



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA22/10382

Date and time of decision: 13 December 2022 14:09:00

S Kamandi, 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 to be a national of Iran. He arrived in Australia in June 2013 and on 7 August 2017 made an application for a Safe Haven Enterprise Visa (SHEV).
2. On 10 May 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate accepted that the applicant attended a Green Movement demonstration in 2009, was detained, questioned, and released, he was not satisfied that the applicant was detained for a period of over a month and tortured, or that he was subsequently detained. The delegate was not satisfied that the applicant had an adverse profile with the Iranian authorities at the time of his departure or had been politically active with the Iranian diaspora in Australia. The delegate was also not satisfied that the applicant's claimed conversion to Christianity was genuine and found that he had been baptised to enhance his protection visa claims. The delegate was not satisfied that the applicant faced a real chance of harm or was at a real risk of significant harm for any of the claimed reasons.
3. The matter was referred to the Immigration Assessment Authority (IAA) which made a decision affirming the delegate's decision on 11 June 2021.
4. The applicant applied for judicial review of the IAA's decision and on 29 September 2022. The Federal Circuit and Family Court of Australia remitted the matter to the IAA by consent orders. It was conceded that the IAA's decision was affected by jurisdictional error on the basis that the IAA failed to consider the claim that the applicant would face harm because of his Bakhtiari ethnicity, a claim that arose on the material and was considered by the delegate.

Information before the IAA

5. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). This review material includes a number of documents which have been identified as information not provided to the IAA previously. This includes an invitation letter to attend an interview with the delegate, the form relating to consular access, the applicant's detention notice after arrival in Australia, the applicant's biographic details confirmation form, and a signed copy of the applicant consenting to the Department to access his identity documents. These documents are administrative in nature, do not contain any information that would materially assist in determination of the applicants claims for protection. I do not consider them to be relevant in the assessment of the applicant's claims.
6. The identified documents also include untranslated copies of what is identified as the applicant's Iranian National Identity card and copies of the written and audio recording of the applicant's arrival and induction interview held on 19 July 2012. These documents and the applicant's arrival interview recording were before the delegate, and I do not consider them to be new information.
7. No further information has been obtained or received.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:

- The applicant was born in Ahwaz city in Khuzestan, Iran, and is of Bakhtiari/Persian ethnicity. His family moved to Esfahan when he was about [age] years of age, where he resided until his departure for Australia in 2013.
- The applicant's father's cousins were involved in Kurdish politics. They were members of a political [party] and were arrested and killed after the Iranian revolution in 1979.
- On 9 July 2009, the applicant joined a protest in Esfahan. He was not politically active but wanted to join and lend his support for the cause. After about an hour and forty-five minutes the police came to disperse the protesters. They started hitting and chasing people. The applicant was injured and taken to the Sepah station and received medical attention. He was kept there for 13 or 14 days, tortured, interrogated, and accused of being a member of a group. He was forced to sign documents agreeing not to participate in further activities and to charges of activities against the regime. He also had to pay a fine of about \$100.00 before being released.
- The applicant was constantly called on his house number. He was told that he could not attend any gatherings, soccer matches, or the Iranian festivities called Chaharshanbeh Soori. He was accused of activities against the government or trying to overthrow the regime, which he did not participate in.
- Between his arrest and until his departure for Australia, the applicant was required to attend the Sepah office, sign documents and make commitments to the Iranian government.
- After his arrival in Australia, the intelligence officers have asked about his whereabouts. His father told them the applicant was in Australia.
- About 18 months prior to departing for Australia, the applicant was arrested for having tattoos on his arm. He was wearing a T-shirt and earrings. The applicant was taken to the police station and asked to sign documents. He was told that he could not wear earrings or short sleeve T-shirts exposing his tattoos.
- Around the same time, the applicant and his sister, who was visiting from [Country 1], were arrested, and taken by the police. After showing their identity documents, they were asked to sign documents and released.
- While working at a [shop], intelligence officers who knew of the applicant's background, would come, and not pay for his services.
- Since his arrival in Australia, the applicant has posted comments critical of the Iranian regime on social media. He has also visited Sepah websites and left critical comments. He has received threats for posting these comments.
- In 2017 (four months prior to his TPV application), intelligence officers interrogated the applicant's father about the applicant.
- The applicant has attended [Church 1] since 2018 and was baptised in 2020.
- The applicant fears arrest, detention, and torture and harm at the hands of the Iranian authorities for reasons of his political opinion, his past interactions with the authorities, and his activities while in Australia.

Refugee assessment

9. 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

10. 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.
11. The applicant has consistently claimed to be a national of Iran. He provided the delegate with copies and English translations of his Iranian military service card, national identity card and drivers’ licence, which support his claimed identity and nationality. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.
12. The applicant’s evidence is that he was born in Ahwaz city in Khuzestan in [year]. His family resided there until 1998 when they moved to Esfahan. His parents are separated, and he has a stepmother. One of his brothers died in a car accident. His parents and his brother reside in Esfahan, and he has two sisters residing in [Country 1]. The applicant completed high school in 2006. He commenced studying [in] [a] University [in] 2007 but withdrew from the course after one semester. He commenced and completed his [apprenticeship] in 2007. The applicant worked as a part time [Occupation 1] between the years of 2007 and 2009. He commenced his military service, as a [Occupation 1] in Tehran, in 2010. He also worked as a [Occupation 2] prior to commencement of his military service in 2010 and after the completion of his military service until his departure in June 2013. I accept the applicant’s evidence in this regard.
13. The applicant’s SHEV application indicates that he is of “Persian/Farsi” ethnicity, which accords with his evidence during his arrival interview held in July 2013. In his SHEV statement, the applicant claims that he “Bakhtiari/Persian” and that his father’s cousins were “Bakhtiari and cooperating with the Kurdish party”, and that they were members of a political [party]. He states that because his father’s cousins were fighting against the regime, they were arrested and eventually killed after the Iranian revolution in 1979. During his arrival interview, the applicant also referred to his father’s cousins having been involved with

Kurdish parties and that they had problems with the Sepah. The applicant did not refer to these claims during the SHEV interview, and as noted by the delegate he has not provided any evidence to indicate that he has any fear of harm for reasons of his ethnicity or his father's cousin's involvement with a Kurdish political party in the 1970s. I also note that the applicant has not provided any submissions to the IAA, either when the matter was first reviewed or following the remittal of the matter by the Court, nor has he disputed this aspect of the delegate's decision.

14. It is reported that two groups, Bakhtiaries and Lurs, resided in the central and southern Zagros and speak Luri, a language closely related to Persian. Like the Persians, Bakhtiaries and Lurs are Shia Muslims and historically were organised in several tribes. It is also reported that tribal leaders, especially those of the Bakhtiari tribes, were involved in national politics and were considered part of the pre-revolutionary elite. In the 1920s, the Pahlavi Shahs gradually succeeded in establishing the authority of the central government in the Bakhtiari area. Several campaigns were undertaken to forcibly settle the nomadic pastoral component of the Bakhtiari tribe. The combined political and economic pressures resulted in significant decline in the power of Bakhtiari tribes. By the time of the revolution in 1979 the term Bakhtiari tended to be restricted to an estimated 250,000 tribespeople. Most of whom still practiced pastoral nomadism. It is reported that Bakhtiaries, especially those who settled in urban areas and received an education in state schools, tended to assimilate into the Persian culture.¹
15. I accept that the applicant is of mixed Bakhtiari, and Persian ethnicity as indicated in his SHEV statement and that his father's cousins, as Bakhtiaries, cooperated with the Kurdish political parties prior to the Iranian revolution. I accept that due to their political activities against the revolution, they were arrested and killed as claimed. I note that the applicant's family moved and resided in Esfahan when he was young and that he attended school, university and worked in Esfahan. The country information indicates that people like the applicant living in urban areas and attending state school assimilated into the Persian culture. The applicant's evidence does not indicate that he or any members of his family faced any form of discrimination or mistreatment due to their Bakhtiari ethnicity or were associated with his father's cousins' political activities prior to the Iranian revolution. As observed by the delegate, the information also does not indicate that Bakhtiaries are discriminated against or face any state sanctioned or societal discrimination or harm for reasons of their ethnicity, and the applicant has not provided any evidence to the contrary. On the evidence before me, I am not satisfied that the applicant faces a real chance of any harm for these reasons.
16. The applicant's central claim arises from his attendance at a demonstration in July 2009. In his arrival interview held on 19 July 2013, the applicant stated that he attended a demonstration on 9 July 2009 and was arrested and detained for a period of 10 to 12 days, after which he was released but was not allowed to work or drive his car. He also stated that he was injured and had a scar on his back. When asked if anything happened to him after 2009, the applicant responded in the negative and stated that he was told that he was not allowed to leave his home or attend ceremonies and events.
17. In his SHEV statement, the applicant claims that he was not politically active but joined a demonstration in 2009 to lend his support to the cause. He claims that after about one hour and forty-five minutes, the police came and started to beat and arrest protesters. The applicant claims that he was running down a laneway when he was stabbed on his shoulder. The police were carrying long knives like swords. He did not see who hit him and that

¹ Library of Congress, "Lurs and Bakhtiaris", 1 January 2018, CXBB8A1DA333.

someone told him that he was bleeding. Due to his injury, he was unable to continue running. He was lying on the ground and was taken to the Sepah station where he received medical attention for his injury. He was kept in the Sepah station for 13 or 14 days, during which he was interrogated about which group he belonged to and was tortured. The applicant claims that he was released after paying a fine of about \$100.00 and signing a document giving commitment that he would not participate in demonstrations. He also claims that he was asked to sign documents agreeing to charges of activities against the regime, trying to overthrow the regime and chanting anti-regime slogans. The applicant states that he was told that he was not to attend gatherings, soccer matches, or Iranian festivities called Chaharshanbeh Soori. At the time of these celebrations, he would receive calls telling him not to attend. The applicant states that he and his family were constantly contacted and asked about his activities. The applicant claims that between his arrest in 2009 and his departure in 2013, he was asked to go to the Sepah office, "sign documents and make commitments", and that this happened "every 7-8 months or every 3 months". He also refers to a friend who was arrested at the time of the protests and claims that although his friend was released, he was arrested again for no reason and had been in and out of jail and that at the time of SHEV statement, his friend was in [jail].

18. Contrary to his evidence during his arrival interview and SHEV statement, at the SHEV interview the applicant indicated that after his arrest at the demonstration, he was detained for over a month. He stated that after two or three weeks, his father tried to bail him out, but the authorities refused and kept him for over a month. He also claimed that after his release, he was detained again. When asked how long after his initial detention, he was detained again, the applicant stated that the whole period took about a few months, he was contacted to come again and when he did, he was detained for a few weeks and that his parents were told to not make inquiries as it was not a police matter but an intelligence matter. When referred to his evidence in his SHEV application that he was detained for 14 days (rather than a month) and asked to explain, the applicant stated that it would have taken two to three weeks, it could not be 14 days and that he was in solidary detention. He also stated that maybe there was an error by the person writing his statement in that the person wrote two weeks instead of two months. The delegate also referred to the applicant's evidence during his arrival interview where he stated that, apart from restrictions on his freedom, nothing further happened after his initial release from detention. The applicant stated that they didn't leave him alone and that he came to Australia for freedom.
19. While I accept that minor differences in recalling timeframes and dates may occur due to lapse of memory and the passage of time, I consider the differences in the applicant's evidence about the length of his detention to be significant. Like the delegate, I do not consider the applicant's explanations for these differences compelling. I have taken into account the opening paragraph in his statement that he would provide further details during his interview and accept that not all details of his claims may have been included in his SHEV statement, but the applicant's evidence at the SHEV interview paints a different picture to what is claimed in his SHEV statement. The claim about his second detention made during the SHEV interview, which I consider to be a significant event and contrary to his evidence during his arrival interview where he stated that apart from his inability to work or drive his car nothing further happened to him, leads me to conclude that the applicant has embellished his claims as time has passed.
20. While the applicant claims that following his release, he was continuously contacted by the authorities about his activities, had to report to the Sepah office to sign documents and make commitments, and was not allowed to drive his car or work, his evidence is that he commenced his military service in March 2010 (months after his release) and served as a

[Occupation 1] for the Iranian army in Tehran. He completed his military service in September 2011. His evidence also indicates that he worked as a [Occupation 2] prior to and after the completion of his military service (from 2009 until his departure in 2013). This does not sit easily with the applicant's evidence that he was not allowed to drive or work, and his evidence does not indicate that he faced any issues or problems while serving in the military. While he claims that when working as a [Occupation 2], officers that were aware of his background would use his services without payment, and that they tried to get his employer to dismiss him, his evidence nevertheless is that he continued to work as a [Occupation 2] until his departure in June 2013.

21. The applicant claims that he had wanted to depart Iran since 2009 but had to save money and obtain his passport. He claims that he departed Iran through the airport from Tehran using his own genuine Iranian passport. At the SHEV interview the applicant was asked if he encountered any issues when leaving Iran. He stated that a relative informed him that he was on the list of people banned from leaving the country and that they paid a bribe to have his name removed from the list until he got out of the country.
22. It is reported that passport control checks are sophisticated in Iran and that authorities routinely impose travel bans on citizens for reasons such as security concerns. Sepah officers are heavily present at the airport and have the power to impose travel bans on those who are of interest to them without recourse to judiciary. Iranians with travel bans are usually unaware of this until they get to the airport and are then banned from leaving. The presence of security organisations at airports enables the authorities to determine whether a citizen can leave the country by air.² A June 2012 country information research report³ indicated that list of banned persons appeared in the computer system used by the airport personnel, meaning that officers examining passports would see the list and prevent the banned individual from leaving the country. While bribery was noted to be widespread in Iran, sources expressed doubt that a bribe could be paid to remove a name from the banned list and that a bribe was considered unlikely to convince an airport official to allow a person on a blacklist to board an international flight. The 2013 Danish Refugee Council report⁴ also discussed the difficulties of paying a bribe to exit the country and pointed to leaving the country through land boarder as a much easier option for those of interest to the authorities.
23. I do not accept that the applicant was of any concern to the authorities or had his name placed on the banned list of individuals as claimed or that he paid a bribe to remove his name off the list. The applicant's ability to depart Iran without encountering any issues during the process of obtaining his passport and departure from the country via Tehran's international airport, undermines his claims that he was of ongoing and intense interest to the Sepah, that he was forced to agree to charges of being anti-regime, overthrowing the regime and engaging in activities against the regime, or that he was required to attend the Sepah office to sign documents and make commitments to the regime between his claimed arrest in 2009 and his departure in 2013.
24. Country information⁵ indicates that following the June 2009 presidential election, up to three million supporters of reformist candidate Mr Mousavi took to the streets of Tehran to protest

² DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

³ Country of Origin Information Section (COIS), "Iranian Passports and Airport Exit/Entry Procedures", 4 June 2012, 53578.

⁴ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114.

⁵ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

the official verdict that conservative candidate Mr Ahmadinejad had been re-elected. It became known as the Green Movement protests during which protesters used public holidays and national commemoration as opportunities to rally. Over the next six months, the Green Movement evolved from a mass gathering of angry voters to a nation-wide force demanding the democratic rights originally sought in 1979 revolution and challenged the regime and leadership. In response the government despatched security forces. Security forces used force causing protester deaths. Thousands were beaten and hundreds were arrested with prominent activists' and many journalists imprisoned. However, by 2010 the government had successfully quashed public display of opposition. DFAT assessed it would be highly unlikely that those arrested at the time for simply participating in the protest would remain imprisoned, or would face continuing surveillance or harassment, but those who had a more active organisational role in the movement were more likely to face continuing official attention and possible harassment. Local sources also informed DFAT that ordinary participants in the Green Movement are not of interest to the authorities. It is further noted that the end of the Ahmadinejad's presidency in 2013 took away much of the movement's purpose and momentum and that the Green Movement participants did not play an active role in the subsequent elections and have had very little profile inside Iran in the years since.

25. Given the applicant's consistent evidence about his participation in a demonstration in 2009 and the country information regarding the large number of people taking part in the protests, I accept that the applicant participated in one demonstration in July 2009 and that he wanted to support the cause. I also accept that the authorities engaged in beating and arresting of protesters and that many, including the applicant, were injured while the authorities were dispersing protesters. The applicant's evidence is that prior to his attendance at this demonstration he was not politically active, and I am not satisfied on the evidence that he was known to the authorities for any reason prior to 2009. While I accept that he attended a protest and that many protesters were arrested and detained, given the problematic nature of his evidence regarding the number and the length of his claimed detentions and his ability to serve in the military and work, I do not accept that he was arrested or detained. Given his very limited participation in one protest and my rejection of his claims that he was detained, I am not satisfied that he was accused of being anti-regime, forced to agree to charges of overthrowing the regime or that he was barred from working, driving his car, or attending gatherings as claimed. I do not accept the applicant's claims that due to his background the intelligence officers continued to harass him, required him to attend the Sepah office, visited his [shop] and did not pay for his services or tried to get him dismissed from his job. After 2009, the applicant completed his military service as a [Occupation 1] for the army, worked as a [Occupation 2] up until his departure, was able to obtain his passport and depart the country without encountering any issues with the authorities.
26. The applicant claimed that a friend of his who was also detained during the protests in 2009, has been in and out of jail and was in detention at the time of his SHEV application. In making these claims, the applicant has not provided and details regarding his friend's background, political involvement, or the reasons for the authorities continued interest in him. While it is possible that the applicant's friend was arrested and detained during the protests, as was the case with many protesters, and that he has been of ongoing interest to the authorities, I am not satisfied that his friend's circumstances substantiate that the applicant was facing the same issues or is at a real risk of being detained if returned to Iran due to his involvement at one protest in 2009.
27. In his SHEV statement, the applicant claims that about 18 months prior to his departure from Iran (early 2012) he was arrested for wearing a short sleeve T-shirt showing his tattoos on his arms and for wearing earrings. He states that he taken by the police, had to sign a document,

and was told not to wear short sleeve T-shirts exposing his tattoos and that he could not wear earrings. The applicant also claims that around the same time, his sister who lives in [Country 1] came for a visit to Iran. They were seen together, arrested, and taken to the police station. When they provided their identity documents and explained the situation to the police, they were released.

28. Country information⁶ indicates that Iran's laws and religious rules don't forbid tattoos and that the only punishable tattoos are those that contain obscene or nasty images on the face or visible parts of the body such as hands and arms. It has been reported that tattoos are increasingly common in Iran, particularly among youth. The 2016 DFAT report⁷ indicates that DFAT was unaware of any specific report of people being targeted by security forces solely for having tattoos. However, it is possible that a person with visible tattoos could come to the attention of security forces and result in low-level harassment. Regarding penalties that could be imposed for having tattoos, violation of dress code or improper hairstyles, DFAT reported that such penalties included a warning or fine and that it was unlikely for the authorities to maintain an interest in someone who had previously come to their attention for these reasons.
29. I accept that the applicant has tattoos on his arm and that one occasion he was stopped by the authorities and warned not to wear short-sleeve T-shirts exposing his tattoos and that he could not wear earrings, seen as a violation of Iran's dress code. I also accept that the applicant was seen with his sister who visited from [Country 1] and was approached by the authorities and taken to the police station. His evidence is that once they established their relationship they were released. The applicant's evidence does not indicate that he was detained or faced any further or ongoing issues in relation to these matters.
30. The 2020 DFAT report⁸ indicates tattoos and western style clothing are common in Iran. Tattoos are increasingly popular among young men and that DFAT is not aware of the authorities targeting people on the basis of a "Western" appearance, which includes Western style haircuts and clothing or visible tattoos. It is reported that men with tattoos covering nearly the entire length of their arms have been seen in public in Iran. While such appearances may be frowned upon by more conservative Iranians, DFAT assesses that people of "Western" appearance, including those with visible tattoos, face a low risk of official and societal discrimination. While there are reports of harassment due to violating the dress code, DFAT assesses that these were most likely to have been because of over-zealous enforcements of these codes by individual security authorities. The applicant has not provided any evidence, such as photos of the claimed tattoos on his arm. He has not indicated that his tattoos contain obscene or nasty images that would be of concern to the authorities.
31. In his SHEV statement, the applicant claims that since his arrival in Australia, he started internet activities. He claims that he had a public [Social media 2] account where he posted critical comments about the Iranian government. He also states that he went onto web pages that belonged to the Sepah or "the leader of Iran" and left critical comments. The applicant claims that "one guy" posted on his [Social media 1] saying that if he came back to Iran, they would kill him and that the applicant replied that "if you can lay your hand on me, you can arrest me". The applicant also claims that intelligence officers spoke to his father about four

⁶ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

⁷ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

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

months prior to his SHEV application (early 2017) and told him that they knew the applicant was in Australia.

32. At the SHEV interview, when asked why he feared returning to Iran, the applicant stated that he was afraid to go back because he had shared comments against the supreme leader and that he had received messages that they will get him back. He also stated that he did not take any screenshots of the threats to show the delegate. When asked when he received the online threats, the applicant said the last threat was made about three years ago, after which his father warned him, and he reduced his online activities. The delegate observed that the applicant would have received these threats after the lodgement of his SHEV application and asked whether he considered that this information would be important for the purposes of his application for protection in Australia. The applicant stated that he did not know and that a friend told him that he could have translated the messages and provided it to the delegate, but he had missed that opportunity. With reference to the applicant's evidence in his SHEV statement that Iranian intelligence officers visited his father in 2017, the delegate asked if they had visited the applicant's family since the lodgement of his SHEV application in August 2017. The applicant said that the last visit was about five months ago because he continued to comment on social media and that his father told him that the authorities were aware of his whereabouts. The applicant stated that he used to post on [Social media 1] a few years ago and that he was still posting on [Social media 2]. When asked about the comments he shared, the applicant said that religion and the government were the subject of his comments.
33. The delegate expressed concern that the applicant had not provided any evidence in support of his online activities in Australia. The applicant stated that he thought his activities would be checked and seen. When reminded that it was his responsibility to provide evidence in support of his claims, the applicant stated that he did not know, had no lawyer to inform him of what to provide and that he thought that he would be believed. At the conclusion of the SHEV interview, the delegate expressed his concerns to the applicant, including his concerns regarding the applicant's claim that he had engaged in online activities criticising the Iranian government while in Australia, and asked the applicant to provide any comments he wished to be considered at the interview or after the interview. The applicant confirmed that he had no further documents or information to provide to the delegate nor did he have anything further to add.
34. On 13 April 2021, about a week after the SHEV interview, the delegate received emails from the applicant attaching screenshots, photos and other documents. The screenshots are of what appears to be comments made by the applicant on [Social media 2]. The comments are made in the Persian language and the applicant has provided English translation of some of these comments. The translated comments are critical of the Islam religion and the Iranian regime and appear to have been made just hours prior to the taking of the screenshot. Some other untranslated comments indicate that the applicant had made the comments seconds prior to the screenshot being taken. At the SHEV interview, the applicant stated that he had reduced his online activities and that he did not have screenshots or other evidence to support his political online activities in Australia. If this is the case, then it appears that the applicant has made these comments in the brief period after the SHEV interview and prior to submitting them to the delegate. The delegate was also provided with photos of him at what appears to be a small scale gathering/protest. He is shown holding banners and there is also a photo of him with the Iranian and Australian flag. Prior to providing these photos, the applicant had not claimed to have engaged in any protests or gathering in Australia. At the SHEV interview, he was asked on several occasions whether he had anything further to add, and apart from his claimed online activities, the applicant did not mention having attended

any gatherings or planning to do so. In providing these photos, the applicant has not explained anything about the event, including the reason for the gathering, when it occurred or the extent of his role or nature of his participation in the event.

35. I accept that the applicant attended a demonstration in 2009 in Iran in solidarity with other protesters and that like many young Iranians, he disagrees with restrictions placed on the citizens lives by the Iranian regime. I accept that the applicant attended a gathering/protest in Australia as evidenced by the photos provided to the delegate, and that this may have occurred after the SHEV interview. I note that the applicant had been in Australia for over eight years, and it appears that he had only attended one such event. I accept that the applicant has used [Social media 1] and [Social media 2] to comment and criticise the Iranian government, prior to and after the SHEV interview, and that he has attended one gathering in Australia. I am not of the view that he has undertaken these activities solely for the purposes of strengthening his claims for protection. The applicant has not provided any further evidence to show that he has continued to engage in these activities in the recent times and I consider the applicant's online activities and attendance at gatherings in Australia to be very limited in nature and do not accept that apart from some sporadic commenting on [Social media 1] and [Social media 2] and attendance at a gathering, he had visited Sepah or Supreme leader's websites, posting critical comments resulting in threats made against his life.
36. Country information⁹ indicates that Iran's constitution provides for freedom of expression, association, opinion, assembly, and religion, but stipulates those freedoms must not violate certain principles, including Islam and public rights. While use of internet and social media platforms including Facebook and Instagram is widespread, it is reported that authorities monitor social media. Individuals posting content openly critical of the Islamic republic, its institution and policies or deemed to be pushing moral boundaries may attract adverse attention, including individuals based abroad. However, it is reported that the authorities do not comprehensively and cannot effectively monitor Iranian's online activities. While there have been reports of individuals coming to the attention of the authorities and having their online activities monitored, such individuals are more likely to be persons with a public profile, or individuals who are considered to have posted material that is objectionable, perceived to be insulting to Islam or waging propaganda.
37. I do not accept that the applicant had any public or adverse profile with the authorities prior to his departure from Iran. I do not consider the applicant's online activities or attendance at one gathering in Australia to be of concern to the authorities in Iran and given his lack of any profile with the authorities, I am not satisfied that the authorities in Iran have monitored his social media accounts or have been made aware of his activities in Australia. I do not accept that the authorities have visited his father and asked about the applicant. Country information¹⁰ also indicates that the authorities pay little attention to returned asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims, such as posting on social media. I consider the chances of the applicant facing any harm for reasons of social media activities and attendance at a gathering in Australia to be no more than remote. The applicant has not claimed and given his evidence that he participated in one protest in Iran and a gathering in

⁹ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; Article 19 (United Kingdom), "Tightening the Net, Part 2: The soft war and cyber tactics in Iran", 3 February 2017, CISED50AD446; International Campaign for Human Rights in Iran, "Security Agencies and the Prosecution of Online Activists", 11 November 2014, CX1B9ECAB9307.

¹⁰ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

Australia and engaged in sporadic online activities while in Australia, I am not satisfied that if returned to Iran, the applicant has any genuine desire to engage in any political activities or protest beyond what he has engaged in the past.

38. I am not satisfied that the applicant was of any ongoing adverse interest to the Sepah, intelligence officers or any other government agency prior to his departure from Iran. I consider the chances of the applicant facing any harm for reasons of his participation at one demonstration in 2009 to be no more than remote. While I consider it possible that the applicant may face some low level of harassment due to his tattoos and may possibly encounter some incidents with the authorities due to perceived violation of Iran's dress code, I am not satisfied that such treatment amounts to serious harm, or that there is a real chance of the applicants experiencing any treatment beyond what they have experienced in the past.
39. The applicant has consistently claimed to have no religion. His evidence during his arrival interview, SHEV application and SHEV interview does not indicate that he adheres to or practices any religion. At the commencement of the SHEV interview the applicant was asked if there was anything in his SHEV application that he wished to amend. The applicant stated that he got married in Australia and has a child but did not refer to any other changes or developments in his circumstances. After the SHEV interview, the delegate was provided with a photo of a certificate of baptism indicating that the applicant was baptised in [Church 1] on [date] November 2020; a photo of the applicant receiving his baptism certificate; and a photo of a letter from Pastor [A] at the [Church 1] dated 11 April 2021. Pastor [A] writes that he had known the applicant since 13 November 2018 when he came to a Bible study class when serious mistakes in the Quran were explained to him. The letter also confirms that the applicant was baptised on [date] November 2020, attended Bible study classes, watched some bible messages on YouTube, gave money to print 5000 gospel tracts in Kenya, and informed his mother that he is a Christian.
40. The information indicates that the applicant had been engaging with the [Church 1] since November 2018, almost two years prior to his SHEV interview, and that he was baptised in November 2020. Like the delegate, I am very concerned that the applicant did not mention his religious activities in Australia at the SHEV interview. The applicant in providing this information to the delegate, has not explained why he didn't provide this to delegate earlier. Nor has he provided any submissions or explanations about his journey towards Christianity or why he converted to Christianity given that he was not following any religion. I also note that the applicant has not sought to provide any explanations or submission to the IAA in response to the delegate's conclusion that he was not a genuine conversion to Christianity. The information in Pastor [A]'s letter seems to suggest that although the applicant has been baptised in 2020, his engagement with the church has been limited, in that he had attended some Bible study classes in 2018 and 2019 and only once in 2021. On the evidence before me, while I accept that the applicant has attended the [Church 1] on a few occasions and was baptised in 2020, I am not at all convinced that that he has a genuine commitment to Christianity, practises the religion in Australia, told his mother in Iran that he is a Christian, or that he has any intention or desire to practice the religion if returned to Iran. I am not satisfied that the applicant has engaged in any of his Christian activities undertaken in Australia, otherwise than for the purpose of strengthening his claim to be a refugee. In accordance with s.5J(6) of the Act I am required to disregard the applicant's Christian activities in Australia when determining whether he has a well-founded fear of persecution.

41. I accept the evidence otherwise provided to the delegate that the applicant does not adhere to or practice any religion. The most recent DFAT report¹¹ indicates that the official religion of Iran is Shia Muslim and that a Muslim who leaves his or her faith or converts to another religion or atheism risk state prosecution and may be charged with apostasy. However, in relation to the Muslim population, it is reported that a significant proportion of the population does not attend Mosque or pray on a regular basis. Religion is considered a private matter and that beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam is an individual choice, and not a matter for the state. Apart from two minor incidents of perceived non-adherence to the Islamic dress code and rules in Iran, the applicant has not claimed that he had been approached or interrogated about the practise of Islam or accused of not following the religion. On the evidence before me, I consider the chance of the applicant coming to attention of the authorities or facing any harm for not adhering to or not practising Islam to be no more than remote.
42. The applicant claims, and I accept, that he departed Iran using his own passport and that he is no longer in possession of a valid Iranian passport.
43. The 2020 DFAT report¹² indicates that Iran does not permit the involuntary return of Iranians from Australia unless they arrived in Australia after 19 March 2018, the date on which Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. As the applicant arrived in Australia prior to 19 March 2018, I find that if he were to return to Iran, it would necessarily be on voluntary basis. DFAT also reports that persons, who do not have a valid Iranian passport require temporary travel documents issued by Iranian diplomatic representatives overseas to facilitate their return and that the authorities at the airport will be forewarned about such persons' return.¹³ Given that the applicant will only be returned on a voluntary basis, it may be possible for him to obtain an Iranian passport. However, even if the applicant returns to Iran on temporary travel documents, I am not satisfied he faces a real chance of persecution. The 2020 DFAT report¹⁴ indicates that he may be questioned by immigration police about the circumstances of his departure and why he is travelling on temporary travel documents. I consider it possible that this may lead the authorities to infer that the applicant has sought asylum while in Australia. The DFAT report¹⁵ indicates that the questioning is usually for a short period of between 30 minutes to an hour but may take longer where returnees is considered evasive in their answers or have a suspected criminal history. Arrest and mistreatment are not common during this process.
44. Other than the possible questioning on arrival, DFAT¹⁶ advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. International observers have reported that the Iranian authorities pay little attention to returned asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims. Unless returnees have an existing profile or were the subject of adverse official attention prior to departing Iran, they are unlikely to attract attention from the authorities. I am not satisfied that the applicant had any adverse profile with the authorities prior to his departure from Iran or would be suspected of having a criminal

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

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

¹³ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

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

¹⁵ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹⁶ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

history, and the information cited above does not indicate that returnees are harmed for reasons of having resided in or sought asylum in a western country. I do not consider that apart from being questioned on arrival, the applicant would attract any form of adverse attention from the authorities. I do not consider being questioned on arrival for a short time amounts to harm nor am I satisfied that he would otherwise face a real chance of any harm during questioning.

45. Considering the applicant's circumstances as a whole and in light of what I have accepted of his claims, I am not satisfied that the applicant faces a real chance of serious harm at the hands of the authorities or any other person in the reasonably foreseeable future. I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act.

Refugee: conclusion

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

Complementary protection assessment

47. 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

48. 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.
49. 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.
50. I accept that it is possible that the applicant may face some low level of harassment, as he claims to have suffered in the past, due to his tattoo and that he may possibly encounter some incidents with the authorities due to perceived violation of Iran's dress code. However, I consider the chances of him being subjected to any treatment beyond what he claims to have experienced in the past to be no more than remote. I am not satisfied that any such treatment and harassment would amount to a level of pain, suffering or humiliation required by the definition of torture in s.5(1) of the Act, nor cruel or inhuman or degrading treatment or punishment, such as to amount to significant harm as defined in s.36(2A) of the Act. Nor

am I satisfied he faces a real risk of the death penalty being carried or the arbitrary loss of his life.

51. I accept that the applicant has attended [Church 1] on a few occasions in 2018, 2019 and once in 2021. I accept that he has been baptised in this church in 2020. I do not accept that applicant has genuinely converted to Christianity or has any genuine ongoing interest in the religion or would seek to practise the religion if returned to Iran. I do not accept that he has informed his mother that he is a Christian. Country information¹⁷ indicates that the authorities pay little attention to returned asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims, such as converting to Christianity. On the information before me, I am not satisfied that the applicant faces a real risk of any harm, as defined in ss.36(2A) and 5J(1) of the Act, in Iran for reasons of his Christian activities in Australia.
52. I have otherwise found above that the applicant does not face a real chance of harm in Iran for any of the claimed reasons. The Federal Court¹⁸ held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm on those grounds, if returned to Iran.

Complementary protection: conclusion

53. 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.

¹⁷ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; UK Home Office, "Country Policy and Information Note - Iran: Christians and Christian converts", 27 February 2020, 20200228081848; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

¹⁸ MIAC v SZQRB (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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