



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA21/09163

IRAN
IAA reference: IAA21/09162

IRAN
IAA reference: IAA21/09165

IRAN
IAA reference: IAA21/09164

Date and time of decision: 15 June 2021 14:30:00
M Oakman, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicants (the applicants) claim to be from Iran. They are a husband [IAA21/09162] (Applicant 1), a wife [IAA21/09163] (Applicant 2), their daughter [IAA21/09165] (Applicant 3), and their son [IAA21/09164] (Applicant 4). Applicants 1, 2 and 3 arrived in Australia [in] July 2013. Applicant 4 was born in Australia in [year]. The applicants lodged applications for Safe Haven Enterprise visas (SHEV) (XE-790) on 25 September 2017. On 10 May 2021 a delegate of the Minister of Immigration (the delegate) refused to grant the visas.

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).
3. On 4 June 2021 the IAA received an email from the applicants' representatives with submissions and further information. The submissions disagree with some of the findings of the delegate and respond to those findings. To the extent the submissions discuss evidence that was before the delegate, refer to case law and legislation, and contain argument, I consider this does not constitute new information and I have had regard to it.
4. The further information consists of country information reports attached/referred to in the submissions. The country information attached/referred to in the submissions was not before the delegate and is new information (new country information).
5. The new country information consists of copies of the following material: Country Guidance note on Iran from July 2011; UN Committee on the Elimination of Racial Discrimination report from September 2011; Ireland Legal Aid Board report on returned asylum seekers to Iran from January 2012; RRT decision record from October 2010; Norwegian Refugee Council report on IDPs returning to Iraq from November 2018; UK Home Office report on Iraq from October 2018; and Department of Foreign Affairs and Trade (DFAT) Country Information report on Iran from June 2018. The submissions also contain an extracts from a Minority Rights Organisation report published on their website in November 2017 (no footnoted reference provided) and refer to, but do not provide an extract from, an Immigration and Refugee Board of Canada report from 2013 (footnoted reference provided).
6. As discussed below, I have determined that the receiving country for the applicants is Iran. Therefore, the reports concerning Iraq (Norwegian Refugee Council and UK Home Office) are not relevant.
7. In relation to the referenced the Minority Rights Organisation report extract and the footnoted reference to the Immigration and Refugee Board of Canada report, no copies of the reports extracted/referred to were supplied. The IAA's Practice Direction for Applicants, Representatives and Authorised Recipients (the practice direction) states, among other things, that where new information, such as country information reports or media articles, is provided or referred to, a copy of that document must be attached. Attached to the representative's email of 4 June 2021 was a copy of an outdated practice direction. The applicants' representatives were contacted by the IAA on 9 June 2021 and advised that contrary to the practice direction copies of two reports were not provided; the copies should be provided by close of business; and a copy of the current practice direction was sent to the representatives. As at the date of this decision, copies of those

two reports have not been received by the IAA. As the terms of the practice direction have not been complied with, and given that copies of the other reports referred to and/or extracted in the submissions were supplied, together with the applicants' representatives being contacted by the IAA about the matter, I have decided under s.473FB(5) of the Act not to accept the new information in relation to those two extracted/referenced reports.

8. The five remaining reports of the new country information all pre-date the delegate's decision. The submissions have not provided any explanation why these reports could not have provided before the delegate's decision and, given the various dates of those reports range from 2011 to 2018, the applicants have not satisfied me that the new country information could not have been provided to the delegate before the delegate made the decision: s.473DD(b)(i). With one exception, the new country information reports do not contain personal information in the s.473DD sense, and the applicants have not satisfied me as to s.473DD(b)(ii) for those reports. The Ireland Legal Aid Board report contains some references to a named individual who was reportedly arrested, and to that extent appears to contain credible personal information in the s.473DD sense. That report provides a summary from several other sources published in 2011 in relation to the fears, and/or treatment, of asylum seekers returning to Iran. It is not evident how the issues facing returned asylum seekers nine or so years ago would assist in assessing the issues that will be faced if the applicants were returned to Iran, now or in the reasonably foreseeable future. In any event the delegate considered other, more recent information in relation to the treatment of returnees to Iran. In short, the Ireland Legal Aid report does not materially add to the information considered by the delegate. The applicants have not satisfied me that the Ireland Legal Aid report is credible personal information which, had it been known, may have affected the consideration of the applicants' claims: s.473DD(b)(ii). As the new country information does not meet s.473DD(b), I am unable to consider it. For completeness, I note that in all the circumstances, including my conclusions in regard to s.473DD(b), that the applicants have not advanced any reasons as to why they say exceptional circumstances exist to consider the new country information and none are apparent, and the delegate considered other country information, including the DFAT 2020 report, that is from a source I consider authoritative, discusses country conditions in Iran and is more recent than any of the new country information reports,¹ I am not satisfied there are exceptional circumstances to justify considering the new country information.

Applicants' claims for protection

9. Applicant 1 is the primary applicant in this matter. Applicants 2, 3 and 4 also make claims. The applicants also claim as members of the same family.
10. The protection claims of Applicant 1 may be summarised as follows:
 - He involved himself in the business of sales and installation of satellite receivers in Iran as he was opposed to the Iranian regime and its oppressive policies including its restrictive media policies. Between 2005 and 2013 he was arrested and harmed by the Islamic authorities on several occasions for possessing satellite receivers and other equipment.
 - He was subject to a great deal of harassment, abuse, intimidation, arbitrary arrest, and other forms of harm at the hands of the Iranian regime after his [specified relatives] fled Iran in or about 2010.

¹ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

- He and his family fled Iran on fake passports. His wife and children cannot return to Iran because the Iranian government does not recognise them as Iranian nationals. If returned to Iran (although he cannot because he won't be able to live without his family), he will be arrested and tried for fleeing Iran unlawfully. He will most definitely be imprisoned for this so-called offence. He has no doubt he will be subject to further mistreatment by the Iranian authorities after being released from prison.

11. The protection claims of Applicants 2, 3 and 4 claims can be summarised as follows:

- They would face persecution or significant harm if returned to Iran and particularly where considering the cumulative effect of their: ethnic origins as Faili Kurds and particularly considering their unlawful departure from Iran; young age, their limited education, employment experience or skills or any support from family or others in Iran; prolonged stay in Australia as asylum seekers that have altered their manner of dress and behaviour causing them to stand out and be perceived as non-conformists; and lack of documentation that would impact on their ability to access basic services in Iran.

Factual findings

Background

12. Applicant 1 was born in [year] in Tehran, Iran. Applicant 2 was born in [year] in Tehran, Iran. Applicants 1 and 2 married in 2006. Applicant 3 was born in [year] in Tehran, Iran. Applicant 4 was born in [year] in Melbourne, Australia. Applicants 1, 2 and 3 lived at various addresses in "A" while they were living in Iran until 2013. Applicant 1 explained at his SHEV interview that A was originally part of [a] township, but at some time it was officially transferred to Tehran and given Tehran's postcode. Applicant 1's parents, [and family members] live in Iran and he is in contact with his family there. Applicant 2 has no family in Iran. Her parents are deceased, [specified family members] live in Australia, and a [sibling] lives in [Country 1]. Applicant 1 attended school in Iran [between specified years], completing [level]. Applicant 2 attended school in Iran [between specified years] and completed [level]. Applicant 1 worked in Iran as [an occupation], for a [business] and in satellite dish sales and installations. He did some unspecified work in Australia but has most recently been on workers compensation. Applicant 1 speaks, reads and writes Persian and reads and writes English. Applicant 2 speaks, reads and writes Persian, speaks Kurdish, and read and writes English. Applicant 3 speaks, reads and writes English and speaks Persian. Applicant 4 was a baby at the time of the SHEV application.

Problems in Iran and activities in Australia

13. In summary, Applicant 1 claims that he is a Persian by ethnicity and an Iranian citizen. His wife is a Faili Kurd and stateless, as are his children.
14. He claims he left Iran because since he became an adult, he was always a critic of the Islamic regime's oppressive policies. He always believed in individual freedom of choice and expression. Unfortunately, the theocratic regime had no regard for basic human rights and always enforced its religious ideologies on Iranian people indiscriminately.
15. Being opposed to the regime's restrictive media policies, he decided to involve himself in the business of sales and installation of satellite receivers in Tehran and [another town]. Many people were sick and tired of listening to the regime's propaganda on official TV channels and craved for access to free international media - access to which was blocked by the regime. The

regime had made it illegal for the public to have satellite receivers at home. A significant number of Iranian people however did not give in to such violation of their social rights and went ahead with installing satellite dishes and receivers at their homes. Many of them have been subject to the regime's raids, confiscation and at times prosecution. The people who engaged themselves in selling and installing such equipment were targeted much more harshly. Irrespective of the regime's ruthless crack-down he was adamant to work in line with promotion of free access to international media. His decision was primarily based upon his antiregime political opinions. He dealt in the satellite dishes, buying and selling, as well as installing them with a friend. They would purchase the dishes from a named place in [a named province] where the goods were smuggled into Iran through middlemen. They stored the goods in shop cellars and balconies. He obtained customers by distributing business cards, which was common in Iran.

16. From 2005 until 2013 when he fled the country, he was arrested and harmed by the authorities, mainly police officers and the Basij, on several occasions, but cannot remember how many times exactly, for possessing satellite receivers and other equipment. They detained him on a number of occasions, from a few hours to a few days, beat him up and took written undertakings to stop such activities. He and his family had to pay bribes to be released otherwise they would send him to the courts for prosecution. After being released he would return to do the same work with even stronger will and motivation. He deeply hated the regime for its brutally oppressive treatments. He suffered a lot at their hands because of being a satellite installer. He became well known to the authorities He did it for eight years, the remuneration was good, and his goal was to enlighten people.
17. In addition to his problems as a satellite installer, he was subject to a great deal of harassment, abuse, intimidation, arbitrary arrest and other forms of harm at the hands of the Iranian regime after his [relatives] fled Iran in or about 2010.
18. He married Applicant 2 who was a stateless Faili Kurd in 2006. Although the laws of the country would consider a way for her to acquire Iranian citizenship after marrying him, the authorities did not give her citizenship. It is a law on paper only, they do not practice it in Iran. They did not refuse to give her Iranian citizenship, but they passed them on from one office to another so many times that they finally got absolutely frustrated and gave up. Their marriage was not registered in 2006 because Applicant 2 did not have any identity documents. Similarly, his children were not issued Iranian identity documents because their mother did not have Iranian citizenship. He had already given up running to the inefficient government offices and begging useless bureaucrats to obtain Iranian nationality for his wife and children hence the reason they all fled on fake passports from Iran.
19. Since his stateless [relatives] fled Iran, the Iranian authorities, mainly the police and Ettelaat who act in coordination when targeting people, diverted their attention onto his family. They came to their house many times verbally assaulting him and his wife. He confronted them to protect his family and self from their unlawful and abusive behaviour several times. They had not done anything wrong. He could not tolerate being harassed by them because his [relatives] had fled the country. On many occasions they arrested him (for disputing with them) and took him in to the custody. He was detained without any charges for up to one month. It was a very stressful and difficult period in his life. His wife fell into severe depression and developed other physical problems from living in constant fear, anxiety, and stress. He was also fed up with the regime's mistreatments.
20. In order to save himself and his family from the continuous harassments of the Iranian regime; to obtain legal status (nationality) for his wife and children; and reunite with his [relatives], he and his wife decided to flee Iran.

21. He and his family fled Iran on fake passports. They spent a huge amount to obtain the passports. They flew via [Country 2] to [Country 3] where they were turned back when they refused to pay a bribe. They subsequently left [Country 2] and travelled by boat to [Country 3] and later left [Country 3] for Australia by boat. His wife and children cannot return to Iran because the Iranian government does not recognise them as Iranian nationals. If he returns to Iran, although he cannot because he won't be able live without his family, he will be arrested and tried for fleeing Iran unlawfully. He will most definitely be imprisoned for this so-called offence. He has no doubts that he will be subject to further mistreatments by the Iranian authorities after being released from prison.
22. In Australia, Applicants 1 and 2 have not been practising their religion. Applicant 1's parents and siblings are in Tehran. Applicant 2 has no family in Iran; her parents are deceased; she has [specified family members] in Australia; and a [sibling] in [Country 1]. His father is retired and lives with his mother in a home his father owns. [One] brother works in [a specified] industry and rents his home. His sisters are all married and [number] of them live in homes they own and the other [number rent].
23. The applicants provided supporting material including Applicant 4's birth certificate; Applicant 1's driver's licence, military service exemption cards, and medical documents; Applicant 2's medical documents; and photos of seized satellite dishes in Iran.
24. In assessing Applicant 1's evidence I have taken into account the difficulties often faced by applicants for protection, particularly those for whom some period has passed since they departed their country of origin, including minor errors and discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, or a lack of cohesive narration due to trauma. I am also mindful of Applicant 1's adjustment disorder with symptoms of anxiety and depression as discussed further below. However, like the delegate, I hold serious concerns about the credibility of Applicant 1's evidence.
25. Applicant 1 failed to acknowledge at his SHEV interview in March 2021 that Applicant 2 had another sister in Australia. The delegate took some time to discuss with him Applicant 2's family members including the named sister. I have carefully listened to the recording of that interview, noting the main discussion of these matters occurred from around 32:50 to 1:05:40, and I agree with the delegate's description of his responses on the issue of his wife's relatives, including the sister, as evasive.² It is also clear that Applicant 1 had a number of opportunities during that discussion to disclose that the person the delegate named was his wife's sister but failed to do so. In post-SHEV interview email submissions, it was confirmed, among other things, that the named woman was Applicant 2's sister, Applicant 2 had not included her in the SHEV application list of family because there was a fall out in their relationship that led to them not speaking to each other for several months, and the applicant regretted not disclosing that information at the interview. The explanation for Applicant 2 not mentioning the sister in the SHEV application list of her family was unconvincing and, notwithstanding his stated regret, no explanation was provided as to why Applicant 1 did not disclose that information himself during the interview. It is not apparent why Applicant 1 was dishonest about his wife's sister, but I am satisfied that he did lie about it. I consider this to reflect very poorly on Applicant 1's overall credibility.
26. Applicant 1 has maintained since his arrival interview that he and Applicants 2 and 3 left Iran through Tehran airport using fake passports because, although Applicants 2 and 3 were entitled to Iranian citizenship through him, in practice Iranian officials do not follow the law and they

² Protection visa decision record, 10 May 2021, page 11.

kept delaying their applications until the applicants could no longer wait. Applicant 2 also said in her arrival interview that they had travelled on fake passports. However, country information³ indicates that for many years, including around the time the applicants left Iran and continuing through to recent times, the security features, systems and checks used by the Iranian authorities, for those travelling out of the country via the airport, were sufficiently sophisticated that exiting the airport on a non-genuine passport was highly unlikely if not impossible. Although some of the country information suggested it might be possible for a person to bribe their way to leaving the airport illegally, the weight of the other country information seems to suggest that is highly unlikely (except at the land border crossings). Based on that country information, I do not consider it credible that Applicants 1, 2 and 3 were able to leave Iran from Tehran airport using fake passports, whether Iranian or foreign.

27. Applicant 1 consistently claimed he had problems in Iran with the authorities as a satellite dish seller and installer, and because of his [specified relatives], since his arrival interview. However, I have concerns about his evidence, as follows:

- In his SHEV application statement and at the SHEV interview he claimed that, as the Iranian regime had restrictive media policies, he decided to involve himself in the satellite dish business as he was opposed to the Iranian regime. I do not consider it credible that, if he was involved in the satellite dish business as a form of political opposition to the Iranian regime, he has made no claims to have been involved in any other forms of political protest against the Iranian regime, either while he was in Iran or since he has been living in Australia.
- He claimed he was arrested several times, and detained for a few hours to a few days, in relation to his satellite dish business; and he was arrested on many occasions, and detained him for up to a month, in relation to the authorities enquiries about his [relatives]. Although it was claimed to be ongoing over several years, I do not consider it credible that he only provided a very general level of detail about these incidents, particularly where he claims he was detained on some occasions for up to a month, a not insignificant period.
- I do not consider it credible that, if he was well known to the authorities because of his satellite dish business and several times provided written undertakings to stop but nevertheless continued with his business, he would have been able to continue that business for so long, bribes notwithstanding, without facing more serious action such as charges and court action.
- I do not consider it credible that the Iranian authorities would question and verbally assault Applicants 1 and 2 on many occasions, and arrest and detain Applicant 1 on some of those occasions when he says he disputed with them, for about three years from around 2010 until they left Iran in 2013, simply to repeatedly ask after the whereabouts of the [specified relatives]. The only explanation Applicant 1 has given for the authorities'

³ Canadian Immigration and Refugee Board, "IRN101054.E - Iran: The passport; its features and procedures for application including whether an applicant who was refused a passport would be notified and have recourse; the use and prevalence of fraudulent or counterfeit passports to exit Iran", 3 April 2006, OGF10222E67; 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; "Entry procedures and passport control at Dubai International Airport", Australia: Department of Immigration and Citizenship (DIAC), 13 April 2012, CX286895; 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; and Immigration and Refugee Board of Canada, "IRN200128.E - Iran: Exit and entry procedures at airports and land borders, particularly at the Imam Khomeini International Airport; whether authorities alert border officials of individuals they are looking for; incidence of bribery of Iranian border off", 10 March 2020, 20200402124242.

interest in the [relatives] was because they were stateless Faili Kurds. I do not consider it credible that the authorities would harass etc Applicants 1 and 2 for about three years because the [relatives] were stateless Faili Kurds. Additionally, I do not consider it plausible that Applicant 1 could be subject to around three years of harassment and questioning by the authorities about his [specified relatives], without Applicant 1 becoming aware of more details of why the [relatives] were wanted by the authorities, either through the nature of that questioning or from Applicant 2's family. Country information⁴ confirms that the families of Kurdish activists could also be targeted by the authorities. However, the same information suggests that occurred in the context of the family member being in the wrong place at the wrong time; they were in one of the Kurdish regions of Iran; or the Kurdish activist family member was giving media interviews in exile overseas. None of those circumstances apply to Applicants 1 and 2, whether before, after or during the period Applicant 1 claims they were subject to adverse attention from the authorities due to [these relatives].

28. The matters discussed above in relation to Applicant 1's evidence go beyond minor errors and discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, a lack of cohesive narration due to trauma, and/or his mental health. I am not satisfied that Applicant 1 has provided a truthful and accurate account of his and his family's problems in Iran or the circumstances of their departure from Iran.
29. I am not satisfied that Applicants 1, 2 and 3 departed Iran on fake passports. Given the country information about the difficulties of departing Tehran airport on false passports, and that Applicants 2 and 3 were entitled to Iranian citizenship through Applicant 1, I find that Applicants 1, 2 and 3 departed Iran on their own, genuine Iranian passports. It follows from this finding that I am satisfied that they were Iranian citizens at the time of their departure from Iran in about April 2013. I am not satisfied that Applicants 1 and 2 were subject to any adverse attention from the Iranian authorities because of the [specified relatives]. Although I have reservations about the claim based on the overall credibility concerns I have identified with his evidence, given he has consistently claimed to have had a satellite dish business in Iran, together with the detail he provided about how he generated business and obtained and stored the goods at the SHEV interview, I am prepared to accept he conducted a satellite sales and installation business in and around Tehran from about 2005 until 2013, and that on a few occasions over that period he had to pay bribes to the authorities when approached about satellite dishes. However, I am not satisfied on the credible evidence before me that he was ever arrested, detained or beaten by the authorities, or was well known to the authorities, in relation to his satellite business. Similarly, I am not satisfied that he was engaged in the satellite business as a form of political action or protest towards the Iranian regime. Additionally, as he had not engaged in any anti-Iranian regime activities in Australia where he is otherwise free to do so, I am not satisfied that, if returned to Iran, he has a genuine interest or desire to engage in political activism in Iran. Given I found they were able to leave Iran in about April 2013 legally through Tehran airport on their own genuine passports; I am not satisfied they were questioned or harassed in relation to the [relatives]; and that the applicants do not claim that the authorities have made any inquiries about their whereabouts or activities since they left Iran, it follows that I am also not satisfied that Applicant 1, 2 and 3 were of any adverse interest to the Iranian authorities at the time they left Iran in April 2013.
30. I have concerns about the applicants' biographical details as set out in their SHEV applications. However, given the concessions and/or corrections made in the post-SHEV interview

⁴ 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.

submissions, I am prepared to accept those details, subject to adding Applicant 2's other sister, as set out in the SHEV applications and at the SHEV interview, summarised above in the applicants' background details, together with the Faili Kurd ethnicity of Applicants 2, 3 and 4 and that Applicants 1 and 2 are non-practising Shias.

31. For completeness, I note that Applicant 1 indicated in his arrival interview that he was arrested in 1999 by the basij because he had drunk alcohol; and Applicant 2 indicated in her arrival interview that she had attended a street protest several years before but nothing had happened as a result. Neither claim was repeated in the SHEV application or at the SHEV interview and, given my general credibility concerns about the evidence, I am not satisfied that those incidents occurred.

Medical issues

32. Supporting documents were provided in relation to the health of Applicants 1 and 2 including [medical] certificates dated 18 November 2020 for Applicant 1 and 22 February 2021 for Applicant 2, a psychologist's letter dated 5 March 2021 for Applicant 1, an undated and incomplete document apparently concerning Applicant 1's workers compensation claim, and prescriptions for Applicant 1 from February and March 2021. I am satisfied based on those documents that Applicant 1 has been diagnosed with chronic low and mid back pain and adjustment disorder with symptoms of anxiety and depression; was assessed as unfit for work until 18 May 2021; and that his ongoing treatment includes medication, therapy from a psychologist and attending a pain clinic. I am also satisfied based on those documents that Applicant 2 has been diagnosed with [specified conditions], anxiety and depression; was assessed as unfit for work until 21 August 2021; and her ongoing treatment includes medication, physiotherapy, counselling and regular reviews.

Receiving country

33. For the reasons discussed above, I am satisfied that Applicants 1, 2 and 3 left Iran on valid Iranian passports and are Iranian citizens. The country information also indicates that Applicant 4, as a child of Applicant 1, is entitled to Iranian citizenship.⁵ I find that the applicants are Iranian nationals and their receiving country is Iran.

Asylum Seekers and return to Iran

34. The applicants claim, and I accept, that Applicants 1, 2 and 3 left Iran in about April 2013 through Tehran Airport. They travelled, on my findings, on genuine Iranian passports. They subsequently travelled from [Country 3] to Australia in a boat organised by smugglers. I find that, if the applicants were to return to Iran, they may be considered returned asylum seekers by the Iranian authorities. Their passports were lost in the water on the boat.
35. Applicant 1, 2 and 3 lived throughout their lives in Iran in A, Tehran. Applicant 1's previous work, including his satellite business, was conducted in and around Tehran and his parents and siblings live in Tehran. Based on those connections, I am satisfied that Tehran is the area to which the applicants will return. Applicant 1 remains in regular contact with his family in Tehran, having spoken to them as recently as the week before his SHEV interview in March 2021. His parents are retired and own their own home, [one] brother is a [an occupation] and rents, his [sisters] are married, [number] lived in their own homes and [number rent]. He was asked at the SHEV

⁵ The Civil Code of the Islamic Republic of Iran, UNHCR Refworld, <<http://www.refworld.org/docid/49997adb27.html>>

interview how his family in Iran support themselves and there was no suggestion in Applicant 1's evidence that his family in Tehran has experienced any difficulty in subsisting either before or after the applicants left Iran. Given those factors, I am satisfied that Applicant 1's family in Tehran will be able to provide the applicants with basic support, if needed, now or in the reasonably foreseeable future, if they return to Iran.

Refugee assessment

36. 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

37. 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.

38. As discussed above, I am not satisfied that Applicants 1, 2 and 3 were of any adverse interest to the Iranian authorities at the time they left Iran in around April 2013. Nor have the Iranian authorities shown any interest in any of the applicants since that time.

39. DFAT states the use of satellite equipment is illegal, and authorities periodically undertake campaigns in which they raid homes, confiscate satellite dishes and fine the owners or installers of the equipment. The importation, production or distribution of satellite equipment carries a fine of between 10 million and 100 million rials plus confiscation of the equipment. Use of satellite dishes is punishable with a fine of 1 million to 3 million rials (approximately AUD10-30 at 2020 market rates) and confiscation of the dish and associated equipment. Carrying, keeping, installing or repairing satellite dishes and equipment entails a fine of 1 million to 5 million rials (approximately AUD10-50 at 2020 market rates). In practice, satellite dishes are widespread and largely tolerated. According to local sources, while satellite dishes are sometimes confiscated, fines are rare. There are reportedly 8 million satellite dishes in Iran, and up to 85 per cent of the population has access to satellite channels. Authorities engage in regular (but not comprehensive) jamming of foreign satellite signals for viewers in Tehran and other cities,

though blocked channels can also be accessed via the Internet, using VPNs.⁶ Applicant 1, notwithstanding that he paid bribes on occasion, described receiving good remuneration and did not suggest he was unable to support his family or had difficulties subsisting, when he conducted his satellite business from 2005 to 2013 in Iran. Applicant 1 has not stated whether he would resume conducting a satellite business if he returned to Iran, but I accept that he may do so. He was previously able to receive good remuneration from the business although he paid bribes; and the country information suggests it is now widely tolerated and if any action were taken, it may be the confiscations of a dish and, rarely, a fine. As such, I am not satisfied that Applicant 1, or the other applicants, if returned to Iran, will face any harm if Applicant 1 were to resume conducting a satellite business, now or in the reasonably foreseeable future.

40. DFAT assesses that, although the experience of different ethnicities is not uniform, both official and societal discrimination against ethnic minorities does occur. DFAT assesses generally that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. This may take the form of denial of access to employment and housing but is unlikely to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism, including those advocating for greater political and cultural rights or speaking out against perceived violations, is higher. DFAT further assesses that Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities; although, like other ethnic minorities, Kurds who are active politically are likely to attract adverse attention from the authorities. DFAT states that Faili Kurds are a sub-group of the larger Kurdish population. Faili Kurds in Iran typically reside either close to the Iraqi border, including in Khuzestan, Lorestan, Kermanshah and Ilam provinces, or in major cities. They are distinguishable from other Iranian Kurds by their religion (most are Shia), their location and their distinctive dialect. Three main groups of Faili Kurds live in Iran: Iranian citizens; those of Iraqi origin who are registered refugees; and those of Iraqi origin who are not registered refugees. Accurate population estimates for the three groups or for the overall number of Faili Kurds in Iran are not available; DFAT has been told by a local source that the number of Faili Kurds in Iran is not significant as a proportion of Iran's population. Faili Kurds who are citizens of Iran enjoy the same rights as other Iranians. DFAT is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment, regardless of which of the three categories they belong.⁷

41. I found that the applicants are Iranian citizens. None of the applicants are political or Kurdish rights activists, and therefore they do not have any increased risk of coming to the attention of the Iranian authorities. Based on the country information, I am satisfied that as Faili Kurds who are Iranian citizens, Applicants 2, 3 and 4 will enjoy the same rights as other Iranians, if returned to Iran. I am not satisfied on the information before me that any of the applicants will suffer any harm in Iran based on the Faili Kurd ethnicity of Applicants 2, 3 and 4. The applicants will be returning to Tehran, where Applicant 1's parents and siblings live. I accept that the applicants may take time to re-establish themselves in Iran, if returned. While they re-establish themselves, including obtaining the issue or re-issue of Iranian identity documents, together with the health concerns and unfitness for work of Applicants 1 and 2, the applicants will face an uncertain period of unemployment. However, as discussed above, I am satisfied that Applicant 1's family would be able to provide the applicants with basic support if required. In the circumstances, I am not satisfied that any period of unemployment the applicants may experience while they re-

⁶ DFAT, "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

⁷ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

establish themselves in Tehran, would threaten their capacity to subsist or otherwise amounts to harm to the applicants, now or in the reasonably foreseeable future.

42. I accept Applicants 1 and 2 may seek medical treatment for their health issues discussed above, if returned to Iran. DFAT indicates that the government remains the main provider of primary health care services across the country, although the private sector also plays a significant role. The quality of healthcare in the public sector is of a good standard but overcrowding and doctor shortages are major challenges. Iran's private health care system is highly regarded and attracts patients from other countries in the region. Numerous NGOs are active on health issues, particularly in specialised fields. Sanctions and COVID-19 have placed significant strains on the local health care system. The need for mental health services in Iran is significant. As part of its implementation of the Health System Development Plan, the government increased the availability of counselling services and therapeutic interventions for mental illness. Private mental health services are available, particularly in Tehran, but are prohibitive financially for the average person. A small number of NGOs work in the field of mental health, but these outfits are generally under-resourced. DFAT does not suggest that Iranian citizens or Faili Kurds suffer any discrimination in accessing or obtaining health services in Iran.⁸ The information available to me does not suggest that if Applicants 1 and 2 seek treatment for their various medical conditions, they would be denied any medical care and treatment as a result of any systematic and discriminatory conduct, including for any of the reasons in s.5J(1)(a) or otherwise.
43. Applicant 1 indicated at the SHEV interview that he and Applicant 2 were not practising their religion in Australia. On that basis, I accept the applicants may also be non-practising Muslims if returned to Iran. DFAT says that local sources indicate that secularism is widespread, particularly in major cities and among younger and wealthier Iranians; a significant proportion of the population does not regularly attend mosque or pray; and alcohol consumption is common. DFAT observes that official sources have said religion is a private matter and, beyond not eating and drinking in public in Ramadan, how one observes Islam was an individual choice and not a matter for the state. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities.⁹ Based on the country information I am not satisfied that there is more than a remote chance that the status of the applicants as non-practising Muslims would come to the attention of the Iranian authorities, be of concern for that reason, or, even taking into account the Faili Kurd ethnicity of Applicants 2, 3 and 4, that the applicants would otherwise suffer any harm as a result, if returned to Iran, now or in the reasonably foreseeable future.
44. I accept that, if returned to Iran, the applicants may be considered returning asylum seekers from Australia, a Western country where they have spent eight or so years.
45. DFAT indicates that Iran did not permit the involuntary return of its citizens from Australia (by refusing to issue the necessary travel documents – *laissez-passers*), but after the signing of a memorandum of understanding with Australia in March 2018 Iran agreed to facilitate the return of Iranians who have no legal right to remain in Australia and who arrived after that date. Applicants 1, 2 and 3 arrived in Australia in July 2013 and I am satisfied that if the applicants were to return to Iran it would only be on a voluntary basis. As the passports of Applicants 1, 2 and 3 were lost on their way to Australia, the applicants may require temporary travel documents issued by Iranian diplomatic representatives to return to Iran. DFAT also indicates

⁸ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

⁹ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

that authorities at the airport in Iran will be forewarned about the return of persons on temporary travel documents because of their sophisticated systems.¹⁰

46. Those who return on a laissez-passer are questioned by the Immigration Police at Tehran Airport about the circumstances of their departure and why they are traveling on a laissez-passer.¹¹ 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. Iranian authorities pay little attention to failed asylum seekers on their return. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including for critical social media posts, protesting outside an Iranian diplomatic mission, converting to Christianity, or engaging in LGBTI activities. DFAT assesses that, unless they were subject to adverse official attention before leaving Iran, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment, or other forms of official discrimination. DFAT also assesses that people of Western appearance face a low risk of official and societal discrimination. The information from DFAT does not suggest that persons of Faili Kurd ethnicity are subject to any adverse attention or heightened scrutiny at the airport.¹²
47. I accept that, if returned to Iran, Applicants 1 and 2 may be questioned about the family's return on temporary travel documents, the circumstances of their departure, and they may be briefly detained at the airport before being released. Their departure from Iran, on my findings, was legal and they were not of any adverse interest to the Iranian authorities at that time, nor have they engaged in any activities in Australia that would be of adverse interest to the Iranian authorities, if known. Applicant 3 is a child of [age] who left Iran when she was [age] years old, Applicant 4 is a child of [age] and was born in Australia, and I am not satisfied either of the children would be questioned by Iranian authorities at the airport. There is no country information before me to suggest children would be separated from their parents at the airport, and I consider the children will be able to remain with one or both of Applicants 1 and 2 during any brief questioning at the airport, prior to them being allowed to leave together. I am not satisfied the applicants would be harmed at the airport, or that this treatment amounts to serious harm for the applicants, even taking into consideration the health issues of Applicants 1 and 2, the ages of Applicants 3 and 4, and the Faili Kurd ethnicity of Applicants 2, 3 and 4. The country information before me does not support a finding that persons who have sought asylum or spent time in Western countries, including Australia, are imputed to hold a political opinion that is against the Iranian government or that they are otherwise of adverse interest to the authorities.
48. I am not satisfied that the applicants face a real chance of harm as returning asylum seekers from Australia, now or in the reasonably foreseeable future.
49. Considering the applicants' circumstances and profiles as a whole, in the context of the country conditions in Iran I am not satisfied that the applicants face a real chance of persecution now or in the reasonably foreseeable future. The applicants do not have a well-founded fear of persecution within the meaning of s.5J.

¹⁰ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

¹¹ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132

¹² DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

Refugee: conclusion

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

Complementary protection assessment

51. Under s.36(2)(aa) of the Act, a criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

52. 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.
53. 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.
54. Based on country information discussed above I accept that Applicants 1 and 2 may face some level of difficulty if they seek to access medical services in Tehran. However, I am satisfied based on the same country information that any difficulties the applicants may have in accessing any medical treatment and care for their medical conditions does not amount to significant harm as it is due to a lack of capacity and resourcing, mainly due to sanctions and the impact of COVID-19, rather than an intentional infliction by the Iranian authorities, or anyone else, to cause extreme humiliation or mental or physical pain or suffering, severe pain or suffering and it does not amount to torture or an arbitrary deprivation of life or the death penalty. I am not satisfied the applicants face discriminatory treatment due to difficulties in accessing medical treatment and care that amount to significant harm as defined in ss.36(2A) and 5 of the Act.
55. I accept that on arrival at the airport in Iran the applicants are likely to be briefly detained and Applicants 1 and 2 may be questioned about their departure, and why the family are travelling on temporary documents, but I am not satisfied that the applicants will not be harmed during this process. I am not satisfied their processing and questioning at the airport amounts to pain or suffering, severe pain or suffering, or extreme humiliation, or that there is a real risk of the death penalty, torture or arbitrary deprivation of life, for the applicants. I am not satisfied that in the process of returning to Iran there is a real risk the applicants will suffer significant harm, even taking into consideration the health issues of Applicants 1 and 2, the young ages of Applicants 3 and 4, and the Faili Kurd ethnicity of Applicants 2, 3, and 4.

56. I have found that the applicants do not otherwise face a real chance of harm in relation to their claims or profiles. As 'real risk' and 'real chance' involve the application of the same standard,¹³ they also do not face a real risk of any harm in Iran. I am not satisfied that the applicants face a real risk of significant harm in Iran.

Complementary protection: conclusion

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

Member of same family unit

58. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include spouses and their children.

59. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

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

¹³ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

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

Determining nationality

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