



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA20/08672

Date and time of decision: 13 October 2020 10:29:00

R Mikhail, 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) claims to be a citizen of Iran. On 19 July 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 7 September 2020 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (review material).
3. On 2 October 2020 the IAA received a submission on behalf of the applicant. This includes a legal submission and several attached documents.
4. In part, the legal submission refers to the delegate's decision and argument which I do not consider to be new information.
5. The legal submission also refers to Articles 78 and 130 of the Iranian "Penal Code of the Armed Forces of the Islamic Republic of Iran". It attaches a copy of those Articles, and Article 30, of the same code and their accredited translations. I consider these Articles extracted from the above code to be new information. The legal submission notes that the delegate, in her decision, did not accept the applicant's claim that his compulsory military service was extended as penalty for refusing to obey orders to suppress Green Movement protesters because the delegate relied upon country information that indicates that military personnel would suffer more serious penalties for such an offence. It argues that the penalties for defying orders in the Iranian armed forces are subject to certain procedures as codified in the above code under Article 78. Whilst heavy penalties do exist for disobeying orders, it submits it should have been put to the applicant whether he was officially charged and attended a military court. It also submits that the delegate failed to give weight to the fact that the applicant was a conscript and failed to consider whether his non-compliance was dealt with as a disciplinary issue or was reported to higher ranks as per Article 130 of the above code which distinguishes disobedience from other offences and distinguishes whether the act was intentional or recklessness. It submits not every instance of non-compliance or defiance would be referred to the General Office of the Armed Forces and that Article 78 provides that where non-compliance is due to recklessness or negligence, a person might be disciplined in accordance with disciplinary guidelines.
6. According to the translations of these Articles, Article 30 states that any commander or military officer who refrains from carrying out military duties assigned to him will be considered an infidel punishable by death. Article 78 states that a military officer who sends counterfactual report (or commits other offences in relation to reports) will be convicted and punished depending on the consequence of the offence. He may be considered an infidel punishable by death, or may be sentenced to imprisonment, or liable to compensation of financial loss. If the violation is the result of negligence or carelessness, the violator shall be punished up to half of the lower range or half of the upper range of the above convictions. Otherwise the violator will be treated in accordance with the regulations stipulated in the Disciplinary Act. Article 130 states that actions that are considered only violations of the disciplinary codes by virtue of certain articles, including Article 78, will be defined by the headquarters of the Armed Forces.

7. I am not satisfied that the above Articles address the specific circumstances of the applicant and provide little support in relation to his claims. Article 30 in fact states that any military officer who does not carry out duties assigned to him will be considered an infidel punishable by death which appears to support the delegate's concerns. It is submitted the delegate should have distinguished the punishment the applicant would receive as a low rank conscript compared to other military officers and that he may have been disciplined in accordance with disciplinary procedures, and although there may be alternative disciplinary procedures in the military, the applicant has not provided any country information about these procedures and when they apply and the specific treatment of low rank conscripts in such circumstances. Further, Article 78 refers to the specific offence of sending counterfactual reports and related offences regarding reporting but that is not what the applicant has claimed to have done. He has also not claimed to have committed an offence due to recklessness but has claimed that he deliberately defied orders to suppress protesters, so I do not consider Article 78 to be particularly relevant to the applicant's claims. Article 130 does not assist in any further as it merely refers to violations of disciplinary codes, which I have noted earlier, have not been provided to the IAA. The submission states that the delegate should have sought clarification from the applicant as to whether his offence was dealt as a disciplinary issue or was reported to higher ranks and he was officially charged and attended a military court. Despite having the opportunity to provide such clarification to the IAA in these submissions, the applicant has not done so nor has he provided any further supporting evidence in relation to these claims to indicate that he was only subject to disciplinary proceedings or that the extension of his military service was punishment for his defiance. The above new information is also not credible personal information. I am not satisfied there are exceptional circumstances to justify considering this information.
8. The submission also states that the applicant has received court and police summons in respect of charges laid against him and attached two copies of these alleged subpoenas with their accredited translations. I am satisfied these documents are new information. This has been provided in response to the delegate's rejection of the applicant's claim to have outstanding charges when he left Iran in regards to two incidents where he was caught drinking alcohol and a subsequent incident where he was stopped by the authorities for his clothing and got into an altercation with the authorities. He claims he was charged with insulting the Supreme Leader and disturbing the public order in relation to both incidents and had to appear in court but left Iran before those hearings. In part, the delegate relied on the fact that the applicant had not provided any documentary evidence in support of these claims. The submission states that the two documents were in Iran with the applicant's family and the applicant did not have access to them as his family members refrained from assisting him as they blamed him for the confiscation of their property which was used as surety for his bail in relation to these charges. It submits that, after the delegate's decision, the applicant employed his family to search their records for any relevant documents regarding his charges and they found these subpoenas.
9. Both subpoenas are dated [Date 1] July 2013. One subpoena is issued from "The Intelligence and Public Security Police Precinct, [Number] Headquarter – The Office of the Intelligence" and is addressed to the applicant. This subpoena states that, to enforce the directive of the Judiciary Office, the applicant is to present himself to the above department on [Date 2] July 2013 to address some "administrative procedures" and states that failure to attend will result in further legal action against him. It also notes the judicial order will be signed by him at his presence. The other subpoena is issued to the applicant from the Prosecutor of "Branch [Number] of the Criminal Verdict Enforcement Office at the Public and Revolutionary Court of Shahr-e Ray". It states that, pursuant to a letter dated [Date 1] May 2013, he is to present himself to the Intelligence and Public Security Police Department of Shahr-e Ray on [Date 2] July 2013 to address some "administrative procedures" and "judicial oversight" and also states that failure to present himself will result in further legal action against him.

10. In his evidence before the delegate, the applicant consistently claimed that he had no documentary evidence in support of these claims. When the delegate asked if he or his family received any contact from the court when he did not appear at his scheduled hearings, he said he did not know and even if they sent a letter, his mother is illiterate and his sister is sick and cannot talk. During the protection visa interview the applicant claimed that a few weeks prior, the authorities had sealed his mother's home and retained the title deed that was used for his bail and she and his sister had to move back to their village and when he calls this mother she does not want to speak to him because of the trouble he has caused them. However, earlier in the protection visa interview he said that he speaks to his mother once a week and he said the same thing in his application for protection which was prepared in July 2017. Given these subpoenas were issued in July 2013, some four years prior to when he prepared his application for protection, I find it difficult to believe that his family did not discuss these documents with him or provide him with a copy up until recently if he had been in regular contact with him up and until that point. In a post-interview written submission to the delegate dated 18 June 2020 it stated that none of his family members were currently ready to cooperate with him and request his court records or obtain any evidence in support of his claims as they all believe he has caused his family mental and financial problems and pain and they are refusing to talk to him or help him. Little explanation has been provided as to why his family have now decided to assist him in providing these documents when it was claimed that they were not even willing to speak to him several months earlier in June 2020. In the circumstances, I am not convinced of the reasons given for why these documents could not have been provided to the delegate.
11. Although the date of the subpoenas is dated after he left Iran (departmental records confirm he arrived in Australia [earlier in] July 2013), the remainder of the information in the subpoenas does not reflect the applicant's claims. There is no mention in either subpoena of having to attend court in relation to the specific charges and events claimed by the applicant. There is no mention of any charge in either subpoena. One subpoena merely request that the applicant attends the police department to address some "administrative procedures" whilst the other subpoena requests that he present himself to the police department to address some "administrative procedures and judicial oversight".
12. Given the unconvincing explanation provided as to why these documents could only be provided recently, in addition to concerns I have noted about the information contained in these documents, I am not satisfied there are exceptional circumstances to justify considering these new documents.
13. The submission states that the IAA should consider its discretion under section 473DC of the Act to interview the applicant as he needs to further elaborate on his military service detention and how his defiance was dealt with by his superior during his military service, that is, whether he was charged or simply punished at a disciplinary level. It submits an invitation to interview the applicant would be appropriate and relevant to clarify all the unaddressed concerns.
14. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. This is subject to other provisions of Part 7AA. Pursuant to s.473DC the IAA is under no duty to get, request or accept any 'new information' whether requested to do so by a referred applicant, by any other person, or in any other circumstances. This discretionary power must be exercised reasonably having regard to the IAA's statutory framework and all the circumstances of each case. If the IAA decides to get or accept new information, it can only consider that information in exceptional circumstances. I am satisfied

the applicant had the opportunity to clarify or elaborate on these claims in relation to his military service in his evidence before the delegate including in post-interview written submissions. Further, he also had the opportunity to do so in submissions to the IAA but did not despite being aware of this issue. I am not satisfied in the circumstances of this application an interview is required.

### **Applicant's claims for protection**

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15. The applicant's claims, as outlined in his application for protection, can be summarised as follows:

- He is a citizen of Iran and grew up in [Village 1], Tabriz but was residing in Tehran from 2006.
- He was born into a Shia Muslim family but has since renounced Islam.
- He experienced problems with the Iranian authorities. When he was conducting his compulsory military service, he was asked to violently suppress Green Movement protesters, but he refused the orders and he was subsequently fined, and his military service was extended for three months.
- On another occasion he was caught drinking alcohol with friends at his house and was subsequently made to pay a fine and was subject to lashes.
- Around one month before he left Iran, he was stopped by police whilst riding his motorbike because of his inappropriate hairstyle and clothing. As a result of getting into an altercation with them he was arrested and then charged with insulting the Supreme Leader and law enforcement. He was subsequently released on bail after providing the title deed to his mother's house and was requested to attend court in two months but left Iran one month later.
- He also fears returning to Iran because he sought asylum in a western country.

### **Factual findings**

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16. On the basis of the applicant's oral evidence and the documentary evidence he provided with his application for protection, including certified copies of his Iranian birth certificate and national identity card, I accept that he is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.

### **Religion**

17. In his statement of claims attached to his application for protection (the applicant's statement), the applicant claims that he has no religion and had renounced Islam as it negatively impacted his life. He claims he had limited religious knowledge and was not interested in Islam and does not consider himself a Muslim. During the protection visa interview, he claimed that in around 2008 or 2009 he decided he did not want to practise Islam anymore as he realised that being a Shia is about hurting and killing people.

18. I accept that the applicant stopped practising and believing in Islam in around 2008/2009 as country information before me indicates that secularism is widespread in Iran, particularly amongst young people.<sup>1</sup>
19. The applicant claims that he experienced problems with the Iranian authorities because of his ideas and non-belief in Islam, however, as outlined below I do not accept as credible most of his alleged encounters with the authorities.

### Treatment during Military Service

20. In his statement, the applicant claimed that during his compulsory military service he was placed in a branch of the military in the Department of Defence working as a guard. During his service, the Green Movement and street protests were taking place in Tehran. Government forces were used to suppress the rising movements and anti-government gatherings and the Ministry of Defence ordered his unit to help and support the government to terrorise and attack people, but he did not agree with it. One of his friends, [Mr A], had participated in one of the street protests and became involved in a fight and died. The applicant refused to obey the orders and consequently he was fined, and his military service was extended from 18 months to 21 months. The applicant referred to these claims during his protection visa interview and said that as defence, they were also a reserve for the *Artesh* and *Sepah* and when the riots happened they were expected to protect *Sepah* and *Artesh* and work as guards to suppress the protests. Further, because he did not obey orders his holiday period was also revoked.
21. The applicant provided a certified copy of his compulsory military service card with his application for protection. It indicates he completed his service from [2008] to [2010] and the duration of his service was 21 months but states that the legal duration of service is 18 months. Country information before the delegate also notes that military service in Iran is compulsory for men aged between 18 and 40, and usually lasts between 18 and 24 months.<sup>2</sup> I accept that the applicant completed his military service during this period and that he completed an extra three months. Country information before the delegate also confirms that the Green Movement protests occurred following the June 2009 presidential elections and, therefore, occurred when the applicant was conducting his military service.
22. However, there is no country information before the delegate to indicate that Iranian army conscripts act as reserves for the Islamic Revolutionary Guards Corps (IRGC)(*Sepah-e Pasdaran-e Enghelab-e Eslami*) and were used to suppress Green Movement protestors in 2009. One source explains that the Iranian military has two main branches, the conventional army, known as the *Artesh*, and the IRGC. The *Artesh* is mainly responsible for guarding the independence and territorial integrity of the country whilst the IRGC is charged primarily with defending and protecting the Islamic regime. The *Artesh* consists of 130,000 professional and non-commissioned officers (NCOs) and 220,000 conscripts, who serve mandatory stints lasting between 18 and 24 months. By comparison, the IRGC is the more ideological force with greater loyalty to the Islamic regime; has professional officers and NCOs, along with conscripts drawn mainly from active members of the Basij militia rather than normal conscripts.<sup>3</sup> Sources indicate that, in response to the Green Movement protests, the government despatched the IRGC, Basij,

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<sup>1</sup> Australian Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 14 April 2020, 20200414083132

<sup>2</sup> Ibid.

<sup>3</sup> Saeid Golkar, "The Supreme Leader and the Guard: Civil-Military Relations and Regime Survival in Iran", Washington Institute for Near East Policy, 28 February 2019, 20190820124105; "Iran's Revolutionary Guards point to fresh dissent within oppressive regime", Guardian (Unlimited) (UK), 11 June 2010, CX246790; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran - COI Compilation", 1 July 2018, 20190326122102

the police and plain-clothed paramilitary forces to beat thousands of protesters and arrested hundreds, while snipers killed dozens.<sup>4</sup> Further, that in December 2009, a statement signed by key figures in the Iranian army surfaced that warned the IRGC that if they attack the Iranian people, the military will come to their aid indicating their lack of involvement and support in regards to the suppression of protesters.<sup>5</sup>

23. Country information that was before the delegate also indicates that the leader of the IRGC described the Green Movement as “more dangerous than the imposed war which Saddam began against us” and that security forces who refused to obey orders, including beating protesters during the Green Movement, were arrested, tortured and imprisoned for months or were sacked.<sup>6</sup> Given this, I find the applicant’s alleged punishment does not match the severity of his offence of wilfully disobeying orders to suppress these protesters.
24. Although I accept the applicant’s military service was extended for three months, his military service completion card does not provide any reasons for this and the applicant has also not provided any further supporting evidence in support of these claims.
25. During the protection visa interview, the applicant also raised claims that were not included in his statement. He claimed that he left Iran because his life was in jeopardy because he witnessed killings and referred to the incident where his friend [Nr A] was killed. He claims that when the authorities realised [Mr A] was his friend, they detained the applicant in the army unit for forty days so they could bury [Mr A] and forget about it. He was told to keep his mouth shut about the incident and not talk about “who killed who”. He claims he was living in stress not knowing if they were going to arrest him.
26. At the beginning of the applicant’s statement it indicates that it is only a summary of his claims and is not an exhaustive statement about what happened to him in the past or the reasons why he cannot return to Iran and he will provide further information during his protection visa interview. Despite this, I remain concerned that the applicant did not refer to being detained during his military service in connection with the death of [Mr A] in his statement particularly given the significance of having been detained for such a long period of time and that he allegedly remained in fear of his life and feared returning to Iran in relation to this incident and that he had mentioned the death of [Mr A] in his statement. It was also notably the first incident he referred to when asked by the delegate why he feared returning to Iran reflecting the significance of this incident to his claims. The fact that he did not raise it in his statement causes me to doubt the credibility of this claim.
27. In addition, the applicant has also not provided any supporting evidence in relation to these claims. The applicant has also not claimed to have been harmed after he completed his military service in relation to this incident. He was also able to obtain his military service completion card, his passport and subsequently travel to [country] for a holiday in 2012. This is not reflective of someone who was still of adverse interest to the Iranian authorities in relation to the death of his friend in 2009.

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4 DFAT, “Country Information Report – Iran”, 14 April 2020, 20200414083132; Saeid Golkar, “The Supreme Leader and the Guard: Civil-Military Relations and Regime Survival in Iran”, Washington Institute for Near East Policy, 28 February 2019, 20190820124105

5 “Dissent in the Iranian Revolutionary Guards”, Assyrian International News Agency (AINA), 7 July 2010, CX259916

6 “Iran’s Revolutionary Guards point to fresh dissent within oppressive regime”, Guardian (Unlimited) (UK), 11 June 2010, CX246790; “Dissent in the Iranian Revolutionary Guards”, Assyrian International News Agency (AINA), 7 July 2010, CX259916; “Iran ponders how to deal with those who disobey”, Asharq Al Awsat, 24 April 2011, CX321657

28. On the evidence before me, I do not accept that the applicant was ordered to violently suppress Green Movement protestors during his military service and, after refusing to, he was punished. I also do not accept that the applicant's friend was killed during the Green Movement and that the applicant was subsequently detained for forty days during his military service in connection with this incident.

### **Arrests on two occasion in 2013**

29. The applicant also claimed in his statement that on one occasion he had friends at his house on a Thursday and they were drinking alcohol when a few plain-clothed members of the Basij came into his courtyard. The Basij beat them using inappropriate language and threatened them and broke all the glasses they were using and searched inside his home and took away their drink bottles. They were arrested and taken to the Basij centre in his area. A report was prepared, and they were interrogated. They kept them in the centre until Saturday. They could not deny that they had consumed alcohol because they had been sent for an alcohol test after they were arrested. During their time in detention they were made to wash and clean the toilets and the applicant was mistreated physically and verbally and was threatened constantly for buying and using alcohol. He was taken to [a] Court on Saturday and, with no proper hearing, was fined [amount] Tomans and sentenced to [number] lashes. He had to pay the fine that day and afterwards he was taken to the basement of the court and whipped (alcohol incident).
30. In his statement the applicant also claimed that around one month before he left Iran, he came to the attention of the authorities again. He was on his motorbike when he was stopped by the police in a random stop because his hair style and clothing were not appropriate. When he asked them what was wrong, they began to swear at him and insult him. He got angry and pushed one of them and then they attacked him and he was taken to [a] police station. He remained in detention for one night and they filed a report against him which said that he had been involved in clashes with the police and it was signed by three policemen so he could not defend himself. The next day he was taken to [the] Court and the judge started writing the verdict without asking him any information. He was accused of insulting the Supreme Leader and law enforcement. The charges were four to six months imprisonment which could be bailed if a title deed was provided. He was released on bail after his mother provided the title deed to her home. He also signed a written commitment to attend the court in two months, but he left Iran after one month before completing his sentence fearing he would be wrongly accused of some "vaguely worded offences" (motorbike incident).
31. During his protection visa interview, the applicant's oral evidence was confused and unconvincing and at odds with his claims in his statement about the above two incidents. Although his statement claims to be only a summary of his claims for protection, as the statement refers to these actual events in detail, I am not satisfied this is a reasonable explanation for the applicant's problematic evidence about these events during his interview.
32. For example in relation to the alcohol incident, during the protection visa interview, the applicant claimed that it was on this occasion that he was released on bail after providing the title deed to his mother's house because if he had not done so he may have been kept in detention. He also claimed that he had also been charged with insulting the Supreme Leader and fighting with the Basij in relation to this incident. However, in relation to the description of this incident in his statement, there is no indication that he insulted the Supreme Leader or fought with the Basij or were charged with these offences and nor did he mention being released on bail.



33. During the protection visa interview, he also claimed that the motorbike incident happened three weeks after the alcohol incident and approximately one month before he left Iran. However, in his statement he only referred to the motorbike incident occurring just prior to his departure from Iran and that this was the reason for his sudden departure from Iran.
34. During the protection visa interview the applicant claimed that in relation to the motorbike incident, he had been driving his motorbike close to the police station and there was a checkpoint and he was stopped and they picked on him because he was wearing a short-sleeve shirt and his trousers were not considered appropriate. He got a little bit angry and started insulting them. He then claimed that the authorities realised that his name was already in the system and that he had been previously charged with insulting the Supreme Leader and disturbing the public order. He then claimed that he was again charged with insulting the Supreme Leader and disturbing the public order. I note the applicant did not mention being charged with disturbing the public order in relation to the alcohol incident in his statement and only feared being charged with this offence in relation to the motorbike incident. He further claimed that when he went to court in relation to the motorbike incident the judge already knew him because he had been there three weeks earlier in relation to the alcohol incident. Further, his mother's house title deed was already there as surety and, had it not been there, he would have been detained for four to six months whilst processing his case. Because the surety was already in place he was released and given a court date in approximately one month but fled the country before then. Again, this is at odds with the information he provided in his statement about the motorbike incident.
35. In a post-interview written submission by the applicant's previous migration agent, it wrote that the applicant had not been banned from leaving the country and was able to depart legally because he was present at the time he was accused and had been sentenced to lashes and had paid the fine and had signed a written commitment not to commit any similar offence. Further, his mother had provided the title deed to her house until such time that the applicant was physically able to attend court because the lashes had caused him intolerable pain and bleeding. As already noted, this claim is odds with the applicant's statement. This submission also makes no mention of the applicant's previous claim that he also had to attend court again regarding the motorbike incident. I also note the country information that was before the delegate indicates that the punishment for alcohol consumption is 80 lashes and not [number] as claimed by the applicant.<sup>7</sup>
36. During the protection visa interview the applicant further claimed that the motorbike incident happened before [Date 2] May 2013. When he attended court in relation to the motorbike incident, he was given another court hearing approximately a month later. The delegate asked him if the court changed the date from [Date 2] May 2013 in relation to the motorbike incident and he responded that he did not know about that. The delegate also noted to the applicant that he claimed to have left Iran on [Date 3] July 2013, however this was after the date in which he was to return to court on [Date 2] May 2013. In response to this concern, at the conclusion of the protection visa interview, his migration agent said that the applicant could not recall the exact dates when these incidents occurred, and he was just estimating when the court hearing was scheduled. In the post-interview written submission, it confirmed that he left Iran in early July 2013 and the date of the court hearing was around one month after he left Iran and he miscalculated the days during the protection visa interview. I find this explanation for his confusion during the protection visa interview unconvincing particularly given the alleged

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<sup>7</sup> "Islamic Penal Code, Books I and II (Iran)", 21 April 2013, CIS36DE0BB2877; "'Hardened Drinker' Faces Death Penalty", Radio Free Europe / Radio Liberty (RFE/RL), 7 February 2008, CX192849

significance of these events and that they were the reasons why he claimed to have left Iran in 2013.

37. The applicant also did not refer to these claims when asked why he left Iran during his Irregular Maritime Arrival and Induction Interview (arrival interview) which was held with him shortly after he arrived in Australia in July 2013. When the delegate raised this during the protection visa interview, the applicant said that at that time of his arrival interview he was very frightened and was fearful that the Australian authorities would put his information somewhere where the Iranian authorities could access it and that is why he did not talk about it. He was also still under the impression that he would be removed and returned to Iran and he would be taken to prison. In the post-interview written submission it was also submitted that the applicant felt unsafe to talk about his history and the problems he had with the authorities in Iran in relation to drinking alcohol and being accused of insulting the Supreme Leader and claims that the applicant was also scared of being sent back to Iran for drinking alcohol and disobeying the rules.
38. I appreciate that arrival interviews are not conducted for the purpose of assessing an applicant's claims for protection and are conducted shortly after applicants have endured a difficult boat journey to Australia. However, in this case, when the applicant was asked why he left Iran during his arrival interview he raised claims against the Iranian authorities in relation to general harassment and being arrested on one occasion for wearing a short-sleeved shirt. In that interview he also referred to being arrested on another occasion after speaking to some girls on the street. The fact that he did raise similar claims of harassment against the Iranian authorities in his arrival interview appears to undermine his explanation for not having raised his current claims in the same interview. I am also not convinced of his claim to fear being sent back to Iran by the Australian authorities because he disobeyed the rules and drank alcohol in Iran when he has provided no evidence of being advised this by the Australian authorities. I do not find his explanation for not having raised these claims during his arrival interview to be convincing.
39. Further, the applicant's description of being arrested for wearing a short-sleeved shirt on the street in his arrival interview appears to be a reference the motorbike incident that he raised in his statement given the similarity in the claim. However, when discussing this incident in the arrival interview he claimed that he was stopped and asked why he did not have a long-sleeved shirt and then was arrested and taken to the station but did not claim that he was detained overnight or charged or mistreated.
40. During the protection visa interview the applicant also claimed that approximately 20 to 25 days prior to his protection visa interview, his mother and brother went to court to ask for their title deed but could not get it because the applicant has to first to present himself to court. He claims the authorities then confiscated his mother's house and put a lock on the door and as a result his mother and sister had to return to [Village 1]. He said his family do not want to talk to him because of all these problems. Country information that was before the delegate indicates that, in cases where a person who has been bailed through a surety does not appear on the due date the surety will be summoned to deliver the accused, failing which the property or the asset that has been pledged to the court will be confiscated.<sup>8</sup> Other sources also noted that if a person who is out on bail leaves the country, the person or his/her family will lose the surety provided.<sup>9</sup> I find it difficult to believe that it took the court seven years to confiscate the family property given

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<sup>8</sup> Immigration and Refugee Board of Canada, Immigration and Refugee Board of Canada, "IRN101299.E - Iran: Arrest warrants and other court documents; trial in absentia in criminal cases; punishment for persons charged with helping anti-revolutionaries; procedure when someone acts as surety", 20 June 2006, CISBE8E6BE629

<sup>9</sup> Danish Refugee Council and Danish Immigration Service, "Iran: Judicial issues", 1 February 2018, CIS7B83941638; 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", 1 February 2013, CIS25114

the authorities would have been aware of the applicant's departure in 2013 when he departed Iran legally.

41. The applicant has also not provided any credible supporting documentary evidence in relation to the above claims.
42. On the basis of the concerns that I have raised above, I do not accept that the applicant was caught drinking alcohol and then charged and subject to punishment and then released on bail after providing the title deed to his mother's house and then required to attend court on another occasion in relation to this incident.
43. Given the applicant's consistent reference to being stopped by the authorities for wearing a short-sleeve shirt and then arrested and taken to the station during his arrival interview, I accept as plausible that this may have occurred. Country information that was before the delegate also confirms that the morality police patrol the streets to monitor Islamic dress code adherence.<sup>10</sup> However, given my concerns outlined above, I do not accept that this incident occurred shortly before he left Iran or that he was then detained overnight and charged with any offence and required to attend court at a later date.
44. In his arrival interview, the applicant also claimed that, in 2005, he was caught talking to some girls and some soldiers questioned him about it and when he told the soldiers that it was none of their business, they arrested him and he was detained for two to three hours. He also referred to general harassment by the authorities for smoking or being in a park. The applicant did not refer to these claims again before the delegate or the IAA, so I am not satisfied he has a fear of harm on return to Iran in relation to these incidents.

## **Refugee assessment**

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45. 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**

46. 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

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<sup>10</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

- 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.
47. I have not accepted that the applicant was asked to suppress Green Movement protestors whilst he was performing his compulsory military service and when he disobeyed that order he was punished. I have also not accepted his claim that his friend died during those protests and he was subsequently detained for forty days during his military service to keep quiet about the incident. I am not satisfied he has a well-founded fear of persecution in Iran in relation to these claims.
48. I have also not accepted that the applicant was arrested and charged and punished when caught drinking alcohol in 2013 or that he was released on bail and then requested to attend a subsequent court hearing. I am not satisfied he has a well-founded fear of persecution in Iran in relation to this claim.
49. I accept that the applicant was stopped on one occasion by the authorities because he was wearing a short-sleeved shirt and that he was arrested and taken to their station. However, I have not accepted this incident occurred shortly before he left Iran or that he was detained overnight and charged with any offence and required to attend court later as per his claims before the delegate. I am not satisfied on the evidence that the applicant was of any further adverse interest to the authorities as a result of this incident or that he was imputed with a religious opinion against Islam because of the way he was dressed or looked. I am also not satisfied that wearing a short-sleeve shirt or his general style was an expression of his anti-Islamic beliefs as he has not claimed this was the case. I am not satisfied he will face a real chance of harm in Iran from any group or person because of this incident.
50. In its most recent report on Iran published in 2020, the Australian Department of Foreign Affairs and Trade (DFAT 2020 report) assessed that authorities are far more likely to target women than men for dress code violations. Western-style clothing is common — jeans and short-sleeved t-shirts (including with Western branding) are *de rigueur* for men in Tehran during summer. Where there have been incidents of harassment of men for violating the dress code, DFAT assesses these were most likely the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities) or because the individual had come to the attention of the authorities for other activities. DFAT is not aware of the authorities targeting people on the basis of a ‘Western’ appearance. While such appearances may be frowned upon by more conservative Iranians, DFAT assesses that people of ‘Western’ appearance face a low risk of official and societal discrimination. The applicant has not provided credible evidence of any other harassment he experienced in Iran because of his western style appearance. I am not satisfied the applicant will face a real chance of harm in Iran due to his western style of clothing or appearance.
51. I have accepted that the applicant has renounced his belief in Shia Islam. Country information that was before the delegate indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. Shia Islam is the official state religion. A Muslim who renounces Islam and becomes atheist is considered an apostate and risks state persecution and, potentially, the death penalty but death sentences in apostasy are rare. In DFAT’s 2020 report, and in other sources that were before the delegate, it notes that secularism in Iran is widespread, particularly in the major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis, and alcohol consumption is

common. Official sources told DFAT that religion was a private matter — that, beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state.<sup>11</sup> In DFAT's 2020 report it also states that, unless they widely publicise their non-belief, atheists are unlikely to come to the attention of the authorities. Atheists from conservative families might face familial pressure and potential ostracism if their atheism were revealed but would generally not be subjected to physical harm and DFAT is unaware of individuals being prosecuted for atheism. It assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. Atheists who are open about their non-belief face a moderate level of official and societal discrimination. I have not accepted the applicant's claim about being caught drinking alcohol. I have also not accepted that the applicant's style of western dress was an expression of his non-belief in Islam or that he was imputed with a religious opinion against Islam because of his style of dress. There is no credible evidence he has an interest in promoting his non-belief in Islam. I am satisfied on the evidence that the applicant will not promote his religious views in public in Iran and I am satisfied this will not be due to a fear of persecution. The applicant has claimed to have received some pressure and problems from his family who were practising Muslims and he was upset with them because of his non-belief in Islam. I accept this as plausible, but he has not claimed to fear harm from his family. I am not satisfied he has come to any harm in the past in Iran because of his religious opinion/non-belief in Islam. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because of his religious opinion.

52. The applicant also claims that he will be arrested, interrogated and tortured because he sought asylum in a western country and the Iranian government will accuse him of being associated with foreign states.
53. In DFAT's 2020 report, it noted that Iran has a global and longstanding policy of not accepting involuntary returns. In March 2018, Iran and Australia signed a Memorandum of Understanding on Consular Matters which includes an agreement by Iran to facilitate the return of Iranians who arrived after March 2018, but the applicant does not fall within that category. I am satisfied that if the applicant were to return to Iran, it will only be on a voluntary basis.
54. In the above report, DFAT has stated that a *laissez-passer* can be obtained from an Iranian diplomatic mission on proof of identity. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities pay little attention to failed asylum seekers on their return to Iran. 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 who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. The treatment of returnees, including failed asylum seekers, depends on the returnees' profile before departing Iran and their actions on return. DFAT assesses that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political

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11 DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; "Iran's Other Religion", Boston Review, 1 June 2003, CX82EDE9415499; Country of Origin Information Services Section (COISS), "Iran - Common Claims - September 2019", 9 September 2019, 20190909125037; ACCORD, "Iran - COI Compilation", 1 July 2018, 20190326122102

activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.

55. There are few very recent reports before me that allege mistreatment of failed asylum seekers from western countries on return to Iran. A 2019 article claims that an Iranian convert to Christianity who was refused asylum in Germany and deported back to Iran was arrested "immediately" upon her arrival in Tehran, but it is unclear from the report why she was arrested. There are two 2017 articles which refer to the sentencing to prison of an asylum seeker on return to Iran but it notes that he had been arrested for an offence prior to his departure from Iran and was related to a political activist with little other detail about the case provided. A Canadian organisation also reported that a failed Iranian refugee claimant, who was deported from the United Kingdom in 2017, was arrested on his return to Iran "due to claiming asylum" and subsequently charged with "homosexuality and promoting immoral behaviours" but there are no other corroborating sources and few details about this incident. A 2015 article by the Guardian refers to the return of two Iranian asylum seekers from Papua New Guinea who, after return, were forced to surrender their documents and were told to report to police though no further details about their circumstances were provided in the report. Other articles refer to the arrest of returning political activists or their families, artists, PHD students, and journalists or those who had been previously convicted of an offence and fled the country. I am also not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or are imputed to be spies.
56. The applicant no longer has his passport. Should he return on a *laissez-passer*, I accept the applicant will very likely face a brief period of questioning on return to Iran. The applicant was not of adverse interest to the Iranian authorities prior to his departure for any reason. I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return. I am not satisfied there is a real chance he will be subject to prolonged questioning or that he will face a real chance of harm during such questioning for any reason. I also do not consider being questioned for a short period in these circumstances amounts to harm.
57. I am not satisfied the applicant will face a real chance of harm from any group or person as a returned failed asylum seeker from a western country.

#### **Refugee: conclusion**

58. 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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59. 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**

60. 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.

61. 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.

62. For reasons given, I have not accepted that the applicant was ordered to violently suppress Green Movement protestors during his military service and was punished for disobeying that order. I have also not accepted that the applicant’s friend was killed during the Green Movement and that the applicant was subsequently detained for forty days during his military service in connection with this incident. I have also not accepted the applicant’s claim to have been arrested and charged and punished for drinking alcohol in 2013 or that he was released on bail and then requested to attend a subsequent court hearing in relation to this incident. I am not satisfied he will face a real risk of significant harm in Iran in relation to these claims.

63. I have accepted that the applicant was stopped on one occasion by the authorities because he was wearing a short-sleeved shirt and that he was arrested and taken to their station. But I have not accepted the applicant’s claim that he was then detained overnight and charged with any offence and required to attend court in relation to this incident. I am not satisfied he was of any further adverse interest to the authorities as a result of this incident for any reason. I am not satisfied he will face a real risk of significant harm in Iran from any group or person because of this incident.

64. I have found the applicant will not face a real chance of any harm in relation to his other claims. Consequently, he will also not face a real risk of any harm in Iran in relation to those claims.<sup>12</sup> I am not satisfied the applicant will face a real risk of significant harm in Iran.

### **Complementary protection: conclusion**

65. 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>12</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.