



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09453

Date and time of decision: 13 August 2021 14:50:00

S Kamandi, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran and of Faili Kurd ethnicity. The applicant arrived in Australia [in] June 2013 and 21 September 2017 made an application for a Safe Haven Enterprise Visa (SHEV).
2. On 30 June 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate did not accept the applicant's claims that he departed Iran because he was targeted by his girlfriend's family or that he departed Iran using a false passport. The delegate was not satisfied that the applicant faced a real chance of harm or was at a real risk of significant harm for reasons of his participation in Kurdish community activities in Australia, his Kurdish ethnicity or as a returned asylum seeker from Australia.

### Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 6 August 2021, the Immigration Assessment Authority (IAA) received an email from [the representative] attaching "legal" and "new information" submissions, a statement from the applicant dated 3 August 2021, and the June and August 2021 Kurdish Human Rights Network monthly reports.
5. It is argued that the applicant's statement contains information that was before the delegate and is not new information as it provides further details regarding protection claims in response to the adverse findings made in the decision. While I agree that some of the information presented in the applicant's statement and legal submission, prepared by [the representative], relates to existing claims, I do not agree that the entire content of the applicant's statement can be classed as such and as noted below, it includes information that was not provided to the delegate and is new information.
6. It is submitted that if any of the information provided to the IAA is considered to be new information, there are exceptional circumstances to justify considering the information. It is argued that factors, including applicant's lack of English language abilities, understanding of the Australian migration law, legal representation at the time of referral of his case to the IAA, as well as considerations that the information may make a material difference in the outcome of the IAA's decision and that the nature of the IAA's extremely limited form of review and serious procedural disadvantages affecting the applicant which collectively increases the risk of the IAA making a decision that is not fair or just, satisfies the threshold for s.473DD(a) of the Act.
7. The applicant in this case was interviewed shortly after his arrival in Australia and had the opportunity to present his claims in a statement attached in his SHEV application (prepared by a migration agent) and was interviewed by the delegate with the assistance of an interpreter in the Faili Kurd language. At the SHEV interview, the applicant confirmed that he understood the interpreter and that he read and understood the information sheet providing an explanation of the Australia's protection obligations. He was advised that it was his responsibility to raise all his claims and that purpose of the interview was to give him the

opportunity to provide further information in support of his application for a protection visa. He confirmed that he had no questions about the interview process and that he understood that he was required to provide accurate information about his claims. The applicant was advised of the delegate's concerns and given an opportunity to respond to those concerns at the time, and after a break at the conclusion of the interview. He was asked on two occasions whether he had anything further to add regarding his claims and was advised that any information provided prior to the decision would be considered. In light of the opportunities given to the applicant to present his claims, I do not accept that the applicant in this case has been adversely impacted by the nature of the IAA's review process.

8. While factors such as English language limitation and lack of legal representation has the potential to hinder an applicant's ability to present their evidence, I am not convinced that the applicant, in this case, was adversely impacted by these factors. The applicant's SHEV statement was prepared with the assistance of a migration agent. At the SHEV interview, he was given ample opportunity to discuss his claims and provide further information. He was able to answer questions asked of him and also had the opportunity to confirm his claims, provide additional details and to clarify the status of his Iranian nationality. The applicant also displayed some English language skills by responding to some questions in English and indicated that he attended English language classes after his arrival in Australia and was working as [an Occupation] in Australia. While there were instances where the delegate had to reword information, particularly around setting out his concerns to the applicant, it appears that the information was relayed to the applicant and he was able to respond. I do not accept that the applicant's lack of representation or lack of English language abilities impacted his ability to present his case to the delegate. It is also not apparent to me how the lack of legal representation at the time of referral of the applicant's case to the IAA would have impacted the ability of the applicant to present his case to the delegate. I note further he has been assisted by [the representative] to present submissions, a further statement and country information for the IAA's consideration.
9. In light of the above, I do not agree that these factors of themselves evidence exceptional circumstances under s.473DD of the Act in this case.

#### *Passport*

10. The applicant's evidence before the delegate, including his evidence at his arrival interview in 2013, his SHEV application made in 2017 and at his SHEV interview held in June 2021, was that he departed Iran using a fake passport arranged by the smuggler who took that passport from him in [Country]. In his SHEV statement, the applicant claimed to fear harm for reasons of departing the country on a fake Iranian passport and that he would be disadvantaged in the legal process because he is Kurdish. At the SHEV interview, while the applicant abandoned his claim that he was stateless and provided the delegate with originals of his Iranian National Identity Card and Military Service Card, he maintained that he departed Iran using a fake passport.
11. In his Statement to the IAA, the applicant now states that he left Iran using a valid Iranian passport and that he does not rely on anything in his previous statement regarding an "alleged false passport". While the applicant's statement seems to suggest that he informed the delegate that he left Iran on a valid passport and that he believes that this was not recorded by the delegate because the delegate was not the officer interviewing him, I do not agree that to be the case. I consider his claim that he departed Iran using a genuine Iranian passport to be new information.

12. Given the applicant departed Iran in 2013, I am not satisfied that the new information could not have been provided to the delegate, particularly given that he informed the delegate that he departed Iran using a false passport at the SHEV interview. In his Statement, the applicant apologises for previously providing the Department with incorrect information based on the smugglers advice which has only caused him problems. Considering this with the applicant's disclosure to the delegate that he was not stateless but an Iranian national and his express statement that he provided the Department with false information and no longer relies on his evidence regarding his identity and passport, I am satisfied that the information regarding the applicant's passport is credible personal information, in the relevant sense, which may have affected the consideration of his claims. Given these matters, I am also satisfied that there are exceptional circumstances to justify considering the new information.

*Applicant's relationship with "Z"*

13. The applicant claims that while in Iran he was in a relationship with his girlfriend "Z". Z was also of Kurdish ethnicity but was a Sunni Muslim. Although the applicant and Z planned to marry, Z's family did not allow their marriage because they did not want Z to marry a Shia Muslim and that their relationship had to end. The applicant claimed that he was fearful of Z's brothers seeking to harm him if he returned to Iran and that the authorities would not intervene.
14. At the SHEV interview, the applicant was asked about the nature of his relationship with Z and whether he was still in contact with her. The applicant stated that their relationship lasted for about two and half years and that he was in contact with Z at the beginning of his arrival in Australia. As Z was forced to marry someone else, the applicant was still in contact with Z's mother, who was not opposed to their marriage, and he talked to her to find out how Z was. When asked about how much time he spent with Z, the applicant stated that their meetings were over the phone as it was unacceptable for men and women to be together outside of marriage. When asked if he ever met her in person, the applicant stated that they did meet up, maybe once a month or every two months, and that if she was caught, she would have been disgraced. When asked if he knew about Z's marriage or the man she married, the applicant stated that he did know the husband's name and that Z told her that she was forced to marry this man.
15. In his statement to the IAA, the applicant states that it is very uncommon for an Iranian Kurdish girl to be in a sexual relationship before marriage. Z's family were very angry with him and they will never forget what happened and would still seek revenge against him if he was forced to return to Iran. Apart from claiming to fear harm at the hands of Z's brothers, the applicant also claims that he fears that Z's husband would harm him if he found out that he had a previous sexual relationship with Z and that he needs this information to be kept confidential because he does not want anything to happen to Z because of him. He also states that he is unable to provide independent corroborative evidence of his relationship with Z and that this was not something he felt comfortable sharing with others. It is submitted on the applicant's behalf that the delegate did not consider that if Z's husband or his family knew of Z's former relationship with the applicant, the applicant would be at even greater risk of harm.
16. The applicant's claim to the IAA that he was in sexual relationship with Z and fears that her husband, if he found out about their prior sexual relationship, would harm the applicant, was not presented to the delegate and is new information. While I have considered the applicant's evidence that he did not feel comfortable sharing this information and that he wishes for the information to be kept confidential as he does not want anything to happen to

Z, given that the information relates to events in Iran and sometime prior to his SHEV interview, and the fact that he was specifically asked about the nature of his relationship with Z at the interview and given assurance about the confidentiality of the process, I am not satisfied that the information could not have been provided to the delegate prior to the delegate's decision made on 30 June 2021. Apart from the refusal of his SHEV application, it is not apparent to me what has changed and why the applicant felt comfortable to disclose this information now, less than two months after his SHEV interview. At the SHEV interview, the applicant's evidence about Z's marriage and her husband, was that Z informed the applicant that it was a "forced marriage", and while the applicant claimed that he was still in contact with Z's mother, he did not have any information about Z's husband, including his name. The information provided now - that he had a sexual relationship with Z - appears contrary to the his description of the nature of the relationship provided to the delegate, in that they primarily talked over the phone and had very limited personal contact due to their awareness of the authorities' and cultural expectations of unmarried couples. I do not accept that if the applicant had a sexual relationship with Z or had a fear that Z's husband would become aware of this and would seek to harm him, that he would not have presented this to the delegate. I am not at all satisfied that the new information is capable of being believed. I am not satisfied that the requirements under s.473DD(b) of the Act are met.

#### *Mental Health*

17. In his SHEV statement, the applicant referred to having eye problems which requires him to wear glasses. He states that his Australian doctor advised him that the condition could have been treated and prevented from getting worse if he was under the care of an optometrist. The applicant also states that for about a year and half since coming to Australia, he was seeing a counsellor to deal with his emotions as a result of his separation from his girlfriend. While he claims that if returned to Iran, he would not be able to obtain the medical treatment that he needs for his eye condition, the applicant's statement does not refer to any ongoing mental health issues or that he required further treatment for dealing with his emotions or otherwise. The applicant's evidence at the SHEV interview, also does not indicate that he suffered from mental health issues in Iran or was suffering from any mental health issues at the time of the interview.
18. In his statement to the IAA, the applicant claims that he was suffering from stress and anxiety when he left Iran. He refers to having been referred to a psychologist in Australia and undergoing counselling for several years. He further claims that he is taking an anti-depressant called Mirtazapine to help him sleep and that he would not be able to access this sort of treatment if returned to Iran. The applicant's claim that he suffered from stress and anxiety while in Iran and that he is taking an anti-depressant which he will not have access to in Iran, was not presented to the delegate and is new information.
19. In presenting this claim to the IAA, the applicant's does not provide details of when he acquired the claimed mental health condition in Iran or any treatment that he required. Given that this relates to events in Iran and opportunities he was given to present his case referred to earlier, I am not satisfied that he could not have presented this information to the delegate. It is not apparent from the applicant's evidence when he was diagnosed or prescribed the anti-depressant in Australia, nor has he provided any supporting evidence indicating that has been diagnosed with any mental health issues that would require ongoing treatment or that he would not be able to access the treatment if returned to Iran. In light of these matters I am not satisfied this is credible personal information that may have affected the consideration of his claims or that it assists in assessing whether he requires ongoing

treatment or is unable to access that treatment if returned to Iran. I am not satisfied that the requirements under s.473DD of the Act are met.

#### *Activities in Australia*

20. In his SHEV statement, the applicant claims that since he has been in Australia, he has attended regular gatherings organised by the Kurdish community, for example, New Years' festivities, and that many people take photos and videos of these events. He claims that if people from Iran or the authorities see the photos, they would think that he supports the Kurdish separatist movement. At the SHEV interview, the applicant confirmed that he attended some social events with the Kurdish community but was not politically involved nor was he a member of any groups. When asked if he had any social media accounts, the applicant stated that he only had [one Social media account] and did not claim to have posted anything that would be of concern on his [Social media] account. In his statement to the IAA, the applicant now states that he believes the Iranian authorities would have information about his activities in Australia through social media and that he also has a [tattoo] which he got done while in Australia. This information was not provided to the delegate and is new information.
21. The applicant has not provided any evidence of his tattoo, such as a photo, or any information regarding when he obtained his tattoo. While he claims now that the authorities in Iran would become aware of his activities in Australia through social media, he has not explained how that would be the case, given that his evidence does not indicate that he has posted any material on his social media account or is aware of others that have posted his photos or videos. I am not satisfied that this new information is credible personal information that may have affected the consideration of his claims or that it assists in assessing whether he would face a real risk of harm for these reasons if returned to Iran. I am not satisfied that there are exceptional circumstances to justify considering the new information.

#### *Kurdish Human Rights Network monthly reports*

22. The IAA has been provided with the Kurdish Human Rights Network, July and August 2021, monthly reports. These reports were not before the delegate and are new information. It is submitted, and I accept, that the reports could not have been provided to the delegate as they were published after the delegate's decision. The reports indicate that the information relates to harm suffered by Kurdish people due human rights violations. They publish the names of individuals and the cause of their death or injury. The reports have information such as individuals the subject of death penalty due to drug charges or premeditated murder, prisoners dying due to lack of medical treatment at prisons, women killed by their families, detention and death of former Kurdish party members, and arrest of individuals such as activities, lawyers and protesters. It is submitted that these reports confirm what has happened to Faili Kurds in Iran, who are opposed to the regime, notably, that in June 2012 an individual was sentenced to 11 years in prison for acting against national security and that eight Faili Kurds were executed in July 2021 on drug offences. It is submitted that it is unclear whether the charges were legitimate or if they were contrived, but the assertion is the latter.
23. I accept that the information is credible personal information, in that they appear to be genuine publications reporting on identifiable individuals' arrest, injury, detention and death. Apart from their Kurdish ethnicity, it is not apparent to me that the individuals named have any connection with the applicant. The applicant has confirmed that he had no political profile in Iran and has not engaged in any political activities while in Australia. He has no

criminal records nor falls within the categories of people who are reported to have been arrested, detained or harmed by the authorities or other individuals. The assertion that the individuals may have been detained or faced death penalty due cases contrived against them is unsupported by the reports or any other evidence. I am not satisfied that the information in these reports may have affected the consideration of the applicant's claims and I do not consider these reports to materially add to the information before the delegate regarding the treatment of Faili Kurds, particularly those with a similar profile to the applicant. I am not satisfied that there are exceptional circumstances to justify considering the reports.

### *Interview*

24. In his statement, the applicant states that he wishes to explain what he has said in his statement in person to the IAA and requests that he be given an opportunity to do so before a decision is made. The submission to the IAA also requests the IAA exercise its discretionary power under s.473DC(3) of the Act to invite the applicant to give oral evidence at an interview, because the delegate did not consider the applicant's claims in its entirety, the delegate's decision was based on adverse credibility findings and the delegate made a jurisdictional error by not considering each integer of the applicant's claims. It is also submitted that if the IAA considers the information presented to be new information, it "needs to consider seeking interview evidence from the applicant to obtain information relating to its finding that the limbs in s 437DD are/are not met".
25. While there is a discretion, there is no obligation on the IAA to obtain new information or invite the applicant to provide new information. As noted above, the applicant was assisted by a migration agent to prepare his SHEV statement, he was interviewed by the delegate with the assistance of an interpreter in the Faili Kurdish language, and has been assisted by [a] specialist refugee migration firm, in presenting further evidence and submissions to the IAA. I am satisfied that the applicant was given ample opportunity to present his claims to the delegate and in providing the IAA with submissions, the applicant had had a real opportunity to address the delegate's decision and put forward arguments in support of his claims. Given the nature of the IAA's de novo review, I do not consider matters such as the claimed failure by the delegate to consider the applicant's claims or the delegate's having made the decision on adverse credibility findings necessitates the IAA inviting the applicant to provide further information in this case. I have considered the submissions regarding the delegate's findings and decision in undertaking this review. As set out above, the IAA has also been provided with a submission in relation to s.473DD of the Act, which I have considered in my assessment of new information provided to the IAA.
26. In addition to the above, the applicant has not indicated what further explanation or clarification he wishes to or is able to provide in addition to his statement. The applicant has had the opportunity to present his claims and evidence to the delegate, respond to the delegate's decision and provide further information to the IAA. I have decided not to exercise my discretion to invite the applicant to give to provide further information, at interview or otherwise.
27. Apart from the above, the information provided to the IAA entails arguments in response to the delegate's findings and decision, which I have considered in undertaking this review.

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

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28. The applicant's claims made in his SHEV application can be summarised as follows:

- The applicant was born in [a] village, Ilam province in Iran. He is of Faili Kurdish ethnicity and a Shia Muslim.
  - The applicant's mother passed away when he was [age]. His father remarried and his paternal grandmother raised him. She passed way about a year prior to the applicant's departure from Iran in May 2013.
  - The applicant is stateless and never health a birth certificate or passport. He found it difficult to get an education. He attended school [age range]. After that he worked for his uncle on his farm. He was unable to find other employment due to lack of identity documents.
  - The Iranian laws discriminate against Kurdish people and the authorities do not help them. The applicant's family were facing discrimination.
  - The applicant was in a relationship with a Sunni Kurdish girl for about two and half years. They wanted to get married. Six months prior to the applicant's departure, they told her family. Her family did not allow their relationship to continue and her brothers started threatening the applicant and telling him to stop seeing her. There were a lot of fights and altercations between the applicant and her brothers. The applicant did not seek help from the police because the law would have been on her family's side for defending her honour.
  - The applicant decided to leave Iran with his aunt and her family. His aunt and her husband were responsible for the applicant after his grandmother's death. Various family members gave the applicant money to pay for his travel to Australia.
  - The applicant travelled out of Iran on a fake passport. The passport had his photograph, but other details were of someone else. He had no problems with security or border control at the airport. The passport was taken from the applicant by the smuggler in [Country].
  - In Australia, the applicant has attended regular gatherings organised by the Kurdish community. May people have taken photos and videos showing the applicant holding the Kurdish flag.
  - He will be harmed by his girlfriend's brothers and also by the authorities because he departed Iran using a fake passport. The authorities will perceive him as a supporter of the Kurdish separatist movement because of his attendance at gathering organised by the Kurdish community in Australia.
  - The applicant has problems with his eyes which was not treated in Iran because he was a stateless Faili Kurd. If returned to Iran, the applicant will not be able to access medical treatment that he needs because of his ethnicity.
29. At the SHEV interview, held on 21 June 2021, the applicant resiled from his claim to be stateless and confirmed that he was an Iranian citizen. He provided the delegate with originals and English translation of his Iranian National Identity Card and Military Service Card.
30. In submission to the IAA, the applicant confirmed that he departed Iran using a genuine Iranian passport.



## Refugee assessment

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31. 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

32. 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.
33. The applicant arrived in Australia [in] June 2013. On 2 July 2013, he was interviewed (arrival interview) and claimed to be a stateless Fail Kurd and that he was a minor born on [Date 1].
34. On 22 July 2013, the applicant was interviewed to assess his age. He continued to claim that he was stateless and under the age of 18. The age determination assessment concluded that it was unlikely that the applicant was under the age 18 and recommended that his date birth of [Date 1] be changed to [Date 2]. The report noted a number of concerns regarding the applicant’s behaviour at the interview (exhibited body language consistent with a person who was knowingly concealing the truth and that he appeared rehearsed and calculated), the implausibility of his recreational pursuits in Iran and suspected that much of the information about his education and employment background in Iran appeared fabricated. The report also expressed concern about the applicant’s effort to convince assessors that he was dependant on his grandmother and uncles in Iran, in order to appear as a minor.
35. In his SHEV application, made in September 2017, the applicant continued to provide his date of birth as [Date 1] (also noting [Date 2] as a different date of birth). He also maintained that he was a stateless Faili Kurd from Iran and referred to not having any identity documents due to his status in Iran.
36. The applicant was interviewed by the delegate on 21 June 2021, over three years after the lodgement of his SHEV application. At the interview, the applicant gave his date of birth as [Date 3]. After being questioned about his date of birth, the applicant stated that when he came to Australia, he gave a date of birth which was not accepted. When asked to specify the date of birth he gave, the applicant stated that he could not remember as it was eight years

ago when he arrived and that he came to Australia on a fake passport. He also confirmed that he knew that his date of birth was [Date 2], but he deliberately gave a different date of birth so he could be accepted as a minor. At that point, the applicant also stated that he had his Iranian National Identity Card and Military Service Card. He provided the delegate with originals and translation of these documents, which notes his date of birth as [Date 3]. He expressed his apology for not providing the Department with this information and said that he was fearful when he arrived in Australia.

37. On the documentary evidence provided by the applicant and his evidence at the interview that he deliberately gave false information about his age and nationality prior to his SHEV interview, I accept that the applicant is an Iranian national born on [Date 3] (almost [Age] years old at the time of arrival). Iran is the receiving country for the purposes of this review. The applicant has consistently claimed to be of Faili Kurd ethnicity and a Shia Muslim, and I accept that to be the case.
38. It is submitted on the applicant's behalf that it is common knowledge that persons seeking protection are often confused, excitable, can unwillingly exaggerate and only speak in generalities and that they are overly reliant and dependant on the people smugglers who have promised them freedom and safety. In his statement the applicant claims that the people smuggler told him what to say to the Australian authorities and as he was "very young and very scared" he thought that he must do what the smugglers told him. He threw his passport into the sea on the instruction of the smugglers and was told to say that he was stateless, travelled on a fake passport and was younger than his actual age. It is argued that the applicant has provided plausible and reasonable explanation as to why he provided incorrect information about his age and citizenship status in Iran.
39. It is plausible that the applicant may have been advised by the smuggler to provide incorrect information regarding his age, citizenship and to say that he travelled using a fake passport, and that this may have impacted his decision to do so at his initial dealings with the Department. However, I am not convinced that the applicant's failure to correct false information at any time prior to his SHEV interview, held eight years after his arrival in Australia, was due to the fact that he was still influenced by the advice given by the people smuggler or that he was fearful or very young. The applicant arrived in Australia when he was almost [Age] years of age. He was [Age] years of age when he signed his SHEV application (and accompanying statutory declaration) declaring that he understood that giving false and misleading information is a serious crime in Australia and that he believed that the information in his statement in true in every particular. That application was prepared with the assistance of a lawyer and migration agent. I do not accept that the applicant's continued provision of false and misleading information in his SHEV application and at the SHEV interview (regarding his fake passport) was due to his young age or that he was fearful.
40. I consider the applicant's very deliberate and continued provision of false information regarding his age and nationality up until his SHEV interview, to significantly detract from his overall credibility. The fact that the applicant persisted with providing wrong information about his date of birth, even after an age determination assessment which undermined his claim about his age, and the continuation of his claim that he departed Iran on a fake passport before the delegate, even after abandoning his claim of statelessness, leads me to conclude that the applicant is not a witness of truth and has willingly contrived and manipulated information to his benefit.
41. In his SHEV statement, the applicant claims that while in Iran, he was in love with a Kurdish girl, Z. They were in a relationship for about two and a half years and wanted to get married.

About six months prior to his departure from Iran, they decided to let Z's family know of their intention, but the family were very angry and opposed to their daughter, a Sunni Muslim, marrying a Shia man. Her brothers started threatening the applicant and warned him to stop seeing Z or he would get hurt. There were a lot of fights and altercations between the applicant and Z's brothers. The applicant did not seek help from the police because they would have been on Z's family's side as they were defending their daughter's honour and her brothers were taking the correct action under the law. He claims to fear harm at the hands of Z's brother's if returned to Iran. I note that the applicant did not refer to this during his arrival interview in 2013. During that interview he confirmed that nothing happened to him while in Iran.

42. At the SHEV interview, the applicant was asked about his relationship with Z. He stated that their relationship was in secret, only one friend knew about and that they planned to get married but her family was against it. When asked about the marriage plan, the applicant stated that it was difficult in Iran to plan these things and that he did not want to do anything that would damage her reputation. Regarding the nature of their relationship, the applicant confirmed that they were in a relationship for about two years, they primarily talked on the phone and saw each other in person about every two months, as in Iran it is unacceptable for unmarried couples to be seen together. He also stated that although he was in contact with Z after his arrival in Australia, she is now married, and he is only in contact with her mother and he asked her about Z. When asked if he still planned to marry Z, the applicant said, "one day if she gets divorced or separated". When asked if Z has told him that she would get a divorce, the applicant referred to Z living in a country that does not respect women, that the forced marriage has occurred and that he did not know "how to break that procedure".
43. The delegate referred to the applicant's age determination interview held in July 2013. The delegate noted that the applicant was asked about his social life and networks in Iran and his family and important people in his life. While he mentioned many things, he did not mention being in a relationship with Z. The applicant stated that it was difficult for him to talk about this, he gets emotional and he did not want to share any information that could be misused against Z. When asked why he still feared harm from Z's family, given that he departed Iran in 2013, eight years ago, the applicant said that because "they" don't forget easily and would take revenge if they could. He also referred to seeing a psychologist after his arrival in Australia because he was having nightmares. When asked why her family would be interested in him given that Z is now married, the applicant said, "they see it as I damaged her reputation".
44. While it is concerning that the applicant did not mention his relationship with Z or that he feared her family at his arrival and age determination interviews held shortly after his arrival, I take into account that the applicant was at that time concealing his true age and when asked about his social activities in Iran, he referred to playing hide and seek and PlayStation. I am not of the view that the applicant's failure to mention his relationship with Z at these interviews is of itself determinative of the credibility of his claim that he was in a relationship with Z. I am willing to accept that the applicant may have been in a relationship with Z as claimed and that they intended to get married, but her family opposed their marriage because they were Sunni and did not want their daughter to marry a Shia man. I accept that the applicant and Z told her family about six months prior to the applicant's departure from Iran and that the applicant was told to stop seeing Z and that he may have been threatened by Z's brothers that he would be hurt if he continued his relationship with their sister. I am also willing to accept that there may have even been some altercations between the applicant and Z's brothers. While I accept that the breakup of the relationship caused the applicant emotional distress, I note that he remained living in his home and continued to

work, and there is no indication that Z's family members attempted to harm him in the six months after they were informed and during the time the applicant remained in Iran. On the applicant's evidence, I am not satisfied that the applicant departed Iran because he was at risk of or had a genuine fear of harm at the hands of Z's family. Apart from his claimed fear, there is no indication that the threat of any harm continued after the initial period or after Z's marriage. While the applicant indicated that he would marry Z if she separated or divorced her husband, that at best appears speculative. As noted by the delegate, Z is now married, and the applicant has been away from Iran for eight years. I do not accept that Z's family are still interested in seeking revenge and consider the chances of the applicant being harmed by Z's family to be no more than remote.

45. I accept that the applicant is a Faili Kurd and practising Shia Muslim. He has not claimed to fear harm on the basis of his religion, and I note that he is part of the majority religious group in Iran. In his SHEV statement, the applicant's evidence regarding the hardship and poverty he faced related to him lacking Iranian identity documents, which is not the case. Although he indicates that his family faced discrimination and refers to Persian people accessing water that was denied to Kurdish people and that these things happened because the authorities did not help Kurdish people, the applicant has not provided any specific details of discrimination that he or his family faced. At the SHEV interview, while the applicant stated that he had concerns due to his Kurdish ethnicity, he did not detail his concerns, nor did he refer to any past instances of discrimination or harm due to his ethnicity. At the conclusion of the interview he was asked on a number of occasions if he had presented all evidence regarding his claims. He did not mention having been harmed due to his ethnicity.
46. I do not accept that the applicant faced any discrimination in education or employment or that any of his claims about hardship he suffered (which was premised on him lacking Iranian nationality and identity documents) is credible.
47. The applicant's evidence is that he was not involved with any political activities nor participated in any political events while in Iran. There is no indication that he came to the attention of authorities for any reason. His SHEV statement indicates that since arriving in Australia, the applicant attended regular gatherings organised by the Kurdish community, for example, New Year's festivities. Many people take photos and videos and they show him with a Kurdish flag and that if people from Iran or the authorities see the photos, they would think that the applicant support the Kurdish separatist movement. At the SHEV interview, the applicant stated that he participated in some events in Australia but is not politically involved or member of any political party. When asked about the activities that he was concerned would bring him to the attention of the authorities, the applicant said that he attended social events with the Kurdish community and held the Kurdish flag. When asked how the Iranian authorities would know about this, the applicant stated that the Iranian government has many intelligence services and find anything out and that many people in Iran get arrested and jailed without any reason.
48. I accept that the applicant may have attended social gatherings organised by the Kurdish community in Australia. It is possible that people may have taken photos and videos of these events. The applicant's evidence does not indicate that he has posted any material on his social media or is aware of others having made these photos or videos available online or in public domain. The applicant's evidence is that he was not in Iran, and has not been in Australia, involved in any political activities or member of any political group. The applicant's evidence does not indicate that he came to the attention of the authorities in Iran or that he had any profile of interest with the authorities or suspected of any involvement with the Kurdish separatist movement. Given the applicant's profile and lack of any evidence that the

applicant's attendance at Kurdish social gatherings have come to the attention of the authorities or that the Iranian authorities monitor activities of individuals, such as the applicant, I am not satisfied that the applicant has attended any events that would be of concern to the authorities or that would implicate him with pro-separatist political views if returned to Iran.

49. While the country information before me indicates that the experiences of minority groups differ in Iran, I am not satisfied that Faili Kurds with Iranian citizenship face a real chance of harm in Iran. DFAT<sup>1</sup> reports that it is not aware of cases where Faili Kurds who are Iranian citizens have faced adverse attention specifically because of their ethnicity. Faili Kurds of Iranian citizenship can access services, including access to employment, on the same basis as other Iranians and appear to face little to no discrimination in access to services on the basis of their ethnicity or religion. DFAT is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment and indicates that Faili Kurds of Iranian citizenship have access to state protection on the same basis as other Iranian citizens. It is also noted that Shia Kurds, like the applicant, face fewer challenges in interacting with government authorities compared with Sunni Kurds. Although there are reports of the authorities targeting ethnic minority activists, such as Kurds attempting to assert cultural or political rights, the applicant's evidence does not indicate that he was involved or engaged with any such activities in Iran or that his participation at social gatherings in Australia have come to the attention of the authorities or would be of concern to the authorities.
50. The applicant has consistently claimed that he suffers from an eye condition requiring him to wear glasses. In his SHEV statement, the applicant claims that his condition was preventable and could have been treated if he was able to see an optometrist and that he could not because he was a stateless Kurd, and would not be able to access treatment if returned to Iran for the reasons claimed. The applicant has confirmed that he is an Iranian citizen. Country information cited above indicates that Faili Kurds of Iranian citizenship can access services on the same basis as other Iranians and appear to face little to no discrimination in access to services on the basis of their ethnicity. Although the applicant has not provided any medical evidence regarding his eye condition or any treatment he requires, I am willing to accept that he has an eye condition that may require him to wear glasses. However, on the evidence before me, I am not satisfied that he requires ongoing medical treatment or if he does, that he would be denied access to such treatment based on his ethnicity or otherwise.
51. I also note the applicant's evidence that he was referred to, and was seen by, a counsellor after his arrival in Australia to deal with his emotions regarding the breakup of his relationship with Z. The applicant has not provided any medical evidence in support and on the evidence before me, while I am willing to accept that he may have seen a counsellor soon after his arrival in Australia, I am not satisfied that he has been diagnosed with any ongoing mental health issues requiring treatment.
52. I accept that the applicant departed Iran using his own genuine Iranian passport and his evidence indicates that he had no issues departing the country. The applicant has consistently claimed, and I accept, that he is not in possession of his passport.
53. DFAT reports that Iran does not permit the involuntary return of Iranians from Australia unless they arrived in Australia after 19 March 2018, the date on which Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the

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<sup>1</sup> DFAT "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

return of Iranians who arrived after this date and who have no legal right to stay in Australia.<sup>2</sup> As the applicant arrived in Australia prior to 19 March 2018, I find that if he were to return to Iran, it would necessarily be on voluntary basis. DFAT<sup>3</sup> also reports that persons, such as the applicant, who do not have a valid Iranian passport require temporary travel documents issued by Iranian diplomatic representatives overseas to facilitate their return and that the authorities at the airport will be forewarned about such persons' return.<sup>4</sup> As the applicant's return will necessarily be on voluntary basis, he may be able to obtain a passport. However, even if the applicant returns to Iran on temporary travel documents, the 2020 DFAT report<sup>5</sup> indicates that he may be questioned by immigration police about the circumstances of his departure and why he is travelling on temporary travel documents. I consider it possible that this may lead the authorities to infer, that the applicant has sought asylum while in Australia. The DFAT report<sup>6</sup> indicates that the questioning is usually for a short period of between 30 minutes to an hour but may take longer where returnees is considered evasive in their answers or have a suspected criminal history. Arrest and mistreatment are not common during this process.

54. Other than the possible questioning on arrival, DFAT<sup>7</sup> advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. International observers have reported that the Iranian authorities pay little attention to returned asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims. Unless returnees have an existing profile or were the subject of adverse official attention prior to departing Iran, they are unlikely to attract attention from the authorities. As indicated above, the applicant did not have any adverse profile with the authorities prior to his departure from Iran nor has he been involved in any Kurdish separatist or political activities. The information before me does not support the applicant's assertion that he would be imputed with a political profile in favour of the west or opposed to the regime because he is Kurdish or for reasons of his the length of his stay in Australia or as a Kurdish returned asylum seeker. I do not consider that apart from being questioned on arrival, the applicant would attract any form of adverse attention from the authorities. I do not consider being questioned on arrival for a short time amounts to harm nor am I satisfied that he would otherwise face a real chance of any harm during questioning.
55. In considering the applicant's circumstances and overall profile in the context of the country information cited above I am not satisfied that he faces a real chance of any harm for any of the claimed reasons. I am not satisfied that the applicant has e a well-founded fear of persecution within the meaning of s.5J of the Act.

### **Refugee: conclusion**

56. 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) of the Act.

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<sup>2</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>3</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>4</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>5</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>6</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>7</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

## Complementary protection assessment

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57. 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

58. 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.
59. 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.
60. I have found above that the applicant does not face a real chance of harm in Iran for any of the claimed reasons. The Federal Court<sup>8</sup> held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm, if returned to Iran.

### Complementary protection: conclusion

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

## Decision

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

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<sup>8</sup> MIAC v SZQRB (2013) 210 FCR 505.

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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



...

### 5J Meaning of well-founded fear of persecution

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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