicant has provided the following documentary evidence of s. 47F(1) identity, nationality and citizenship:

- A certified copy of s. 47F(1) <sup>1</sup> The original was presented at interview on s. 47F(1)

There is no evidence before me indicating that any of the documents provided is a bogus document as defined in s5(1) of the Act.

The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems has revealed no information that raises concern that the applicant has given a false identity.

For the reasons provided above, and for the purposes of this assessment, I find the applicant's identity is as listed above.

### Protection in another country – section 36(3)-36(7)

I have found the applicant to be a national of s. 47F(1) The applicant claims that they do not hold citizenship of any other country or have a current right to enter and reside in any other country. There is no material evidence before me which contradicts this claim.

### Finding

I find that, based on the evidence before me, the applicant does not have a right to enter and reside in a country other than their country of citizenship.

I accept that, as the applicant does not have a current right to enter and reside in a country other than their country of citizenship, s36(3) of the Act does not apply to them.

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

## Findings of fact

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s. 47F(1)

Throughout the interview, the applicant was capable of articulating s. 47F(1) claims for protection and responding to questions without difficulty. At interview s. 47F(1) gave verbal evidence outlining the development of s. 47F(1) in s. 47F(1) and Australia.

At interview the applicant claimed s. 47F(1)

The applicant also responded to questions about s. 47F(1) experiences in Australia in a direct and open manner. While s. 47F(1) has not provided any further evidence in support of s. 47F(1) claims s. 47F(1) I have no reason to doubt s. 47F(1) claims.

s. 47F(1)

s. 47F(1)

The applicant's description of s. 47F(1) fears about s. 47F(1) reaction to the disclosure of s. 47F(1) was consistent with societal reactions noted in reports related to s. 47F(1)

s. 47F(1)

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The applicant was asked why s. 47F(1) delayed the lodgement of s. 47F(1) Protection visa application. In response s. 47F(1) indicated that s. 47F(1) intention in travelling to Australia on a s. 47F(1) visa was to pursue permanent residency in Australia in order to live more s. 47F(1). s. 47F(1) indicated that s. 47F(1) had been unaware that s. 47F(1) could be a reason for a grant of asylum. Given my generally favourable assessment of the applicant's claims, I have drawn no adverse conclusion in regard to the applicant's credibility as a result of the delay in lodgement of s. 47F(1) Protection visa application.

The applicant's responses were plausible and persuasive in the context of country reports cited about s. 47F(1). Consequently I accept as credible the applicant's claim that s. 47F(1).

### **Australia's protection obligations**

Sections 36(2)(a) and (aa) of the Act set out criteria for the grant of a Protection visa.

Under s36(2)(a), a criterion for the grant of a Protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the applicant is a refugee as defined by s5H of the Act.

Under s36(2)(aa), a criterion for the grant of a Protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Section 36 of the Act also sets out criteria which must be satisfied for the grant of a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who holds a Protection visa and meets one of the two criteria described above.

### **REFUGEE CRITERION ASSESSMENT – section 36(2)(a) of the Act**

#### **Persecution**

#### **Does the applicant fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion? - subsection 5J(1)(a) of the Act**

The applicant claims to fear harm because s. 47F(1).

The test to determine whether a group falls within the definition of a 'particular social group' in section 5L of the Act was developed in the case of *Applicant S v MIMA* [2004] HCS 25. To be a member of a particular social group (other than the person's family), the person has or is perceived to have a characteristic shared by each member of the group which is innate or immutable; or fundamental to a member's identity or conscience; or distinguishes the group from society; and which is not a shared fear of persecution.<sup>9</sup>

In the case of the proposed group s. 47F(1) its members are recognisable by their s. 47F(1), which distinguishes them from s. 47F(1) society in general, rather than a shared fear of persecution. Country reports cited in this assessment indicate that legal, cultural and religious

<sup>9</sup> PAM 3, Migration Act, s5L Membership of a particular social group other than family, 01/09/2015



prohibitions against s. 47F(1) will set members of the PSG apart from s. 47F(1) society in general.

### Finding

In accordance with s5J(1)(a), I am satisfied that the applicant fears persecution for the following reasons:

- Membership of a particular social group, s. 47F(1)

**Is/are the reason/s established the essential and significant reason/s for the persecution they fear? - subsection 5J(4)(a) of the Act**

I am satisfied that the reason of the PSG s. 47F(1) is the essential and significant reason/s for the feared persecution.

**Does the persecution feared involve serious harm to the applicant – s5J(4)(b), and subsection 5J(5) of the Act which lists instances of serious harm?**

The applicant fears being physically harmed, imprisoned or killed because of s. 47F(1). It is also noted that s. 47 claims to be unable to s. 47F(1).

### Finding

I am satisfied the feared persecution involves serious harm to the applicant as required under s5J(4)(b) of the Act.

**Does the persecution feared involve systematic and discriminatory conduct - subsection 5J(4)(c) of the Act?**

I am satisfied the feared persecution involves systematic and discriminatory conduct.

**Is the fear of persecution well-founded?**

**In accordance with s5J(1)(b), is there a real chance that if the applicant returned to the receiving country, they would be persecuted for one or more of the reasons mentioned in s5J(1)(a) of the Act?**

A fear of being persecuted is well-founded if there is a 'real chance' that an applicant may be persecuted (see *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at p.389, Toohey J at pp.406-7, Dawson J at pp.396-8, McHugh J at pp.428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well-founded.

s. 47F(1)

s. 47F(1)

*Conclusion*

Sources indicate that s. 47F(1), particularly outside s. 47F(1), are likely to be required to hide their s. 47F(1) to avoid harassment and harm. I accept the applicant's evidence that if s. 47F(1) returned to s. 47F(1) would have to behave discreetly in the expression of s. 47F(1) for fear of

s. 47F(1)

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reprisal action by s. 47F(1) family, community members and/or the potential for harassment, prosecution and abuses by the police/authorities. I find it would be unreasonable to expect s. 47F(1) to conceal s. 47F(1) or to act in a discreet manner in order to avoid 'serious harm' in s. 47F(1) and consider this a material constituent of s. 47F(1) claims. Further, sources also indicate that threats to their safety and wellbeing, discrimination and harassment, persist in s. 47F(1) against s. 47F(1) from the community and police. Therefore on the basis of the evidence before me, I therefore cannot exclude as remote and insubstantial the chance that the applicant would face a real chance of serious harm as a consequence of s. 47F(1) being identified as s. 47F(1).

### Finding

I am satisfied that there is a real chance of persecution for one or more of the reasons mentioned in s5J(1)(a) in the receiving country.

### Does this real chance of persecution relate to all areas of the receiving country – s5J(1)(c) of the Act?

Discrimination and human rights abuses against s. 47F(1) are perpetrated by the s. 47F(1) authorities and societal disapproval is prevalent throughout the country, therefore I find the applicant cannot relocate within s. 47F(1).

I am satisfied that the real chance of persecution relates to all areas of the receiving country, as required by section 5J(1)(c).

### Finding

I am satisfied that the real chance of persecution relates to all areas of the receiving country, as required by s5J(1)(c).

### Are there effective protection measures available to the applicant in the receiving country/ies? - s5J(2) of the Act

As noted, discrimination and human rights abuses against s. 47F(1) are perpetrated by the s. 47F(1) authorities therefore I find there is no effective protection available to the applicant in s. 47F(1).

### Finding

I find that effective protection measures, as defined in s5LA, are not available to the applicant in the receiving country.

### Could the applicant take reasonable steps to modify their behaviour so as to avoid a real chance of persecution - other than a modification outlined in s5J(3)(a) (b) or (c) of the Act?

The applicant's claims are related to s. 47F(1) membership of the particular social group s. 47F(1). Under s5J(3)(b) it is inherently unreasonable to require a person to conceal an innate or immutable characteristic such as s. 47F(1).<sup>23</sup>

### Finding

I find that the applicant could not take reasonable steps to modify their behaviour to avoid a real chance of persecution as outlined in s5J(3).

<sup>23</sup> PAM3, s5J(3), Refugee Law Guidelines, 01/01/2016



**While in Australia, has the applicant engaged in conduct for the purpose of strengthening their claim/s? – s 5J(6) of the Act**

There is no evidence before me to suggest that the applicant has engaged in conduct in Australia for the purpose of strengthening s. 47F(1) claim to be a refugee.

**Finding**

I find that the applicant has not engaged in conduct in Australia for the purpose of strengthening s. 47F(1) claim to be a refugee within the meaning of section 5H of the Act. Therefore, pursuant to s5J(6) of the Act, I have not disregarded this conduct in determining whether the applicant has a well-founded fear of persecution.

I find that the applicant's fear of persecution is well-founded.

**Finding on refugee criterion – s36(2)(a)**

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**Finding on s5H(1) of the Act**

I am satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act.

**Exception to the meaning of a Refugee - s5H(2) of the Act**

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**Are there serious reasons for considering the applicant has committed acts set out in subsections 5H(2)(a), (b) or (c) of the Act?**

**Finding**

I am satisfied the exclusion clauses in paragraphs in 5H(2)(a), (b) or (c) of the Act do not apply to the applicant.

**COMPLEMENTARY PROTECTION CRITERION ASSESSMENT – s36(2)(aa) of the Act**

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Since I find the applicant to be a refugee, Complementary Protection criterion assessment is not relevant to the applicant.

**SECURITY AND SERIOUS CRIME OR DANGER TO THE COMMUNITY ASSESSMENT – subsections 36(1B) and 36(1C) of the Act**

**Security assessment – s36(1B) of the Act**

An Adverse Security Assessment (ASA) has not been received for this applicant, s. 47F(1). This means s. 47F(1) is not assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security within the meaning of the *Australian Security Intelligence Organisation Act 1979*.

**Serious crime or danger to community or security – s 36(1C) of the Act**

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**Is the applicant considered to be a danger to Australia's security?**

As noted above, there is currently no evidence before me at time of this assessment to indicate that the applicant is considered a risk to national security.


**Has the applicant been convicted by a final judgement of a particularly serious crime and considered to be a danger to the Australian community? – s5M of the Act**

There is currently no evidence before me at the time of this assessment to indicate that the applicant has been convicted by a final judgement of a particularly serious crime and considered to be a danger to the Australian community.

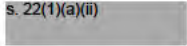
**Finding**

I do not consider, on reasonable grounds, that the applicant is a danger to Australia's security; or having been convicted by a final judgement of a particularly serious crime, is a danger to the Australian community.

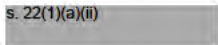
s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



**Appendix A - Material before the case officer**

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1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Australian case law as footnoted throughout the recommendation.
3. Country information as footnoted throughout the recommendation.
4. Department of Foreign Affairs and Trade reports (see Direction No.56).
5. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook)
6. Procedures Advice Manual 3: Refugee Law Guidelines
7. Procedures Advice Manual 3: Complementary Protection Guidelines
8. Protection Visa Common Processing Guidelines

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# PROTECTION VISA DECISION RECORD

## Part 1: Application summary

s. 47F(1)



## Part 2: Assessment details

The applicant, s. 47F(1), is refused a Protection visa subclass XA-866 Permanent Protection Visa under s65 of the *Migration Act 1958* (the Act) for the following reason/s:

The applicant is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) or s36(2)(aa) and is not a *member of the same family unit* as a non-citizen in respect of whom the Minister is satisfied Australia has protection obligations and who holds a Protection visa of the same class as that applied for by the applicant (s36(2)(b) and s36(2)(c) of the *Migration Act 1958* (the Act)).

## Part 3: Migration history and identity assessment

s. 47F(1)



I accept the applicant's identity is:

s. 47F(1)



s. 22(1)(a)(ii)

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Country of citizenship: s. 47F(1)

The applicant has provided the following documentary evidence of their identity, nationality or citizenship:

A s. 47F(1) in the name s. 47F(1) was used by the applicant to enter Australia on s. 47F(1). A copy of the biodata page of this passport is held by the Department.<sup>1</sup>

There is no evidence before me indicating that any of the documents provided is a *bogus document* as defined in s5(1) of the Act.

The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems has revealed no information that raises concern that the applicant has given a false identity.

For the reasons provided above, and for the purposes of this assessment, I find the applicant's identity is as listed above.

## Part 4: Protection claims

s. 47F(1)

## Part 5: Findings of fact

Section 5AAA was introduced as an amendment to the Act in the *Migration Amendment (Protection and Other Measures) Act 2015* and provides that it is the responsibility of an applicant for a Protection visa to specify all particulars of his or her protection claims and provide sufficient evidence to establish the claims. 5AAA is intended to encourage PV applicants to present all claims with their primary application to assist the decision maker to establish the relevant facts.<sup>2</sup>

Decision makers should be sensitive to the difficulties often faced by asylum seekers and may need to give the benefit of the doubt if the asylum seeker is generally credible but is unable to substantiate their claims. However, a decision maker is not required to accept uncritically an asylum seeker's claims and the asylum seeker is not entitled to have their claims accepted simply because there is a possibility that they might be true.<sup>3</sup>

The applicant arrived in Australia on s. 47F(1). In the statement submitted in support of s. 47F(1) Protection visa application, s. 47F(1) claimed s. 47F(1).

s. 47F(1)

s. 47F(1)

s. 47F(1)

s. 22(1)(a)(ii)

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s. 47F(1)

At the time of application, the applicant claimed s. 47F(1)

s. 47F(1)

At the time of application, the applicant stated:

s. 47F(1)

At interview, the applicant claimed s. 47F(1)

s. 47F(1)

It is acknowledged that the applicant has made serious allegations against s. 47F(1). Nevertheless, having considered the inconsistent and implausible nature of the claims provided by the applicant at the time of application and at interview, I am not satisfied that s. 47F(1) has provided an open and honest account of s. 47F(1) employment with s. 47F(1) and s. 47F(1) marriage to s. 47F(1). In reaching this conclusion, I have given weight to the following:

- The applicant failed to provide consistent testimony as to how s. 47F(1) started working at s. 47F(1). Despite initially claiming that the job was organised by s. 47F(1) subsequently claimed that it was arranged by s. 47F(1).
- The applicant was not consistent in relation to the circumstances surrounding s. 47F(1) marriage to s. 47F(1). Despite indicating at the time of application that s. 47F(1) was tricked into marrying s. 47F(1) and that the relationship was not genuine, at interview s. 47F(1) indicated that while s. 47F(1) employers forced s. 47F(1) to marry s. 47F(1) also attempted to s. 47F(1). The applicant failed to provide a plausible explanation as to why they would have arranged to s. 47F(1).
- The applicant has been unable to provide a convincing explanation as to why s. 47F(1) would force the applicant into a marriage with s. 47F(1) against s. 47F(1) will and without s. 47F(1) knowledge. The applicant's attempt to frame s. 47F(1) as a victim who was tricked into marriage was inconsistent and unconvincing.

Based on the information and evidence before me, I am of the opinion that the applicant knowingly entered into a fraudulent marriage with s. 47F(1) and lodged a s. 47F(1) in an attempt to obtain permanent residence in Australia. I am of the opinion that the applicant's



inconsistent and implausible claims and testimony in relation to this matter greatly damages §. 47F(1) credibility and is evidence of a willingness to fabricate testimony in order to mislead the Department.

§. 47F(1)

At interview, the applicant claimed §. 47F(1)

In support of §. 47F(1) claim §. 47F(1) the applicant submitted a Statutory Declaration from a person named §. 47F(1).<sup>6</sup> According to this Statutory Declaration, dated, §. 47F(1)

§. 47F(1)

§. 47F(1)

§. 47F(1)

§. 47F(1)

s. 47F(1)



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s. 22(1)(a)(ii)

At interview, it was put to the applicant that the only evidence in support of s. 47F(1) claim s. 47F(1) had come from s. 47F(1) Statutory Declaration. It was put to s. 47F(1) that the inconsistencies between s. 47F(1) testimony and s. 47F(1) Statutory Declaration cast serious doubts about s. 47F(1) claim s. 47F(1). When asked why s. 47F(1) had not mentioned that they were in a relationship for s. 47F(1) reiterated that s. 47F(1) is not good with dates.

At interview, the applicant was asked if s. 47F(1) worked s. 47F(1) in Australia. s. 47F(1) responded: s. 47F(1). When asked who s. 47F(1), s. 47F(1) claimed that s. 47F(1).

As outlined above, the applicant's account of s. 47F(1) relationship with s. 47F(1) was vague, inconsistent and unconvincing. Having carefully considered s. 47F(1) claims and the Statutory Declaration, I do not accept that s. 47F(1) or the applicant have provided an open and honest account of their relationship. Given the significant inconsistencies concerning the timeframe of their relationship, and the evasive nature of s. 47F(1) responses to questioning about s. 47F(1) I do not accept that they were ever engaged in s. 47F(1) relationship. Furthermore, I give no weight to s. 47F(1) Statutory Declaration as evidence in support of the applicant's claim s. 47F(1).

Apart from claiming to have had a relationship with s. 47F(1), the applicant claimed that s. 47F(1).

I am not satisfied that the applicant has visited s. 47F(1).

In reaching this conclusion, I have given weight to the fact that the applicant has clearly fabricated claims concerning s. 47F(1) relationship with s. 47F(1) and has failed to provide an open and honest account of s. 47F(1) employment history in Australia. As outlined above, on s. 47F(1) the applicant advised the Department s. 47F(1) was working as a s. 47F(1). At interview, the applicant also made comments which indicated that s. 47F(1) working as a s. 47F(1). While s. 47F(1) tried to portray this work as rare and voluntary, I am of the opinion that s. 47F(1) responses were deliberately vague and misleading. On balance, I am of the opinion that the applicant has been working as a s. 47F(1) in Australia and I do not accept that s. 47F(1) has s. 47F(1).

s. 47F(1)

s. 47F(1)

The applicant's failure to lodge a Protection visa application at an earlier opportunity, supports a finding s. 47F(1) claim s. 47F(1) and to fear harm on this basis has been fabricated in order to remain in Australia. If the applicant s. 47F(1) as claimed, I am of the opinion that s. 47F(1) would have lodged a Protection visa application at an earlier opportunity, and s. 47F(1) would have been able to provide consistent, plausible and compelling testimony and evidence in support of this claim. Accordingly I do not accept that the applicant s. 47F(1) or that genuinely fears being harmed for the reasons claimed, nor that s. 47F(1) claims for protection are credible.

47F



## Part 6: Australia's protection obligations

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### Protection in another country assessment

I find that based on the evidence before me, the applicant does not have a right to enter and reside in a country other than s. 47F(1) I accept that s36(3) of the Act does not apply to the applicant.

### Refugee criteria assessment—s36(2)(a) of the Act

As stated in Part 5 of this decision, I find that the applicant's claims are not credible, and the applicant does not genuinely fear returning to s. 47F(1) for the reasons claimed. Accordingly I am not satisfied that there is a real chance of persecution for one or more of the reasons mentioned in subsection 5J(1)(a) in the receiving country. Therefore the applicant is not a refugee as defined in section 5H and the criterion in paragraph 36(2)(a) of the Act is not satisfied for this reason.

### Finding on refugee criteria—s36(2)(a) of the Act

I am not satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act. Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the Act.

As I am not satisfied s. 47F(1) is a refugee, as defined by s5H(1) of the Act, an assessment in relation to s5H(2) of the Act has not been made.

### Complementary protection criteria assessment—s36(2)(aa) of the Act

As stated in Part 5 of this decision, I find that the applicant's claims are not credible, and the applicant does not genuinely fear returning to s. 47F(1) for the reasons claimed. Accordingly I find there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to s. 47F(1) there is a real risk the applicant will suffer significant harm as required by s36(2)(aa).

### Finding on complementary protection criteria—s36(2)(aa) of the Act

I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to s. 47F(1) there is a real risk s. 47F(1) will suffer significant harm as outlined in s36(2)(aa) of the Act. Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(aa) of the Act.

As I am not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations an assessment in relation to s36(2C) has not been made.

### Finding on Australia's protection obligations

I am not satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act. Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the Act.

As I am satisfied s. 47F(1) is not a refugee, as defined by s5H(1) of the Act, an assessment in relation to s5H(2) was not made.

I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of s. 47F(1) being removed to s. 47F(1), there is a real risk s. will suffer significant harm as defined in s36(2A) of the Act.

Therefore, s. 47F(1) [REDACTED] is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(aa) of the Act.

s. 22(1)(a)(ii) [REDACTED]

Delegate of the Minister for Immigration and Border Protection for the purposes of s65 of the Act

s. 22(1)(a)(ii) [REDACTED]

### **Attachment A—Material before the decision maker**

Departmental files s. 22(1)(a)(ii) [REDACTED] relating to the applicant.

Australian case law as footnoted throughout the assessment record.

Country information as footnoted throughout the assessment record including any relevant country information assessment prepared by the Department of Foreign Affairs and Trade specifically for the purpose of assessing protection obligations (see Direction No.56).

The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook).

Procedures Advice Manual 3: Refugee and Humanitarian – Refugee Law Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Complementary Protection Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Common Processing Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Permanent protection visas processing guidelines

s. 22(1)(a)(ii) [REDACTED]

## Attachment B—Protection obligations applicable law

### *Migration Act 1958*

#### Section 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.

#### Section 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.

### Section 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.

# PROTECTION VISA ASSESSMENT

s. 22(1)(a)(ii)

## APPLICATION SUMMARY

### Applicant details

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s. 47F(1)

### Assessment finding

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For the reasons outlined below, I recommend that s. 47F(1) (the applicant) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the *Migration Act 1958* (the Act).

As I recommend the person is a refugee, I have not considered s36(2)(aa) of the Act, the criterion for the grant of a Protection visa on complementary protection grounds.

I have not considered the criteria referred to in s 36(1A)(a) of the Act or the criteria in Schedule 2 of the Migration Regulations for a Protection (class XA, subclass 866) visa, therefore I have not yet made a decision in relation to whether the applicant meets the criteria for a grant of a Protection visa.

This finding is not an exercise of the power under s65 of the Act.

### Applicant history/migration history

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s. 47F(1)

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s. 22(1)(a)(ii)



s. 47F(1)



### Summary of protection claims

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The applicant's detailed written claims are on the Department of Immigration and Border Protection (department) file s. 47F(1)

The applicant's protection claims are summarised below:

s. 47F(1)



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s. 47F(1)

## FINDINGS PRELIMINARY TO ASSESSMENT OF PROTECTION CLAIMS

### Identity assessment

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The applicant provided the following documentary evidence of their identity, nationality or citizenship:

- [REDACTED] s

There is no evidence before me indicating that any of the documents provided is a bogus document as defined in s5(1) of the Act.

The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems has revealed no information that raises concern that the applicant has given a false identity.

For the reasons provided above, and for the purposes of this assessment, I find the applicant's identity is as listed.

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s. 22(1)(a)(ii)

### Protection in another country – section 36(3)-36(7)

I have found the applicant to be a national of s. 47F(1). The applicant claims that they do not hold citizenship of any other country or have a current right to enter and reside in any other country. There is no material evidence before me which contradicts this claim.

#### **Finding**

I find that, based on the evidence before me, the applicant does not have a right to enter and reside in a country other than their country of citizenship.

I accept that, as the applicant does not have a current right to enter and reside in a country other than their country of citizenship, s36(3) of the Act does not apply to them.

#### **Findings of fact**

When determining whether an applicant is entitled to protection in Australia, a decision maker is required to make findings of fact on the applicant's claims that he or she is a refugee. This process may involve an assessment of the credibility of the claims. When assessing credibility, a decision maker must be sensitive to the difficulties often faced by asylum seekers and should give the benefit of the doubt to those who are generally credible, but are unable to substantiate all of their claims. However, a decision maker is not required to accept uncritically any and all allegations made by an applicant, nor is it necessary for a decision maker to have rebutting evidence before they can find that a particular factual assertion by an applicant has not been made out. Nor is a decision-maker required to accept claims which are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality.<sup>2</sup>

I have considered the applicant's claims and the evidence s. 47F(1) has provided both in s. 47F(1) written application and at s. 47F(1) Protection visa interview. During s. 47F(1) PV interview I asked the applicant about s. 47F(1) background, family, circumstances and the reasons s. 47F(1) feared returning to s. 47F(1). The applicant was forthright with the information s. 47F(1) provided and it was consistent with the claims in s. 47F(1) written application. The applicant answered questions with confidence and without hesitation. s. 47F(1) provided detail and clarity in respect of s. 47F(1) claim. The applicant presented as a person with s. 47F(1) genuine fear and did not appear to exaggerate s. 47F(1) claims. I am satisfied that the applicant is credible and that s. 47F(1) claims as listed above are s. 47F(1) genuine and plausible.

It is noted that the applicant has previously provided false and misleading information to the Department in relation to a s. 47F(1) visa application that was subsequently withdrawn on s. 47F(1). Nevertheless, it is noted that this false and misleading information concerning s. 47F(1) does not contradict the applicant's claim s. 47F(1). Having listened to the interview conducted with the applicant and s. 47F(1) on s. 47F(1), I am of the opinion that their responses actually constitute compelling evidence that they were s. 47F(1) and were co-habiting at that time.

Prior to s. 47F(1) Protection visa interview, the applicant had indicated that s. 47F(1) resided with s. 47F(1). The applicant also appeared to

s. 47F(1)



be indicating that s. 47F(1) was in a genuine and ongoing relationship with s. 47F(1). At interview, the applicant admitted that s. 47F(1) has not resided with s. 47F(1) since s. 47F(1), and that they were not currently in an ongoing defacto relationship. While it does appear that the applicant may have attempted to mislead the Department about the current nature of s. 47F(1) relationship with s. 47F(1) I do not find that this damages the overall credibility of s. 47F(1) claim s. 47F(1) and to have previously co-habited with s. 47F(1).

s. 47F(1)

The applicant was asked about s. 47F(1)

The applicant claims s. 47F(1)

s. 47F(1)

***Harm and mistreatment from*** s. 47F(1) :

According to a s. 47F(1) report: s. 47F(1)

s. 47F(1)

s. 47F(1)

s. 47F(1)

As outlined above the applicant claims s. 47F(1)

The applicant's testimony at interview was plausible and persuasive in the context of country reports cited above about s. 47F(1). Consequently, I accept as credible the applicant's claim that s. 47F(1) has been ostracised and subjected to verbal abuse and threats as outlined by s. 47F(1).

After considering the applicant's claims in s. 47F(1) Protection Visa application and s. 47F(1) oral testimony at the Protection visa interview, I accept that the following as findings of fact:

- The applicant is a s. 47F(1).
- The applicant s. 47F(1).
- The applicant has been ostracised, physical and verbally abused and threatened by s. 47F(1) family and relatives.
- s. 47F(1) fears that s. 47F(1) family and friends could harm s. 47F(1) returns to s. 47F(1) because s. 47F(1). This includes a fear of physical harm or being forcibly hospitalised for treatment.
- The applicant has a subjective fear of the s. 47F(1) community and the s. 47F(1) authorities in s. 47F(1) such as the security forces and the police because s. 47F(1).

### Australia's protection obligations

Sections 36(2)(a) and (aa) of the Act set out criteria for the grant of a Protection visa.

Under s36(2)(a), a criterion for the grant of a Protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the applicant is a refugee as defined by s5H of the Act.

Under s36(2)(aa), a criterion for the grant of a Protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Section 36 of the Act also sets out criteria which must be satisfied for the grant of a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who holds a Protection visa and meets one of the two criteria described above.

s. 47F(1)

## **REFUGEE CRITERION ASSESSMENT – section 36(2)(a) of the Act**

### **Persecution**

**Does the applicant fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion? - subsection 5J(1)(a) of the Act**

The applicant claims to fear harm on the basis of s. 47F(1) [REDACTED]. I am satisfied that the reason of the PSG s. 47F(1) [REDACTED] is the essential and significant reason for the feared persecution.

#### **Finding**

In accordance with s5J(1)(a), I am satisfied that the applicant fears persecution for the following reasons: Membership of a particular social group s. 47F(1) [REDACTED]

**Is/are the reason/s established the essential and significant reason/s for the persecution they fear? - subsection 5J(4)(a) of the Act**

The applicant claims to fear harm and mistreatment because s. 47F(1) [REDACTED]. I am satisfied that the reason of the PSG 's. 47F(1) [REDACTED]' is the essential and significant reasons for the feared persecution.

#### **Finding**

I am satisfied that the reason of membership of a particular social is the essential and significant reason for the feared persecution.

**Does the persecution feared involve serious harm to the applicant – s5J(4)(b), and subsection 5J(5) of the Act which lists instances of serious harm?**

The applicant fears s. 47F(1) [REDACTED]

#### **Finding**

I am satisfied the feared persecution involves serious harm to the applicant as required under s5J(4)(b) of the Act.

**Does the persecution feared involve systematic and discriminatory conduct - subsection 5J(4)(c) of the Act?**

The applicant has described a fear of harm and mistreatment that would be systematic and non-random targeting which discriminates against a person for a Convention reason.

#### **Finding**

I am satisfied the feared persecution involves systematic and discriminatory conduct.

**Is the fear of persecution well-founded?**

**In accordance with s5J(1)(b), is there a real chance that if the applicant returned to the receiving country, they would be persecuted for one or more of the reasons mentioned in s5J(1)(a) of the Act?**

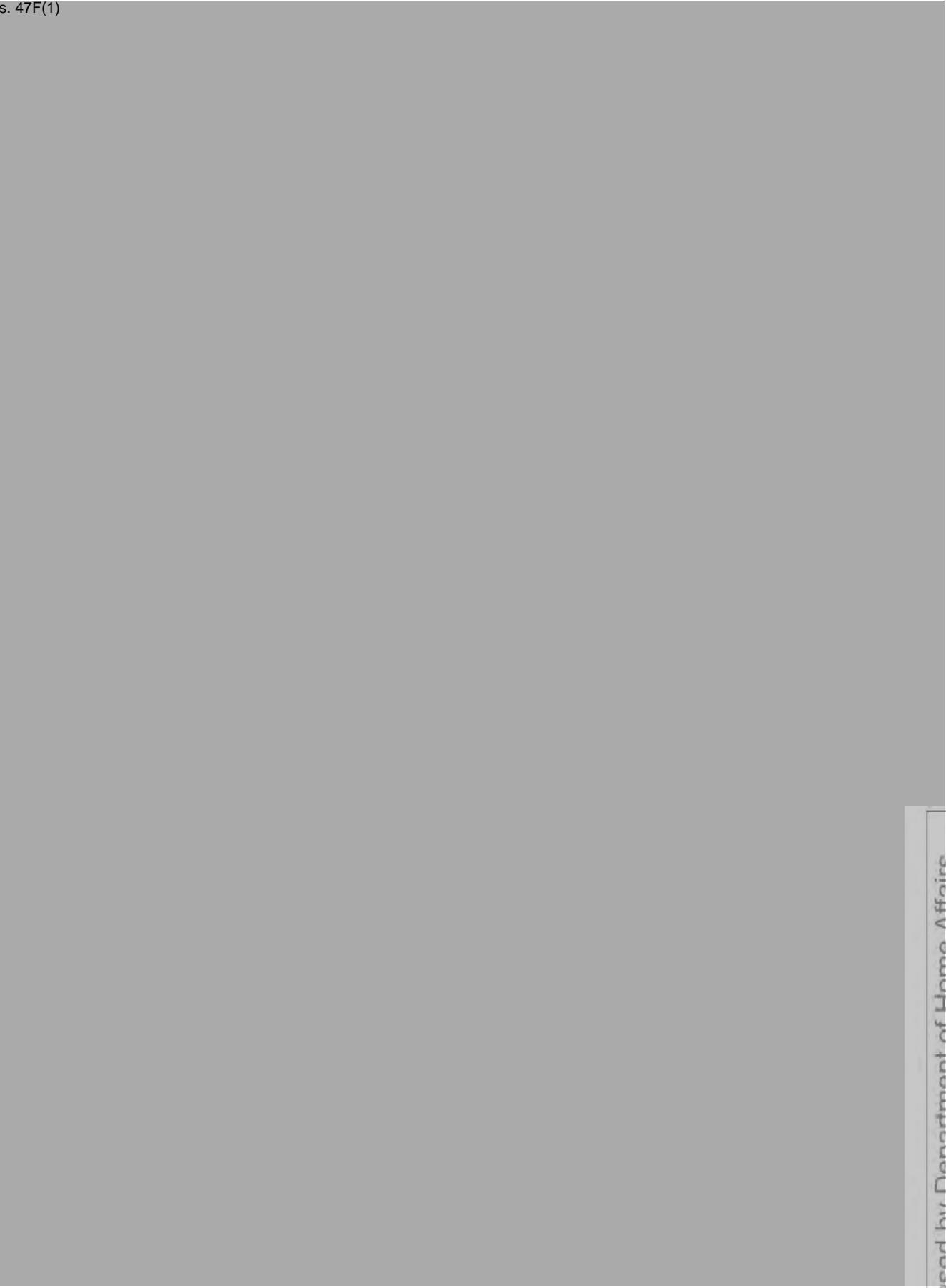


A fear of being persecuted is well-founded if there is a 'real chance' that an applicant may be persecuted (see *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at p.389, Toohey J at pp.406-7, Dawson J at pp.396-8, McHugh J at pp.428-9). A 'real chance' may be below a 50 per cent chance. However, a real chance is not a remote chance; there needs to be a real substantial basis for a fear of persecution in order for it to be well-founded.

Country reports have indicated that s. 47F(1)

s. 47F(1)

s. 47F(1)



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s. 22(1)(a)(ii)

s. 47F(1)



I accept that s. 47F(1) who are identified as s. 47F(1) may face a real chance of family and societal discrimination and violence that amounts to persecution. In light of the applicant's testimony and evidence, I am satisfied that there is a real chance that s. 47F(1) would be subjected to serious harm at the hands of s. 47F(1) family and community if s. 47F(1) returns to s. 47F(1) as s. 47F(1). I also accept that if s. 47F(1) seeks police protection, there is a real chance that s. 47F(1) may be denied adequate protection and there is a real possibility that the police may perpetuate persecution on the basis of s. 47F(1). Consequently, I do not find that the applicant would be able to avoid harm and mistreatment at the hands of s. 47F(1) family by reporting them to the police.

s. 47F(1)



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s. 47F(1)

Based on the available information, I accept the applicant's evidence that if s. 47F(1) returned to s. 47F(1) would have to s. 47F(1) for fear of reprisal action by s. 47F(1) family, community members and/or harassment, prosecution and abuse by the police/authorities. I find it would be unreasonable to expect s. 47F(1) to s. 47F(1) or to act in a discreet manner in order to avoid 'serious harm' in s. 47F(1). Further, sources also indicate that threats to safety and wellbeing along with discrimination and harassment against s. 47F(1) at the hands of the community and police persists in s. 47F(1). Therefore on the basis of the evidence before me, I cannot exclude as remote and insubstantial the chance that the applicant would face a real chance of serious harm as a consequence of s. 47F(1) being identified as s. 47F(1) by s. 47F(1) immediate family, the broader community and security forces.

I am satisfied that the possibility of the applicant facing harm upon return to s. 47F(1) from s. 47F(1) family and/or the police due to s. 47F(1) is not remote or far-fetched.

### Finding

I am satisfied that there is a real chance of persecution for one or more of the reasons mentioned in s5J(1)(a) in the receiving country.

### Does this real chance of persecution relate to all areas of the receiving country – s5J(1)(c) of the Act?

The applicant's fear must be well-founded in relation to the country as a whole. If there are parts of the country in which the applicant would be safe from persecution, and the applicant can reasonably be expected to relocate to those parts, then they will not have a well-founded fear of persecution in relation to the country as a whole. When assessing what is reasonable, the majority of the High Court in *SZATV* held it means 'reasonable in the sense of practicable', but will also depend on the particular circumstances of the applicant and the impact of relocation on the applicant.<sup>29</sup>

I have considered internal relocation which was discussed with the applicant at interview and I am not satisfied that this would be an option for avoiding serious harm for the applicant. Although country information indicates that s. 47F(1) is more liberal than regional areas, there are still instances of police and societal harassment occurring in s. 47F(1). As the state is a contributor to the persecution, there is no location within s. 47F(1) that could be said to be safe.

### Finding

I am satisfied that the real chance of persecution relates to all areas of the receiving country, as required by s5J(1)(c).

### Are there effective protection measures available to the applicant in the receiving country/ies? - s5J(2) of the Act

s. 47F(1)

With consideration to the country information above, it would seem plausible that if the applicant's family members or members of the community attempt to seriously harm s. 47F(1), the police would not offer effective state protection. It is also apparent the persons most at risk of being harmed in detention include s. 47F(1). Given the legal prohibition against s. 47F(1) and the ongoing reports of harassment and physical abuse by law enforcement agencies, such as the use of s. 47F(1), I am satisfied that the s. 47F(1) authorities remain unwilling to provide adequate state protection to s. 47F(1).

I find that effective protection measures, as defined in section 5LA, are not available to the applicant in the receiving country.

#### **Finding**

I find that effective protection measures, as defined in s5LA, are not available to the applicant in the receiving country.

#### **Could the applicant take reasonable steps to modify their behaviour so as to avoid a real chance of persecution - other than a modification outlined in s5J(3)(a) (b) or (c) of the Act?**

While it may be possible to avoid the adverse attention of the authorities by maintaining a private or discreet practice of s. 47F(1), I am mindful that Appellant S395/2002 v MIMA24 established that such an expectation is not reasonable.

The applicant's claims are related to s. 47F(1) membership of the particular social group s. 47F(1). Under s5J(3)(c)(i) - (vi) **the concealment of** immutable or innate characteristics such as s. 47F(1) are excepted from an applicant taking 'reasonable steps' to modify their behaviour.<sup>30</sup>

#### **Finding**

I find that the applicant could not take reasonable steps to modify their behaviour to avoid a real chance of persecution as outlined in s5J(3).

#### **While in Australia, has the applicant engaged in conduct for the purpose of strengthening their claim/s? – s 5J(6) of the Act**

There is no evidence that the applicant has engaged in conduct for the purpose of strengthening their claims.

#### **Finding**

I find that the applicant has not engaged in conduct in Australia for the purpose of strengthening their claim to be a refugee within the meaning of section 5H of the Act. Therefore, pursuant to s5J(6) of the Act, I have not disregarded this conduct in determining whether the applicant has a well-founded fear of persecution.

I find that the applicant's fear of persecution is well-founded.

#### **Finding on refugee criterion – s36(2)(a)**

<sup>30</sup> PAM3, s5J(3), Refugee Law Guidelines, 01/01/2016

**Finding on s5H(1) of the Act**

I am satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act.

**Exception to the meaning of a Refugee - s5H(2) of the Act**

---

**Are there serious reasons for considering the applicant has committed acts set out in subsections 5H(2)(a), (b) or (c) of the Act?**

**Finding**

I am satisfied the exclusion clauses in paragraphs in 5H(2)(a), (b) or (c) of the Act do not apply to the applicant.

**COMPLEMENTARY PROTECTION CRITERION ASSESSMENT – s36(2)(aa) of the Act**

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Since I find the applicant to be a refugee, Complementary Protection criterion assessment is not relevant to the applicant.

**SECURITY AND SERIOUS CRIME OR DANGER TO THE COMMUNITY ASSESSMENT – subsections 36(1B) and 36(1C) of the Act****Security assessment – s36(1B) of the Act**

An Adverse Security Assessment (ASA) has not been received for this applicant, s. 47F(1). This means s. 47F(1) is not assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security within the meaning of the *Australian Security Intelligence Organisation Act 1979*.

**Serious crime or danger to community or security – s 36(1C) of the Act**

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**Is the applicant considered to be a danger to Australia's security?**

As noted above, there is currently no evidence before me at time of this assessment to indicate that the applicant is considered a risk to national security.

**Has the applicant been convicted by a final judgement of a particularly serious crime and considered to be a danger to the Australian community? – s5M of the Act**


There is currently no evidence before me at the time of this assessment to indicate that the applicant has been convicted by a final judgement of a particularly serious crime and considered to be a danger to the Australian community.

**Finding**

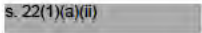
I do not consider, on reasonable grounds, that the applicant is a danger to Australia's security; or having been convicted by a final judgement of a particularly serious crime, is a danger to the Australian community.




s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



**Appendix A - Material before the case officer**

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1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Australian case law as footnoted throughout the recommendation.
3. Country information as footnoted throughout the recommendation.
4. Department of Foreign Affairs and Trade reports (see Direction No.56).
5. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook)
6. Procedures Advice Manual 3: Refugee Law Guidelines
7. Procedures Advice Manual 3: Complementary Protection Guidelines
8. Protection Visa Common Processing Guidelines

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# PROTECTION VISA DECISION RECORD

## Part 1: Application summary

s. 47F(1)

## Part 2: Assessment details

The applicant, s. 47F(1) is refused a Protection visa subclass XA-866 Permanent Protection Visa under s65 of the *Migration Act 1958* (the Act) for the following reasons:

The applicant is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) or s36(2)(aa) and is not a *member of the same family unit* as a non-citizen in respect of whom the Minister is satisfied Australia has protection obligations and who holds a Protection visa of the same class as that applied for by the applicant (s36(2)(b) and s36(2)(c) of the *Migration Act 1958* (the Act)).

## Part 3: Migration history and identity assessment

### **Migration history**

s. 47F(1)

### **Identity**

The applicant presented s. 47F(1) passport at the PV interview on s. 47F(1). The passport will expire on s. 47F(1) and a copy of the passport is held on departmental records.<sup>1</sup>

s. 47F(1)

s. 22(1)(a)(ii)

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There is no evidence before me indicating that the document provided is a *bogus document* as defined in s5(1) of the Act.

The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems has revealed no information that raises concern that the applicant has given a false identity.

For the reasons provided above, and for the purposes of this assessment, I find the applicant's identity is as listed above.

I accept the applicant's identity is:

s. 47F(1)

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#### Part 4: Protection claims


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s. 47F(1)

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s. 22(1)(a)(ii)

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s. 47F(1)

## Part 5: Findings of fact

Section 5AAA was introduced as an amendment to the Act in the Migration Amendment (Protection and Other Measures) Act 2015 and provides that it is the responsibility of an applicant for a protection visa to specify all particulars of his or her protection claims and provide sufficient evidence to establish the claims. 5AAA is intended to encourage PV applicants to present all claims with their primary application to assist the decision maker to establish the relevant facts.<sup>3</sup>

Decision makers should be sensitive to the difficulties often faced by asylum seekers and may need to give the benefit of the doubt if the asylum seeker is generally credible but is unable to substantiate their claims. However, a decision maker is not required to accept uncritically an asylum seeker's claims and the asylum seeker is not entitled to have their claims accepted simply because there is a possibility that they might be true.<sup>4</sup>

### **Statement of claims:**

s. 47F(1)

For the purposes of this assessment, I accept that the applicant has only told s. 47F(1) from s. 47F(1) that s. 47F(1). I also accept that the applicant wrote the statement of claims that s. 47 submitted to the Department.

### **Claims concerning s. 47F(1) :**

s. 47F(1)

3 PAM3, Refugee and Humanitarian, PAM, Protection visas, All applications, Common Processing Guidelines, s 36-37

4 PAM3, Refugee and Humanitarian, Asylum claims, Assessing Credibility.

s. 22(1)(a)(ii)

s. 47F(1)

[REDACTED]

s. 47F(1)

[REDACTED]

I accept that the applicant is a practising s. 47F(1). Nevertheless, for reasons outlined elsewhere in my decision, I do not accept that the applicant ceased attending s. 47F(1) in s. 47F(1) after s. 47F(1).

**Employment:**

s. 47F(1)

[REDACTED]

It was put to the applicant that s. recorded s. occupation as a s. 47F(1) on the Passenger Card s. completed prior to arrival in Australia. The applicant agreed that s. did this. When asked if s. is a s. 47F(1), the applicant said that s. 47F(1). The applicant claimed that s. 47F(1) for s. 47F(1) for about s. 47F(1) years, and stopped s. 47F(1) around s. 47F(1). For the purposes of this assessment, I accept that the applicant's employment history is as stated.

**Claims related to s. 47F(1) relationship with s. 47F(1):**

s. 47F(1)

[REDACTED]



s. 47F(1)

Having carefully considered the applicant's claims concerning s. relationship with s. 47F(1), I am not satisfied that s. has provided an open and honest account of this relationship and the custody of s. children. In reaching this conclusion, I have given weight to the following:

- I am of the opinion that the applicant regularly wore a wedding band in the past and that s. has sought to mislead the Department about this. In reaching this conclusion, I have given weight to the photographic evidence from s. 47F(1) which shows that the applicant consistently wore a ring on s. ring finger, and the applicant's inability to provide a coherent, consistent and plausible explanation about these photographs. I find that this constitutes evidence that the applicant has sought to mislead the Department about the nature of s. relationship with s. 47F(1)

- The applicant has failed to provide consistent testimony about the custody of s. 47F(1) children. In s. 47F(1) original statement of claims, the applicant did not mention that s. 47F(1) partner returned s. 47F(1) children to s. 47F(1) about s. 47F(1) months after taking them away.
- The applicant's testimony concerning the custody of s. 47F(1) children was unconvincing. I do not find it plausible that s. 47F(1) would have returned the children to the applicant's care if s. 47F(1) held strong negative views about s. 47F(1).
- As outlined elsewhere in this decision, adverse credibility findings concerning other elements of the applicant's protection claims, lead me to conclude that the applicant is willing to fabricate claims in order to mislead the Department.

Given the adverse findings above, I do not accept that the applicant is estranged from s. 47F(1) partner, s. 47F(1).

**Claims related to an incident at s. 47F(1) :**

s. 47F(1)

s. 47F(1)

Having carefully considered the applicant's claims concerning the assault at s. 47F(1), I find that the applicant has fabricated this claim. In reaching this conclusion, I have given weight to the following:

- The applicant was not consistent about the nature of s. relationship with s. . Despite originally claiming that s. had been in a relationship with s. at the time of the attack, s. contradicted this claim at interview. The applicant's account of the events leading up to the attack were not consistent. The applicant was not consistent about s. dealings with the police. In s. statement of claims the applicant indicated that the police detained s. for further investigation, but at interview s. did not advance this claim. 47F
- The applicant's claim that news of the event had reached the police before s. arrived at the station, and they refused to assist s. 47F(1) because they knew s. 47F(1) was 47F unconvincing. The applicant was unable to provide a plausible explanation as to why the police would have refused to accept s. account of the incident.
- The applicant was unable to provide a consistent account as to when s. told s. that s. s. 47F(1) 47F 47F(1) 47F
- Adverse credibility findings concerning other elements of the applicant's protection claims, lead me to conclude that the applicant is willing to fabricate claims in order to mislead the Department.

**Claim to have been** s. 47F(1) .

s. 47F(1)

s. 22(1)(a)(ii)

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s. 47F(1)



The applicant's testimony about s. [redacted] movements following s. 47F(1) [redacted], was vague, inconsistent, evasive and unconvincing. I do not accept that the applicant has provided a credible account of s. [redacted] residential history from s. 47F(1) [redacted]. In reaching this conclusion, I have given weight to the following:

s. 22(1)(a)(ii)

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- The applicant has failed to provide consistent testimony about where and with whom s. 47F(1) stayed after s. 47F(1). Despite claiming at the time of application that s. 47F(1) went to stay with a friend, the applicant unconvincingly claimed that s. 47F(1) had actually resided in s. 47F(1) building in s. 47F(1) for s. 47F(1) months at interview. I find this claim to be belated and unconvincing.
- The applicant was inconsistent about where s. 47F(1) resided prior to travelling to Australia. At the time of application s. 47F(1) claimed that s. 47F(1) returned home after an unsuccessful attempt to relocate to another part of s. 47F(1). s. 47F(1) also indicated that s. 47F(1) stayed inside s. 47F(1) house to avoid being attacked. At interview, however, the applicant contradicted this claim by stating that s. 47F(1) did not spend much time at s. 47F(1) house and actually returned to the s. 47F(1) in s. 47F(1). The applicant's claims concerning s. 47F(1) movements during this period were vague, inconsistent, evasive and unconvincing.
- The applicant's claim that s. 47F(1) threatened to kill s. 47F(1) on the streets of s. 47F(1) was belated and unconvincing. I find the applicant's claim that the s. 47F(1) knew s. 47F(1) because a friend had told them about it to be contrived. Furthermore, I find the applicant's assertion that s. 47F(1) was s. 47F(1) in s. 47F(1) because s. 47F(1) was s. 47F(1) and s. 47F(1) to be unpersuasive.
- If the applicant genuinely feared being killed by s. 47F(1) people in s. 47F(1), I find it implausible that s. 47F(1) would return to that area after being threatened in s. 47F(1). The applicant's assertion that s. 47F(1) returned to s. 47F(1) because s. 47F(1) was able to move in and out of the area "undercover" without being seen was unconvincing.
- The applicant's testimony concerning the amount of time that s. 47F(1) spent at s. 47F(1) house in s. 47F(1) after returning from s. 47F(1) was inconsistent and unconvincing. The applicant's belated claim to have returned to s. 47F(1) because s. 47F(1) realised that it was not possible to stay in s. 47F(1) without being seen was contradictory and unpersuasive.

I do not accept that the applicant was s. 47F(1) from s. 47F(1) to s. 47F(1). I find that s. 47F(1) continued to reside at s. 47F(1) home in s. 47F(1).

**Claims related to s. 47F(1):**

s. 47F(1)

s. 47F(1)

Having carefully considered the applicant's claims, I do not accept that the applicant has provided a credible account concerning s. 47F(1) application for a s. 47F(1) and how s. 47F(1) financed s. 47F(1) travel to Australia. I found the applicant's testimony in relation to these matters to be vague, inconsistent, evasive and unconvincing. In reaching this conclusion, I have given weight to the following:

- The applicant's claims concerning s. 47F(1) knowledge of s. 47F(1) travel to Australia was inconsistent. Despite initially claiming that s. 47F(1) never told s. 47F(1) that s. 47F(1) was leaving s. 47F(1) the applicant subsequently claimed that it was s. 47F(1) who had obtained money from a friend in order to facilitate s. 47F(1) travel to Australia.
- The applicant's testimony concerning s. 47F(1) engagement with s. 47F(1) in s. 47F(1) was vague and inconsistent. Despite indicating in s. 47F(1) statement of claims that s. 47F(1) spent most of time with s. 47F(1) because of the discrimination s. 47F(1) was experiencing, the applicant subsequently claimed, at interview, that s. 47F(1) had not attended any s. 47F(1) since s. 47F(1).
- The applicant's claims concerning the funding of s. 47F(1) travel to Australia were unconvincing. I do not find it plausible that the applicant was able to fund travel to Australia through savings and money from s. 47F(1) friend.

**Delay in departing:**

Despite being granted a s. 47F(1), the applicant did not leave s. 47F(1) until s. 47F(1). If the applicant had been s. 47F(1) since s. 47F(1) and genuinely feared that s. 47F(1) was at risk of being killed, I am of the opinion that s. 47F(1) would have departed s. 47F(1) at an earlier opportunity.

**Claim** s. 47F(1)

s. 47F(1)

s. 47F(1)

Given the adverse findings outlined elsewhere in this decision, I am of the opinion that the applicant has demonstrated a willingness to provide false testimony in relation to s. 47F(1) personal experiences in s. 47F(1). I find that the applicant has fabricated significant protection claims in order to mislead the Department. In light of these adverse findings, and in the absence of any evidence in support of s. 47F(1) claims, I do not accept that the applicant is s. 47F(1). Consequently, I find that the applicant has fabricated claims in relation to having had s. 47F(1) in s. 47F(1).

## Part 6: Australia's protection obligations

### Protection in another country assessment

As I have found that the applicant does not meet s36(2)(a) or (aa), I also find that it is not necessary to assess s36(3) of the Act. It is not necessary to assess if the applicant has a right to enter and reside in a country other than s. 47F(1).

### Refugee criteria assessment—s36(2)(a) of the Act

Available country information indicates that s. 47F(1) in s. 47F(1) and that the s. 47F(1) faces violence, harassment, and discrimination.<sup>6</sup> This information indicates that the s. 47F(1) s. 47F(1).

For the reasons set out at Part 5 above, I have found that the applicant's protection claims in relation to s. 47F(1) being targeted for harm because of s. 47F(1) are not credible.

I am not satisfied that there is a real chance that, if the applicant was returned to s. 47F(1), they will be persecuted for one or more of the reasons mentioned in s5J(1)(a) of the Act. Therefore, the applicant is not a refugee as defined in s5H and the criterion in s36(2)(a) of the Act is not satisfied for this reason.

### Finding on refugee criteria—s36(2)(a) of the Act

I am not satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act. Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the Act.

As I am not satisfied s. 47F(1) is a refugee, as defined by s5H(1) of the Act, an assessment in relation to s5H(2) of the Act has not been made.

s. 47F(1)

## Complementary protection criteria assessment—s36(2)(aa) of the Act

For the reasons set out at Part 5 above, I have found there is no credible evidence before me to indicate that the applicant is s. 47F(1), or that s. 47F(1) has ever been targeted for harm and mistreatment for this reason. I have found there is no real chance the applicant would suffer serious harm for this reason if s. 47F(1) returns to s. 47F(1). Considering the information discussed above, I also find there is no real risk of the applicant facing significant harm, as defined in s36(2A), for these reasons if s. 47F(1) returned to s. 47F(1) in the foreseeable future.

### Finding on complementary protection criteria—s36(2)(aa) of the Act

In the absence of any credible threat or any objective evidence of danger, I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to s. 47F(1), there is a real risk s. 47F(1) will suffer significant harm as outlined in s36(2)(aa) of the Act. Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(aa) of the Act.

As I am not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations an assessment in relation to s36(2C) has not been made.

Ministerial Direction No.75 – Refusal of protection visas relying on section 36(1C) and section 36(2C)(b) During this assessment I have followed Ministerial Direction No.75 – Refusal of protection visas relying on s36(1C) and s36(2C)(b). I have followed the order in which the application must be considered as required by this Direction in respect of s36(2)(a) and s36(2)(aa), s36(1B), s36(1C) and s36(2C)(b) and finally s501 of the Act.

### Finding on Australia's protection obligations

I am not satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act. Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the Act.

As I am satisfied s. 47F(1) is not a refugee, as defined by s5H(1) of the Act, an assessment in relation to s5H(2) was not made.

I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of s. 47F(1) being removed to s. 47F(1) there is a real risk they will suffer significant harm as defined in s36(2A) of the Act.

Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(aa) of the Act.

s. 22(1)(a)(ii)

s. 22(1)  
(a)(ii)

Delegate of the Minister for Home Affairs for the purposes of s65 of the Act

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)



## Attachment A—Material before the decision maker

Departmental file s. 22(1)(a)(ii) relating to the applicant.

Australian case law as footnoted throughout the assessment record.

Country information as footnoted throughout the assessment record including any relevant country information assessment prepared by the Department of Foreign Affairs and Trade specifically for the purpose of assessing protection obligations (see Direction No.56).

The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook).

Procedures Advice Manual 3: Refugee and Humanitarian – Refugee Law Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Complementary Protection Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Common Processing Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Permanent protection visas processing guidelines

## Attachment B—Protection obligations applicable law

### *Migration Act 1958*

#### Section 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.

#### Section 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.

### **Section 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.

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*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.



# PROTECTION VISA DECISION RECORD

## Part 1: Application summary

s. 47F(1)

## Part 2: Assessment details

The applicant, s. 47F(1), is refused a Protection visa subclass XA-866 Permanent Protection Visa under s65 of the *Migration Act 1958* (the Act) for the following reasons:

The applicant is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) or s36(2)(aa) and is not a *member of the same family unit* as a non-citizen in respect of whom the Minister is satisfied Australia has protection obligations and who holds a Protection visa of the same class as that applied for by the applicant (s36(2)(b) and s36(2)(c) of the *Migration Act 1958* (the Act)).

## Part 3: Migration history and identity assessment

s. 47F(1)

### Identity

The applicant presented s. 47F(1) passport at s. 47F(1) Protection visa interview on s. 47F(1). The passport will expire on s. 47F(1) and a copy of the passport is held on departmental records.<sup>1</sup>

s. 47F(1)

s. 22(1)(a)(ii)

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There is no evidence before me indicating that the document provided is a *bogus document* as defined in s5(1) of the Act.

The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems has revealed no information that raises concern that the applicant has given a false identity.

For the reasons provided above, and for the purposes of this assessment, I find the applicant's identity is as listed above.

I accept the applicant's identity is:

s. 47F(1)

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#### Part 4: Protection claims

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s. 47F(1)

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s. 47F(1)

## Part 5: Findings of fact

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Section 5AAA was introduced as an amendment to the Act in the Migration Amendment (Protection and Other Measures) Act 2015 and provides that it is the responsibility of an applicant for a protection visa to specify all particulars of his or her protection claims and provide sufficient evidence to establish the claims. 5AAA is intended to encourage PV applicants to present all claims with their primary application to assist the decision maker to establish the relevant facts.<sup>3</sup>

Decision makers should be sensitive to the difficulties often faced by asylum seekers and may need to give the benefit of the doubt if the asylum seeker is generally credible but is unable to substantiate their claims. However, a decision maker is not required to accept uncritically an asylum seeker's claims and the asylum seeker is not entitled to have their claims accepted simply because there is a possibility that they might be true.<sup>4</sup>

The applicant's testimony at interview was consistent with the claims submitted at the time of application. Nevertheless, for the reasons outlined below, I am of the opinion that the applicant has fabricated s. 47F(1) protection claims.

47

**Claim to have** s. 47F(1) :

The applicant claims s. 47F(1)

<sup>3</sup> PAM3, Refugee and Humanitarian, PAM, Protection visas, All applications, Common Processing Guidelines, s 36-37

<sup>4</sup> PAM3, Refugee and Humanitarian, Asylum claims, Assessing Credibility.

s. 47F(1)

Having carefully considered the applicant's claims and testimony concerning this matter, I accept that the applicant may have undertaken a placement s. 47F(1) at the s. 47F(1)

s. 47F(1). Nevertheless, I do not accept that s. 47F(1)

s. 47F(1). In reaching this conclusion, I have given weight to the following:

- As outlined further below, I find that the applicant has fabricated key protection claims. Consequently, I am of the opinion that the applicant's claim to have organised s. 47F(1) s. 47F(1) is a part of this false narrative.
- I do not find it plausible that the applicant would have organised s. 47F(1)

**Claim to be** s. 47F(1).

The applicant's testimony concerning s. 47F(1) was vague, unconvincing and unsubstantiated. Despite claiming to have been working as s. 47F(1), the applicant was unable to provide any compelling evidence in support of this claim.

At interview, the applicant presented a s. 47F(1) identity card that was of a particularly low quality and did not have any security features. At interview, the applicant claimed that the quality of the card was actually of a high standard for s. 47F(1). I am of the opinion that such a document is easily fabricated and give it no weight as evidence in support of the applicant's claims.

At interview, it was put to the applicant that s. 47F(1) had not provided any compelling evidence in support of s. 47F(1) claim s. 47F(1). The applicant indicated that s. 47F(1) did not have access to any of s. 47F(1) work because s. 47F(1) had to flee s. 47F(1) i. The applicant also claimed that it was difficult to provide any evidence because, despite being s. 47F(1) was never s. 47F(1)

On s. 47F(1), the applicant submitted a copy of a s. 47F(1) which included an article by s. 47F(1). This is the only evidence that the applicant has been able to produce as evidence of s. 47F(1) work as s. 47F(1) from s. 47F(1). Having carefully considered this article, I am of the opinion that this article has been fabricated in order to substantiate the applicant's claim to s. 47F(1). In reaching this conclusion, I have given weight to the following:

- The article is purported to have been s. 47F(1) of s. 47F(1) s. 47F(1) but reports on events that occurred in s. 47F(1). It also makes reference to a forthcoming court appearance to be held on s. 47F(1). It is also noted that the s. 47F(1) on the page, purported to have been s. 47F(1), also refers to events that occurred prior to s. 47F(1). I do not find it plausible that the s. 47F(1) s. 47F(1) concerning events that occurred in s. 47F(1), in a s. 47F(1)

s. 22(1)(a)(ii)



- Overall, the article has the same structure as an s. 47F(1) on s. 47F(1). Furthermore, it contains some passages that are identical to this s. 47F(1). I am of the opinion that the s. 47F(1) was fabricated using the s. 47F(1) as a template.
- The font sizes of the two articles presented on page 11 are different and further supports a finding that the articles are fabricated.
- During the course of the interview, the applicant maintained s. 47F(1) was unable to provide evidence of s. 47F(1) work as s. 47F(1) because the s. 47F(1) does not record s. 47F(1) 47F. The fact that this s. 47F(1) contradicts s. 47F(1) testimony at interview.

The only other evidence submitted by the applicant in support of s. 47F(1) claim to be s. 47F(1) was s. 47F(1) 7 For reasons outlined in further detail below, I am also of the opinion that this report is also fabricated.

Having carefully considered the applicant's claims and evidence, I am of the opinion that the evidence submitted by the applicant in relation to s. 47F(1) employment as s. 47F(1) is fabricated and s. 47F(1) did not work as s. 47F(1) for s. 47F(1) 47F.

At interview, the applicant claimed that s. 47F(1). The applicant has submitted photographs that show s. 47F(1). While I do not accept that the applicant was s. 47F(1), I accept that s. 47F(1) may have participated in a s. 47F(1). I do not accept that s. 47F(1) were discussed in this program.

**Claims to have been a s. 47F(1) :**

In s. 47F(1) statement of claims, the applicant claimed s. 47F(1)

s. 47F(1)

As outlined above, I do not accept that the applicant worked as s. 47F(1) for the s. 47F(1). Consequently, I do not accept that the applicant's work as s. 47F(1) led s. 47F(1) to s. 47F(1). Furthermore, at interview, the applicant failed to demonstrate knowledge of s. 47F(1) in s. 47F(1) commensurate with s. 47F(1) claimed profile. s. 47F(1) was unfamiliar with key s. 47F(1) and aspects of the law impacting on s. 47F(1). The applicant's assertion that s. 47F(1) only focused on s. 47F(1) at a local level was unpersuasive. 47F

While the applicant has submitted a number of photographs purporting to show s. 47F(1) engaging in activities with s. 47F(1) in s. 47F(1). I do not give them any weight. These photographs are of unidentified people and there is no corroborating evidence to support s. 47F(1) assertion that they are s. 47F(1) or that s. 47F(1). In the absence of a 47F

credible account, I do not accept that the applicant was involved in any of the § 47F(1) that § 47F(1) claims.

**Claims to have been harmed and mistreated in § 47F(1)**

The applicant claims to have been subjected to harm and mistreatment in § 47F(1) because of § 47F(1) and § 47F(1). As outlined above, I do not accept that the applicant worked as a § 47F(1) or that § 47F(1) § 47F(1). Consequently, I do not accept § 47F(1) was subjected to any of the harm and mistreatment in § 47F(1) claimed.

**Claims in relation to harm and mistreatment in § 47F(1) :**

The applicant claims that the § 47F(1) arranged for § 47F(1) to relocate to § 47F(1). As outlined above, I do not accept that the applicant worked § 47F(1) for the § 47F(1) § 47F(1). Consequently, I do not accept that the applicant worked as § 47F(1) for § 47F(1) from § 47F(1), or that § 47F(1) resided there in accommodation organised by § 47F(1) in this city. In the absence of any credible testimony outlining § 47F(1) employment and accommodation in § 47F(1) I do not accept § 47F(1) resided in this city from § 47F(1). As a result of this finding, I am of the opinion that the applicant's claims concerning harm and mistreatment experienced in § 47F(1) are all fabricated.

Having carefully considered the applicant's claims, and in the absence of any credible evidence to the contrary, I am of the opinion that the applicant continued to reside at § 47F(1), from § 47F(1).

§ 47F(1)

As outlined above, I do not accept that the applicant was § 47F(1). In reaching this conclusion, I have also given weight to adverse findings made in relation to § 47F(1) submitted by the applicant § 47F(1) on § 47F(1) § 47F(1).

" § 47F(1)

§ 47F(1)

§ 47F(1). Having carefully considered § 47F(1), I am of the opinion that it was fabricated in order to mislead the Department. In reaching this conclusion, I have given weight to the following:

- The report indicates that the threats § 47F(1) had only been made "just days" before § 47F(1). Given that § 47F(1) appears to have § 47F(1) on § 47F(1), I do not find § 47F(1) to be consistent with the applicant's own statement of claims. In particular,

§ 22(1)(a)(ii)



the report makes no mention of the attack on the applicant's house in s. 47F(1) and the s. 47F(1) in s. 47F(1).

- The report is vague and provides no specific information about the timing and location of the threats that the applicant had purportedly received. The report is lacking in detail and appears to be contrived in order to establish that the applicant had s. 47F(1). I am not satisfied that it is a genuine report.
- The reports states that s. 47F(1). The level of harm and mistreatment outlined in s. 47F(1) is not consistent with the harm and mistreatment outlined by the applicant in s. 47F(1) statement of claims.

**Claim to have been** s. 47F(1) :

s. 47F(1)  
 s. 47F(1)  
 s. 47F(1)  
 s. 47F(1) As outlined above, I am of the opinion that the applicant has fabricated key protection claims, including s. 47F(1). Consequently, I do not accept that s. 47F(1).

#### **Conclusion:**

Despite being given an opportunity to address concerns about s. claims to be a s. 47F(1), the applicant failed to do so. Given the adverse findings outlined elsewhere in this decision, I am of the opinion that the applicant has demonstrated a willingness to provide false testimony in relation to s. personal experiences in s. 47F(1). I find that the applicant has fabricated significant protection claims in order to mislead the Department. In light of these adverse findings, and in the absence of any credible evidence in support of s. 47F(1) claims, I do not accept that the applicant was a s. 47F(1). Furthermore, I do not accept that s. 47F(1) and s. 47F(1) or had s. 47F(1). Finally, I do not accept that s. has an adverse profile as s. 47F(1).

## **Part 6: Australia's protection obligations**

### **Protection in another country assessment**

As I have found that the applicant does not meet s36(2)(a) or (aa), I also find that it is not necessary to assess s36(3) of the Act. It is not necessary to assess if the applicant has a right to enter and reside in a country other than s. 47F(1).

### **Refugee criteria assessment—s36(2)(a) of the Act**

Available country information indicates that s. 47F(1) and that s. 47F(1) faces violence, harassment, and discrimination.<sup>10</sup> This information indicates that s. 47F(1) remains fearful and underground.

For the reasons set out at Part 5 above, I do not accept that the applicant was s. 47F(1), or that s. was targeted for harm because of s. 47F(1). Furthermore, I do not

s. 47F(1)

accept that s. 47F(1) . I find that the applicant has failed to provide any credible claims concerning harm and mistreatment experienced in s. 47F(1)

s. 47F(1)



I have considered all of the claims of the applicant, both individually and cumulatively. I find that if the applicant were to return to s. 47F(1) , they would not face a real chance of persecution now or in the foreseeable future.

I am not satisfied that there is a real chance that, if the applicant was returned to s. 47F(1) , they will be persecuted for one or more of the reasons mentioned in s5J(1)(a) of the Act. Therefore, the applicant is not a refugee as defined in s5H and the criterion in s36(2)(a) of the Act is not satisfied for this reason.

s. 47F(1)



s. 22(1)(a)(ii)

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***Finding on refugee criteria—s36(2)(a) of the Act***

I am not satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act. Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the Act.

As I am not satisfied s. 47F(1) is a refugee, as defined by s5H(1) of the Act, an assessment in relation to s5H(2) of the Act has not been made.

***Complementary protection criteria assessment—s36(2)(aa) of the Act***

For the reasons set out at Part 5 above, I have found there is no credible evidence before me to indicate that the applicant is a s. 47F(1), or s. 47F(1) has ever been targeted for harm and mistreatment for this reason. I have also considered whether the applicant would face a real chance of persecution on account of s. 47F(1) or s. 47F(1) extended stay in Australia. I have found there is no real chance the applicant would suffer serious harm for these reasons s. 47F(1) returns to s. 47F(1). Considering the information discussed above, I also find there is no real risk of the applicant facing significant harm, as defined in s36(2A), for these reasons s. 47F(1) returned to s. 47F(1) in the foreseeable future.

***Finding on complementary protection criteria—s36(2)(aa) of the Act***

In the absence of any credible threat or any objective evidence of danger, I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to s. 47F(1), there is a real risk s. 47F(1) will suffer significant harm as outlined in s36(2)(aa) of the Act. Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(aa) of the Act.

As I am not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations an assessment in relation to s36(2C) has not been made.

Ministerial Direction No.75 – Refusal of protection visas relying on section 36(1C) and section 36(2C)(b) During this assessment I have followed Ministerial Direction No.75 – Refusal of protection visas relying on s36(1C) and s36(2C)(b). I have followed the order in which the application must be considered as required by this Direction in respect of s36(2)(a) and s36(2)(aa), s36(1B), s36(1C) and s36(2C)(b) and finally s501 of the Act.

***Finding on Australia's protection obligations***


I am not satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act. Therefore, I am also not satisfied s. 47F(1) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the Act.

As I am satisfied s. 47F(1) is not a refugee, as defined by s5H(1) of the Act, an assessment in relation to s5H(2) was not made.

I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of s. 47F(1) being removed to s. 47F(1), there is a real risk they will suffer significant harm as defined in s36(2A) of the Act.

Therefore, s. 47F(1) is not a person in respect of whom Australia has protection obligations as outlined in s36(2)(aa) of the Act.

s. 22(1)(a)(ii)

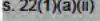


s. 22(1)  
(a)(ii)

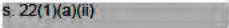


Delegate of the Minister for Home Affairs for the purposes of s65 of the Act

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



**Attachment A—Material before the decision maker**

Departmental file s. 22(1)(a)(ii) relating to the applicant.

Australian case law as footnoted throughout the assessment record.

Country information as footnoted throughout the assessment record including any relevant country information assessment prepared by the Department of Foreign Affairs and Trade specifically for the purpose of assessing protection obligations (see Direction No.56).

The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook).

Procedures Advice Manual 3: Refugee and Humanitarian – Refugee Law Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Complementary Protection Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Common Processing Guidelines

Procedures Advice Manual 3: Refugee and Humanitarian – Permanent protection visas processing guidelines

## Attachment B—Protection obligations applicable law

### *Migration Act 1958*

#### Section 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.

#### Section 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.

### Section 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.

# PROTECTION VISA ASSESSMENT

s. 22(1)(a)(ii)

## APPLICATION SUMMARY

### Applicant details

s. 47F(1)

### Assessment finding

For the reasons outlined below, I recommend that s. 47F(1) (the applicant) is a person in respect of whom Australia has protection obligations as outlined in s36(2)(a) of the *Migration Act 1958* (the Act).

As I recommend the person is a refugee, I have not considered s36(2)(aa) of the Act, the criterion for the grant of a Protection visa on complementary protection grounds.

I have not considered the criteria referred to in s 36(1A)(a) of the Act or the criteria in Schedule 2 of the Migration Regulations for a Protection (class XA, subclass 866) visa, therefore I have not yet made a decision in relation to whether the applicant meets the criteria for a grant of a Protection visa.

This finding is not an exercise of the power under s65 of the Act.

### Applicant history/migration history

s. 47F(1)

s. 22(1)(a)(ii)

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s. 47F(1)



## Summary of protection claims

s. 47F(1)



## FINDINGS PRELIMINARY TO ASSESSMENT OF PROTECTION CLAIMS

### Identity assessment

The applicant has provided the following documentary evidence of their identity, nationality or citizenship:

- s. 47F(1) in the name s. 47F(1),  
born s. 47F(1).<sup>1</sup>

There is no evidence before me indicating that any of the documents provided is a bogus document as defined in s5(1) of the Act.

s. 47F(1)



s. 22(1)(a)(ii)





The applicant has provided sufficient evidence of their identity which is consistent with their narrative and biometrics. A check of relevant systems has revealed no information that raises concern that the applicant has given a false identity.

s. 47F(1)

For the reasons provided above, and for the purposes of this assessment, I find the applicant's identity is as listed.

### **Protection in another country – section 36(3)-36(7)**

I have found the applicant to be a former habitual resident of s. 47F(1). The applicant claims that they do not hold citizenship of any other country or have a current right to enter and reside in any other country. There is no material evidence before me which contradicts this claim.

### **Finding**

I find that, based on the evidence before me, the applicant does not have a right to enter and reside in a country other than their country of citizenship.

I accept that, as the applicant does not have a current right to enter and reside in a country other than their country of citizenship, s36(3) of the Act does not apply to them.

### **Findings of fact**

At the time of application, the applicant indicated that s. 47F(1), but also stated that s. 47F(1) had s. 47F(1). The applicant has provided two letters of support from friends, and a psychologist, which support s. 47F(1) claim s. 47F(1).<sup>3</sup> At interview, the applicant provided testimony in an open, forthright and compelling manner concerning s. 47F(1). s. 47F(1) explained that s. 47F(1) was s. 47F(1) and identified as s. 47F(1). s. 47F(1) provided persuasive testimony in relation to the conservative nature of s. 47F(1) family. I accept that the applicant witnessed, and was also personally subjected to physical harm perpetrated by s. 47F(1) when s. 47F(1) transgressed social/religious norms.

I find that the applicant s. 47F(1) and that s. 47F(1) family holds conservative views concerning s. 47F(1).

### **Australia's protection obligations**

Sections 36(2)(a) and (aa) of the Act set out criteria for the grant of a Protection visa.

Under s36(2)(a), a criterion for the grant of a Protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the applicant is a refugee as defined by s5H of the Act.

s. 47F(1)



Under s36(2)(aa), a criterion for the grant of a Protection visa is that the Minister is satisfied that Australia has protection obligations in respect of the applicant because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Section 36 of the Act also sets out criteria which must be satisfied for the grant of a Protection visa where the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen who holds a Protection visa and meets one of the two criteria described above.

## **REFUGEE CRITERION ASSESSMENT – section 36(2)(a) of the Act**

### **Persecution**

#### **Does the applicant fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion? - subsection 5J(1)(a) of the Act**

Whether the applicant is a member of a group that is a particular social group (PSG) is to be determined from relevant country information in relation to s. 47F(1). The available evidence indicates there is an identifiable s. 47F(1). It is characterised by s. 47F(1), which set the PSG apart from the society as a whole. I consider that s. 47F(1) are recognisable due to their s. 47F(1), rather than a shared fear of persecution. A more specifically defined or exclusive PSG of s. 47F(1) has been used for this assessment.

#### **Finding**

In accordance with s5J(1)(a), I am satisfied that the applicant fears persecution because of s. 47F membership of a Particular Social Group (PSG), s. 47F(1).

#### **Is/are the reason/s established the essential and significant reason/s for the persecution they fear? - subsection 5J(4)(a) of the Act**

The applicant claims to fear harm because s. 47F(1). It is noted that the applicant has also claimed that s. 47F fears harm and mistreatment as s. 47F(1) and because of s. 47F religious views. Nevertheless, I am of the opinion that the applicant's s. 47F(1) is the essential and significant reason for the persecution feared.

#### **Finding**

I am satisfied that the reason of membership of a Particular Social Group (PSG) is the essential and significant reason for the feared persecution.

#### **Does the persecution feared involve serious harm to the applicant – s5J(4)(b), and subsection 5J(5) of the Act which lists instances of serious harm?**

The applicant fears that s. 47F(1) could be physically harmed or killed by s. 47F(1).

4/1

4/1

4/1

**Finding**

I am satisfied the feared persecution involves serious harm to the applicant as required under s5J(4)(b) of the Act.

**Does the persecution feared involve systematic and discriminatory conduct - subsection 5J(4)(c) of the Act?**

The country reports cited in my assessment of s5J(1)(b) indicate that s. 47F(1) authorities and non-state actors target s. 47F(1) in a systematic and discriminatory manner in s. 47F(1).

**Finding**

I am satisfied the feared persecution involves systematic and discriminatory conduct.

**Is the fear of persecution well-founded?**

**In accordance with s5J(1)(b), is there a real chance that if the applicant returned to the receiving country, they would be persecuted for one or more of the reasons mentioned in s5J(1)(a) of the Act?**

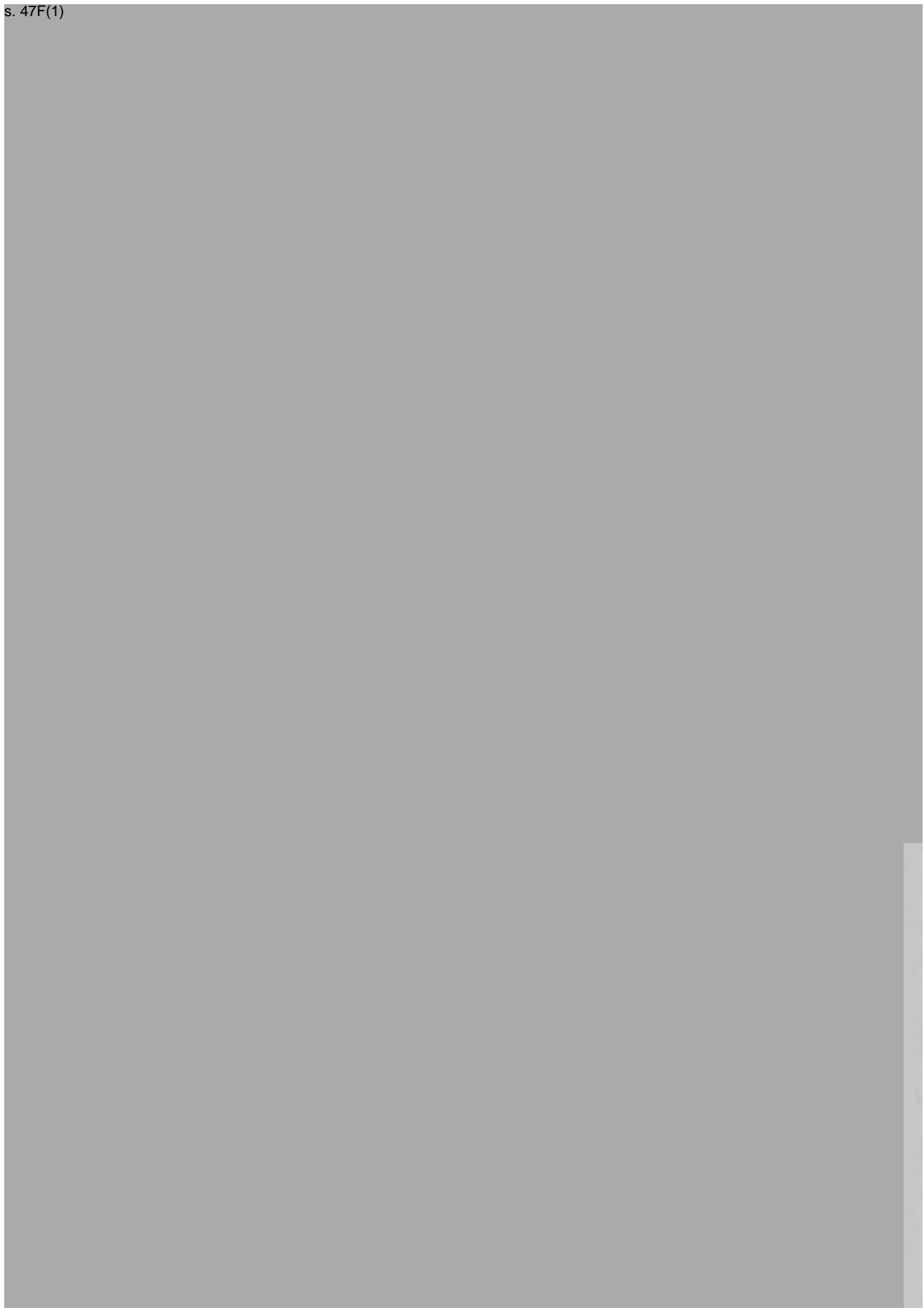
A fear of being persecuted is well-founded if there is a “real chance” that an applicant may be persecuted. A real chance may be below a 50 per cent chance; however a real chance is not a remote chance. There needs to be a real substantial basis for a fear of persecution in order for it to be well-founded.

I have accepted as credible the applicant’s claim s. 47F(1). I have considered whether the applicant, s. 47F(1) particular circumstances, faces a real chance of persecution or serious harm in s. 47F(1) if s. 47F(1) were to s. 47F(1).

s. 47F(1)

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s. 47F(1)



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s. 22(1)(a)(ii)



s. 47F(1)

**Conclusion:**

As outlined in the Findings of Fact section, I accept that the applicant s. 47F(1) and that s. 47F(1) has been s. 47F(1) from s. 47F(1) family and the broader community in s. 47F(1) because s. 47F(1) feared harm and mistreatment. In light of the available evidence, I am satisfied that to s. 47F(1) raises a high likelihood of discrimination, threats, extortions, verbal abuse and harassment, as well as the risk of violence or hate crimes from within s. 47F(1) family or the broader community. I am of the opinion that the applicant is at an increased risk of harm within the family and society as s. 47F(1) because of the general treatment of s. 47F(1) and s. 47F(1) that operates in s. 47F(1)

Evaluating these factors, I am satisfied the applicant is cumulatively likely to face a real chance of persecution or serious harm on s. 47F(1) return to s. 47F(1) in the reasonably foreseeable future. I am satisfied therefore that a balanced assessment of the country information leads to a conclusion that the statutory requirements for a well-founded fear are made out.

**Finding**

s. 47F(1)

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I am satisfied that there is a real chance of persecution for one or more of the reasons mentioned in s5J(1)(a) in the receiving country.

**Does this real chance of persecution relate to all areas of the receiving country – s5J(1)(c) of the Act?**

The applicant's fear must be well-founded in relation to the country as a whole. If there are parts of the country in which the applicant would be safe from persecution, and the applicant can reasonably be expected to relocate to those parts, then they will not have a well-founded fear of persecution in relation to the country as a whole. When assessing what is reasonable, the majority of the High Court in *SZATV* held it means 'reasonable in the sense of practicable', but will also depend on the particular circumstances of the applicant and the impact of relocation on the applicant.<sup>15</sup> As discrimination and persecutory acts against s. 47F(1) is prevalent throughout s. 47F(1), I find the applicant cannot relocate within the s. 47F(1) s. 47F(1).

**Finding**

I am satisfied that the real chance of persecution relates to all areas of the receiving country, as required by s5J(1)(c).

**Are there effective protection measures available to the applicant in the receiving country/ies? - s5J(2) of the Act**

Given the legal prohibition against s. 47F(1) and the ongoing reports of discrimination, harassment and physical harm, I am satisfied that the s. 47F(1) authorities remain unwilling to provide adequate state protection to s. 47F(1).

**Finding**

I find that effective protection measures, as defined in s5LA, are not available to the applicant in the receiving country.

**Could the applicant take reasonable steps to modify their behaviour so as to avoid a real chance of persecution - other than a modification outlined in s5J(3)(a) (b) or (c) of the Act?**

Australian refugee case law has advised that if an applicant would be forced to modify their behaviour so as to avoid being persecuted in their country of origin, they may be owed protection, if doing so would entail the suppression of basic human rights.<sup>16</sup> I am satisfied that the modifying s. 47F behaviour to hide s. 47F(1) constitutes suppression of a basic human right.

**Finding**

I find that the applicant could not take reasonable steps to modify their behaviour to avoid a real chance of persecution as outlined in s5J(3).

**While in Australia, has the applicant engaged in conduct for the purpose of strengthening their claim/s? – s 5J(6) of the Act**

s. 47F(1)

While the applicant has I am satisfied that there are no issues relating to the applicant's circumstances which are relevant to this subsection of the Act.

#### **Finding**

I find that the applicant has not engaged in conduct in Australia for the purpose of strengthening their claim to be a refugee within the meaning of section 5H of the Act. Therefore, pursuant to s5J(6) of the Act, I have not disregarded this conduct in determining whether the applicant has a well-founded fear of persecution.

I find that the applicant's fear of persecution is well-founded.

#### **Finding on refugee criterion – s36(2)(a)**

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#### **Finding on s5H(1) of the Act**

I am satisfied that s. 47F(1) is a refugee as defined by s5H(1) of the Act.

#### **Exception to the meaning of a Refugee - s5H(2) of the Act**

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#### **Are there serious reasons for considering the applicant has committed acts set out in subsections 5H(2)(a), (b) or (c) of the Act?**

On the evidence before me at time of assessment, I do not have serious reasons for considering that subsection 5H(1) does not apply to the Applicant for the reasons stated in paragraphs 5H(2)(a), (b) or (c).

#### **Finding**

I am satisfied the exclusion clauses in paragraphs in 5H(2)(a), (b) or (c) of the Act do not apply to the applicant.

#### **COMPLEMENTARY PROTECTION CRITERION ASSESSMENT – s36(2)(aa) of the Act**

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Since I find the applicant to be a refugee, Complementary Protection criterion assessment is not relevant to the applicant.

#### **SECURITY AND SERIOUS CRIME OR DANGER TO THE COMMUNITY ASSESSMENT – subsections 36(1B) and 36(1C) of the Act**

##### **Security assessment – s36(1B) of the Act**

An Adverse Security Assessment (ASA) has not been received for this applicant, s. 47F(1). This means s. 47F(1) is not assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security within the meaning of the *Australian Security Intelligence Organisation Act 1979*.

##### **Serious crime or danger to community or security – s 36(1C) of the Act**

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**Is the applicant considered to be a danger to Australia's security?**

As noted above, there is currently no evidence before me at time of this assessment to indicate that the applicant is considered a risk to national security.


**Has the applicant been convicted by a final judgement of a particularly serious crime and considered to be a danger to the Australian community? – s5M of the Act**

There is currently no evidence before me at the time of this assessment to indicate that the applicant has been convicted by a final judgement of a particularly serious crime and considered to be a danger to the Australian community.


**Finding**

I do not consider, on reasonable grounds, that the applicant is a danger to Australia's security; or having been convicted by a final judgement of a particularly serious crime, is a danger to the Australian community.


s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



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**Appendix A - Material before the case officer**

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1. Departmental file s. 22(1)(a)(ii) relating to the applicant.
2. Australian case law as footnoted throughout the recommendation.
3. Country information as footnoted throughout the recommendation.
4. Department of Foreign Affairs and Trade reports (see Direction No.56).
5. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Re-issued, Geneva, December 2011 (the UNHCR Handbook)
6. Refugee Law Guidelines
7. Complementary Protection Guidelines
8. Protection Visa Processing Guidelines

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