



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08355

Date and time of decision: 9 June 2020 14:12:00

I Sheck, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) is an Iranian national from Tabriz. He departed Iran [in] May 2013 and arrived in Australia [in] June 2013. On 7 July 2017 he lodged an application for a protection visa (PV).
2. On 30 April 2020 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant was of Azeri ethnicity and did not practise Islam in Iran. The delegate did not accept that the applicant was involved in the production and publication of a book against Islam, the Iranian government and religious leaders. The delegate concluded that the applicant would not face a real chance of serious harm in Iran due to his religion, ethnicity 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). No further information has been obtained or received.

Applicant's claims for protection

4. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 11 July 2013. The applicant provided details of his claims in a statutory declaration dated 24 June 2017, lodged with his PV application. On 4 February 2020 the applicant attended the PV interview with the delegate. He was unrepresented. The applicant claims:
 - He was raised in a Muslim family but they were not religious and the applicant ceased practising Islam in his mid-teens;
 - He came to the adverse attention of the authorities on a few occasions; sometimes due to his clothing and once when walking with his girlfriend. The authorities are inconsistent; punishments depend on who you are dealing with. At the age of [age] he was detained and beaten due to celebrating [an event]. He was subsequently fined by the Courts;
 - He is of Azeri ethnicity and suffered verbal abuse. Outside of his home city of Tabriz there is employment discrimination towards Azeris;
 - He and four friends decided to write a book critical of the Iranian government and religious rulers. One of the group involved with the book informed the authorities and law enforcement officers sought the applicant at his home, causing him to flee Iran;
 - If he returns to Iran he will be sentenced to death for apostasy.

Factual findings

5. The applicant's evidence regarding his family, education and work history has been consistent and I am satisfied that it is as stated. Based on the information provided in his arrival and PV interviews and identity documents, I find that the applicant's background is as follows: he was born on [date] in Tabriz city, East Azerbaijan province and is an Iranian national. He is of Azeri ethnicity. He has [specified family members]. His parents and siblings still reside in Iran. He

undertook primary and secondary schooling from [specified years]. He completed military service from [between specified years]. He was employed and then self-employed as [an occupation 1] until his departure from Iran. He departed Iran legally on his own passport. He has been employed in Australia since 2017 as [another occupation].

6. I have accepted that the applicant is of Azeri ethnicity. Country information indicates that Approximately 12.3 million Iranians are of Azeri origin, making Azeris Iran's largest ethnic minority. Azeris are politically and socioeconomically diverse: they work in a variety of professions, have a wide range of income and wealth levels, and have attained a range of education levels. Azeris are, on the whole, better integrated into Iranian society, business, politics and the security forces, and have greater influence, than other ethnic minorities.¹ The applicant does not claim to fear harm on return to Iran however indicated that he had been subject to racial slurs in the past and I accept that this occurred. The applicant does not claim that he personally suffered employment discrimination at any point due to his ethnicity and I find he did not.
7. I accept that the applicant was born a Shia Muslim and did not practise Islam in Iran. I accept that he came to the attention of the Basij or morality police due to infractions of the conservative dress code and due to walking with his girlfriend. I infer that the applicant would not resume the practise of Islam, were he to return to Iran.
8. The applicant has consistently stated that he was celebrating [an event] when he was detained by the authorities. The applicant was [age] years of age at the time. In his July 2013 arrival interview the applicant stated that he was taken and detained by the Basij while in his 2017 statutory declaration he claims it was the Ettela'at. The applicant claims to have been held for a week, beaten, charged with organising a riot against the government, taken to Court and fined. At the PV interview the delegate put to the applicant that he was [age] years of age at the time therefore below the age of legal responsibility (which is age 15 for boys).² The applicant responded "that is the problem in Iran there is no law". This response is not consistent with country information and I do not find it persuasive. Although it is plausible that the applicant was rounded up during the course of celebrations by police or other law enforcement officials, I do not accept that he was detained for a week, charged with organising a riot, found guilty of this charge and fined.
9. The applicant's central claim is that he was involved in the production of a book that would be considered to be against the Iranian government including religious leaders. At his arrival interview the applicant explained that he was one of five people who "tried to write a book about the situation in Iran, the Mullahs". He was told in this interview to keep his responses brief. In his 2017 statutory declaration the applicant provided further detail about this book. He stated that he and his friends H, A, M and M's wife were working on a book "about the religion and the situation in Iran at that time. Iran is a rich country and has a lot of resources, but the rulers were taking and using the resources for themselves to have more power over people." The applicant's task was to speak with people who "knew about what was happening." He obtained information from 10 to 15 people. About six weeks into the project, A was arrested. The applicant was of the view that this was because A was a drug addict. A told the authorities all about the planned book and took law enforcement officers to the applicant's house. The applicant and remaining members of the group decided to flee. M and his wife fled to [a named country]. The applicant and H came to Australia. "We had heard it takes about a week for the

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 13 April 2020, 20200414083132; 3.14

² Ibid; 4.22

authorities to get a court order to put us on a watch list at the airport. That is why we made all the arrangements and left within two days". I note the applicant had stated at his arrival interview that he started his travel arrangements on [a date in] April 2013, paid the smuggler on [a date in] May and left Iran on [a later date in] May 2013. This is clearly not consistent with his claim to have made all the arrangements within two days.

10. At the PV interview the applicant advised that he and group had met on four or so occasions to discuss their book. The project started because they would complain about life in Iran and decided to put it down in a book "so people would know." When asked what information they intended to gather the applicant responded "about Islam about what's happening in the government". They had no name for the book. They had no idea how books were published in Iran but had a friend who [who could help]. The applicant gathered comments from a friend of his who was studying law and from a doctor. Altogether, members of the group spoke to five or six people over four or five days. They would note down what the people said and give the notes to M's wife, who would type them into her laptop. When A was arrested his mother told M. The applicant also called M to tell him but he already knew. The police came to the applicant's house and asked for the applicant. A was with them. He had been tortured. The applicant's mother said the applicant wasn't there and they left. They didn't say why they were there or look in his room. Some time later the police sent his mother a warrant but she lost it. The whole period from commencing work on the book to the visit from the police had been about a week.
11. As can be seen from the summaries above, there has been a marked variance in the length of time the project had been under way and how much information the applicant claims to have obtained from contributors to the book. Overall however, it is less a question of variation in the evidence and more the lack of plausibility of the entire claim. From the applicant's description, the planned book would appear to contain anecdotal evidence from a number of Iranians relating to their general dissatisfaction with life in Iran. The applicant gave no reasons as to why Iranians would have any interest in purchasing such a book. The delegate put to the applicant that the points he made regarding the unfair distribution of resources and general corruption of the government were common and well known themes in Iran, regularly discussed by everyday Iranians,³ as well as in the media and on-line. The applicant denied that this was the case and asserted that it is difficult to access the internet in Iran as the government closes it down. Although such shutdowns do occur, most recently during the November 2019 riots,⁴ country information does not indicate that they are commonplace and I reject the assertion. Further to this, books may only be published in Iran after review and approval from the Ministry of Culture and Islamic Guidance;⁵ it is not a matter of simply having a friend who [could help].
12. I reject the applicant's central claim to have been involved in the research and production of a book adverse to the Iranian regime and find that it is a fabrication. I find that the applicant was of no adverse interest to the Iranian authorities at the time that he left Iran.

Refugee assessment

13. 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

³ DFAT, "DFAT Country Information Report – Iran", 13 April 2020, 20200414083132; 3.82

⁴ Ibid; 3.89 and 3.110

⁵ Ibid; 3.104

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

14. 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.

15. The applicant is an Iranian national; it follows that Iran is his receiving country. I have not accepted that he was involved in the production of a book adverse to the Iranian government. I have accepted that he was detained at the age of [age] but not that he was charged with or convicted of organising a riot against the government. I have found that the applicant was of no interest to the Iranian authorities prior to his departure from Iran in 2013.

16. I have accepted that the applicant is of Azeri ethnicity. I accept that the applicant may be subject to societal as well as official discrimination, including restrictions in access to employment and housing.⁶ I note that the applicant ran his own [occupation 1] business until his departure from Iran and his father was a [different occupation]. The applicant has not claimed to have ever been refused employment due to his ethnicity and I find he has not been. The latest DFAT report notes that more than 10% of the working age population in Iran are unemployed and a further 26% underemployed.⁷ The material before me does not however support the conclusion that the applicant would be denied access to any employment or that he would be unable to subsist because of his ethnicity.

17. I have accepted that the applicant was subject to racist slurs. I am not of the view that such actions, although regrettable, constitute serious harm. In terms of whether the applicant faces a real chance of serious harm from the State on the basis of his ethnicity, the country information supports that ethnic minorities who have sought greater rights or who have been involved in political activism have been targeted for arrest and prosecution on national security grounds.⁸ In the absence however of any public assertion of cultural or political rights, the review material does not support a finding that Azeris face a real chance of serious harm from the Iranian authorities. The applicant does not face a real chance of serious harm of the basis of his ethnicity.

⁶ DFAT, "DFAT Country Information Report – Iran", 13 April 2020, 20200414083132; 3.7

⁷ Ibid; 2.11

⁸ Ibid; 3.5

18. I have accepted that the applicant abandoned the Islamic faith in his teens and did not practise Islam before he left Iran in 2013. The applicant has not claimed that he ever faced harm in Iran due to this. I have found that he would not practise Islam on return to Iran. He has asserted that on return to Iran he would be labelled an apostate and sentenced to death. This assertion is not supported by the country information, which suggests that in 2015 perhaps only 16-17 per cent of people in Iran practise Islam, most others are secular, or even agnostic.⁹ According to a survey conducted among the Persian diaspora in Europe in June 2015, half of the interviewees between the ages of 20 and 40 said they were not Muslim. They primarily identified with the options 'atheist', 'agnostic' or 'other religion'. Meanwhile, 35 per cent of those who claimed to be Muslim said they were essentially non-practising.¹⁰ The most recent country material indicates that a significant proportion of the population does not attend mosque or pray on a regular basis, and alcohol consumption is common.¹¹ I am not satisfied that there is a real chance the applicant would face punishment from the authorities on return to Iran even if he were known not to observe Islam.

19. Abandonment of Islam whether for another religion or for any other reason is viewed as apostasy, and is formally punishable by death as noted by the applicant. A November 2017 report noted that while Christian converts are often threatened with apostasy charges, actual charges are a rare occurrence.¹² In March 2017 the Supreme Court upheld the decision of a criminal court in Arak to sentence a 21 year old man to death for apostasy. Authorities had arrested the man after he made social media posts considered critical of Islam and the Koran.¹³ Aside from his story about the book, which I have rejected, the applicant does not claim to have made any public statements which could be considered adverse to Islam. I find that the applicant would not publicly declare that he had abandoned Islam or otherwise denounce Islam on return to Iran. Overall I am not satisfied the applicant faces a real chance of any harm for reason of religion.

Refugee: conclusion

20. 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

21. 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

22. Under s.36(2A), a person will suffer 'significant harm' if:

⁹ Asia News IT, "Young Iranians affected by the embargo, tired of political Islam" 1 April 2015, CXBD6A0DE4714

¹⁰ LSE Middle East Centre (United Kingdom), 'The Revival of Nationalism and Secularism in Modern Iran' November 2015, CISEC96CF14725; p.10

¹¹ DFAT, "DFAT Country Information Report – Iran", 13 April 2020, 20200414083132; 3.70

¹² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Iran - COI Compilation', 01 July 2018, 20190326122102; p.117

¹³ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 3.44

- 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.

23. 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.

24. I accept that the applicant was subject to verbal abuse in Iran due to his Azeri ethnicity and may again face such actions in the future. I am not satisfied that such behaviour or its consequences constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, it does not amount to pain or suffering, severe pain or suffering or extreme humiliation. I have concluded above that the applicant does not face a real chance of harm due to not practising or due to abandoning Islam. As 'real risk' and 'real chance' involve the application of the same standard,¹⁴ 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) for this reason.

Complementary protection: conclusion

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

Decision

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

¹⁴ *MIAC v SZQRB* (2013) 210 FCR 505

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.