



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/07585

IRAN

IAA reference: IAA19/07588

IRAN

IAA reference: IAA19/07586

IRAN

IAA reference: IAA19/07587

Date and time of decision: 14 January 2020 14:29:00

M Brereton, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants (the applicants) claim to be a family group from Iran, comprising a husband (IAA 19/07585(the first applicant)), wife (IAA 19/07588 (the second applicant)) and two children (IAA 19/07586 and 87 (the child applicants)). The first, second and one of the child applicants departed Iran by air in February 2013 and arrived on Christmas Island [in] March 2013. The other child applicant was born in Australia. On 27 July 2017, they made valid applications for Safe Haven Enterprise Visas (SHEV). On 26 November 2019, a delegate of the Minister for Home Affairs (the delegate) refused to grant the SHEV.
2. The first applicant claimed to fear harm because he is a Hazara who has no citizenship rights in Iran and will be deported to Afghanistan. He also claimed to fear harm because he had forged Iranian identity documents, had departed on a false passport, had sought asylum in the West, and is an atheist and a non-practising Muslim.
3. The delegate found that the applicants are Iranian citizens and did not accept that the first applicant would be deported to Afghanistan. The delegate considered the first applicant's claims against country information for Iran and was not satisfied that the first applicant faced a real chance or real risk of relevant harm in Iran.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. On 13 December 2019, the applicants, through their agent, provided a submission and attachments to the IAA. Parts of this submission refer to the issues and information that were before the delegate and to that extent are not new information.
6. The submission refers to two country information reports that were not before the delegate and are new information.¹ These reports refer to claims of mistreatment made by Afghan refugees in Iran. The applicants submit that the confiscation of the first applicant's documents has left him without documentation to prove his Iranian citizenship and that he may be facing criminal charges for fraud if he is returned. For the reasons given below, I have not accepted that the first applicant's documents have been confiscated or that he is not an Iranian citizen. The new information does not otherwise relate to Iranian citizens or the first applicant's other claims and I am not satisfied that there are exceptional circumstances to justify considering it.
7. The submission states that the first applicant has had a [Social media] account where he was critical of the Iranian government at times, but he became anxious and has de-activated this account. The first applicant did not make any claims to fear harm because of his social media profile or for having criticised the Iranian government, either in his SHEV application or at the interview with the interviewing officer on 25 June 2018 (the interview), and this appears to be a new claim. The submission also makes what appears to be a new claim by the second applicant that she is also an atheist and has a social media account that contains links to

¹ Human Rights Watch, "Unwelcome Guests, Iran's violation of Afghan Refugees and Migrant Rights", 20 November 2013; Danish Institute for International Studies, 2016 (no further detail provided); Edmund Rice Centre, "Deported to Danger";

feminist, anti-religion and anti-Islam pages. The submission refers to country information² that was not before the delegate and attaches a two page print out of the second applicant's claimed social media account. She claims that this is easily accessible and if it was accessed, it could lead to her and the first applicant being arrested and imprisoned. The applicants were assisted by a registered migration agent (the former agent) when they made their SHEV applications. As noted above, the first applicant made no claims arising from his social media profile or claimed criticisms of the Iranian government. The second applicant stated in her SHEV application that she was not raising her own claims for protection and she did not provide any separate statement in that application. I consider that the new claims based on the social media profiles and claimed criticisms were not articulated before the delegate, nor did they arise on the material. While an otherwise unarticulated claim may arise on the information before a decision maker, there needs to be some evidence or material suggestive of the existence of each element of the claim to be considered. A fear of persecution or significant harm is an essential factual element of claims for protection and if this does not arise on the material before a decision maker, a relevant claim based on these fears does not arise.³ The first applicant did not claim any fear based on his social media profile or criticisms of the Iranian government and the second applicant did not indicate any fear of persecution or other harm for any reason other than those arising from the first applicant's claims. I consider that the new claims to fear harm because of the social media profiles and content are not claims that arose on the factual material before the delegate. I am satisfied that these claims, the supporting document and the reports are all new information.

8. The applicants submit that the second applicant was not interviewed and I infer that this is said to be the reason why the new information about her claim could not have been provided before the delegate made the decision. The social media posts date back to 2016. On 14 June 2018, the first and second applicants were invited to attend an interview in relation to their SHEV applications. The first applicant attended that interview but the review material does not contain any indication that the second applicant attended, asked to be interviewed (separately or otherwise) or that she or the first applicant indicated at any time that she had her own claims or information to provide. The first applicant made no claims in relation to any real or imputed profile arising from social media, including when asked if he had made all of his claims. The former agent made no submission as to any profiles other than those discussed at the interview. At the end of the interview the first applicant was invited to provide any further information within seven days and told that he could request an extension to this if he required one. There is no subsequent correspondence relating to further information in the review material.
9. I am satisfied that the applicants had a real and meaningful opportunity to provide their claims and evidence, including the opportunity to provide any additional claims or evidence in the 17 months between the interview and the delegate's decision. Furthermore, even if I accept that the new claims and information satisfy s.473DD(ii)(b), the claims do no more than indicate that the applicants may have an adverse profile if the authorities were aware of the second applicant's social media activity. Although the applicants make reference to the Iranian regime having a sophisticated mechanism for controlling the internet, including the routine surveillance of social media, the applicants have not provided any claims or information to indicate that the authorities have accessed, or are likely to access, the second applicant's social media account. Her profile is not said to be over and above the millions of other Iranians who

² Freedom House, "Iran, Freedom on the Net 2012", September 2012; United Kingdom Border Agency, "Country of Origin Information Report, Iran", 26 January 2010; Fahmida Y Rashid, "Iran, Developing Software to Control Social Networking Sites", 5 January 2013; "Human Rights Lawyer Nasrin Sotoudeh jailed for 38 years in Iran", Guardian, The, 29 March 2019; Wikipedia, "Irreligion in Iran".

³ *EXV17 v MHA* [2018] FCA 1780

use social media, nor does the attached information show that she has done any more than like and share some posts. The information in the social media attachment does not contain any anti-Iranian comments, although there is one criticism of Islamic practices made by an Afghani woman in Kabul. For completeness, I note that the submission does not expressly claim that the Iranian authorities may have accessed, or otherwise be aware of, the first applicant's closed social media account. In any event, other than making an assertion that this contained criticism of the Iranian government, the first applicant has not provided any other evidence of the existence of this account or the nature of any information that he has posted.

10. The second applicant has invited the IAA to access and examine her social media account but I consider that if the second applicant wished to rely on other specific posts, articles or other information, these could have also been attached. Similarly, I consider that if the first applicant had information supporting his assertions, he could have provided that information to the IAA. I have decided not to exercise my discretion to obtain further information in relation to the social media accounts. Having regard to all of the above, I am not satisfied that the circumstances are out of the ordinary, unusual or uncommon. I am not satisfied that there are exceptional circumstances to justify considering the new claims and information.
11. The applicants ask for an interview to "further discuss the information provided". The applicants have not indicated what aspects of the information they wish to discuss, why this further discussion could not have been done in the IAA submission, or how any new information that might be raised at interview is said to satisfy s.473DD. Having regard to my conclusions in relation to the new information provided by the second applicant, the information already before me, the statutory scheme governing fast track applications, and the particular circumstances of this case, I have decided not to exercise my discretion to obtain further information or comment from the applicants by interview or otherwise.

Applicants' claims for protection

12. Only the first applicant made claims in the SHEV application. The other applicants relied on the first applicant's claims.
13. The claims can be summarised as follows:
 - The first applicant is a Hazara who was born in Iran but comes from an Afghan family. His father moved to Iran as a young child and obtained Iranian citizenship fraudulently.
 - The first applicant was recognised as an Iranian citizen because of his father's citizenship. However, when the first applicant was about seven years old the Iranian authorities confiscated the family's documents and the family had to pay for forged documents.
 - He believes that his family are Hazaras from Afghanistan and he does not have any right to citizenship in Iran. He thinks he might have citizenship rights in Afghanistan.
 - He has experienced harm because of his Hazara appearance. He has been punished by a teacher, teased by schoolmates and on one occasion he was told by police that Iran is only for Iranians, not for people like him. On another occasion he was stopped from entering a tourist site and told to go and visit sites in Afghanistan instead.
 - In 2011, he went to register his son's birth. He was told that his birth certificate looked suspicious and the authorities would not return his or the second applicant's birth certificates. He was ordered to come back with all of his family's identity documents for

examination but he was scared and did not do so. When he asked his family about his birth certificate, they told him it was a false document.

- He went to the Department of Foreign Citizens to try and register as a foreign Hazara residing in Iran. He was told that he needed proof of his family's Afghan citizenship (which he did not have) and that the next "window" to register may not be for another 10 years.
- He will be detained, tortured or killed because the authorities will suspect from his appearance that he is Afghan and has no right to Iranian citizenship. He may be detained, forced to fight in Syria or deported to Afghanistan.
- He will be harmed in Afghanistan because he is a Hazara and will be suspected of being a Shi'a.
- He is an atheist and does not practise Islam. He may be harmed in Iran or Afghanistan because of this.

Factual findings

14. The first applicant admitted at the interview that he had previously provided false information to the Department of Immigration (the Department). This was a false name for himself, a false date of birth for the second applicant, claims that his father was deceased, and evidence of his family composition and family in Australia. The review material also contains information provided to the Department by the first applicant's mother and siblings which is inconsistent with aspects of the first applicant's claims and which was put to the first applicant for comment during the interview.
15. The first applicant provided what he said were his true claims about his citizenship in Iran. He said that his father was born in Afghanistan and arrived in Iran as a child. The father, or the father's family, obtained citizenship documentation through fraudulent means, although the first applicant told the interviewing officer that this was based on what he has been told and is not his personal knowledge. He said that his parents later obtained birth certificates for him and his siblings and he believes these were also obtained fraudulently. He said he did not know this at the time because he never discussed such issues and the family is not close. He obtained an identity card and when his own son was born in 2011, he went to the office to register his son and handed his and the second applicant's birth certificates to the officials. The officials told him that he would need to come back with his family's certificates and kept the two birth certificates. He had heard of this happening to other people and thought that this would cause problems for his family, so he was fearful and did not return to the office. He does not know why the authorities kept the certificates but he believes that the authorities saw that his was fraudulent.
16. The interviewing officer told the first applicant that information before the Department, including information provided by the first applicant's parents and siblings, indicated that the first applicant's parents had been born in Iran and that the family had Iranian birth certificates and identity cards. The first applicant said that could not be the case with his father, because his father had an accent. He said he did not talk to his parents about these things so he was not sure about his mother's birth or citizenship. The interviewing officer asked a number of questions about the family's documents including marriage registrations, birth certificates and the first applicant maintained that he thought his documents were false and he did not know much about his family's documents. He said that the family knew some people in Iran who had

also come from Afghanistan and his parents had obtained false documents through those people.

17. The interviewing officer asked the first applicant about the passport that he obtained in 2013 and travelled on. He said that this passport contained his photograph and the name on his Iranian birth certificate and identity card ("AT"), but this was a false passport that had been arranged by a people smuggler. The interviewing officer asked if the passport was checked at the airport and the first applicant said that it had been but he had not had any problems leaving. The officer asked how the fake passport was not identified by the computer system at the airport and the applicant said that maybe it was a good fake.
18. Information before me (based on consultations with United Nations High Commissioner for Refugees (UNHCR) personnel in Tehran in 2006) notes that while counterfeit Iranian passports can be purchased rather easily on the black market with prices fluctuating "according to the quality of the counterfeit work," authorities are generally adept at identifying these documents via a "double check" mechanism in the law enforcement database which tracks passport issuance. A report of the Danish Immigration Service's 2000 fact-finding mission partially corroborated that information, stating that according to Iranian authorities at Tehran airport, passport control officers used stringent control procedures and "technical equipment for scrutinizing travel documents in cases of suspected forgery". In addition, the report stated that passport control authorities at the airport and border areas had been trained to recognize false travel documentation. In August 2005, the director general of the Iranian Police Passport Department noted that, since the creation of a new passport application system in March 2005, there have been no reports of forged passports.⁴
19. Other information⁵ reports that the verification of passports and documentation at departure points at land borders and airports is carried out in the last phase of exit procedure. At airports the passports are checked by officers who verify in a law enforcement database whether the passport is fake and whether the person standing in front of the officer is the same person whose name and photo appears on the passport. In practice, once a passenger reaches the passport inspection booth, he gives his passport to the two passport inspectors. In the case of Iranian nationals, the information contained in the passport is checked against data stored in a computer system to which the inspectors have access. The data stored in the computer system covers both Iranian nationals and persons permitted to reside in Iran. It may happen in practice that individuals who have fraudulent travel documents can pay bribes to border officials to pass through the control system unharmed.
20. The Australian Department of Foreign Affairs and Trade (DFAT)⁶ reports that Iranian identity documents include sophisticated security features and would be difficult to manufacture for fraudulent use. While it may be possible to obtain a genuine identification document with the intention of impersonating another person, DFAT assesses that sophisticated border control procedures would make it difficult to use such a document in order to leave Iran. All Iranian passports have been biometric since February 2011 and include the following data: holder's signature, country of residence, place of issue, name and position of issuing authority, passport

⁴ Immigration and Refugee Board of Canada, "IRN101054.E - Iran: The passport; its features and procedures for application including whether an applicant who was refused a passport would be notified and have recourse; the use and prevalence of fraudulent or counterfeit passports to exit Iran", 3 April 2006, OGF10222E67.

⁵ Immigration and Refugee Board of Canada, "IRN101052.E - Iran: Exit and entry procedures at airports and land borders, particularly at Mehrabad International airport; identity documents such as birth certificates, and marriage and divorce certificates", 3 April 2006, OGF10222E66.

⁶ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

type, country code, passport number, national ID number, holder's name, father's name, date and place of birth, sex, date of issue, and date of expiry. Applicants for passports are required to provide their original Iranian birth certificate (*shenasnameh*), photocopies of all of the pages of the birth certificate containing an ID photograph, the original and a copy of their Residence Permit, and three passport photographs taken within the past three months. Although this information indicates that it would be difficult to obtain and travel on a forged passport, DFAT does note that in February 2016, the International Business Times reported the arrest in Thailand of a passport forger who admitted to selling forged passports to people from Iran, Iraq and Syria. The majority of forged passports sold by the forger were allegedly used to travel to Europe.

21. The first applicant's evidence is that he, the second and one of the child applicants left Iran by air and although he was questioned at the airport, he does not recall what he was questioned about. He said that he was not of any further interest other than this questioning and his passport was not identified as a false document. He has not claimed that he or any of his other family members paid bribes in order to leave on fraudulent documents. While I note the DFAT report that there have been forged passports detected as recently as 2016, the DFAT report does not indicate whether these forged passports were used to exit Iran by air or via any other formal border control area where such documents are subjected to official scrutiny as noted above.
22. The first applicant told the interviewing officer that he obtained the passport after his birth certificate was taken by the authorities in 2011. The first applicant said that the purported false passport contained the same information (name, date of birth, photograph) as that on his birth certificate. I consider it is implausible that if the first applicant feared his birth certificate was forged and had been confiscated by the authorities for that reason, he would obtain a false passport with the same details as were on that certificate and then risk using this to exit Iran through an international airport with sophisticated border control systems where the passport would be scrutinised. I consider it is more likely that the passport was obtained through official channels and if so, this is not consistent with his claim that the authorities had taken his birth certificate. The information cited above states that passports are only issued on production of identity documents including birth certificates. Had the first applicant's birth certificate been confiscated as a suspected forgery, he would not have been able to obtain a passport through official channels.
23. I have considered the information put to the first applicant that his parents and siblings had travelled on Iranian passports. The first applicant said that maybe they had false passports as well but he has not provided any further information, including any information from his family, to support this. The first applicant said that his family is not close and does not talk about such things, but I note that all of his family apart from one sister has now travelled to Australia, and his mother and one sister travelled to Australia on the same boat as the first applicant. I do not consider it is plausible that the family did not discuss, or the first applicant was otherwise not aware of, what citizenship status they were claiming and why. On the other hand, although the mother and sister's information is in the review material, that information does not confirm whether or not the mother and sister's documents were genuine. Although the delegate's decision indicates that the mother and sister's claims of having travelled on fraudulent documents were rejected, ultimately I am not satisfied that the information is on its own determinative of the mother and sister's citizenship or the genuineness of their travel documents and I have not given it any weight in relation to the first applicant's citizenship status. However, my concerns as to the plausibility of the first applicant's explanations to the interviewing officer remain and I have given that aspect some weight.

24. The first applicant's other sister ("S") has also come to Australia and made a SHEV application. That application and relevant information are in the review material. On 16 November 2016, S provided the Department with certified copies and translations of her claimed birth and marriage certificates, which both state that she is Iranian. Her birth certificate also records that her parents have Iranian birth certificates. In later statements to the Department (made after S was advised that her mother and sister were claiming to be Afghan) she says that she always believed her documents to be genuine and never had any problems, although she had now been told by her mother that someone had reported that the mother and other sister may be Afghani and using false documents. S said that she was told that the documents had been called in for review. S's explanation is generally consistent with the first applicant's explanation that he believed the family documents to be genuine up until just before he left Iran. However, S's application also contains a copy of her Iranian passport, issued in June 2010. She has not claimed that this is a false passport and while I note that S is married to an Iranian citizen, the information in the review material indicates that the marriage occurred in 2011, after her passport had been issued. I am satisfied on the evidence before me that S's passport is genuine and the information cited above as to the passport application process in Iran points strongly to S's documents being examined and accepted, and that S thus holds Iranian citizenship. There is nothing in the information relating to S that refers to the first applicant's claims or his citizenship and while I do not consider that the information relating to S is necessarily determinative of the first applicant's citizenship status, I have given this information considerable weight in considering the claim that the first applicant's family documents are fraudulent.
25. Having carefully considered all of the above, I am not satisfied on the evidence before me that the family did in fact obtain fraudulent documents. As I do not accept that the documents were fraudulent, I do not accept the first applicant's evidence in relation to the claimed confiscation of the birth certificates or obtaining a forged passport. I do not accept that his or the second applicant's birth certificates have been confiscated by the Iranian authorities or that he, the second applicant and the child applicant (son) travelled on forged passports. The first applicant has not provided any other official confirmation, supporting statements or information that his identity or citizenship has been questioned in Iran or that his documents have been found to be fraudulent. I find that the first applicant travelled on a genuine and lawfully issued Iranian passport. The DFAT report states that Iranian passports serve as proof of Iranian citizenship under Iranian law and there is no other information before me to suggest otherwise. I find that the first applicant has fabricated that part of his claims relating to false documents and forged passports, that he is a citizen of Iran and that Iran is the receiving country for the purposes of this review.

Refugee assessment

26. 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

27. 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.
28. The first applicant claims to fear harm because he will be perceived to be Afghan and may be detained, forced to fight in Syria, or deported to Afghanistan. The photographs in the review material are consistent with what I understand to be the general appearance of a Hazara person and I am satisfied that he may be perceived initially to be a Hazara or Afghani.
29. The first applicant claims to have experienced harm in the past because of his appearance. He said he was teased by schoolmates and told that he looked like an Afghan Hazara. Once, when he was stopped by the police and produced an Iranian driver's licence, the police threw it back at him and told him that Iran is not a place for people like him; it is only for Iranians. On another occasion he was stopped from visiting a tourist site in Shiraz and was told that he should "go back and visit his country" and the ancient sites in Afghanistan. At the interview he also said that the second applicant had faced some problems with getting a vaccination for their son, but he has not provided any further information in relation to this problem, nor has the second applicant or child applicant (son) raised, or sought to raise, any claim in relation to this.
30. DFAT⁷ reports that ethnicity remains a sensitive political topic in Iran. The Islamic Republic has generally sought to emphasise religion as a means of fostering national identity and avoiding problems of ethnic division. Iran does, however, remain a strongly Persian-centric society in practice. While ethnic minority communities exist in Tehran and other major cities, a large percentage of non-Persian Iranians are concentrated in less developed rural areas of the country where access to services and employment opportunities is limited. This issue affects all rural residents, regardless of ethnicity. DFAT assesses that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. The national civil registry maintains a list of acceptable names and prohibits the registration of children whose given name is not on it. As the list contains overwhelmingly Farsi names, the registry in practice limits the ability of ethnolinguistic minorities to name their children in their own language or tradition (although, in practice, DFAT understands that many Iranians use their own names in informal settings, which are different from those registered). Ethnic minorities report political and socioeconomic discrimination, particularly in relation to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights. Human rights organisations claim that the government's application of the death penalty disproportionately affects ethnic minorities. Rights groups claim authorities commonly submit

⁷ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

members of ethnic minorities in pre-trial detention to more severe physical punishment or mistreatment than other prisoners, regardless of the crime they are accused of committing.

31. DFAT also notes that the overwhelming majority of ethnic minority communities are integrated into Iranian society, participate in politics, and identify with the Iranian nation. For the most part, activists advocating the rights of ethnic minority communities have agitated for greater rights rather than greater autonomy or separation. However, authorities are highly sensitive to political activism, particularly when they perceive it to be a threat to the Islamic Republic and have targeted ethnic minority activists for arrest and prosecution on national security grounds. Overall, DFAT assesses that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. This may take the form of denial of access to employment and housing, but is unlikely in most cases to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism is higher.
32. The DFAT information does not identify Hazaras as an ethnic minority in Iran, nor does it indicate that Hazaras who are entitled to Iranian citizenship have been denied citizenship or treated differently because of their ethnicity. It does, however, note that Iran hosts a population of 950,000 registered Afghan refugees and between 1.5 and three million undocumented Afghans. Around 30,000 registered Iraqi refugees live in Iran. Registered refugees may face some restrictions in movement, foreign travel, emigration, and repatriation. Registered refugees are prohibited from residing in specified areas, which are different for refugees of different origins and are subject to change. Registered refugees have access to healthcare, education and state benefits, although such access is at a lower level than that provided to Iranian citizens. International observers report that Iraqi refugees generally receive better treatment in Iran than those of Afghan origin. Unregistered refugees are likely to face more difficulty in moving, and most lack access to the full range of government services. Although it is plausible that a person who is perceived to be Hazara may face some initial questioning as to their citizenship status, the DFAT information does not indicate that Iranian Hazaras face the difficulties and discrimination that unregistered Hazaras may face.
33. Other information⁸ in the review material is consistent with the DFAT assessments and does not identify Hazaras as an ethnic minority facing any particular discrimination, violence or harassment on ethnic grounds. The most recent report from Amnesty International⁹ opines that the human rights situation in Iran severely deteriorated in 2018 and the authorities sanctioned pervasive discrimination and violence based on gender, political opinion, religious belief, ethnicity, sexual orientation, gender identity, and disability. Amnesty International refers to incidents of discrimination against Ahwazi Arabs, Azerbaijani Turks, Baluchis, Kurds and Turkmen, but does not report any incidents, or make any comment or opinion, as to the situation for Iranian Hazaras.
34. I accept that the first applicant has suffered harassment, low-level abuse and discrimination because of his appearance as a Hazara. He has not claimed to have suffered any treatment that might be considered as serious harm, nor am I satisfied that this harassment, abuse and discrimination has, singly or together, constituted conduct that would be serious harm of a kind contemplated by ss.5J(4) and (5) of the Act. I must also consider whether he may face serious harm now or in the reasonably foreseeable future should he return to Iran. I

⁸ Ozum Yesiltas, "Contested Notions of National Identity, Ethnic Movements and Democratisation in Iran", 1 January 2016, CIS38A80123751; Ceasefire Centre for Civilian Rights, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441.

⁹ Amnesty International, "Report on the human rights situation covering 2018 – Iran", 26 February 2019, 20190308090902.

acknowledge that a lack of past serious harm is not necessarily an indication that there is no real chance of such harm now or in the reasonably foreseeable future. I have found that the first applicant is an Iranian citizen who has held Iranian citizenship documents. I have not accepted that these documents have been confiscated and I am not satisfied that there is more than a remote chance that he will be denied, or otherwise be unable to obtain, such documents should he return to Iran. Accordingly, I do not accept he will be undocumented on return, as claimed. I am not satisfied that he faces any more than a remote chance of facing harm as an imputed Afghan, including being detained, deported to Afghanistan or being sent to fight in Syria.

35. The first applicant has not claimed to have been politically active, or to have been accused of being politically active, in the past, nor has he claimed to have engaged in political, separatist or anti-regime activities since leaving Iran. I am not satisfied that he has any political profile, or that there is any more than a remote chance that he would be imputed with any political profile or activism, on the basis of his appearance as a Hazara, or any imputation that he is Afghani.
36. I am not satisfied on the information before me that Iranian Hazaras otherwise face a real chance of serious harm because of their ethnicity. I have accepted that the first applicant has faced harassment, low-level abuse and discrimination in the past and I accept that there is a more than remote chance that he may continue to face such conduct in Iran. I am not satisfied that any such harassment, abuse and discrimination would, singly or together, constitute systematic and discriminatory conduct that would be serious harm of a kind contemplated by ss.5J(4) and (5) of the Act. I am not satisfied that the first applicant has a well-founded fear of persecution arising from his ethnicity, or any imputed ethnicity or origin.
37. For completeness, as I have found that the first applicant is a citizen of Iran, I am not satisfied that he faces a real chance of any harm arising from his claimed attempt to register with the Department of Foreign Citizens, or that he will need to seek such registration should he return to Iran.
38. The first applicant claims that he is a non-practising Muslim and an atheist. In his entry interview conducted on 25 March 2013 (the entry interview), he claimed that his and the second applicant's families are practising Muslims and they had threatened to take the first applicant's son and had excluded the first and second applicants from family events and gatherings. He also said that his father used to beat him for not praying. The first applicant did not refer to any mistreatment, threats or fear of harm from his family in his statement of claim, at the SHEV interview or in the period between the interview and the delegate's decision. He was asked a number of times during the interview if he had made all of his claims and provided all of his evidence and he said that he had. The delegate considered whether the first applicant may face harm as a non-practising Muslim or atheist but did not consider whether that included any harm or fear of harm from his family. The first applicant has not made any complaint or submission to the IAA in relation to this. I am satisfied that the first applicant has had a real and meaningful opportunity to provide evidence and make claims in relation to his application. I am satisfied that he is not making a claim to fear harm to himself or the other applicants from his family because of his lack of religious belief.
39. Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy. Separately, a person of any religion may be charged with the crime of "swearing at the Prophet" (blasphemy) if he or she makes utterances that are deemed derogatory towards the Prophet Mohammed, other Shi'a holy figures, or other divine prophets. The Penal Code does not specifically criminalise apostasy, but provisions in the

Penal Code and Constitution state that sharia applies to situations in which the law is silent, and judges are compelled to deliver sharia-based judgements in such cases. Although the Koran does not explicitly say that apostasy should be penalised, most Islamic judges in Iran agree that apostasy should be a capital crime.¹⁰

40. Non-practising Muslims are said to form a large part of the population of Iranian cities. Some people from the conservative communities pay more attention to public manifestations of religion such as participation in Friday prayers, whereas people from the more secular segment do not pay any attention to such public manifestations. They lead normal lives and are rarely pressured to observe Islamic precepts or called upon to answer direct questions about Muslim religious practice. Many Iranians do not go to mosque or prayers, even if they hold religious beliefs. Applicants for certain jobs (including in the public media or the military) are asked about their religious affiliation and way of practicing Islam during their job interviews. In such situations, most non-practising Muslims prefer to hide the truth. If, however, such a person insists on saying that they do not practise the Islamic precepts, they may reduce their chances of being accepted for the job but they would not face any further harm. During Ramadan, everyone is obliged to observe the Islamic precepts and is therefore not allowed to eat, drink or smoke in public. Any visible act of non-observance can entail punishment under the law.¹¹ DFAT assessed in 2016 that it is unlikely that the government would monitor attendances at mosques or other religious events, and it is generally unlikely that it would become known that a person was no longer faithful to Islam unless they manifested this in some way.¹² The more recent DFAT report does not indicate that this situation has changed.
41. DFAT has assessed that atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views. Although DFAT was, in 2016, unaware of any recent charges of individuals for being atheists, it remained legally possible for a person to be punished under the Penal Code for insulting the Prophet Muhammad or other prophets and a Muslim who left his or her faith to practice atheism could be charged with apostasy.¹³ Other information before me reports that there are “more and more atheists in Iran” and that this is “more accepted among some Iranians”.¹⁴ I note however that this is in the context of being “more accepted” than conversion to Christianity and do not consider that this information indicates a general acceptance of atheism in Iran. Another report indicates that atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions, although public expression does appear to carry the risk of being charged with apostasy or other consequences such as losing social benefits or being barred from university entrance.¹⁵
42. The first applicant claims that he was a non-practising Muslim in Iran and that he suffered some physical punishment from teachers at school for instances of religious non-compliance. At the entry interview he said that a teacher put pens under his (the first applicant’s) hands and pushed on them for about an hour during a Koran lesson. The first applicant has not claimed to have ever been reported, or to otherwise have come to the attention of, the authorities or the wider community for his non-practice. He said that he did not put himself

¹⁰ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226.

¹¹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622.

¹² DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677; Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, 1 June 2014, CIS28931.

¹³ DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677

¹⁴ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, 1 June 2014, CIS28931.

¹⁵ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622.

“out there” and sometimes he pretended to say the prayers. He has not claimed that he has been involved in any anti-Islam or pro-atheist activities or organisations in Australia or that he would be so involved on return to Iran, or that he would otherwise do anything to publically express his views. There is no material before me that I am able to consider which indicates that his atheistic views, or his non-practice of Islam, are or would become known to the Iranian authorities. I am not satisfied that he faces any more than a remote chance of harm as a non-practising Muslim or atheist.

43. I have not accepted that the first applicant departed Iran on a false passport. I have found that he departed Iran on his own passport but I note that he told the interviewing officer that he no longer has this passport. I am satisfied that as he has no passport he will therefore require a temporary travel document should he return to Iran. DFAT¹⁶ reports that Iran has historically refused to issue travel documents (*laisser passers*) to allow the involuntary return of its citizens from abroad. On 19 March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia but I am satisfied that as the first applicant arrived before that date, he is not covered by the MOU. I find that if he returns to Iran, he will only do so as a voluntary returnee.
44. DFAT advises that in cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person’s imminent return. 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. DFAT reports that it is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in Iran, or any specific barriers to prevent voluntary returnees from returning to their home region. Further, according to international observers, Iranian authorities pay little attention to failed asylum-seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution and the Iranian 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. Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists. The DFAT report does not refer to returned asylum-seekers or returned Hazara asylum-seekers, including those who have made claims or otherwise resided in a western country, being imputed with any adverse profile for that reason only, or being treated differently or subjected to harm because of that profile.
45. I have not accepted the claim that the first and second applicant’s birth certificates have been confiscated. The first applicant was not of adverse interest to the authorities or any other reason prior to departing Iran and I have found that he would not be of adverse interest for any reason now, including for being a non-practising Muslim. The information before me does not indicate, and I am not satisfied, that he will be of any additional interest to the authorities because he is, or may be perceived to be, Hazara. I am not satisfied that he will come to any adverse attention arising from his departure. I am not satisfied that the first applicant faces a real chance of harm as a returned asylum-seeker.
46. Having regard to all of the above, I am not satisfied that the first applicant has a well-founded fear of persecution for any reason or combination of reasons should he return to Iran. As the second and child applicants have not raised any claims that I am able to consider and otherwise rely on the first applicant’s claims, it follows that I am not satisfied that the second

¹⁶ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226.

and child applicants have a well-founded fear of persecution for any reason should they return to Iran.

Refugee: conclusion

47. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

48. Under s.36(2)(aa) of the Act, 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

49. 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.

50. "Torture", "cruel or inhuman treatment or punishment" and "degrading treatment or punishment" are further defined in s.5(1) of the Act. Each requires that the infliction of harm, by act or omission, is intentional.

51. I accept that the first applicant may face harassment, low-level abuse and discrimination because of his appearance as a Hazara. He has not claimed to have experienced any conduct that may be said to rise to the level of significant harm for this reason in the past. I am not satisfied that any harassment, low-level abuse and discrimination that he may face in Iran would comprise, or together comprise, any conduct that would rise to the level of significant harm as contemplated by the Act.

52. I have found above that the first applicant does not face a real chance of harm in Iran as a returning asylum-seeker. I have considered his profile cumulatively and for the reasons I have already given, I am not satisfied that there is any more than a remote risk that his cumulative profile as a returning Hazara asylum-seeker who has made protection claims outside Iran and who is returning on a temporary travel document is one that will attract more than a remote risk of any adverse interest by the Iranian authorities or any other person. I am not satisfied that he faces a real risk of significant harm for any reason, or any combination of reasons, should he return to Iran. Further, as noted above, the second and child applicants have not made any claims to fear harm (that I am able to consider) other than as a consequence of the first applicant's claims. As I am not satisfied that the first applicant faces a real risk of

significant harm for any reason, I am not satisfied that the second and child applicants face a real risk of significant harm for any reason or reasons relating to the first applicant.

Complementary protection: conclusion

53. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

54. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a spouse of the family head and a dependent child of the family head.
55. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.