



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA20/07828

Date and time of decision: 27 February 2020 09:27:00

I Sheck, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) is an Iranian national from [City 1] in West Azerbaijan province. He departed Iran in January 2013 and arrived in Australia [in] February 2013. On 18 November 2016 he lodged an application for a protection visa (PV).
2. On 30 January 2020 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate did not accept that the applicant had been charged and convicted of adultery and had been sentenced to death by stoning. The delegate assessed that the applicant would not face serious harm in Iran due to being a non-practising Muslim, a failed asylum seeker or for any other reason.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material). On 12 February 2020 the IAA received a submission on behalf of the applicant from his representative, Mr [A]. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances to justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. The submission by Mr [A] addresses the delegate's decision and restates parts of this and the applicant's evidence. To this extent, it may be regarded as argument rather than new information and I have had regard to it.
4. Mr [A] has also provided new information, this being that the applicant had "attended church almost every week since he arrived in Australia", he has "accepted Christianity and is due to be baptised [in] February 2020". Mr [A] has not provided any information on why the new information could not have been provided to the delegate. The applicant claimed on arrival to Australia that he was a Shia Muslim and in his PV application that he had no religion. At the PV interview the delegate specifically asked the applicant whether he were making a claim for protection on the basis of religion and he stated he was not. The delegate asked the applicant whether he identified with any religious faith and he responded that he was previously a Shia Muslim but did not believe this any more. He only believed in God. When asked whether he engaged in any religious practices in Australia he said he did not. Mr [A] submits that the applicant does not wish to call Christianity a "religion", he has been taught that it is a faith rather than a religion. I consider this argument to be specious and do not accept it. The new claim is a direct contradiction of the applicant's evidence given at the recent PV interview and I am not of the view that it is capable of being believed. I therefore conclude that this new claim does not comprise credible personal information. The applicant has not satisfied me that either limb of s.473DD(b) is met and I have not had regard to the new information.

### Applicant's claims for protection

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5. After his arrival in Australia the applicant was interviewed by officers of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 11 February 2013 and 21 February 2013. The applicant provided details of his claim in a statutory declaration dated 7 November 2016. Mr [A] provided submissions dated 15 November 2016. On 24 September 2019 the applicant attended an interview ("the PV interview") with the

delegate, at which Mr [A] was present. The applicant claims that he was found guilty of the crime of adultery [in] January 2013 and was sentenced to death by stoning. He escaped from custody [in] January 2013 and subsequently fled the country. If he returns to Iran he will be immediately taken into custody and the death sentence will be carried out.

## **Factual findings**

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6. Based on the information provided in his arrival and PV interviews, his PV application and identity documents, I find that the applicant's background is as follows: he was born on [date] in [City 1] and is an Iranian national. He is of Turkish (Azeri) ethnicity. He is the second of three brothers. His father passed away around 2005; his mother [resides] in [City 1]. He completed primary and secondary schooling to [a specified year]. He undertook compulsory military service from [October] 1990 to [October] 1992. He was employed in [a specified] industry in various [roles]. He married [in] September 1988 and his children were born on [dates]. He and his wife "Z" divorced in Australia [in] January 2016.
7. The applicant's central claim is that he has been found guilty of adultery and on return to Iran the sentence of stoning will be carried out against him, resulting in his death. The details of this claim can be summarised as follows:
  - The applicant married in 1998 but his marriage subsequently began to break down. He and Z were separated under the same roof from 2007. Z attempted to return to her parents' home but by court order dated [January] 2012 she was ordered to return to the marital home and be obedient to her husband. She sought review of this judgement and the original judgement was confirmed by the Revision Court [in] July 2012;
  - In 1390 [the Persian year commencing March 2011] the applicant met "L" when she came to his business with her [husband]. A relationship developed between the applicant and L. L was at that time living alone, as her husband was residing with his second wife. L had sought a divorce from her husband but her request had been disallowed by the courts. The applicant would visit L around two nights a week, leaving early in the morning;
  - [In] June 2012 L's apartment was entered by her husband, police officers and some neighbours. The applicant and L were in bed together at the time. They were arrested and taken into detention. The applicant was beaten;
  - The following day the applicant was taken to court where an order was made that he be detained until the case against him was complete. A further order was made that he appear in the Revolutionary Court to answer the charge of adultery. The applicant was detained for a period of seven months. Under torture he admitted to [number] instances of intercourse with L, which carried the death penalty;
  - [In] January 2013 [the] Revolutionary Court of the City of [City 1] handed down its judgement that the applicant and L were sentenced to death by stoning;
  - [In] January 2013 the applicant was granted a two hour leave order to visit his mother. He was accompanied by [prison] guards. His leg irons and manacles were removed and he was left unsupervised for [some] periods. He took the opportunity to escape the family home through a skylight, which had been left unlocked by his brother "R". R and a cousin rendezvoused with the applicant in a nearby street and drove him to [a city], from where he crossed the border into [Country 1] and subsequently travelled to [Country 2] on a false passport. The applicant, his wife Z and their two children reunited in [Country 2] and travelled together from [Country 2] to Australia;

- [In] January 2013 a warrant for the applicant's arrest was issued. [In] March 2013 [the] Revolutionary Court of the City of [City 1] made an order that the sentence against the applicant and L would be carried out at dawn [in] April 2013.
8. The applicant has been generally consistent in his claim, having given evidence on this point at his arrival interview in 2013, in his statutory declaration of November 2016 and during the PV interview in September 2019. One point of inconsistency was the nature of the relationship between himself and L. From the statutory declaration it appears that it was entirely clandestine; the applicant noting that "for the reason of protecting her privacy, I used to visit her after work, normally at night. I also used to leave her house in the early morning." In contrast to this, at the PV interview the applicant indicated that they talked on the phone every day, L would come to his work and sit in the office, they went out for dinner, they went for drives around the city together and he would go to her apartment and she would cook a meal. This indicates an overt relationship. During the PV interview the applicant stated that the relationship between himself and L started in September 2011. I note that in the Iranian court document relating to the applicant and Z's marriage, Z's petition included the following claims against the applicant: "[details deleted]". There is no mention of the applicant having an extra-marital relationship or being absent from the marital home for several nights a week. I consider it likely that Z would have mentioned such a situation, were it occurring.
  9. A further disparity is how the police, L's husband and the neighbours entered L's apartment [in] June 2012. In the PV interview the applicant claimed that the police broke down the apartment door. The delegate had spent some time ascertaining whether L's husband had access to the apartment to which he had responded that L "said she was not allowing him to go to her place". In his statutory declaration the had applicant stated that "when the police raided the apartment, they easily gained entry as her husband had the key; when they came to the bedroom we were both in the bed." When the delegate put this statement to him, the applicant responded "anyway they broke down the door but she had said he has a key but I don't let him come here". Later in the interview when the delegate indicated he was still concerned about how the police had entered the apartment the applicant responded that L's husband had keys to enter the apartment building but not keys to the apartment as L had changed the locks. I am concerned that the applicant did not mention this at any earlier point in the interview and this casts doubt on the veracity of the narrative.
  10. I have further doubts regarding whether the applicant's story is true, due to his claimed escape from custody. I do not accept as plausible that a man convicted and sentenced to death only two days before, would be accompanied to a home visit by [prison] guards, who then removed all of his shackles and left him in his family home while they waited outside. The applicant has not provided any information on who else was in the home at the time of his claimed visit, but indicated that his mother had [his] sister-in-law (M's wife) assisted with her care. As noted in Mr [A]'s submissions of November 2016, the applicant his wife and children also lived in the home. There were therefore up to six people, other than the applicant, in the home at the time. The delegate put to the applicant that this part of the narrative lacked plausibility and the applicant responded it was not his fault that the guards were unable to do their job properly. I do not find this response particularly compelling.
  11. The applicant also asserted at the PV interview: "I was going to be hanged. You don't know when they read the verdict to someone who is going to be hanged how the person feels mentally". This statement is of concern because the documents provided by the applicant indicate that he was sentenced to death by stoning, not hanging. As the applicant's central claim for protection is that as an adulterer he would be stoned to death on return to Iran, I do not consider it plausible that he would forget the method of his claimed execution.

12. Turning then to the documents the applicant has provided, as noted above there are three documents which purport to be from [the] Revolutionary Court of the City of [City 1]. The first is the "Court Judgement" dated [date] January 2013. I note that although this document states that the applicant and L are sentenced to death by stoning, at no point does the judgement indicate that the Court has in fact found them guilty of any charges. The second document is an arrest warrant dated [date] January 2013 noting that the applicant is "on the run" following his escape from custody [in] January 2013. The third is dated [date] March 2013 and is entitled "Execution of Sentences". This states that the death sentence against the applicant and L would be carried out at dawn [in] April 2013. Given that it is claimed the Court was aware that the applicant had escaped custody [in] January 2013, I can think of no reason why the Court would make such an order, which could clearly not be carried out.
13. Country information on the judicial system in Iran notes that the Constitution establishes civil, criminal and military courts. Regular courts, known as public courts, mainly deal with the civil and criminal matters of the common public. These courts are functionally classified according to their area of jurisdiction, civil or criminal, and according to the seriousness of the crime or the litigation.<sup>1</sup> The judiciary also includes Revolutionary Courts and the Special Court for the Clergy, both established following decrees from Ayatollah Khomeini. Revolutionary Courts primarily deal with prosecutions involving acts against national security, as well as drug smuggling and espionage. They do not use juries, and trials are frequently closed to the public. The judges in the courts fulfil additional roles as prosecutors and mediators. The courts do not allow defence attorneys.<sup>2</sup> According to two lawyers with criminal law experience, adultery cases fall under the criminal courts. Asked about prevalence of adultery cases before the courts, the lawyers stated that adultery is usually not reported to the police or to the court.<sup>3</sup>
14. Mr [A] has stated that a month after the applicant entered prison his brother R organised a lawyer for him, who "became [the applicant's] lawyer for all future Court appearances." As noted above, the Revolutionary Courts do not allow defence lawyers. Having regard to the country information, I do not accept that any charge of adultery brought against the applicant by L's husband (listed as "the plaintiff" in the court documents the applicant has presented) would be heard by the Revolutionary Court as has been claimed. I therefore conclude that the three Court documents provided by the applicant to support his claim to have been sentenced to death are not genuine. Provision of false documents significantly undermines the applicant's credibility. Taking into account the provision of false documents, the implausibility of the escape from custody and the other discrepancies as discussed above, I conclude that the entirety of the applicant's claim to have been tried for and convicted of adultery is a fabrication.
15. At the PV interview the delegate asked the applicant whether he claimed to fear harm on a number of other bases and the applicant replied in the negative. In his submissions to the IAA, Mr [A] notes "Our client has not claimed religion, politics or ethnicity as a basis for his need to be recognised as a refugee yet the Delegate spends a page discussing these elements with pages 12- of the Record doing the same, unnecessarily. Our client's claim is based solely on the fact of his adultery and on the consequences of that life-choice." I am satisfied that no other claims for protection arose simply on the basis of the applicant's PV application, statutory declaration or other evidence provided to the delegate. I am satisfied that the applicant does

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 5.12

<sup>2</sup> Ibid; 5.13

<sup>3</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; p.38

not claim to fear harm for reasons of religion, politics or ethnicity. As a consequence I am not assessing whether he has a well-founded fear of persecution on these bases.

### **Refugee assessment**

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

### **Well-founded fear of persecution**

17. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

18. The applicant is an Iranian national; it follows that Iran is his receiving country. I have not accepted the applicant’s claim that he was tried for and convicted of adultery. I do not accept that the applicant faces a real chance of serious harm in the foreseeable future as a result of being sentenced to death by the Iranian Revolutionary Court. The applicant has not claimed to fear harm in Iran for any other reasons. On the basis of the evidence before me, I am not satisfied that there would be a real chance of future harm to the applicant in Iran for any reason.

### **Refugee: conclusion**

19. 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**

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20. 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**

21. 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.

22. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

23. I have concluded above that the applicant does not face a real chance of harm for any reason in Iran. As 'real risk' and 'real chance' involve the application of the same standard,<sup>4</sup> I am not satisfied that the applicant would face a real risk of harm. I am equally not satisfied that the applicant faces a real risk of being killed, seriously injured or facing any other form of significant harm on return for the purposes of s.36(2)(aa).

### **Complementary protection: conclusion**

24. 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**

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

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<sup>4</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## Applicable law

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### ***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.