



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09614

IRAN

IAA reference: IAA21/09615

Date and time of decision: 23 September 2021 15:12:00

J Maclean, Reviewer

Decision

In respect of the referred applicant (IAA21/09615) the IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

In respect of the other referred applicant (IAA21/09614), the IAA remits the decision for reconsideration with the direction that:

- the other referred applicant is a member of the same family unit as the above-named applicant and satisfies the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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) are a family, consisting of the father (IAA21/09614, 'Applicant 1') and his daughter (IAA21/09615, 'Applicant 2'). The applicants claim to be Iranian citizens. In June 2017 the applicants lodged applications for Safe Haven Enterprise Visas (SHEVs). On 31 July 2021 a delegate of the Minister for Immigration refused to grant 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). No further information has been obtained or received.

Applicants' claims for protection

3. The applicants both make claims for protection. Along with the SHEV application Applicant 1 submitted a statutory declaration dated 20 June 2017, making claims for himself and Applicant 2, a minor child, then aged [Age]. Those claims are summarised as follows:
 - He fears if he and his daughter return to Iran he will be killed by his former brothers-in-law, or they will organise for him to be killed, and his ex-wife's family will force his daughter to comply with their Islamic beliefs and force her to marry. He also fears harm for having sought asylum overseas, and because he no longer practises Islam.
 - He married his ex-wife ('L') in 2003. Shortly before their daughter (Applicant 1) was born L started having mental health problems and would not get treatment. They divorced in 2007, but remained living together for three or four years as L's family disapproved of divorce, and in Iran if the child is under seven years old the mother gets custody and he would not see his daughter. L's mental health problems continued, she did not take care of their daughter, and he was fearful of leaving the child with her. L threatened that her brothers were powerful and would harm him.
 - When Applicant 2 was about [age range] years old Applicant 1 told L's family he could not live with L anymore. Everything was okay for three or four months, but then L started to visit and try to take Applicant 2. L has two brothers who are very powerful, AA and AB, one is in the Army, and the other works for the Basij or the intelligence services. AA and AB began threatening to kill him and run him over in the street, and said they would only leave him alone if he gave the child to L.
 - He went to the Family Court about the threats at the end of 2011 or beginning of 2012. They said they would look into it and he was chasing the file for about six months but nothing ever came of it.
 - He was scared someone would kidnap Applicant 2, and although he moved houses they still found him and were threatening him. In 2011 or 2012 when he filed the complaint with the Family Court he was bashed in the street two or three times. Although it was not the brothers he is sure they sent the people.
 - A friend advised him to leave Iran where they would not be able to find him. He organised passports and tickets for himself and his daughter and left the country in March 2013 without any problems at the airport.

- About four to five months after arrival in Australia he found out L and one of her brothers had visited his sister. They threatened to bash her, and L assaulted her. His sister told them he had gone to Australia. They then went to his mother's house and fought with his brother, and said they had been happy just to take the child, but now they would kill him.
 - He was born Shia Muslim but no longer observes any of the customs. He has been interested in converting to Christianity, has some Christian friends, and about two to three years ago attended six or seven times at [Church 1] and [Church 2]. He is too scared to officially convert in case he is sent back to Iran and be in serious trouble for apostasy. He plans to convert to Christianity if granted protection in Australia.
 - Having spent her formative years in Australia his daughter would struggle to adjust to life on return to Iran. They have not been practising Islam or observing the religion in Australia, and his daughter has no knowledge about the religion and speaks only broken Farsi. His ex-wife's brothers will kill him or have him put in jail, and he will not be able to protect his daughter. His name will be on a blacklist and the brothers will be alerted on his arrival, and they will take Applicant 2 and force her to live according to their strong Islamic beliefs, including forcing her to wear the hijab, praying, and forcing her to marry a Muslim man.
4. After Applicant 1 had been interviewed by the delegate, Applicant 2 provided a statement dated 21 May 2021, making her own claims. Those claims are summarised as follows:
- She believes she remembers little about her experiences in Iran because she has suppressed traumatic memories, but is aware her father left Iran because of problems with her mother, who was mentally unwell, and that issues with their relationship led to them divorcing.
 - Her mother and her mother's family wanted custody of her, and her mother's brothers have powerful positions in government and sent people to find her.
 - After coming to Australia she spoke to her mother now and then, but she became aware her mother intended to set up an arranged marriage to an older man, which made her uncomfortable, so she does not have contact with her mother anymore. Her mother's new husband is a wealthy and powerful man in the Iranian government, and she fears his position, and her mother's brothers' positions, would be used to have her father arrested and to force her to marry.
 - She is also fearful of returning to Iran because she is bisexual, and if forced to return to Iran would need to hide that part of herself, and would not have freedom to date or marry who she wants to. Her mother is a traditional Muslim who would consider bisexuality sinful.
 - She would stand out in Iran as a westernised, independent young woman. She dresses as a western woman, does not read or write Persian, and speaks only broken Persian, she is not religious or Muslim, and has not had exposure to Islamic practises. She would stand out and be targeted by the Iranian government because of this, and also as a woman she would be at risk of sexual assault, abuse, and gender-based violence.
5. In Applicant 1's statutory declaration he referred to suffering anxiety and absent-mindedness due to the stress he has been through, including looking after his daughter, and to being referred to some specialists at a hospital six months earlier, and waiting to hear back from them. He indicated that when he was in immigration detention a mental health assessment was recommended, he did not have that assessment, and he struggled to remember dates and employment during the interview (presumably the Entry interview). Given the period of time

that has elapsed since many of the events he described by Applicant 1, I can accept he may have some difficulty recalling exact dates, and I make no adverse inference about such discrepancies in his evidence, which I consider are minor. During the SHEV interview Applicant 1 gave appropriate and cogent responses to questions posed by the delegate through the interpreter, and no documentary information has been provided to support he suffers from any health condition, mental or physical, that would impact his ability to provide information at interview. When the delegate asked if he had been diagnosed with any condition by a medical practitioner he said 'no'. On the information before me, I am not satisfied Applicant 1's ability to present his claims was impacted by any health issues, and I am satisfied he has had the opportunity to present those claims, including during the SHEV interview.

Refugee assessment

6. Under s.36(2)(a) of the Act a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee. 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

7. 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.

Identity and background

8. The applicants have consistently identified their citizenship as Iranian. Documentary evidence has been provided to support their identities, including Applicant 1 and 2's Iranian birth certificates and Applicant 2's National Identity Card, and English translations of those documents. The documents are in the applicants' names and show their claimed date and place of birth and their photographs. I accept the applicants' identities are as claimed, that they are Iranian nationals, and Iran is the receiving country for the purpose of this assessment.

9. I accept the broadly consistent information about the applicants' background, early life in Iran, and their family, as follows: Both Applicant 1 and 2 were born in Tehran, in [Year] and [Year] respectively; Applicant 1's mother and father are deceased, however he has a full sister who continues to live in Iran. His step-mother and [a number] of his half siblings remain living in Iran. One half-sister resides in [Country 1], and another in [Country 2]; Applicant 1 attended schooling in Iran [during year range], and completed two years compulsory military [service]; with the exception of during Applicant 1's military service, the applicants always lived in Tehran; Applicant 1 married Applicant 2's mother ('L') in February 2003, and they divorced in February 2007; L continues to live in Iran.
10. Applicant 1 identified his ethnicity as Azeri/Farsi, his father being Azeri, and his mother being Farsi. In the SHEV application Applicant 2's ethnicity was indicated as Persian. Neither applicant has claimed to fear harm for reason relating to their ethnicity.

Applicant 2's Risk of harm due to bisexuality

11. This claim is being discussed first because, as it turns out, the outcome of the applicants' application turns on this claim.
12. Applicant 1 was interviewed by the department on 13 May 2021, and at the conclusion of the interview he was asked if he consented to the department interviewing his daughter independently at a later date, and he said 'yes'. Applicant 2 was present outside the interview room but was not interviewed at that time. On 21 May 2021 the department received a statement from Applicant 2, of the same date, a submission, and country information. The submission addresses Applicant 2's claims to fear harm as a bisexual woman in Iran, the risk of forced marriage of women and girls in Iran, and the status of westernised atheist women in Iran. In her statement Applicant 2 indicated she wished to explain herself why she would be at risk of persecution and serious harm if returned to Iran. She was interviewed by the department on 23 July 2021, without the assistance of an interpreter, and without a migration agent or support person. Applicant 2 had assistance from the Asylum Seeker Resource Centre to prepare her statement and submissions to the delegate. During the interview she demonstrated fluency in English, and her responses to questions posed by the delegate were given without hesitation, and demonstrated emotional maturity. I am satisfied Applicant 2 had the capacity to participate in the interview and present her claims, provide information to support those claims, and to respond to the delegate's concerns.
13. Applicant 2 was only [age] years of age when the SHEV application was lodged, so I consider it unsurprising claims regarding her sexual identity were not made at that time. In her statement of claims she refers to observing feelings of attraction towards both males and females when she was around [age] years of age. She has had one relationship with a man, but is open to a relationship with a woman, speaks openly about her sexuality with her friends, and it is completely normal to talk about it with people she knows. If returned to Iran she would need to hide this part of herself as being homosexual or bisexual in Iran is considered wrong, it is against the law, people can be put in prison for being openly homosexual or bisexual, and it is taboo to talk about these things. She is accustomed to speaking openly in Australia, and would find it extremely difficult to constantly monitor what she tells other people about herself. In addition, her mother, a traditional Muslim, would not accept this aspect of her. In Australia she is free to date and marry who she wants to, but her mother would force her into a marriage with an older man.
14. At her SHEV interview Applicant 2 indicated she realised at about [age range] years of age she was attracted to both sexes. She was confused and kept her feelings to herself for a while, but

she learned about sexuality in Health classes at school, and this made her feel normal and okay about coming out. As she has grown up and met more women her feelings have become clearer to her. At about [age] years of age she spoke to her Dad about her confusion, and asked him how he felt about people who are bisexual and gay women. She was unsure how he would react as he came from a Muslim country where everyone is closed-minded and ignorant about these issues. He indicated this was not part of his life, but that he did not have hateful feelings towards people who want to pursue same-sex relationships. This encouraged her to speak to him about her situation, including about an experience she had with a girl. Her father told her she would have more clarity about her feelings with time. She felt loved and accepted by her father and was very grateful she did not need to hide herself from him. When she was about [age] years of age she also discussed her feeling attraction to both sexes with friends, and about possibly being bisexual. The more parties she went to the closer she got to girls, and she felt the level of connection with girls was stronger, and that this was something she would pursue with the right person. She is very open, with friends and whoever she meets, speaking about being attracted to both sexes. With regard to any relationships, Applicant 2 described being in 'a situation' with a person, of the same gender she met at school ('H'), on and off for a year when she was about [age]. She described the situation as 'friends with confusion'. That relationship stopped when she got into a relationship with a man ('J'). This relationship went for 10 months before they parted ways. J was aware of her sexuality and was understanding. Applicant 2 went on to describe celebrating New Year's with a female after breaking up with J, and indicated this was a romantic relationship, but that she was not in touch with that person any more. After breaking up with J she also described developing a romantic connection with H, the friend she mentioned earlier, and who she has known since Year [grade] She described the relationship as 'nothing serious', but said she feels a growing connection, that it feels pure and genuine and like they understand one another on another level. They shared a kiss on the friend's birthday on [Date], and although they have discussed their situation and the 'moment' they shared together, they are graduating very soon and it is a stressful time, and they do not want to focus on a relationship right now, and are just going with the flow and letting time figure everything out for them.

15. Given Applicant 2 indicated she has discussed her sexuality with her father, and he is very accepting of who she is, I find it rather surprising Applicant 1 did not mention this claim during his SHEV interview. In her statement she indicated her father did not feel he was able to completely put into words all the reasons why she cannot return to Iran. Applicant 2 was in attendance outside the interview room when Applicant 1 was interviewed, but she was not interviewed at that time. During her SHEV interview Applicant 2 appeared to provide information without hesitation or exaggeration, and gave the impression of recounting lived experience and genuine feelings. As Applicant 2 is young I consider her limited relationship history and her initial confusion regarding her sexuality to be unsurprising. I do not share the delegate's concerns regarding Applicant 2's failure to raise her claims until after Applicant 1's SHEV interview, her inability to remember the precise date of some events, such as a conversation with a female friend who happens to be a Muslim, because she described an incident when a boy at her 'open-minded' school gave a presentation claiming 'gays should burn', or because she has not engaged with any LGBTI community groups or services. Applicant 2 was open about the interactions she had with girls initially not being as serious as the connection she had with J during their 10-month relationship, and the deepening romantic connection she feels with girls, most recently with H. She also displayed a mature approach to their relationships in the context of them being in [high school], and not wanting to be stressed.
16. I accept Applicant 2 has felt attraction to both men and women, that she has had relationships with people of both sexes, and that she considers herself bisexual. I am mindful she is a young

woman who is still developing, that sexual exploration is common during adolescence, and that she may have further clarity about her sexual preferences with time, including in the reasonably foreseeable future. Applicant 2 claims she has been raised as an independent and free-thinking woman, who is accustomed to speaking openly about her sexuality in Australia, and that it would be very difficult for her to constantly monitor what she tells other people about herself, and given she has been free for several years to explore and discuss her sexuality in Australia, I accept that is so, and that there is a real chance she want to speak openly about her sexuality on return to Iran in the reasonably foreseeable future.

17. Country information indicates Chapter 2 of the Iranian Penal Code explicitly criminalises same-sex relations, including where consensual in nature. Punishments for male homosexual acts are more severe than those given to women. Whereas a man can be executed on the first conviction in cases involving penetration, a woman can only be sentenced to death on her fourth conviction. Non-penetrative homosexual acts such as kissing or ‘touching as a result of lust’ are punishable by flogging, applicable to both men and women, and sexual acts between women are specifically defined and prohibited, with flogging stipulated as punishment. Same-sex conduct not involving sexual organs – like ‘passionate kissing’ – also attracts flogging as punishment. There is no distinction between the active and passive parties or between Muslims and non-Muslims in cases involving sexual acts between women. The prevailing view among Iranian healthcare professionals is that homosexuality is a psycho-sexual illness. Official ‘treatment’ for gay men and women includes prescription medications (such as Valium) and gender reassignment surgery (GRS). International observers report that private and semi-governmental psychological and psychiatric clinics offer ‘corrective treatment’ for LGBTI persons. There is a strong societal taboo against homosexuality, particularly among older, more conservative Iranians — one local source said it was impossible for Iranians, as Muslims, to accept homosexuals. While official rhetoric against homosexual individuals and practices has reduced since the Ayatollah Khomeini era, high-level officials (including Ayatollah Khamenei) have continued to issue derogatory statements about homosexuality. The government censors all materials related to LGBTI issues, including blocking websites or content within sites that discusses such issues. NGOs are unable to work openly on LGBTI issues. The law does not prohibit discrimination based on sexual orientation and gender identity, and no criminal justice mechanisms exist to prosecute those accused of committing hate crimes against LGBTI persons. Authorities have reportedly expelled individuals from university for alleged same-sex relations. It is not possible for an LGBTI person to seek state protection, as doing so would be an act of self-incrimination and leave them vulnerable to arrest and prosecution. Given the criminalised and hidden nature of homosexuality, harassment of and discrimination against LGBTI persons is under-reported.¹
18. Local sources told DFAT that younger Iranians, particularly in more progressive parts of major cities, are increasingly more tolerant, but that, on balance, homosexuality is not openly discussed and gay people face severe discrimination. This includes abuse and harassment from family members, work colleagues, religious figures, and school and community leaders. Ostracism from one’s family is common, particularly in the case of conservative families. DFAT heard anecdotally that gay men and lesbians face considerable societal pressure to enter into a heterosexual marriage and produce children. International observers report that homosexual and bisexual persons who do not openly reveal their sexual orientation and keep a low profile are able to move freely within society, particularly in larger cities that offer greater anonymity. It is not uncommon in Iran for people of the same sex to live together, although this is not necessarily associated with homosexuality. While the Penal Code’s punishment for sexual conduct is less harsh for lesbians, human rights observers report that their social and economic

¹ Department of Foreign Affairs and Trade (DFAT), ‘DFAT Country Information Report Iran’, 14 April 2020, 20200414083132

situation is significantly more restrictive than that of gay men. The restrictions already imposed on lesbians as women in Iranian society are compounded by the discrimination they face because of their sexual orientation. Financial and social survival for lesbians depends on their ability to repress or hide their sexual identity, particularly from family members. 'Honour killings' of lesbians by male kin reportedly occur, as do beatings and other physical and psychological abuse. Most often, lesbians find themselves abandoned by their families, a situation that can compel them to engage in sex work in order to survive. This leaves them further vulnerable to abuse, harassment and possible arrest.²

19. I am satisfied if Applicant 2 is returned to Iran and openly expresses her sexuality there is a real chance she will be identified as a lesbian and be subjected to ostracism and abuse from the community, harassment, discrimination, prosecution, punishment, and that this amounts to serious harm. I accept Applicant 2 may be able to avoid harm in Iran by behaving discreetly, but that if she acted discreetly it would be to avoid persecution. I am satisfied her fear of harm is well-founded, that is that there is a real chance she would be persecuted if she did not hide this part of herself, and that the harm would be essentially for reason of her membership of a particular social group, that is women who identify as bisexual, and the real chance relates to the whole country. It follows that I am satisfied s.5J(1) of the Act is met.
20. I am satisfied the reason for the harm is the applicant's expression of her sexuality, and that women who identify as bisexual are a particular social group within the meaning of s.5L, as their sexuality is a characteristic shared by each member of the group which is innate or immutable, and the shared characteristic is not the fear of persecution. I am satisfied the harm would be for the essential and significant reason of the applicant's membership of this particular social group and involves systematic and discriminatory conduct. I am satisfied it would be an impermissible modification of behaviour to require Applicant 2 to conceal her sexual orientation or identity, and therefore s.5J(3) of the Act does not apply. The harm would be inflicted by Iranian authorities, who exercise control over the entire country,³ and members of society generally. As homosexual conduct is illegal, and based on available information regarding the treatment of women who engage in, or are perceived to engage in, same-sex relationships by Iranian authorities, I am satisfied those authorities are not willing to offer the applicant protection, and that effective protection measures against official or societal harm are not available. I am satisfied the real chance of persecution relates to all areas of the country. I find the harm amounts to persecution within the meaning of s.5J(4). I am satisfied Applicant 2 has a well-founded fear of persecution within the meaning of s.5J of the Act.
21. With regard to the risk of Applicant 2 being forced to marry, or otherwise being of interest to her mother or her mother's family, I am satisfied Applicant 2 would return to Iran with Applicant 1. Applicant 2 has indicated she has discussed her sexuality with Applicant 1, and he is supportive of her, and I am not satisfied he would exert pressure on his daughter to marry, or otherwise harm her for reason relating to her sexual identity. As discussed below, I am not satisfied L's family were threatening Applicant 1 or attempting to kidnap Applicant 2 at the time they departed Iran, or that they would seek to do so if the applicants returned to Iran. I can accept that if L and her family were to find out about Applicant 2's sexuality they may not approve of it. I acknowledge there is country information which refers to honour killings where a family member has damaged the family's reputation by their actions, such as refusal of an arranged marriage or homosexual acts, and honour crimes are not specifically penalised under the Penal Code. However, forced marriage is prohibited by law.⁴ Given the prior failure of L and

² DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 2020041408313

³ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 2020041408313

⁴ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 2020041408313

her family to take action against the applicants, that Applicant 2 would be legally an adult on return, and that both applicants are now estranged from L and her family, I am not satisfied they are likely to have any involvement with the applicants should they return to Iran, or be able to exert any pressure on Applicant 2 to marry, or have any interest in her actions. I am not satisfied there is a real chance Applicant 2 would be at risk of being forced into a marriage, or being subjected to an honour killing.

Claims about religion

22. Applicant 1 has been broadly consistent in claiming to not feeling connected to Islam when living in Iran, but still believing in God and the importance of feeling connected to a religion. At the SHEV interview he said he is Muslim at the moment, but that he had attended church for two years in Australia and familiarised himself with Christian rules, but did not convert because he was not sure about his stay in Australia. Applicant 2's statement indicates she is not a Muslim, she was not raised with religion as part of her life, does not know anything about Islam, and has not had exposure to Islamic practices, and therefore she would stand out and be targeted by the Iranian government. Although Applicant 2's submission suggest she is an atheist, at the SHEV interview she said she does not regard herself as a religious person, but is open-minded to everything, that she had been to Christian church with her friends, and just believes there is a God.
23. DFAT reports that, under Iranian law, a person who leaves their faith or converts to another religion can be charged with apostasy, and risks state persecution, and potentially the death penalty. Separately, a person of any religion may be charged with the crime of 'swearing at the Prophet' (blasphemy) if they make utterances that are deemed derogatory toward the Prophet Mohammed, other Shi'a holy figures or divine prophets. While apostasy and blasphemy cases are no longer an everyday occurrence in Iran, authorities continue to use religiously-based charges (such as 'insulting Islam') against a diverse group of individuals, including Shi'a members of the reform movement, Muslim-born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam (particularly Sufis) and others who espouse unconventional religious beliefs (including members of recognised religious groups). However, today death sentences in apostasy and blasphemy cases are rare. According to local sources, secularism is widespread, particularly in the major cities and among younger and wealthier Iranians, and a significant proportion of the population does not attend mosque or pray on a regular basis. Official sources told DFAT religion was a private matter, and beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state. DFAT heard anecdotally that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids and smoking at home. Most restaurants are closed during Ramadan, although many (especially in Tehran) reportedly serve food discreetly. According to DFAT, unless a person widely publicises their non-belief, even atheists are unlikely to come to the attention of the authorities. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination.⁵
24. I can accept Applicant 1 became disconnected from Islam whilst in Iran, and consider it likely he ceased being a practising Muslim whilst in Iran. I also accept Applicant 2 was not a practising Muslim whilst in Iran. I consider it highly unlikely either applicant would engage in Islamic practices on return to Iran. Applicant 1 has indicated he still considers himself a Muslim, and there is no information before me to support that either applicant experienced any adverse consequences in Iran for any previous non-adherence to Islam, or that either has

⁵ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

publicly renounced Islam or widely published their beliefs, or lack thereof, or that they would do so in the future, such that they would be considered apostate and be at risk of harm for that reason. I have doubts about Applicant 1's claim that he has not converted to Christianity due to fear of harm on return to Iran. Country information reports that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims such as converting to Christianity.⁶ The information before me does not support a conclusion that Iranian authorities would seek to harm the applicants because of any Christian related activities engaged in whilst in Australia, should these activities become known in Iran. Considering the evidence overall, along with the lack of documentary evidence about Applicant 1's attendance at churches in Australia, I am not satisfied Applicant 1 has not converted to Christianity due to fear of harm, but rather consider it is because he does not have a genuine connection to the religion, or desire to do so. I accept the applicants would be considered non-practising Muslims on return to Iran, however taking into account the country information, I am not satisfied there is a real risk they would experience harm in Iran, from Iranian authorities or any other person, for reason of religion, now or in the reasonably foreseeable future.

Applicant 1's claims, and Applicant 2's other claims

25. With regard to Applicant 1's primary claim that he was threatened by his wife's brothers, and that he feared harm for himself and his daughter, and this was the reason they left Iran, for the reasons noted below, I do not consider these claims to be credible, and I do not accept the events occurred. Firstly, Applicant 1 claims he moved to a different address in 2011 to avoid his ex-wife or brothers finding him and his daughter. However, he has consistently referred to moving in 2011 from Apartment 5 to Apartment 6 in the same building, where he remained living until departing for Australia, and where I consider he could easily have been located. Secondly, Applicant 1 claims that he continued to live with his ex-wife for a number of years after they divorced, because in Iran the mother gets custody of a child until they are seven years of age, and after that time custody reverts automatically to the father. The delegate referred to country information supporting that after a child is seven years of age the father has custody unless the mother contests it, and I accept that is the case. In circumstances where Applicant 1 purports his ex-wife's mental health issues were continuing, that she was not taking care of their daughter, and he was fearful of leaving Applicant 2 with her, and where Applicant 1 was consistently working until he departed for Australia, I consider it extremely unlikely Applicant 1 would have continued with the living arrangements with his wife for an extended period of time. During the SHEV interview Applicant 1 said his ex-wife did not contest custody, which I consider somewhat undermines his claims regarding L's family's threats and demands. In addition, Applicant 2's evidence about contact with her mother appeared inconsistent with Applicant 1's evidence. Applicant 2 said she was about five or six when her parents divorced, and she remembers her mother picking her up and travelling about 30 minutes to her place, which supports that L was not living with the applicants after her divorce from Applicant 1. She said these visits happened every few months, or monthly with big gaps, and that she would spend a few nights at her mother's house. There is no reason Applicant 2 is not to be believed on this issue, and it appears L was not living with the applicants after the divorce, and her family knew where the applicants were living and had numerous opportunities to not return Applicant 2 to her father, and casts doubt over the claim that L's family were intent on kidnapping or harming Applicant 2.
26. Thirdly, I found Applicant 1's evidence about the 'powerful' positions of AA and AB, and the claimed threats to be extremely vague, and not at all convincing. With regard to threats made

⁶ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

directly by the brothers, I consider if the brothers had a genuine intention to harm or kill Applicant 1, or kidnap Applicant 2, they had ample opportunity to do so, and it is not apparent to me why they would not have done so in the period after purportedly finding out in 2011 that Applicant 1 and their sister had divorced, and prior to the applicants departing Iran in March 2013. Fourthly, Applicant 1 said his ex-wife's brothers have powerful positions in the Army and intelligence service/Basij, and suggested if he returned to Iran he would be 'blacklisted' and the brothers would be notified of his return. Applicant 1 indicated at the SHEV interview he and Applicant 2 departed Iran lawfully using genuine Iranian passports in their identities, and I have no reason to doubt that is the case. He went on to say they did not encounter any difficulties with Iranian authorities when departing from the airport. Country information indicates security procedures at Imam Khomeini International Airport in Tehran are robust, including computerised cross-checking and multiple layers of physical security and document checking.⁷ In the context of the country information it is apparent that whatever concerns L's family did have about Applicant 1 having custody of Applicant 2 they evidently did not take any precautions to ensure the applicants did not leave the country, which I consider they would likely have done in the circumstances.

27. Fifthly, Applicant 1's evidence regarding events he attributed to the brothers, such as when he was hit by a car and the person drove off, or being beaten up in the street, appeared purely speculative, and he gave no indication the people involved in the incidents had threatened him, or indicated they had been sent by the brothers, nor is it apparent to me the brothers mentioned the events had been organised by them, which I consider would have been the case if those people were acting at the behest of the brothers. Sixthly, in his SHEV application the applicant suggested he went to the Family Court about the threats at the end of 2011 or start of 2012, and although he 'chased the file' for about six months nothing came of it and he was told to wait. At the SHEV interview Applicant 1 denied he had been to the court, but said he made reports to the Police. Despite indicating he would get copies of the police reports no documentary evidence has been provided from a court or the Police about these problems, leaving only Applicant 1's unsupported assertions. Seventhly, Applicant 1 claimed the threats were at their worst in 2011 or 2012, but he did not depart Iran until March 2013. When the delegate asked why he did not depart sooner he responded that it took a while to sort out the process for coming to Australia. I consider if the purported problems were occurring in 2011 or 2012 Applicant 1 would not have waited for up to a year to depart Iran.
28. Both applicants indicated at their SHEV interviews that L had remarried to a powerful man in the government, indicating this exacerbated their fears, however their evidence was extremely vague, being unable to name the man or give any information about his role within the government, and I found it entirely unconvincing. Although I can accept L has remarried, and given the emotions and difficulties associated with separation and custody disputes I can accept there may have been some animosity towards Applicant 1 from L's brothers, however, I do not accept the applicants have been threatened by L's brothers in the manner claimed, or that they are at risk of harm from L's brothers or her present husband on return to Iran, or because of their positions or influence within the Iranian government.
29. Overall, I am not satisfied Applicant 1 was ever threatened in the manner claimed, by L, her family members, or her present husband, or that L's family were attempting to kidnap Applicant 2, or that there is a real chance of them experiencing harm for those reasons on return to Iran. I am also not satisfied that since the applicants left Iran that Applicant 1's family in Iran were approached by L's brothers as claimed.

⁷ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 2020041408313

30. With regard to Applicant 2's claims regarding being westernised and non-compliant with Islamic customs, I accept the applicant has now spent a significant portion of her life growing up in a western society, and not dressing in a traditional Islamic manner. Country information indicates that men and women of all religions are required to adhere to conservative dress codes, with women required to cover their bodies, with the exception of their face, hands and feet while in public. Women appearing in public without a proper *hijab* can be punished with lashes. In practice such penalties are rare, and generally a woman deemed to have '*bad hijab*' would be ordered by the morality police to adjust their headscarves and would only incur a criminal record for repeat offences.⁸
31. On the information before me I am not satisfied Applicant 2 would refuse to dress in a compliant manner, including wearing a hijab, such that she would draw attention to herself because of her dress and be at risk of harm. In any event, if she were to be cautioned, for example for '*bad hijab*' or inappropriate dress, the most likely result would be that she would need to adjust her dress and sign an undertaking not to do so again.⁹ I am not satisfied this, or being required to dress according to the dress code, would amount to serious harm for this applicant.
32. With regard to Applicant 2's claim that as a woman she would be at risk of sexual assault, abuse, and gender-based violence, DFAT's 2016 report indicates Iran's constitution provides for equal rights for women, but that there are a number of legal provisions in the penal and civil codes dealing with property, family law, and the rules of evidence, that discriminate against women. That report describes the government introducing positive measures to improve women's economic participation, such as establishing a foundation to support women entrepreneurs, cooperatives to alleviate poverty, and self-employment loans and grants to women. Women exercise the right to vote in high numbers and have very high participation rates in higher education, but comparatively low rates of participation in the workforce. Although rape within marriage and domestic violence are not recognised as criminal offences, when prosecuted, a conviction of rape is punished harshly.¹⁰
33. The 2020 DFAT report does not indicate the situation for women in Iran has deteriorated since the 2016 report was published. The Iranian constitution commits the government to ensuring the rights of women in all respects, in conformity with Islamic criteria. Women enjoy considerable legal protections in many areas, including personal safety, participation in the workforce and mandatory schooling for girls. Women can drive, work and attend university (there are more female university graduates than men), and the government has committed to achieving gender equality and empowering women and girls. Notwithstanding the government's official commitment to women's equality, hard-line sharia interpretations and conservative cultural and societal norms continue to limit the extent to which women are able to participate in Iranian society, and women who travel alone can face societal harassment for doing so, particularly in more conservative areas. Parliament has been considering for several years increasing the legal age of marriage for girls from 13 to 16 years, and although laws pertaining to marriage and divorce are tilted heavily in the favour of men, Iranian women have gained greater rights to divorce in recent years, and divorce is more common today, particularly in the major cities. Although DFAT assesses that most Iranian women face persistent societal discrimination and the threat of gender-based violence, that assessment is given in the context of discussing honour killings and female genital mutilation. There are a number of provisions in Iranian law dealing with offences primarily affecting females, including

⁸ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 2020041408313

⁹ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 2020041408313

¹⁰ DFAT 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677

prescribing severe penalties (including the death penalty) for rape, and criminalising female genital mutilation.¹¹

34. On the information before me, I am not satisfied there is a real chance Applicant 2 would be sexually assaulted or abused, or that she would not be protected from assault. I accept it is possible she may experience some societal harassment in Iran should she engage in activities such as travelling alone, however, on the information before me, I am not satisfied there is a real chance she will experience gender-based violence. Although experiencing societal harassment may be hurtful and troubling, I am not satisfied such it amounts to serious harm for this applicant.
35. Applicant 1 also claimed to fear harm from the Iranian government for having sought asylum overseas. He claims they do not like people who seek asylum overseas, and they might interrogate him at the airport or detain him. I accept the applicants' broadly consistent evidence they departed Iran from the airport using genuine Iranian passports in their names, and they no longer have those documents in their possession. On the evidence before me, I am not satisfied the applicants were of interest to Iranian authorities for any reason when they departed, or that they have been involved in any activities in Australia that would make them of interest to Iranian authorities on return.
36. Iran has historically refused to issue travel documents (*laissez-passeurs*) to allow the involuntary return of its citizens from abroad. In March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicants do not fall within that category, and if returned to Iran in the foreseeable future, I am satisfied it would only be on a voluntary basis.¹²
37. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. In 2016 DFAT reported that a voluntary returnee would not attract much interest from authorities amongst the large regular international movements of Iranians, and credible sources said they move quickly through airports without official interest. Similarly, the 2020 DFAT report indicates 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 in relation to protection claims, and unless they were the subject of adverse official attention prior to departing Iran, for example for their political activism, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.¹³

¹¹ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

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

¹³ DFAT 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677; DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

38. I accept if the applicants return to Iran it would be done using temporary travel documents, and as a result it is likely Iranian authorities would assume they sought protection in Australia. I accept they may be questioned about their return on temporary travel documents, the circumstances of their departure, and they may be briefly detained at the airport before being released. I am not satisfied the applicants would be harmed at the airport, or that this treatment amounts to serious harm for these applicants. The country information before me does not support a finding that persons who have sought asylum or spent time in Western countries, such as Australia, are harmed for that reason. I am not satisfied there is a real chance the applicants would suffer serious harm for being failed asylum seekers who sought protection in Australia.

Refugee: conclusion

39. Applicant 2 meets the requirements of the definition of refugee in s.5H(1), and meets s.36(2)(a), however I am not satisfied Applicant 1 meets those criteria.

Member of same family unit

40. 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 a dependent child of the family head. Regulation 1.03 defines 'dependent child of a person' to include a child who has not turned 18, or who has turned 18 and is dependent on that person.

41. I note Applicant 2 will turn 18 years of age in approximately [time frame]. On the material before me it appears Applicant 2 will remain substantially reliant on her father for financial, psychological, or physical support, and would continue to meet the relevant definition of dependent child, after she turns 18 years of age.

42. I am satisfied: Applicant 2 has not turned 18; Applicant 1 is Applicant 2's father; that he is a member of the same family unit as Applicant 2; that Applicant 2 is a person mentioned in s.36(2)(a); and that Applicant 1 therefore meets s.36(2)(b)(i).

Decision

In respect of the referred applicant (IAA21/09615) the IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

In respect of the other referred applicant (IAA21/09614), the IAA remits the decision for reconsideration with the direction that:

- the other referred applicant is a member of the same family unit as the above-named applicant and satisfies the criteria in s.36(2)(b)(i) of the *Migration Act 1958*.

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.