



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10125

Date and time of decision: 18 February 2022 09:23:00

V Price, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims that he was born in Iraq but resided in Iran for most of his life. He claims that he is of Arabic ethnicity and that he is stateless. On 10 March 2017 he lodged an application for a protection visa with the Department.
2. On 26 October 2021 a delegate of the Minister for the Department (the delegate) refused to grant the visa to the applicant. The delegate accepted the applicant was born in Iraq, resided in Iran and that he was not a citizen of either country. However, the delegate determined that the applicant did not face a real chance of risk of harm in Iran due to his statelessness, his ethnicity, his illegal departure from Iran or as a returned failed asylum seeker.

Information before the IAA

3. I have had regard to the material given to the Immigration Assessment Authority (IAA) by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The material provided by the secretary included audio recording for part 2 of the applicant's Irregular Maritime Arrival and Induction Interview (arrival interview) conducted with a Department officer in 2013. It is evident that the written transcript of the interview was before the delegate at the time of making the decision and is not new information. It is less clear whether the audio recording constitutes new information. If it does, I note that the applicant participated in this interview shortly after arriving in Australia and provided his background and circumstances in both Iran and Iraq. It is relevant to the assessment of his claims. I accept there are exceptional circumstances to justify considering this information and that it meets s.473DD(a). This material contains information given by the applicant, it is not new material but relates to matters raised with the delegate, it is not on its face adverse to his claims, it is consistent with the written record before the delegate, broadly confirms evidence he has provided in his protection visa application, and aspects of this interview were discussed with the applicant during the protection visa interview. In the circumstances I am not satisfied that obtaining further information from the applicant on the arrival interview recording is warranted.
5. The applicant's representative provided a submission to the IAA on 28 November 2021. The submission provides legal arguments and responds to the findings of the delegate. It does not contain new information for the purpose of s.473DC(1) of the Act and I have considered it.
6. I have obtained a copy of 'Iraq: Resolution No.666 of 1980 (Nationality)' (Decree 666).¹ This is the instrument by which the then Iraqi government stripped many Iraqis of their nationality, and it is directly relevant to establishing the credibility of the applicant's contention that he and his family lost their Iraqi nationality in the early 1980's. The delegate referred to Decree 666 in the decision record, but this was in the context of considering its subsequent repeal in 2006. It was not expressly considered whether the applicant's claimed circumstances fell within the provisions of Decree 666. Moreover, the delegate cited a secondary source which did not extract the provisions of Decree 666 and which considered the application of that instrument to a different ethnic group than that claimed by the applicant. I am satisfied there are exceptional circumstances to justify its consideration under s.473DD(a) of the Act.

¹ 'Resolution No. 666 of 07.05.1980', Iraqi Revolutionary Command Council, 26 May 1980, CX239828 (Decree 666).

7. I have also obtained the most recent country information report on Iraq from the Australian Department of Foreign Affairs and Trade (DFAT).² In this case the applicant claimed he was born in Iraq, and made specific claims relating to Iraqi citizenship requirements and the security situation in that country. There is limited information in the referred material regarding each of these matters, and given the new information is pertinent to assessing matters including the applicant's claimed nationality and the credibility of his claimed past in Iraq, I am satisfied there are exceptional circumstances to justify considering this information: it meets s.473DD(a) of the Act.
8. In this case the new information it is not on its face adverse to the applicant's claims, it does not raise any new issues, but rather relates to matters the applicant put before the delegate and of which he is aware, and I consider it supports his claims. In these circumstances, I have determined that obtaining further new information from the applicant on these reports is not warranted.

Applicant's claims for protection

9. The applicant participated in an Irregular Maritime Arrival and Induction Interview (arrival interview) with a Department officer in 2013. During this interview he provided his background and circumstances including his birth in Iraq and subsequent move to and residence in Iran. He stated he was stateless, had no rights or entitlements in Iran, no identity documents and faced discrimination for these reasons. He also stated that was detained in Iran, including when he and a group of others were involved in a workplace dispute.
10. He provided written claims for protection in his protection visa application and participated in an interview with the delegate in June 2021 where he elaborated on those claims.
11. The applicant's protection claims can be summarised as follows:
 - He was born in Iraq. His father was active with a political group opposed to Saddam Hussein's regime (the Dawa Party). Many of the applicant's family members were executed for being against the government. He and his parents were exiled from Iraq to Iran in 1980's.
 - Due to their Arab ethnicity and their statelessness, they were not welcomed in Iran. They were not given legal status and were not treated equally to Iranian citizens. He was not able to hide his Arab ethnicity, including his accent. He encountered countless acts of discrimination and degradation during and after his schooling, including from within community. He was harassed and ashamed. He was not legally permitted to work and did not have employment, regularly moving from one job to another. He was always fearful for his life and could not work where he wanted.
 - His father tried unsuccessfully to obtain Iraqi citizenship and identity documents prior to his death. He also tried to obtain Iraqi citizenship after his father's death but was similarly unsuccessful.
12. The applicant stated that on return to Iran he will be degraded, discriminated against, and harmed due to his Arab ethnicity and his statelessness. He also feared he would be harmed due to his Illegal departure and as returnee/failed asylum seeker from the west.

² Australia: Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq, 17 August 2020, 20200817105936 (DFAT Iraq 2020 Report).

Refugee assessment

13. 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

14. 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.

Nationality and receiving country

15. The applicant’s nationality is an issue in this case. He has claimed that he was born in Iraq, lost that nationality, resided in Iran as a refugee (first registered and eventually unregistered), and that he remains stateless. However, he has provided limited documentary evidence to support his claims and aspects of the applicant’s evidence going to these matters has been different and/or does not sit easily with country information. These matters have made the assessment of his nationality difficult.
16. A child born to an Iranian father automatically acquires Iranian nationality.³ It was also possible for some Iraqi refugees to gain Iranian nationality if they could demonstrate Iranian ancestry, but this is a lengthy and costly process, and it is often difficult to provide the required documentation.⁴ The granting of Iranian citizenship is also dependent on the completion of security checks by the Intelligence Ministry and the intelligence wing of the Iranian Revolutionary Guard Corp (IRGC), and certification that granting citizenship would not constitute a ‘security problem’.⁵ It is not clear how many Iraqi refugees acquired citizenship in this manner.⁶

³ Ibid; DFAT 2018 Report; and DFAT 2020 Report.

⁴ DFAT 2014 Thematic Report; DFAT 2018 Report; and DFAT 2020 Report

⁵ DFAT 2020 Report

⁶ DFAT 2014 Thematic Report; DFAT 2018 Report; and DFAT 2020 Report.

17. Refugees in Iran have been issued with different types of registration documents over time, including the so-called blue, green and white refugee registration cards.⁷ Between 2000 and 2001 the Bureau of Alien and Foreign Affairs (BAFIA) issued a registration program slip, but these were replaced by the temporary resident or Amayesh card.⁸ The cards must be renewed annually upon payment of the stipulated fees.⁹ The holder of a card is considered a 'registered refugee' in Iran and are permitted to access education, health care, employment, and movement with the area in which they are registered.¹⁰ Those who fail to renew their Amayesh cards in time, or comply with the terms of their prior registration, and those who exited and then returned to Iran (through official border crossings) may be unable to re-new their cards, though officials can be lenient in individual cases.¹¹ No new Amayesh card registrations have taken place since 2007, and in 2013 the BAFIA privatised the system for refugee registration and service delivery and the cards changed in colour every registration round.¹²
18. In Iraq anyone born to an Iraqi parent is a national under the terms of the Constitution and Iraqi Nationality law.¹³ Where citizenship is withdrawn, there is a right to demand its reinstatement.¹⁴ Under the provisions of Decree 666 (which has now been repealed), Iraqi nationality could be removed from 'any Iraqi of foreign origin if it appears that he is not loyal to the homeland, people, higher national and social objectives of the Revolution'.¹⁵ A 2014 report by the Australian Department of Foreign Affairs (DFAT) examined the situation for Iraqi Faili Kurd refugees.¹⁶ This report also refers to circumstances applicable to other categories of refugees, including Iraqi Arabs, and is relevant to this assessment. DFAT stated that Iraqi refugees began returning to that country from 2003 following the collapse of Saddam Hussein's regime, and advised that there were processes in place to restore Iraqi nationality.¹⁷ A representative of the family was required to travel to Iraq and present relevant identity documentation and evidence of previous Iraqi residency. If an applicant did not have an Iraqi identification card additional steps were required to obtain new Nationality Certificates, including cross-referencing local registrations, and/or the testimony of witnesses supporting prior residence in the country. While many returned refugees did reacquire Iraqi nationality, others could not satisfy the relevant evidentiary requirements and were unable to regain nationality.¹⁸

⁷ Australian Department of Foreign Affairs and Trade (DFAT), "Country Information Report - Iran", 7 June 2018 CIS7B839411226 (DFAT 2018 Report); DFAT, "Country Information Report - Iran", 14 April 2020, 20200414083132 (DFAT 2020 Report); DFAT, Thematic Report: Faili Kurds in Iraq and Iran', 3 December 2014 CIS2F827D91722 (DFAT 2014 Thematic Report); Department of Immigration and Border Protection, (DIBP), 'Feyli Kurds—obtaining identity travel documents', Tehran, 17 September 2015 CISEC96CF13392 (DIBP 2015 Report); DFAT, 'Faili Kurds,' Australia, 19, March 2010; CX241170 (DFAT 2010 Report); Danish Refugee Council and Danish Immigration Service (DRC and DIS), 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', April 2009, CIS17329 (DRC DIS 2009 Report); and Jason Tucker, 'Exploring statelessness in Iran ', Tilberg University, 1 January 2014, CIS2F827D91542 (Jason Tucker Article).

⁸ DFAT 2014 Thematic Report.

⁹ DFAT 2018 Report; DFAT 2020 Report; DFAT 2014 Thematic Report; DIBP 2015 Report; DFAT 2010 Report; DRC DIS 2009 Report) and Jason Tucker Article.

¹⁰ DFAT 2018 Report; DFAT 2020 Report; DFAT 2014 Thematic Report; DIBP 2015 Report; DFAT 2010 Report; DRC DIS 2009 Report) and Jason Tucker Article.

¹¹ DFAT 2018 Report; DFAT 2020 Report; DFAT 2014 Thematic Report; DIBP 2015 Report; and DFAT 2010 Report.

¹² DFAT 2018 Report; DFAT 2020 Report; DFAT 2014 Thematic Report.

¹³ DFAT Iraq 2020 Report.

¹⁴ DFAT Iraq 2020 Report.

¹⁵ Decree 666; DFAT 2020 Report; DFAT 2018 Report; and DFAT Iraq 2020 Report.

¹⁶ DFAT 2014 Thematic Report.

¹⁷ Ibid.

¹⁸ Ibid; DFAT 2020 Report; and DFAT Iraq 2020 Report.

19. The applicant has consistently claimed that he was born in Baghdad in Iraq. However, he has provided different evidence regarding the nationality of his parents. In his protection visa application, he stated that initially held Iraqi nationality and later lost it. In contrast, during the protection visa interview, he initially stated that his parents were Iraqi nationals, but then appeared to change his evidence and said his parents never held Iraqi nationality despite being born in that country. He provided a copy and translation of an extract of birth registration ('birth extract') issued by the Ministry of Health in Iraq in 2017, which states that he was born in Baghdad in [Year] to parents of Iraqi nationality. He also provided a 'certificate' issued by the Foreign National and Immigrants Affairs Department [in] July 2021 ('the certificate') confirming that he was born in Iraq and resided in Iran from 1982 until April 2012. This document does not mention the nationality of his parents.
20. In this case, noting it is supported by the birth extract he provided, I consider his initial evidence to be more reliable than his later statements at interview. I accept that the applicant was born in Iraq as claimed, that his parents were Iraqi nationals at the time of his birth, and under Iraqi law, he was an Iraqi national at birth. I am not satisfied that he is Iranian national by birth.
21. The applicant claimed that he and his family were expelled from Iraq due to his father's connection to the Dawa party. The 'Hizb al-Dawa al-Islamiyya' (al-Dawa) Party was an Iranian backed Shia party opposed to Saddam Hussein's Sunni Ba'ath Party and loyal to the Supreme Leader of Iran.¹⁹ The Ba'ath party targeted al-Da'wa members, arresting and imprisoning them, and it is alleged that 250,000 members of the party were killed between 1968 and 2003.²⁰ In 1980, the Iraqi government proscribed the al-Dawa party as a banned organisation in Iraq, this along with harm they were experiencing, prompted many al-Dawa members to flee to Iran.²¹ The information before me does not expressly state that members of the al-Dawa were expelled from the country, or had their nationality removed. However, in circumstances where the al-Dawa party were loyal to Iran, it is plausible that some members of the party could have had their nationality removed under the terms of Decree 666 set out above.
22. There are some differences in the applicant's evidence regarding his father's association with the Dawa party. At interview he claimed that his father was not a member of the party but was imputed to be such due to associating with friends and family who were members. In contrast, in his written statement and in his arrival interview, he indicated that his father was an active member of the party. Noting his young age at the time of the claimed events, I accept he may not have known the full extent of his father's participation with the party. I give weight to the fact that he has been consistent in his assertions that his father had some connection to the party since his arrival in Australia. I accept that his father was found to be connected to the al-Dawa party, that he was imprisoned, and that the family were expelled to Iran shortly after his release from prison in the early 1980's and I accept that at that time he and his parents lost their Iraqi nationality. I accept that they resided in a refugee camp for six months and were then sponsored by a relative to move to Qom.

¹⁹ United Kingdom Home Office (UKHO), 'Joint British-Danish Fact-Finding Mission to Amman and Ankara regarding Iraqi asylum seekers', 1 June 2002, CIS0F8D958433 (UKHO 2002 Report); Dagher, Sam, "Ex-Hussein Officials and Others Go on Trial", The New York Times, 28 December 2008 (New York Times 2008 Article); and Roger Shanahan, 'The Islamic Da'wa Party: Past development and future prospect', 1 June 2004, CX99317 (Roger Shanahan 2004 Article).

²⁰ UKHO 2002 Report; New York Times 2008 Article; and Roger Shanahan 2004 Article.

²¹ UKHO 2002 Report; New York Times 2008 Article; and Roger Shanahan 2004 Article.

23. I note that the applicant speaks Farsi and Arabic which is consistent with his evidence that he was resident in both Iran and Iraq.²² The applicant's evidence was that he and his family resided in Iran on white cards which allowed them residency, freedom of movement, and access to health care. He and his family had to re-new the card every year for a fee. He completed both primary and secondary education in Qom, and between 1990 and 2008 he was employed making [Products 1] in several manufacturing factories and as a salesman for a [Product 2] wholesaler in Iran. This evidence is broadly consistent with country information above and was presented in a manner indicative of lived experience and on the totality of the evidence before me, I accept that applicant and his family were at that time resident in Iran as registered refugees as claimed and were not nationals of any country at that time.
24. The applicant stated the family returned to Iraq in 2005/2006, losing their Iranian white cards in the process, but were unsuccessful in their attempts to reacquire Iraqi nationality. In about 2011, after his father died, he travelled to Iraq but was again unable to gain Iraqi nationality and he and his family remained stateless and were unregistered refugees in Iran. I accept that the applicant travelled to Iraq on these occasions as claimed, and given the information above, I accept that he and his family lost their white card on their first departure from Iran.
25. However, there are some troubling aspects of the applicant's evidence which, on one hand, raise concerns either that he remained a registered refugee in Iran, or that he did acquire Iraqi or Iranian nationality at some point. Specifically:
- During the protection visa interview the applicant appeared to provide different evidence regarding the status of he and his family on return to Iran in 2005/2006, first stating that they were given permanent residency but on 'a different type of card', and then that they were never given identification documents or white cards on return and they remained unregistered refugees. Moreover, the certificate issued by Foreign National, and Immigrants Affairs Department in 2021 indicates that he was resident in Iraqi from 1982 until April 2012, which appears to be at odds with his evidence that he was not registered in Iran from 2005/2006 and his evidence he left the country in May 2013.
 - His evidence that left Iran in 2012 on a fraudulent Iranian passport does not sit easily with information that it is difficult to depart Iran on a such a document: Iranian passports have good security features (biometric since 2011 with detailed information about the holder, including their signature) and there are multiple security checkpoints at the airport itself which utilise computerised passport records.²³ His evidence on this point is also perplexing given he also claimed to hold had a fake Iraqi passport. At that time Iraqi passports and identity documents lacked robust security features and had poor issuing procedures which were open to bribery,²⁴ and it is likely it would have been easier to depart Iran on this document rather than a fraudulent Iranian passport. Iranian passports are generally considered to be good evidence of Iranian nationality given their security features.²⁵
 - The existence of the applicant's Iraqi birth extract (issued in 2017) appears at odds with his claims that he and his family had no registration records in Iraq and were therefore unable to reclaim Iraqi nationality in 2005/2006 or 2011.

²² DFAT Iraq 2021 Report; and DFAT 2020 Report.

²³ DRC DIS 2009 Report; DFAT 2018 Report; and DFAT 2020 Report.

²⁴ DFAT 2014 Thematic Report.

²⁵ DFAT 2020 Report.

26. On the first point, I have listened to the interview recording, and while not certain, it is possible that the applicant was referring to their status when first deported from Iraq to Iran in the 1980's when he stated they were given residency cards. In relation to the certificate, though it may be expected that such a document would be issued to registered refugee: it does not expressly identify the applicant's basis for residing in Iran as a registered refugee or otherwise. On its face, it establishes only that he was resident in that country in the stated period. Moreover, the independent information states that individual generally loses their white card/registration status on departing Iran.
27. The second point is somewhat more difficult to reconcile. The delegate, noting these issues, concluded that the applicant departed Iran using the fraudulent Iraqi passport. However, this is contrary to the applicant's express evidence, given consistently since his arrival in Australia, that he left on the Iranian passport, and I cannot reach the same conclusion as that of the delegate. However, I have considered the applicant's evidence that he departed with a group of other travelers, also aided by the smuggler, who advised they needed to depart on Iranian documents and that though he was not privy to all the details, he understood extensive bribes were paid to facilitate their exit from the country. This finds some support in independent information that at the relevant time it may have been possible to leave on fraudulent Iranian passport by bribing personnel at that airport.²⁶
28. In relation to the birth extract, it is not entirely clear on the evidence before me that this information of itself would have been sufficient to satisfy the evidentiary requirements to reacquire Iraqi nationality, which as discussed above, were said to be onerous.
29. I have also considered that the applicant's evidence that he and his family could not prove Iranian ancestry is consistent with the information above regarding the practical obstacles facing those applying for Iranian nationality. Further, his evidence on the reasons he and his family did not remain in Iraq in 2005/2006 and again in 2011, is supported by independent information that these periods saw heightened sectarian and politically based violence in Iraq.²⁷ I have also given some weight to the fact that the applicant's evidence was generally presented in a manner indicative of lived experience.
30. Ultimately, I have concluded that concerns identified above are insufficient, without more, to establish that the applicant has attained nationality of either country, or that he remained registered in Iran. Accordingly, while not free from doubt, on the evidence before me, I accept that the applicant did not acquire Iranian nationality or regain Iraqi nationality. I accept that on return to Iran he and his family lost their status as registered refugees and were from that point unregistered, and I accept that he remained unregistered, including on return after his 2011 trip to Iraq.
31. The applicant is not a national of any country and is stateless. His evidence was that he and his family settled in Qom and, aside from brief periods of return to Iraq, he resided there between about March 1983 and his departure from the country in May 2013. He was educated and employed in that area. The applicant's father is deceased, but his mother and [siblings] continue to reside in Qom in Iran. On the evidence before me, I find that Iran is his country of former habitual residence and his receiving country for the purpose of this assessment. Given his past residence in Qom and his ongoing familial connections to the area, I find that it is highly likely that is the area to which he would return in the future.

²⁶ DRC DIS 2009 Report.

²⁷ United Nations High Commissioner for Refugees (UNHCR), 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq', 31 May 2012, (UNHCR 2012 Report); and DFAT Iraq 2020 Report.

Assessment of harm on return to Iran

32. I accept that the applicant is of Arab ethnicity and an adherent of the Shia Muslim faith. I have accepted that he was first a registered refugee in Iran and then unregistered. On the information above that there are no new registrations for an Amayesh card, and I accept that the applicant will return to Iran as an unregistered stateless Arab refugee from Iraq. I accept that he departed the country illegally, and that he will be identified as returnee/failed asylum seeker from the west on return to Iran. I also accept he has had long-term residence in Australia.
33. Approximately 1.5 million and 3 million ethnic Arabs live in Iran.²⁸ The Iranian constitution states that all people of Iran enjoy equal rights, regardless of the ethnic group to which they belong, and colour, race, and language do not bestow any privilege.²⁹ Farsi is the official language of Iran and must be used in all official documents, textbooks, and signage, but the use of regional and tribal languages, including Arabic, is permitted alongside Farsi in the press, mass media and for the teaching of literature in schools.³⁰
34. DFAT states that most ethnic minority communities are integrated into Iranian society.³¹ However, both official and societal discrimination against ethnic minorities does occur.³² Arabs complain of economic neglect and discrimination in education, housing, politics, and culture, and community representatives claim that Iranian Arabs are excluded from employment in the shipbuilding, manufacturing, and petrochemical industries. Generally ethnic minorities are excluded from employment in government and military.³³ Arabs remain underrepresented in politics, with only one Arab having served in an Iranian Cabinet, but generally Arabs are not prevented from political participation.³⁴ With the exception of certain politically active Arabs, (discussed below), the state tolerates Arab cultural activities and Arabs can freely wear traditional Arabic dress and speak the Arabic language.³⁵
35. In April 2015 about large numbers of Arabs were arrested in Ahvaz (Khuzestan Province) in the lead up to the tenth anniversary of a significant 2005 protests in which many Arabs were killed or detained.³⁶ DFAT advises that those arrested in 2015 were largely prominent activists, though there were reports that some were arrested for peacefully expressing dissent or for exhibiting their Arab identity and culture. In September 2018, the Ahwaz National Resistance (an Arab separatist group) claimed responsibility for an attack on a military parade which killed 25 people, including members of the IRGC and civilians.³⁷ Following the incident, the authorities launched a sweep of the Arab community in Khuzestan Province, with reports of up to 800 people being arrested, some of whom were executed.³⁸ Hundreds of people were also arrested in this area in 2018 during protests over water shortages and poor water quality, and approximately 80 people were arrested, and some

²⁸ DFAT 2018 Report; and DFAT 2020 Report.

²⁹ DFAT 2018 Report; and DFAT 2020 Report.

³⁰ DFAT 2018 Report; and DFAT 2020 Report.

³¹ DFAT 2020 Report.

³² DFAT 2018 Report; and DFAT 2020 Report.

³³ DFAT 2018 Report; and DFAT 2020 Report.

³⁴ DFAT 2018 Report; and DFAT 2020 Report

³⁵ DFAT 2018 Report; and DFAT 2020 Report

³⁶ DFAT 2018 Report; and DFAT 2020 Report.

³⁷ DFAT 2018 Report; and DFAT 2020 Report

³⁸ DFAT 2018 Report; and DFAT 2020 Report.

were killed in violent protests arising from a November 2019 decision by the government to reduce petrol subsidies.³⁹

36. Iranian Arabs do not generally harbour strong separatist tendencies and fought on the side of Iran during the Iran-Iraq War (1980-88) and separatist groups do not enjoy broad support among Iranian Arabs.⁴⁰ Rather, DFAT advises that Iranian Arabs generally favour greater political and cultural rights over autonomy or a separate state. DFAT states that the authorities maintain security control in Arab-populated areas, and militant separatism has largely been neutralised.⁴¹
37. DFAT assessed in its 2020 report that Arabs who are active politically are likely to attract adverse attention from the authorities, particularly those in border provinces. Arabs who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment, and mistreatment. However, overall, DFAT assesses that Arabs are not specifically targeted for discrimination due to their ethnicity, including in their ability to access government services.⁴² DFAT assesses that ethnic minorities, including Arabs are unlikely to face violence on that basis alone.⁴³
38. About 26,000 registered refugees from Iraq currently reside in Iran and information indicates that Iranian refugees are generally received better treatment than those from other countries.⁴⁴ Unregistered refugees are likely to face more difficulty in moving, and most lack access to the full range of government services: normally, identity documents would be required to rent a house, buy a house, car, mobile phone or establish a utilities account.⁴⁵ However, unregistered refugees can pay to access health care and are able to enter private, undocumented rental agreements, which avoid identification requirements.⁴⁶ Though some practical difficulties arise, unregistered refugee children have access to education due to an Iranian government mandating education for all children, and in some cases, a hospital birth record and separate vaccination book may be sufficient to secure schooling.⁴⁷ Generally, unregistered refugees in Iran have no right to work and are unlikely to secure a work permit, but refugees can be self-employed, and others find work with Iranian employers prepared to disregard the law, typically in low-paying manual labour.⁴⁸ This 'informal' employment is normally tolerated by authorities.⁴⁹
39. DFAT reported in 2020 that Iran has a global and longstanding policy of not accepting involuntary returns. Historically Iran has refused to issue temporary travel documents (laissez-passers) to facilitate the involuntary return of its citizens from abroad; in March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters which included an agreement by Iran to facilitate the return of Iranians who arrived after March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.⁵⁰

³⁹ DFAT 2020 Report

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid; and DFAT 2018 Report.

⁴⁵ DFAT 2018 Report; DFAT 2020 Report; and DFAT Thematic 2014 Report.

⁴⁶ DFAT 2018 Report; DFAT 2020 Report; and DFAT Thematic 2014 Report.

⁴⁷ DFAT 2018 Report; DFAT 2020 Report; and DFAT Thematic 2014 Report.

⁴⁸ DFAT 2018 Report; DFAT 2020 Report; and DFAT Thematic 2014 Report.

⁴⁹ DFAT 2018 Report; DFAT 2020 Report; and DFAT Thematic 2014 Report.

⁵⁰ DFAT 2020 Report.

40. A laissez-passer can be obtained from an Iranian diplomatic mission on proof of identity and nationality and DFAT advises that the International Organisation for Migration (IOM) and the Iranian cooperatively run a program to assist returnees.⁵¹ 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. DFAT states that 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.⁵²
41. Recent reporting from DFAT advises that the authorities pay little attention to failed asylum seekers on their return.⁵³ Iranians have left the country in large numbers since 1979, there is an understanding that many people seek to live and work overseas and Iranian authorities have little interest in prosecuting failed asylum seekers, including in relation to any protection claims. The treatment of failed asylum seekers will depend on their profile prior to departing Iran and their actions on return: those with an existing high profile, such as political activists, might face a higher risk of coming to the attention of authorities. Overall, DFAT advises that, unless they were the subject of adverse official attention prior to departing Iran (e.g. 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.⁵⁴
42. Local sources have advised DFAT that that failed asylum seekers may face issues finding meaningful employment and reintegrating into the community. However, overall DFAT states that they are not aware of any legislative or social barriers to voluntary returnees finding work, accommodation or returning to their home areas.⁵⁵ DFAT also advises that they are not aware of the authorities targeting people because they have a 'western' appearance, and nor does the information support long-term residence in a western country will give rise to an adverse profile.⁵⁶ DFAT advises that people in Iran with western appearance face a low risk of official and societal discrimination.⁵⁷
43. The penalty for leaving Iran without a valid passport (or similar travel document) is between one- and three-years' imprisonment, or a fine.⁵⁸ A special court located in Tehran's Mehrabad Airport deals with such cases. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups, and any other circumstances. DFAT assesses that individuals who exit Iran illegally and have not previously attracted the adverse attention of the authorities – for example, for their political activism – face a low risk of prosecution.⁵⁹ If prosecuted, the most likely punishment is a fine. DFAT states that where prosecution for illegal departure occurs, may do so in conjunction with other, unrelated offences.⁶⁰
44. In this case, during the protection visa interview when asked if he had ever been detained, the applicant identified one period of detention. He stated that he was detained briefly

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ DFAT 2018 Report; and DFAT 2020 Report.

⁵⁷ DFAT 2020 Report.

⁵⁸ DFAT 2018 Report; and DFAT 2020 Report.

⁵⁹ DFAT 2020 Report.

⁶⁰ Ibid.

following his participation in workplace dispute, involving wages and bribes with the owner of the factory. I accept his evidence presented in manner suggestive of lived experience and find he was detained on one occasion due to a workplace dispute. However, he stated that he was released after two days, and that he was not subject to criminal charges or any court action arising from this incident and I also accept this evidence. The applicant also stated that he was not politically active in Iran and was not involved in any protests, including against the Iranian government. I am not satisfied that he had an adverse political profile or was of any interest to the authorities at the time of his departure from Iran. Nor am I satisfied that his involvement in the workplace dispute gives rise to a real chance of any harm on return now or in the reasonably foreseeable future.

45. The applicant claimed that he and his family faced discrimination and were verbally insulted by members of the community because they were stateless Arab refugees. Having regard to the country information set out above, and his consistent evidence on this point, I accept that the applicant and his family did face some discrimination and were insulted and called names by members of the community as he has claimed. I accept his evidence that he was not subject to physical violence for these reasons. I also find, based on his evidence, that he completed primary and secondary education in Iran, and that he was able to access health care. His application cited two residential addresses in Qom, one from March 1983 to 2001, and the second from January 2001 until May 2013, which is indicative of stable residence, including during the period when he was not a registered refugee.
46. Despite information above that Arabs can face difficulties attaining work in the manufacturing industry, and his claims of unstable employment, the information he provided in his protection visa application was that he had ongoing employment in the manufacturing and [wholesale] industries between 1990 and 2008 and I accept this evidence. Notably, he remained employed in manufacturing after 2006, when he claimed he and his family lost their white cards and became unregistered. Following 2008, the applicant stated that he cared for his father during his illness and cited his caring responsibilities, and his 2011 travel to Iraq, as the reason for his lack of employment after that time. I am not satisfied that he was unemployed after 2008 for reasons of his ethnicity, and/or his status as a stateless unregistered refugee.
47. The information above is that unregistered refugees have access to private rental arrangements and informal employment and that the authorities are tolerant of this practice. It also indicates that unregistered refugees can pay to access health care. I also give weight to DAFT's assessment that Arabs are not specifically targeted for discrimination due to their ethnicity, including in their ability to access government services, they are permitted to speak Arabic, participate in cultural activities, and wear Arabic clothing. I also give weight to information from DFAT and they are not aware of any legislative or social barriers to voluntary returnees / failed asylum seekers from Australia finding work and accommodation, and that those of western appearance face a low risk of discrimination. The applicant speaks both Farsi and Arabic, he completed high school in Iran, and worked in various industries in Iran, including at a time when he was unregistered/undocumented. The evidence also indicates the applicant had stable accommodation in the past, again including when he was not registered. His mother and siblings continue to reside in Qom and on the evidence before me, I am not satisfied that they will be unable to assist him if required. On the country information and his circumstances, I am not satisfied that the applicant will be unable to find accommodation or employment on return to Iran. Nor am I satisfied that he will be unable to access basic services, including health care, now or in the reasonably foreseeable future.

48. As noted, the applicant was not politically active in Iran. He has not stated that he holds separatist beliefs or that he otherwise holds anti-government political views. He stated that he has not engaged in any political activities here in Australia and claimed this was because he did not wish for his family in Iran to be harmed. However, given he was not politically active in the past, I am not satisfied this is the case, rather I consider he was not interested in participating in political activities here in Australia. On his profile, I am not satisfied that he would be interested in engaging in any political or anti-government protests on return to Iran. Moreover, he is returning to Qom, and information above indicates that protest activity and government/security responses affecting the Arabic community largely occur in Ahvaz, Khuzestan Province. On the evidence before me, I am also not satisfied that there is a real chance he will be caught up in any protests on return to Iran.
49. I give weight to authoritative information from DFAT which expressly considers the circumstances and treatment of Arabs in Iran. DFAT advises that it is Arabs who are politically active who are likely to attract adverse attention from the authorities, particularly those in boarder provinces. On his accepted profile, I am not satisfied that the applicant will have any such profile on return to Iran in the reasonably foreseeable future. DFAT also advises that generally ethnic minorities, including Arabs, are not targeted for physical violence, and that Iraqi refugees are generally treated better than other classes of refugees in Iran. Further, the evidence before me does not support that failed asylum seekers/returnees from the west (including those with western appearance and long-term residence in the west), and/or unregistered stateless persons are targeted for such harm. I am not satisfied that the applicant faces a real chance of harm from the government, authorities and/or security agencies for these reasons.
50. I have accepted the applicant was verbally insulted and called names by members of the community in the past because he was a stateless Arab refugee. He was not threatened in these incidents and there was no violence. I accept that he may face similar treatment on return to Iran in the future. However, on his profile and circumstances discussed above, and having regard to the nature of this treatment, I am not satisfied that it would constitute a threat to his life or liberty, significant physical harassment, or ill-treatment, that it would threaten his capacity to subsist, or that it otherwise rises to the level of serious harm, having regard to the non-exhaustive definition in the Act.
51. The applicant departed Iran prior to March 2018 and I am satisfied the MOU is not applicable in his circumstances and that the only circumstances in which he would return to Iran is on a voluntary basis. I accept that the applicant will be questioned on return at the airport in Iran about the circumstances of his departure and why he is travelling on a temporary document. However, I have found above that the applicant did not have an adverse political profile in Iran and was not otherwise of interest to the authorities at the time of his departure. Nor does the information before me support that his status as an unregistered/undocumented stateless Arab will be of interest to the authorities on his return. Noting this, and information from DFAT that mistreatment is not common during questioning, I am not satisfied that he faces a real chance of harm during this process. DFAT advises that returnees without a past adverse profile, such as the applicant in this case, are unlikely to attract interest of the authorities on return and face a low risk of monitoring, mistreatment, or other forms of official discrimination. On the totality of his profile, I am not satisfied that there is a real chance he will be monitored, or that he otherwise faces a real chance of any harm for any reason associated his residence in Australia, and as a returnee/failed asylum seeker from he west.

52. I have accepted that the applicant departed illegally and given the manner of his return, I accept this is likely to become known to authorities on return. I give weight to advice from DFAT that individuals, such as the applicant in this case, who exit Iran illegally and have not previously attracted the adverse attention of the authorities, face a low risk of prosecution. On his accepted profile, I am not satisfied that there is a real chance he will be prosecuted. However, even if he is, on advice from DFAT above, I find that he is likely to receive a fine, rather than a custodial sentence, and I am not satisfied this amounts to serious harm of the kind set out in the Act. I am not satisfied on the evidence before me that the applicant will be unable to pay any fine that is issued to him. Nor, having regard to his profile and circumstances, am I satisfied that there is a real chance he will face prosecution for other unrelated offences at that time.
53. I also find that the evidence from DFAT is that all persons who depart Iran illegally are subject to the terms of the penal code on return to the country. I am not satisfied that the law is discriminatory on its terms and or in its application, and I find that this is a law of general application. A generally applicable law will not ordinarily constitute persecution because the application of such a law does not amount to discrimination. The information before me does not support that the law is selectively enforced or that it is applied in a discriminatory manner. Accordingly, even having regard to the applicant's profile, I find that the investigation, prosecution and punishment for his illegal departure would be the result of a law of general application and does not amount to persecution for the purpose of ss.5H(1) and 5J(1) of the Act.
54. On the totality of the evidence before me, including the independent information and the applicant's accepted circumstances, I am not satisfied that he faces a real chance of persecution on return to Iran now or in the reasonably foreseeable future, for the reasons he has claimed, including because he is a stateless, unregistered/undocumented Arab refugee from Iraq, due to his long-term residence in Australia, because he is a returned failed asylum seeker from the west and/or because he departed Iran illegally.

Refugee: conclusion

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

Complementary protection assessment

56. 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

57. 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.
58. 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.
59. On the country information and the applicant’s particular profile and circumstances, discussed above, I am not satisfied that he will not be able to find accommodation or employment on return to Iran. Nor am I satisfied that he will be unable to access basic services, including health care on return to Iran.
60. I have accepted that the applicant was verbally insulted and called names by members of the community in the past because he was a stateless Arab refugee. I accept that he may face similar treatment on return to Iran in the future. However, on his profile and circumstances discussed above, and having regard to the nature of the claimed insults, I am not satisfied that it would amount to significant harm within the meaning of ss.36(2A) and 5 of the Act. I am not satisfied that this treatment amounts to the death penalty, an arbitrary deprivation of life or torture. Further, I am not satisfied that there is an intention to inflict severe pain or suffering, pain or suffering that is cruel or inhuman, or that it amounts to degrading treatment or punishment intended to cause extreme humiliation within the meaning of Act.
61. I have accepted that the applicant departed illegally and that given the manner of his return, this is likely to become known to authorities on return. I give weight to advice from DFAT that individuals, such as the applicant in this case, who exit Iran illegally and have not previously attracted the adverse attention of the authorities, face a low risk of prosecution. On his accepted profile, I am not satisfied that there is a real risk he will be prosecuted for his illegal departure. However, even if he is, on the information set out above, I find that he is likely to receive a fine, rather than a custodial sentence, and I am not satisfied this amount to significant harm as defined: it will not amount to torture, the death penalty, or an arbitrary deprivation and nor am I satisfied there is an intention to inflict severe pain or suffering, pain or suffering that is cruel or inhuman, or that it amounts to degrading treatment or punishment intended to cause extreme humiliation. I am also not satisfied on the evidence before me that the applicant will be unable to pay any fine issued to him. Nor, having regard to his profile and circumstances, am I satisfied that there is a real risk he will face prosecution for other unrelated offences at that time.
62. I have otherwise found that the applicant does not face a real chance of harm on return to Iran for the reasons set out and discussed above. I note that ‘real chance’ and ‘real risk’ involve the same standard.⁶¹ I similarly find having regard to the evidence, independent information and his particular profile discussed above, that these matters do not give rise to a real risk of significant harm for the purpose of ss.36(2)(aa) and 36(2A) of the Act.
63. I am not satisfied that the applicant faces a real risk of significant harm on return to Iran for the reasons he has claimed.

⁶¹ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

64. 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.