



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08831

Date and time of decision: 22 February 2021 15:17:00

A Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. He arrived in Australia [in] March 2013. On 14 August 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 5 January 2021 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate accepted the applicant was a [Tribe] Arab from Ahvaz who had been employed for many years in [workplaces] and had experienced some problems with his most recent employer prior to leaving Iran. However the delegate was not satisfied the applicant lodged a complaint against his employer or that the Iranian authorities at the behest of his employer had issued a warrant for the applicant's arrest. While the delegate accepted the applicant had participated in Baha'i events in Australia and been the subject of an initial positive recommendation by his local Baha'i Spiritual Assembly, she was not satisfied the applicant had genuinely converted to the Baha'i faith and was not otherwise satisfied there was a real risk the applicant would suffer persecution or significant harm if returned to Iran.

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).
4. On 25 January 2021 the applicant's representative provided to the IAA on the applicant's behalf an email with attachments (the IAA submission). The attachments comprised: a legal submission providing commentary on the delegate's decision; a statutory declaration by the applicant dated 25 January 2021 responding to the delegate's findings; screenshots of postings to a [Social media 1] account in a name close to the applicant's spanning the period 2016 to 2020 (with unofficial translations of parts of the postings); a statement by the applicant dated 21 January 2017; a letter from the Spiritual Assembly of the Baha'is of [Town] dated 11 June 2020; and a reference letter for the applicant from a [job position] dated 21 January 2021.
5. In the legal submission it was submitted that the applicant's statutory declaration does not provide new information but rather supplements the information provided by the applicant in his SHEV application and interview and provides clarification on issues raised by the delegate in the Protection Visa Decision Record. The legal submission was silent as to whether or not the other attachments were new information.
6. The reference letter outlines an Australian employer's view of the applicant's suitability as an employee and potential citizen. I do not consider the letter is relevant to the review, s. 473DC(1)(b) is not met in connection with it. The applicant's 2017 statement, the Spiritual Assembly's 2020 letter and excerpts from the DFAT Country Information Report Iran dated 14 April 2020 and a BBC report dated 22 September 2009 referred to in the legal submission were before the Minister when the s.65 decision was made and are not new information. The legal submission and statutory declaration each restate some of the applicant's claims that were before the delegate and address the delegate's decision and issues arising. I regard these documents as containing argument rather than information and have considered them.
7. However, the screenshots of postings to a [Social media 1] account were not before the Minister when the s.65 decision was made and are new information. They pre-date the

delegate's decision by periods ranging from weeks to years. I note the applicant was advised by the delegate at the opening of the SHEV interview that it was his responsibility to raise all his claims and provide evidence in support of those claims and that if he did not do so before a decision was made he may not have another chance to do so. The applicant was also told at the close of the SHEV interview that any additional information provided before the decision was made would be considered.

8. During the seven month period that elapsed between the SHEV interview and the decision the applicant did provide some information to the Department of Home Affairs (the Department) when requested to do so: namely a copy of the June 2020 Local Spiritual Assembly letter and responses to written requests from the Department to provide more information and comment on information relating to events he claimed he experienced in Iran. While the delegate and the applicant did discuss his social media usage during the SHEV interview and the applicant did mention he used [Social media 1] and [Social media 2] to develop a better understanding of the Baha'i faith the delegate did not specifically request evidence of social media posts then or later in writing when seeking other information from the applicant. In this context, I am prepared to accept the applicant was unaware of the importance of providing the [Social media 1] posts until he saw the Protection Visa Decision Record in which the delegate drew a negative inference about his commitment to the Baha'i faith from his failure to provide evidence of using social media to expand his knowledge of the religion. I am satisfied the [Social media 1] posts are credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims. Taking those matters into account, I am satisfied that s.473DD(b) is met and that there are exceptional circumstances to justify considering the new information.
9. On 29 January 2021 the IAA invited the applicant to provide new information on the status of his application to be recognised as a member of the Australian Baha'i Community. On 12 February 2021 the applicant's representative provided on his behalf an email and attachments (the 2nd IAA submission). The representative's email was brief and did not include any submissions. Its attachments comprised: two emails from the National Spiritual Assembly of the Baha'is of Australia (the National Spiritual Assembly) to the Local Spiritual Assembly of the Baha'is of [Town] (the Local Spiritual Assembly) about the applicant dated four years apart; and three communications from the Local Spiritual Assembly concerning the applicant: one to the National Spiritual Assembly, one to the Department and one to the IAA.
10. As noted above, the Local Spiritual Assembly's letter to the Department was before the Minister when the s.65 decision was made and is not new information. While neither the Local Spiritual Assembly's first communication to the National Assembly or the National Assembly's November 2016 email to the Local Spiritual Assembly were before the Minister when the s.65 decision was made the content of both of these items was before the Minister. It was relayed and discussed in a September 2020 telephone conversation between the Department and the secretary of the Local Spiritual Assembly that forms part of the review material. I am therefore satisfied the information contained in these two documents is not new information
11. The remaining attachments, the National Spiritual Assembly's email of 14 December 2020 to the Local Spiritual Assembly and the Local Spiritual Assembly's email of 12 February 2021 to the IAA are new information.
12. The Local Spiritual Assembly's email post-dates the delegate's decision, while the National Spiritual Assembly's email pre-dates the delegate's decision by a few weeks. However, the latter email was not addressed to the applicant and it is not clear when it came into his

possession. Although, the applicant was generally aware that the genuineness of his religious conversion was the subject of ongoing assessment by the Baha'i authorities, that the matter was of interest to the Department and he has not claimed he only recently became aware of the correspondence. Nevertheless, both emails contain credible personal information about the applicant's adherence to the faith and on their face the communications appear to be authentic. Taking those matters into account and that both documents have now been provided in response to the IAA's recent invitation that the applicant provide an update on his formal recognition as a Baha'i and any communications by the appropriate Baha'i authorities on this issue, I am satisfied that s.473DD(b) is met and that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

13. The applicant's claims as set out in the August 2017 SHEV application can be summarised as follows:

- he is a [Tribe] Arab who was born in the city of Ahvaz in Khuzestan province. During his education and compulsory military conscription in the Eighties and Nineties he suffered discrimination because of his race. In primary school teachers and classmates made fun of his Arabic accent. Later, in middle school classmates 'blamed him' for Iraqi attacks during the Iran-Iraq war causing him to change school and then quit school for a year before completing middle and high school and then undertaking technical training. Finally, despite his [qualification], during conscription he was assigned duties in a barracks kitchen and administrative office. In support of these claims he provided a scanned copy (and English translation) of a Technical and Vocational Training Certificate in [Subject].
- he obtained a position at a [workplace] in Ahvaz in late 1996. Almost a decade later a friend helped him obtain an office job in the [job task] section of another [workplace] owned by the same company where he worked for another five years. However, in 2010 the management of these [workplaces] changed and this affected him.
- the new director was strongly associated with the Iranian regime and began extending the applicant's work contracts on only a monthly basis. The applicant tolerated this for a year before meeting with the director and asking why his contracts were not renewed yearly like other employees. The director said he had already done him a favour by not purging him like other Arabs and that he could resign if he was unhappy. The director also threatened him with jail if he besmirched the regime at work. While conditions at work worsened - they made excuses to reduce his pay and other staff avoided him - he did not dare to object.
- around a year later, at the end of 2012, the applicant applied for his contract to be renewed. When more than two weeks had passed and this had not occurred he raised the matter with his supervisor who told him the director had decided not to renew his contract. On the suggestion of a friend the applicant lodged a formal complaint with the Department of Labour.
- the following day, the director's secretary told the applicant to meet the director at his office. As soon as he entered the office, the director told him: "It seems that you do not understand who is standing opposite to you? So you have lodged a complaint and thought they would not inform me?" He then told the applicant to sign a backdated statement indicating he had willingly requested renewal of his contracts on a monthly basis. The

applicant refused to sign the statement. The director swore at him and threatened 'heavy consequences'. The applicant lost his temper, swore at the Islamic regime and denounced the Islamic republic. The director ejected the applicant from his office.

- the applicant went home and phoned his brother who indicated the applicant had made trouble for himself as they were notorious and had imprisoned or executed hundreds of people. That afternoon an old friend asked him if he had any savings to travel to Indonesia and Australia. After considering the matter overnight, the next day the applicant withdrew his savings from the bank, booked an air ticket for [Date] February 2013. In support of these claims the applicant provided scanned copies of several certificates (and where appropriate English translations) for short training courses completed by him between 2000 and 2009 concerning various aspects of the [industry].
- a few days after the incident at the director's office the applicant went to stay with a relative in Tehran. When he called his brother in Ahvaz, he advised the applicant that someone from work had called his home and wanted him to go there. The applicant did not feel safe and moved from his Tehran relative's to a Tehran guest house where he stayed till he departed Iran some weeks later.
- after the applicant arrived in Australia in late March 2013 his brother told him the family had received legal documents while he was on his way to Australia. In support of these claims the applicant provided scanned copies of two summons sheets dated [February] 2013 and [May] 2013 and an arrest warrant dated [May] 2013.
- while living in Brisbane between May 2013 and April 2014 the applicant met a Baha'i woman and began volunteering with the organisation she worked at that provided support services to asylum seekers. He heard stories about the Baha'i faith and tried to increase his knowledge of the religion. He participated in Baha'i rituals and gatherings and after attending spiritual classes for a few months he was confident that the Baha'i faith is the most inclusive and advanced religion. In support of these claims he provided a copy of a letter dated 13 June 2017 from the President of [Organisation], who is also a [Community services provider] case worker; and a certified copy of a Certificate of attendance for a [Community services provider] course dated May – August 2013.
- the applicant moved to Melbourne in May 2014. In June 2016 he formally applied to convert to the Baha'i faith on the basis of the recommendation of [Suburb] ([Town]) Baha'i. In support of this he provided a letter dated 11 June 2020 from the secretary of the Spiritual Assembly of the Baha'is of [Town].
- because of the arrest warrants and his conversion to the Baha'i faith he fears if he returned to Iran he would be regarded as an apostate, tortured, imprisoned and put to death.

14. In December 2020 the applicant made an additional claim:

- that in 2018 an officer from the Division of Execution of Court Orders came to his house and told his family there was a judgment pertaining to the applicant but that he would only serve it on the applicant.

Refugee assessment

15. 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

16. 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.

17. In support of his identity the applicant provided a certified copy (and English translation) of a Shenashnameh (Birth certificate) dated [date] and a certified copy (and English translation) of a National Identity Card. I accept that his name is as claimed and that he is a national of Iran. I find that Iran is his receiving country for the purpose of this review.

18. On the basis of the applicant’s documentary and oral evidence I also accept: he completed primary school, middle school and high school in Ahvaz; he obtained a technical training qualification; he completed compulsory military service; that his family continue to live in Ahvaz; and that in late 2019 he married a woman resident in Australia. If sent back to Iran, I find it very likely the applicant would return to Ahvaz. He was born and educated in that city. He also worked in Ahvaz for around 16 years prior to his departure from Iran.

19. Country information indicates up to three million Arabs live in Iran, predominantly in the south-western province of Khuzestan. They are often referred to as ‘Ahvazis’ after the provincial capital, speak Arabic and most practise Shia Islam. Arab cultural activities are tolerated, Arabs can freely wear traditional Arabic dress and freely speak the Arabic language. Arabs complain of economic neglect and discrimination in education, employment, housing, politics and culture. As Muslims, Arabs can contest parliamentary elections but are politically under-represented. In April 2019, Khuzestan Province, at 16.9 per cent, had the second highest unemployment rate in the country and their community representatives claim they are systematically excluded from employment in the shipbuilding, manufacturing and petrochemical industries and from opportunities to work in local government. Protests in Khuzestan Province are common. Most recently, violent protests, including some deaths, followed the government’s announcement in November 2019 to reduce petrol subsidies, with

at least 80 people arrested. In October 2018, the authorities launched a major security sweep in Khuzestan Province following a deadly terrorist attack on a military parade in Ahwaz.¹

20. I accept the applicant is an Ahvazi Arab descended from the [Name] tribe. While none of his official documents confirm his ethnicity or tribal affiliation and he spoke in Farsi rather than Arabic on the occasions he was interviewed by the Department, his identity documents consistently list his place of birth as Ahvaz, he has consistently claimed his ethnic background is Arabic, and the secretary of the Local Spiritual Assembly referred to him assisting them with unofficial Arabic translations. Furthermore, country information cited above confirms the bulk of Iran's three million Arabs are found in the province of Khuzestan, particularly in its capital Ahvaz².
21. I also accept that more than thirty years ago the applicant suffered verbal abuse at school because of his ethnicity, in the context of tensions that had arisen in Iranian society during the time of the Iran-Iraq war. That mistreatment of this type occurred is broadly supported by country information³. However, I am not satisfied that during conscription the applicant was allocated duties unconnected with his technical qualification because of his ethnicity. Apart from his assertion, there is no information before me to support that conscripts are routinely deployed on the basis of specific skills or that Arab conscripts have been subject to less favourable treatment during military training. In any event, I note the applicant successfully completed education to the post-secondary level and military conscription; that he went on to obtain employment over more than a decade and a half in the [industry] in Iran; and that throughout his life he was issued with official documentation by the Iranian authorities, including a birth certificate and identity card.
22. I accept that for around a decade and a half the applicant was employed at an Ahvaz [workplace] and that for much of that time he worked in the [job task] section. Since he has arrived in Australia he has consistently claimed he was employed in the Iranian [specified] industry in the city in which he lived and he has provided some documentary evidence that supports he underwent relevant industry training over a number of years and that he had an ongoing connection with a particular [workplace] in two locations. Although I note the documents do not clearly indicate precisely what his role in the [workplace] was or cover the full period of his claimed employment. While I found the applicant's evidence that he worked in the [workplace] convincing, as discussed below I did not find his evidence about what he claims happened to him at work persuasive.
23. While there is some country information to support that summons are used as a form of harassment in Iran⁴, for the reasons set out below I am not satisfied this occurred to the applicant. In particular, I am not satisfied that because of the applicant's ethnicity/tribe the [Workplace]'s new director forced him onto a monthly employment contract, threatened him, reduced his pay, or that in retaliation the applicant lodged a complaint against his employer. Nor am I persuaded that at a subsequent meeting the applicant's employer attempted to force

¹ DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

² Ceasefire Centre for Civilian Rights, Centre for Supporters of Human Rights, Minority Rights Group International, 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441. DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

³ Ceasefire Centre for Civilian Rights, Centre for Supporters of Human Rights, Minority Rights Group International, 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441.

⁴ UNHCR - Refworld, Immigration and Refugee Board of Canada, 'The circumstances under which court summons and forfeiture documents are issued by courts; information on bail; the circumstances under which notices of conviction are issued by the Islamic Revolutionary Court; the prevalence of forged court documents', 6 May 2009, CIS22683.

him to sign a back-dated document confirming his agreement to poorer conditions, that his employer threatened him with serious consequences when he refused to do so, that the applicant fled to the capital Tehran for about five weeks before leaving for Australia or that as a result of the run-in with his boss the applicant was summonsed twice, or that a warrant was issued for his arrest.

24. The delegate accepted the applicant had been forced onto a monthly contract but did not accept he had several meetings with his boss where he was intimidated and threatened, that he lodged a complaint against his boss or that his boss pursued the applicant in court. While the delegate found the applicant's evidence about the contract change persuasive, having listened to the audio recording of the SHEV interview I am not convinced. While the applicant provided other documentation connected to his employment, he did not provide documentary evidence to support his key claims that he was forced to accept short term contracts or that he was underpaid. He did not provide a copy of a monthly, or any, employment contract. Nor did he provide any payslips. The applicant also did not provide a copy of the formal complaint he asserts he made to the Department of Labour about his purported ill-treatment by his employer.
25. I also have serious concerns about the documents he has provided in support of the claims that his boss is seeking to intimidate him via legal action, namely the two summons and arrest warrant. The applicant has only provided uncertified copies of these documents, not the originals although he referred to his family having originals. A document examiner who inspected the documents on behalf of the Department concluded that they were all low-quality generations. While certain aspects of the summonses and arrest warrant are consistent with country information about such documents' formats⁵, in other respects they are problematic. For example, the two summonses lack the stamps that should normally appear on such documents⁶.
26. I also note that the arrest warrant issued [in] May 2013 with an expiry date of [June] 2013 includes a purported extension until [May] 2013, which pre-dates the warrant's expiry date. I have considered but am not persuaded by the explanation the applicant provided for the apparent discrepancy when asked about it during the SHEV interview. After initially stating he did not know about the anomaly, the applicant then said possibly the warrant had not been properly translated. I do not accept this is the case. The translation, that the applicant himself provided with the SHEV application, was undertaken by an appropriately accredited Persian (Farsi) to English interpreter. I also note the applicant has not provided an alternative translation identifying what the extension date is, if the date appearing on the translation is wrong.
27. The applicant's description of the circumstances in which his brother took receipt of the arrest warrant is also inconsistent with the country information before me concerning this particular

⁵ Iran Human Rights Documentation Center, 'Criminal Code of Procedure for Public and Revolutionary Courts (Approved on September 19 1999 with amendments)', Islamic Republic of Iran, 1 January 2013, CIS25100. Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329. UNHCR - Refworld, Immigration and Refugee Board of Canada, 'The circumstances under which court summons and forfeiture documents are issued by courts; information on bail; the circumstances under which notices of conviction are issued by the Islamic Revolutionary Court; the prevalence of forged court documents', 6 May 2009, CIS22683. 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.

⁶ Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329.

procedure⁷. In addition, authoritative country information sources before me comment that summonses can easily be obtained illegally in Iran and that it is also easy to forge summonses by erasing information in the summons and adding new details⁸. Taking all of this into account, I am not satisfied that the legal documents are genuine. Furthermore, I note that neither address history provided by the applicant, in either the 2017 SHEV application or the written record of the interview conducted with him in 2013 soon after his arrival, both of which were quite specific, include an address in Tehran, where the applicant claims he fled for a five week period after the altercation with his employer and before his departure for Australia.

28. For the following reasons I also do not accept the additional claim made by the applicant around four months after the SHEV hearing, that in 2018 his family was informed he had been convicted of an offence in absentia. Firstly, towards the beginning of the June 2020 SHEV interview the applicant was asked whether there was anything he wished to add or change in relation to his SHEV application. In response, he informed the delegate that he had changed his local address and married a woman in Australia in December 2019. He did not refer to any developments in connection with the summonses and the arrest warrant purportedly issued for him in 2013. Nor did he mention it when he and the delegate discussed his employer's treatment of him later in the interview. It was only when the delegate wrote to the applicant some months after the interview in December 2020 and asked him directly whether a court had handed down a judgment in his absence, that the applicant asserted that in 2018 his family had been told by a court officer that he possessed a court judgment relating to the applicant but would only serve it on the applicant personally. I note the applicant does not claim that his family has only recently informed him of the purported judgment against him. In these circumstances, if true it is not credible that the applicant would not have mentioned in the SHEV interview that he had been convicted of a crime several years previously. Particularly given he and the delegate had a lengthy discussion in the June 2020 interview about his interactions with his employer, including his employer's purported attempt to take legal action against him. Or subsequently in the period the delegate provided him with after that interview to provide any further information. Furthermore, the applicant has provided no details about the specific timing or any other aspect of the purported judgment, apart from the year his family was informed of it. Finally, the five year gap between the issuing of the initial legal documents pertaining to the applicant and the related judgment is in contrast with country information before me indicating that when the accused does not appear as required the timeline between the issuing of the first summon and the verdict is usually swift⁹. Moreover it is not believable that the applicant's boss would go to the trouble of pursuing the applicant through the court system over a period of five years when on the applicant's own evidence he had already dispensed with the problem the applicant posed to him and punished the applicant by declining to renew his employment contract in late 2012.
29. The applicant's claims for protection also rest on his engagement in Australia with the Baha'i faith. Country information indicates there are up to 350,000 Baha'is in Iran. Although the Baha'i faith is not a recognised religion in the country and its adherents are considered infidels¹⁰. To become a Baha'i an individual independently recognises the religion's Founder-Prophet as the

⁷ 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.

⁸ Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329. DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

⁹ DFAT, 'RRT Country Information Request IRN35547', CX235773R.

¹⁰ DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

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Messenger of God for this age and accepts His laws, teachings and institutions. In Australia, people who wish to become members of the Baha'i community sign a "declaration card" for administrative purposes. This is forwarded to the responsible Baha'i institution, usually the Local Spiritual Assembly for the area where they live. The Assembly will meet with the individual to answer any questions and make sure they understand the significance of the step they are taking. If, after meeting with the individual, the Assembly feels that the declaration is sincere, it then embarks on what is usually a multi-year process to confirm and verify the new believer. The sincerity of the new believer's declaration is assessed by the National Spiritual Assembly who confirm the individual's enrolment as a member of the Australian Baha'i Community ¹¹.

30. I accept the applicant was born and raised as a Shia Muslim in Iran and that when he arrived in Australia Islam was his religion. The applicant's own evidence was this was the case when he was interviewed soon after his arrival in Australia and it is consistent with country information before me that indicates nearly all Iranians are Muslims and that the bulk of this totality are Shia Muslims, including most Iranian Arabs¹². I also accept that while the applicant was living in Brisbane in 2013 he met and was inspired by an Iranian community worker who is a Baha'i, that he attended a Baha'i meeting with her and as a result of her example and his experience at that meeting he developed an initial interest in the Baha'i faith. A letter from the case worker confirms the interaction between herself and the applicant in Brisbane at that time and more recent [Social media 1] postings provided by the applicant to the IAA corroborate the case worker is a Baha'i and that there is an ongoing connection between her and the applicant as a result of their shared interest in that religion¹³.
31. I accept the applicant has a [Social media 1] account in a name similar to his full name on which he places material about the Baha'i faith. Information before me confirms that over a period of approximately four years he has reposted on that social media account many short articles authored by others outlining the main beliefs of Baha'is and the treatment of Baha'is in particular countries, including a couple of reposts that relate to the ill-treatment of Baha'is in Iran¹⁴. However, I note the applicant does not author any posts about the Baha'i religion or any other matters himself and in general the reposts he makes are not accompanied by comments by him about the posts' contents, which suggests limited engagement on his behalf with the material. It also appears the applicant's reposts are viewed by very few people. If at all, his reposts are liked by the same one or two individuals.
32. DFAT reports the Iranian authorities do not comprehensively monitor Iranians' online activities but that individuals with a public profile (including with large social media followings), who are politically active, advocate for greater human rights, have connections to foreigners and are otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored – and, concomitantly, face a higher risk of arrest or harassment¹⁵. Considering the applicant's circumstances I do not consider he has such a profile. DFAT further reports that as far as it is aware, the authorities do not check the social media accounts of Iranians returning from abroad and that Iranian authorities have little interest in prosecuting failed asylum

¹¹ 'IRN CI141016120826957 – Baha'i Faith – Conversion to Baha'i Faith – Treatment of Baha'is – 2011 Census', Country of Origin Information Section (COIS), 28 November 2014, CR0596BBF383. The Spiritual Assembly of the Baha'is of [Town], Letter to the Department of Immigration and Border Protection, 11 June 2020.

¹² DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

¹³ [Organisation], Letter to whom it may concern, 13 June 2017. Screenshots from [Social media 1] with unofficial translations.

¹⁴ Screenshots from [Social media 1] with unofficial translations.

¹⁵ DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

seekers for posting social media comments critical of the government, including relating to religious conversion, (heavy Internet filtering means most Iranians will never see them)¹⁶.

33. I accept that in June 2016 the applicant signed a card declaring his belief in the Prophet-Founder Bahá'u'lláh and the Baha'i faith thereby applying for enrolment as a Baha'i; that in October 2017 his Local Spiritual Assembly made a brief initial positive recommendation to the National Assembly about him; that for a period he frequently attended public Baha'i celebrations; that he participated in in at least five study groups; that he attended multiple Holy Day commemorations in 2018 and mid-2019; and that in January and February 2021 he attended a few online devotional gatherings and a study session, after a hiatus of around five months. His involvement with the Baha'i community is confirmed by several detailed communications provided by the Local Spiritual Assembly¹⁷. Consistent with this, at the SHEV interview the applicant was able to outline the nature of his involvement with the Local Assembly and demonstrated a rudimentary understanding of the key tenets of the Baha'i faith and some key celebrations, indicative of an individual developing a knowledge of a new religion.
34. I also accept the applicant has told his family in Iran; his wife, and his mother-in-law and his sister-in-law in Australia about his interest in and involvement with the Baha'i religion in Australia. He has consistently claimed in the SHEV interview and to the Local Spiritual Assembly that family members are aware he considers himself a Baha'i and that they accept his decision. He has not claimed that he fears harm from his family in connection with his behaviour or that they have told anyone else about his involvement with the Baha'i faith. At the SHEV interview the applicant also claimed he has told almost all of his friends of his religious conversion. However, I am not satisfied of this. The applicant provided very few details about who amongst his acquaintances he had told or when. He did not state whether he was referring to friends in Australia or Iran. In any event, he did not claim that these friends objected to his activities.
35. I acknowledge, as pointed out in some of the correspondence provided by the Baha'i authorities, that becoming a member of the Baha'i community can take a number of years. Of itself I do not regard it as indicative of a lack of commitment that it has been four and a half years since the applicant lodged his application for enrolment as a Baha'i. Nevertheless, on the information before me I, like the delegate, am not satisfied that the applicant has genuinely and fully converted to the Baha'i religion. In reaching this conclusion, I place weight on the correspondence provided by the Baha'i Local Assembly and National Assembly and the applicant's actions rather than his statements. In particular, I note the applicant's religious knowledge and the sincerity of his declaration to be a Baha'i has not yet been assessed by the National Spiritual Assembly. This means he has not yet been recognised as a Baha'i by the religion's authorities. The National Assembly has twice, in 2017 and late 2020, requested additional information on the applicant, which strongly suggests they are not yet satisfied as to the genuineness of the applicant's purported conversion¹⁸. While the Local Assembly report that in their opinion the applicant remains sincere in his belief in the Baha'i faith, they also highlight what they consider are serious reservations about his religious conviction. The Local

¹⁶ DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

¹⁷ The Spiritual Assembly of the Baha'is of [Town], Letter to the Department of Immigration and Border Protection, [June] 2020. Audio recording of conversation between The Spiritual Assembly of the Baha'is of [Town] and the Department of Home Affairs, [September] 2020. The Spiritual Assembly of the Baha'is of [Town], Letter to the Immigration Assessment Authority, [February] 2021.

¹⁸ National Spiritual Assembly of the Baha'is of Australia Inc., Letter to The Spiritual Assembly of the Baha'is of [Town], [November] 2016. National Spiritual Assembly of the Baha'is of Australia Inc., Letter to The Spiritual Assembly of the Baha'is of [Town], [December] 2020.

Assembly note that the applicant did not marry his wife under Baha'i rites in late 2019; that between August and December 2020 the applicant did not engage with the Baha'i community despite opportunities to do so; and that in 2021 his participation in Baha'i religious activities has been minimal. As a result the Local Assembly has not as yet made a further recommendation to the National Assembly about the legitimacy of the applicant's application to be a Baha'i, although they were pressed by the National Assembly to do so several months ago. Furthermore, the applicant himself acknowledged to Local Assembly members that it may not be appropriate for them to write a letter on his behalf for the purposes of his protection visa application, as he had requested that they do, given their reservations about his commitment to the religion as set out in their letter to the IAA¹⁹.

36. It is noted that the applicant seems to have disengaged with the local Baha'i community soon after he attended the SHEV interview, despite opportunities for him to remain involved with it. It is also noted that the timing of his re-engagement with the community occurred around the time he was notified by the Department of its decision to refuse him a protection visa. Taking this into account, it would appear that the applicant's conduct in Australia has been at least partly motivated by a desire to enhance his claims for protection. Notwithstanding this, having regard to the Local Spiritual Assembly's view of the applicant and the social interaction he has enjoyed as a result of his participation in the Baha'i community, I am satisfied that his conduct in connection with the Baha'i religion in Australia has been otherwise than for the sole purpose of strengthening his claim to be a refugee.
37. Taking into account the applicant's more sporadic engagement with the Baha'i community in the past year, his resumption of his involvement with them only after being refused protection by the Department, his failure as yet to gain official recognition as a member of the Baha'i faith and the applicant's unwillingness to fully commit to that religion in a country where he is free to practise his spiritual beliefs, I am not satisfied that if he is returned to Iran the applicant would seek out other Baha'is in Ahvaz or that he would continue to practise the Baha'i faith. I also find the applicant would behave in this way because of a lack of conviction regarding his conversion to the Baha'i religion, rather than because of a fear of suffering harm. Moreover, I note country information suggests that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims²⁰. I am not satisfied the applicant has converted to the Baha'i faith, that he would pursue the Baha'i religion in Iran or that he would be regarded as an apostate in Iran.
38. I am satisfied the applicant remains a Shia Muslim and if returned to Iran he would do so as a Shia Muslim. Country information indicates over 99 per cent of Iranians are Muslim of whom 90-95 per cent are estimated to be Shia and that Shia Islam is the official state religion. It also states secularism is widespread in Iran, that a significant proportion of the population does not attend mosque or pray on a regular basis, and that religion is regarded as a private matter²¹. The applicant has not claimed he had any difficulties practising as a Shia Muslim in Ahvaz in the past or that he suffered any adverse treatment in the almost four decades he lived in Iran as a member of that religious congregation. Nor is it apparent why the situation would have changed. I am not satisfied there is a real chance the applicant would suffer any harm in connection with his religious beliefs now or in the reasonably foreseeable future.

¹⁹ The Spiritual Assembly of the Baha'is of [Town], Letter to the Immigration Assessment Authority, 12 February 2021.

²⁰ DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

²¹ DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

39. The applicant claimed, and I accept, he is a [Tribe] Arab who formerly worked for a [workplace] in Khuzestan province for many years. If returned to Iran, I consider it very likely the applicant would go back to that province's capital Ahvaz where he previously lived and worked for more than three decades, where his family remain and where most of Iran's Ahwazi Arabs live. An October 2019 UK Home Office report referred to judgments by authorities in that country that expressed the view that Iranian Arabs would not risk persecution for reason of their ethnicity alone in the event of return²². In April 2020 DFAT assessed that the Arab-populated parts of Iran have traditionally been the subject of economic neglect but that Arabs are not specifically targeted for discrimination on the basis of their ethnicity. However, they also indicated that following a 2018 attack against security forces in Ahvaz those Arabs advocating for greater rights and autonomy and/or self-determination have faced a high risk of official harassment, monitoring, imprisonment and mistreatment. The applicant has not claimed that he has been politically active in either Iran or Australia. The applicant has claimed he suffered past discrimination because he is an Arab and I accepted as a child he was teased about his accent. Apart from the claimed future mistreatment by the Iranian authorities at the behest of his former employer, which I have not accepted, the applicant has not claimed that he fears he would suffer any other particular form of discrimination if returned to Iran.
40. I have not accepted the applicant's claims that friction between himself and his former employer led to his former employer having him falsely charged and convicted of a crime. The applicant has not claimed that if returned to Iran he would seek or have the opportunity to be re-employed by the same [workplace]. In the SHEV application the applicant indicated he had been employed in the [industry] for a decade and a half. At the SHEV interview he emphasised the numerous relevant qualifications he held and referred to the existence of other [workplaces] where he could potentially be employed. The applicant has obtained further experience and employment skills in Australia. A letter from the Local Spiritual Assembly refers to him working here. I consider it highly unlikely the applicant would be unable to find employment or subsist in Ahvaz where his family still live. I am not satisfied there is a real chance the applicant would be denied the capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist or that he would otherwise suffer harm on account of his ethnicity/tribe or for any other reason now or in the reasonably foreseeable future.
41. I accept the applicant married an Iranian born woman who lives in Australia in late 2019. The applicant has provided a copy of their marriage certificate. Given his wife's heritage and that the applicant mentioned his wife's interest in his ability to travel at the SHEV interview, I consider it very likely that if the applicant is returned to Iran his wife would accompany him there. I note the applicant has not claimed that because of their marriage he fears he or she would be harmed if that occurred and there is nothing in the information before me to suggest that he would be adversely treated by his former employer, the Iranian authorities or anyone else in connection with his wife travelling to Iran with him. If I am wrong and the applicant's wife remains in Australia, I find the applicant may be separated from his wife if he is returned to Iran. I accept that the applicant may find these circumstances distressing. However, I am not satisfied that one or more of the reasons set out in s.5J(1) of the Act is the essential and significant reason for this or that the applicant faces a real chance of persecution as a result of his marital situation.
42. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Iran.

²² UK Home Office, 'Iran - Ahwazis and Ahwazi political groups', 11 January 2019, 20190117152034.
IAA21/08831

Refugee: conclusion

43. 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

44. 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

45. 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.
46. 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.
47. I accept that if he returns to Iran it is possible the applicant may be separated from his wife. While such a parting would be distressing for the couple, I am not satisfied that any suffering caused to the applicant if he were separated from his wife would constitute any form of significant harm as defined. I am not satisfied that the Australian authorities, in removing the applicant from Australia in accordance with the requirements of the Migration Act, would intend to cause severe pain or suffering, pain or suffering that could reasonably be regarded as extreme humiliation by doing so. I am not satisfied there is a real risk the applicant would suffer cruel or inhuman or degrading treatment or punishment; or torture; or that the death penalty will be carried out; or that he will be arbitrarily deprived of his life. Having regard to the Federal Court's decision in *SZRSN v MIAC*²³, I do not consider that harm arising from the act of removal itself, such as separation from his Australian-based wife, meets the definitions of 'significant harm' in s.36(2A).
48. I have otherwise concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard²⁴, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

²³ *SZRSN v MIAC* [2013] FCA 751.

²⁴ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.

- (2A) A non-citizen will suffer **significant harm** if:
- (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.
- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

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

Determining nationality

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