



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06480

Date and time of decision: 18 April 2019 14:39:00

N Becke, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen from Gilan Province, Iran. On 7 April 2017 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 18 March 2019 a delegate of the Minister for Immigration (the delegate) refused to grant this visa.

Information before the IAA

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

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - The Iranian authorities chased, detained, tortured and interrogated him because of his political activities.
 - The applicant had an affair with a married woman, whose relatives were members of the Iranian security forces. In approximately 2012 they abducted the applicant for two days and assaulted him. Several months later they attempted to abduct him again but he escaped and went into hiding.
 - In October 2012 the applicant departed Iran legally, using his own passport.
 - The applicant fell in love with Christianity shortly after his arrival at Christmas Island.
 - In mid-January 2013 the applicant was released from detention and moved to [City 1] where he began his journey to become a true believer in Jesus Christ.
 - In July 2012 the applicant was baptised at [Church 1].
 - Since residing in [City 1] the applicant has continued his political activities against the Iranian regime and participated in Christian activities.
 - The applicant fears the Iranian authorities will detain, interrogate, torture or kill him because: he had an affair with a family member of the security forces; since he has been in Australia he has been baptised and attended church; he is a Christian; he has undertaken anti-Iranian regime activities; and he would be returning as a failed asylum seeker from Australia.

Refugee assessment

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

Well-founded fear of persecution

5. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
6. The applicant has been consistent in stating his identity since his arrival in Australia. In support, the applicant has provided copies of his Iranian passport, birth certificate, national identity card and drivers licence, accompanied by English translations. On the basis of the information before me I am satisfied the applicant's identity is as claimed and that Iran is the receiving country for the purposes of this assessment.
7. At the SHEV interview the delegate referred to the applicant's written SHEV statement and asked about his political activities in Iran. The applicant responded that he did not undertake any political activities. After considerable hesitation, the applicant added that in 2009 he helped an injured woman after the elections. The applicant claimed that he took the woman to hospital where he was asked for his address. The applicant then added that he was "not found by them".
8. The delegate then asked the applicant if he had engaged in any political activities in Australia and he responded that he had not. The delegate then read the applicant's written SHEV statement back to him, which indicated the contrary. The applicant then retracted his earlier evidence and stated that since his arrival in Australia he has been undertaking unspecified activities on [social media] because he has to fight against what is happening in Iran as much as possible. The applicant referred to the violations of women's rights in Iran, specifically the requirement to wear the hijab. The applicant has not provided any corroborating material to support his claimed [social media] activity, and I do not accept that he has expressed any such opinions on social media. On the evidence, I am not satisfied that the applicant has ever engaged in any type of political activities in Iran or Australia.
9. At the SHEV interview the applicant raised that, just prior to his departure from Iran, he had had an affair with a woman whose husband's family were part of the security forces. The applicant's initial evidence regarding this was vague; however, after a break in the SHEV interview, during which the applicant consulted with his representative, he added further details regarding this matter.
10. The applicant advised the delegate that he broke up with the woman upon finding out she was married, but she continued to contact him. In 2012 the woman's husband abducted and assaulted the applicant for two days, and then released him. Three months later, around June

or July, the woman's husband and other persons, whom the applicant identified as Sepah members, attempted to abduct him again but he escaped and went to work in a factory out of town. Following this incident, the applicant remained cautious, rarely leaving the factory until his departure from Iran in October 2012.

11. I have serious concerns regarding the credibility of the applicant's evidence. The applicant told the delegate that he could not remember when he first met the woman or whether he knew she was married, and his evidence as to whether or not they had sex or just conducted their purported relationship over the phone, changed during the SHEV interview. I do not consider it credible that the applicant would not be able to recall these details with more accuracy. I also do not consider it plausible that if the applicant had escaped from the woman's relatives, purportedly members of the Iranian security forces, that he would be able to avoid them for several months and then depart the country, without incident, using his own passport.
12. While I note the applicant raised his claim regarding the affair at his arrival interview, he did not raise it in his SHEV application in which he also indicated that he was working at the same address for the twelve months prior to his departure from Iran. I consider that this undermines his claim to have been in hiding for some of that time. Given the superficial and implausible nature of the applicant's evidence, I do not accept that he had an affair with a married woman whose relatives abducted and assaulted him, and that this is the reason he left Iran.
13. The applicant also told the delegate that in 2013 he received a phone call from his [sibling] who advised him people had visited their home in Iran looking for him. The applicant's evidence as to whether these people came on one or two occasions varied, and I do not find it credible that he would not be able to recall this detail with accuracy and I do not accept the visits occurred as claimed. Given the evidence overall, I am not satisfied the applicant was a person of interest to the Iranian authorities, or anyone else, at the time of his departure from Iran.
14. During the SHEV interview the delegate questioned the applicant at length regarding his religious affiliation upon his arrival in Australia. The applicant told the delegate that he had never believed in Shia Islam but was forced to practise it at school and during his military service. The delegate put to the applicant that Departmental notes from his arrival interview, held five weeks after his arrival in Australia, indicated he had declared he was a Shia Muslim, and that during three separate, documented interactions with immigration case managers, he had described himself as a Shia Muslim. The delegate further noted that on two of those occasions he had requested halal food, and on a third occasion had requested to go to a mosque.
15. The applicant denied this and said he recalled declaring that he had been born a Muslim, and that this may have been misinterpreted; and then added that all Iranians are born Muslim and so must tick that box on forms. The applicant claimed that while he was in immigration detention he did not practise any religion and that he has always eaten any type of food. While I have considered the applicant's explanation, I have had regard to the fact that three different case managers, in three separate interactions, handwrote his responses in full sentences, and that there were no tick boxes in relation to religious affiliations on those forms. There are no references in the arrival interview or case management notes of the applicant expressing an interest in Christianity, and notes taken a week before his release from detention indicate his religion as Shia Islam. I am satisfied that at the time of the

applicant's release from detention he identified as a Shia Muslim, and was not attracted to Christianity.

16. The applicant told the delegate following his release from detention he moved to [City 1] where his flatmate attended church regularly. The applicant claimed that he initially had no interest in joining him because he thought Christianity was just another religion, but that he began to get to know his flatmate's other friends, who were Christian and seemed to be positive people. The applicant initially claimed that six months later he attended church at [a suburb] for the first time, but then amended his evidence to four months. The applicant told the delegate that he was still attending the same church to the present day; however he could not initially recall its name, instead repeating that it was called [information deleted], the suburb in which it is located. Five minutes after the delegate had first asked the applicant, he was able to recall that the church he attends is called [Church 1].
17. The delegate asked the applicant what he knew about Christianity before his July 2013 baptism and he responded that he believed in Judgment Day, and that all people die and are raised again. The delegate then expressed concerns about the speed of the applicant's claimed conversion, given that he still identified as Muslim a week before his release from detention in January 2013. Following a break in the SHEV interview to allow the applicant to consult with his representative, he attempted to clarify the timeline of his conversion to Christianity. The applicant advised the delegate that he had started attending church six weeks after his release from detention, not six months, and that he began to consider himself a Christian from about two weeks prior to his baptism, a period of approximately four months.
18. The delegate asked the applicant how often he currently attends church and he responded that he had been going to church every Sunday, and attending Bible studies class once a week, for the past six years. The delegate then asked the applicant what was the most important part of the Christian faith to him and he responded that it was the Trinity. When asked what he liked about the Trinity, the applicant responded that God has three dimensions – the Father, Son and the Holy Spirit. When asked why the Trinity was important to him personally, the applicant did not initially respond and then stated that he did not understand the question. The delegate then asked the applicant twice what was the most important part of the Christian faith to him personally, and what he personally found relevant about the faith, and the applicant said twice more that he did not understand the question. The delegate then asked why the applicant had converted to Christianity and he responded because he saw salvation in Christianity and he saw good people in his workplace, and at church, helping others.
19. When asked, the applicant was able to give a generic example of a Christian teaching (Jesus passing through towns and healing the sick) and was able to describe in general terms the Christian concept of 'love thy neighbour'. When asked if he would practise Christianity upon return to Iran, the applicant responded that he would, because evangelism is part of his religion. Following a break in the SHEV interview, during which the applicant consulted with his representative, he further claimed that he had proselytised to his family over Skype, and that his [relative], who is a Sepah member, had threatened to take revenge on him for shaming their family through his conversion. The applicant also claimed that he had successfully proselytised to three friends in Australia, and gave the delegate their first names. At the end of the SHEV interview the applicant's representative stated that he would obtain a letter from the pastor of [Church 1], attesting to the applicant's attendance there over the past six years; however no such evidence has been provided.

20. The applicant presented a baptism certificate at the SHEV interview. I accept that the applicant was baptised in July 2013 at [Church 1], and that he attended church on this, and possibly other, occasions. While I also accept that religious belief and practise is personal and can manifest in different ways, I am not satisfied on the evidence overall that the applicant has demonstrated any genuine commitment to, or understanding of, Christianity. The applicant did not provide any persuasive evidence as to what motivated him to convert, and even with reference to the amended timeline he provided, I still have serious concerns regarding the speed of his conversion over a period of four months. There is also no evidence before me to corroborate the applicant's claim that he has been attending church activities at least twice weekly for the past six years. Given the superficial and generalised nature of the applicant's responses at SHEV interview regarding Christianity as a religion, and his association with the Church, I am not satisfied he has done so.
21. I also have serious concerns with the timing with which the applicant advised the delegate that he had been proselytising, and I am not satisfied it is credible. I do not accept the applicant has encouraged three of his friends in Australia to convert to Christianity, that he has proselytised to his family over Skype, or that he has a [relative] who is a Sepah member and has threatened him for this reason. On the evidence I do not accept the applicant has genuinely converted to Christianity. I am not satisfied that the applicant would seek to practise Christianity, visit church, or proselytise, upon return to Iran because he is not genuinely committed to being a Christian. Overall I am not satisfied the applicant obtained the baptism certificate, and attended church, otherwise than for the purpose of strengthening his claims to be a refugee, and I have disregarded that conduct under s.5J(6) of the Act.

Returning Asylum Seeker from Australia/Western Country

22. I accept in October 2012 the applicant departed Iran legally, using a genuine Iranian passport and sought asylum in Australia.
23. It is possible that the Iranian authorities may become aware, upon the applicant's return, that he had been living in Australia during his time abroad and that he had sought asylum here. I note that Iran does not facilitate the involuntary return of Iranian citizens from Australia if they arrived before 19 March 2018.¹ If the applicant were to return, I am satisfied it would only be on a voluntary basis.
24. According to international observers, Iranian authorities pay little attention to failed asylum seekers on their return. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government; as heavy internet filtering means most Iranians will never see them. Authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departing. Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.²
25. With reference to the applicant's particular circumstances, I have found he departed Iran lawfully, and there is no credible evidence before me to indicate he has an adverse profile

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report - Iran ", 7 June 2018, CIS7B839411226

² Ibid.

with the Iranian authorities. Nor does the country information before the delegate support a finding that persons who have sought asylum in Western countries, such as Australia, are imputed to hold an anti-Iranian government political opinion. I am not satisfied the applicant had a profile of interest to the Iranian authorities for any reason prior to his departure or since, or would attract the adverse attention of the Iranian authorities. I am not satisfied the applicant faces a real chance of harm on this basis.

26. I am also not satisfied he faces a real chance of harm for any of the above reasons, should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

27. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

28. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

29. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
30. I accept that the applicant has been baptised as a Christian; however I have not accepted that his interest is at all genuine, and I am not satisfied he would be involved with the practise of Christianity upon return. I accept the applicant was baptised in 2013 and am satisfied that the engagement he did have was brief and non-genuine in nature. DFAT assesses that Christian converts who return to Iran and seek to practise their new faith publicly, or proselytise, may face adverse attention - including arrest and detention.³ However, the country information before the delegate does not indicate that merely attending church and undergoing baptism overseas, without anything further, would give rise to a real risk of any harm. Overall I am not satisfied that there is a real risk that the applicant would face significant harm for this reason.
31. I accept that the applicant would be returning to Iran as a (voluntary) failed asylum seeker using a temporary travel document; however I have found that he would not face a real chance of harm in relation to this reason upon return or on any other basis. For the same reason I also find there is not a real risk he will suffer significant harm.

³ Ibid.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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