



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA21/09970

Date and time of decision: 15 November 2021 14:59:00

I Sheck, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) is an Iraqi national from Amarah in Maysan governorate. He departed Iraq in March 2005 and arrived in Australia [in] June 2013. On 28 September 2017 he lodged an application for a protection visa (PV).
2. On 23 September 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate did not accept that the applicant was of any personal interest to militia groups in Iraq. The delegate concluded that the applicant would not face a real chance or a real risk of serious or significant harm in Iraq due to sectarian violence or the security situation in Maysan governorate.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

Applicant's claims for protection

4. After his arrival in Australia the applicant was interviewed by officers of the then Department of Immigration and Border Protection on 9 June and 12 June 2013. The applicant provided details of his claims for protection in his PV application. On 30 April 2021 the applicant attended an interview with the delegate by videoconference (the PV interview), at which his then representative [was] present. [The representative] provided additional documents to the delegate on 13 May 2021 and 22 September 2021. The applicant claims:
 - After the fall of the Saddam regime there were many problems in Iraq. There was an improvised explosive device (IED) placed outside his family home but it failed to explode. He left Iraq for [Country 1] in 2005 then after a year travelled to [Country 2], where he lived and worked until 2013. He cannot return to Iraq as he is hunted by Shia organisations. His brothers have left Iraq because of threats from the militias;
 - His brother S was a police officer and was killed by the parties in 2006. His father fought in the war against Iran under the Saddam regime and was a prisoner of war from 1988 to 2001. The parties are all Iranian. They considered his father to be a spy. If the applicant returns to Iraq he will be killed by the parties because of his brother and his father;
 - His tribal name is used by both Shia and Sunni Iraqis. If he returns to Iraq he will be imputed to be a Sunni and be killed by Shia militias.

Factual findings

5. The applicant's evidence regarding his background has been consistent and I am satisfied that it is as stated. Based on the information provided in his visa application, arrival and PV interviews and identity documents, I find that the applicant's background is as follows: he was born on [date] in Amarah, Maysan province and is an Iraqi national. He is of Muslim (Shia) faith. He had [number of] brothers and [number of] sisters. His father passed away last year of a [medical condition] and his mother late last year. His brother S was martyred in

2006 and one sister died of [medical condition] in 2017. The applicant completed primary and intermediate schooling, followed by trade school, ceasing studies in 2001. He worked with his brother in [Industry 1]. In March 2005 he departed Iraq and travelled to [Country 1], where he worked in a [workplace]. In 2006 he travelled to [Country 2], where he worked as a [Occupation 1] and in [Industry 2] until 2013. He returned to Iraq for a month or two in 2011. He has worked in Australia as a self-employed [Occupation 1].

6. The applicant stated in his 2013 arrival interview that he left Iraq in 2005 due to the increasing level of sectarian conflict. Country information confirms that following the fall of the Saddam regime and the consequent occupation of Iraq by international forces there was significant conflict, with suicide bombings, shooting and car bombings widespread across the country.¹ The applicant has also consistently stated that an IED was placed outside his family home. In his arrival interview the applicant did not provide any information on why this may have occurred however in his 2017 PV application noted that he had been accused by the Shia militias of being a spy, because his brother worked for the Iraqi police force under the Saddam regime. I note that the applicant's brother S continued to work for the police force after the fall of the Saddam regime. The applicant has provided documentation that indicates his brother S was assassinated by way of a gunshot to the head while on police business, [in] 2006.
7. Country information from 2004 to 2006 indicates that police officers were widely targeted for harm from both Shia and Sunni armed groups; a large number of policemen quit the police force in this time because of security concerns. It appears however that they were targeted not because of their association with the former regime but they were considered to be collaborating with the US and other international forces occupying Iraq.² The review material does not indicate that family members of serving police officers were targeted due to having a police officer in their family. I do not accept that the applicant was threatened by militia groups due to having a brother who was a serving police officer. I do not accept he was of adverse interest to any militia or armed groups or that he departed Iraq in 2005 for this reason.
8. At the 2021 PV interview the applicant made a new claim that "the parties, the militias. We used to call them the Mahdi Army... kept calling and threatening my family on one occasion they tried to shoot my brother they used to call my father and say we are going to kill all your sons and you are going to witness that." The applicant stated that the reason for these calls and threats was because his father had fought in the Iran/Iraq war and was subsequently held as a prisoner of war. He was therefore considered to be a spy. I note that of the applicant's [living] brothers, M relocated to Australia prior to 2013, D has lived in [Country 3] since 2016 and A has resided in [Country 4] since mid-2020. [A number of] brothers remain in Iraq. The applicant returned to Iraq for a visit in 2011 for a month or two. He has not indicated that he was harmed or threatened in any way during this visit and I conclude he was not. The applicant has provided no credible evidence to indicate that he, his father or any of his brothers were harmed or threatened during the period from 2001, when the applicant's father returned from Iran, to his death in 2020, due to the applicant's father being considered a spy. The applicant was asked at the PV interview whether the Iraqi authorities could protect him, should he return to Iraq, and responded that the authorities were run by Iran too. "Maybe they will kill me instead."

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iraq 17 August 2020', 20200817105936; 2.3; Guardian (Unlimited) (UK), 'Attacks target Iraqi police', 29 December 2004, CX110492

² Al Jazeera, 'Car bombs target police across Iraq', 07 February 2005, CX113551; Guardian (Unlimited) (UK), 'Attacks target Iraqi police', 29 December 2004, CX110492

9. I am not satisfied that the applicant's father or any of his family were of any adverse interest to militia groups in Iraq due to the applicant's father having served in the Iran/Iraq war or for having been a prisoner of war in Iran. There is nothing in the review material to indicate that these people were of adverse interest to the Iraqi government or law enforcement authorities, either before or after the fall of the Saddam regime. I am not satisfied that the applicant's departure from Iraq had anything to do with his father's war service. I conclude that the applicant departed Iraq in 2005 due to a fear of harm from general or sectarian violence.
10. The applicant also claims that his tribe has both Sunni and Shia members therefore he could be imputed to be a Sunni due to his tribal name. The applicant has not indicated that he faced harm in Iraq prior to 2005 due to being imputed to be a Sunni however I accept as plausible that he could be so imputed, should he return to Iraq.

Refugee assessment

11. 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

12. 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.
13. The applicant is a national of Iraq. It follows that Iraq is his receiving country. I have not accepted the applicant's claim that he was threatened by members of Shia militia groups in 2005, before his departure from Iraq, or that he and his family were of adverse interest to militia groups or the Iraqi authorities because his father fought in the Iran-Iraq war and was a prisoner of war. I accept that the applicant's brother S was assassinated in 2006 and conclude that this was because he was a serving police officer. It has been 15 years since this event. I am not satisfied that the applicant would face harm in the foreseeable future, due to having a brother who had been a police officer or who was assassinated by a militia or insurgent group.

14. The applicant claims that he fears harm from Shia militia groups as well as the Iraqi authorities. He has not specifically claimed to fear harm on the basis of the overall security situation in Iraq however I will consider whether the applicant faces a real chance of persecution because of sectarian violence and the overall security situation, particularly in Maysan governorate. The most recent country information in the review material indicates that the security situation in Iraq, while varying according to location, is highly unstable and fluid. Security incidents occur often and without warning, including rocket attacks, mortar attacks, attacks with improvised explosive devices (IEDs), grenade attacks, small arms fire, assassinations and kidnapping for ransom.³ Despite its territorial defeat in December 2017, ISIS/Da'esh remains a major perpetrator of abuses and atrocities.⁴ Over 2019 and 2020 however violence by ISIS/Da'esh continued to fall, and in particular the number and impact of bomb attacks with explosives (whether or not by suicide bombers) continued to decline. The number of incidents caused by ISIS/Da'esh per month is recorded by Joel Wing in his blog 'Musings on Iraq'. The monthly report included in the review material for January of this year shows zero incidents for Maysan governorate in the tables: "Security Incidents by Province" and "Casualties by Province".⁵ Overall, I am not satisfied on the review material that ordinary civilian residents of Maysan face a real chance of harm due to ISIS/Da'esh attacks.
15. While the takeover of large parts of Iraq by ISIS/Da'esh left Maysan untouched, intra-Shia violence escalated in Iraq's southern governorates in 2016, prompting a military intervention and tribal reconciliation efforts. More recently, security incidents in Maysan and Iraq's other southern governorates result mainly from (intra-)tribal disputes and/or criminal activity. Whilst southern Iraq is 'more secure' than other parts of the country, problems of criminality, drug abuse, and violence between Shia armed groups involved in militia and tribal groups occur. Local sources suggest that intra-Shia violence predominantly affects those who are actively involved in a militia or tribal groups.⁶ The applicant has not claimed to have been involved in such groups. Although violent crime, including bombings, kidnappings and killings, does still occur across Iraq, on the basis of the material before me I am not satisfied that it is currently at a level that would give rise to a real chance that the applicant would face serious harm, should he return. I further note that should the applicant be harmed due to security incidents such harm would not be due to his race, religion, nationality, membership of a particular social group or political opinion. I am therefore not satisfied that he has a well-founded fear of persecution due to the security situation.
16. I have accepted that the applicant's tribe has both Sunni and Shia members and the applicant may be imputed to be Sunni due to his tribal name. In considering whether the applicant would face a real chance of harm in Maysan due to being imputed to be a Sunni Muslim, the current country information indicates that sectarian violence between Sunni and Shia has reduced substantially since the mid to late-2000s, but still occurs occasionally. International observers attribute the reduction in sectarian violence to an increase in self-segregation by communities, and to conscious efforts by political leaders to remove sectarian slogans from public discourse after the military defeat of ISIS/Da'esh. It was reportedly common during the lead-up to the May 2018 election to hear politicians and commentators emphasising the need to rise above sectarianism and revenge to stabilise the country.⁷ The 2020 DFAT report does not contain any assessment of Shia or Sunni Muslims in the "Refugee Convention Claims" chapter. From the country information overall, I conclude that being a Sunni Muslim is no

³ DFAT, 'DFAT Country Information Report Iraq 17 August 2020', 20200817105936; 2.54

⁴ Ibid; 2.56

⁵ Wing, J, 'Violence Continues To Decline In Iraq Winter 2020-21', 4 February 2021, 20210209100327

⁶ European Asylum Support Office (EASO), 'Iraq: Security situation', 30 October 2020, 20201102085642, p.211

⁷ DFAT, 'DFAT Country Information Report Iraq 17 August 2020', 20200817105936; 2.60

longer of itself a basis on which a person may face a real chance of harm in Iraq. I am not satisfied that the applicant faces a real chance of harm in Maysan in the event he is imputed to be a Sunni Muslim or due to sectarian violence.

Refugee: conclusion

17. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

18. 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

19. 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.
20. 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.
21. I have concluded above that the applicant does not face a real chance of harm due to having a brother who had been a police officer, who was assassinated by a militia or insurgent group. I have also concluded that the applicant does not face a real chance of harm if he is imputed to be a Sunni or due to sectarian violence. As 'real risk' and 'real chance' involve the application of the same standard,⁸ I am equally not satisfied that the applicant faces a real risk of being killed, seriously injured or facing any other form of significant harm on return for the purposes of s.36(2)(aa) for these reasons.
22. I have also found that although there is criminal activity by way of security incidents across Iraq it is not at such a level that would constitute a real chance, and therefore a real risk, that the applicant would be harmed. If this conclusion is wrong, I further note that s.36(2B) provides that there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally. As the risk of significant harm due to the security situation is one faced by Iraqis generally, the applicant does not face a real risk of significant harm due to the security situation in Iraq.

⁸ *MIAC v SZQRB* (2013) 210 FCR 505

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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