



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06640

Date and time of decision: 17 June 2019 10:57:00

M Anderton, 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 applicant is an Iranian citizen who arrived in Australia by boat [in] July 2013.
2. On 9 August 2017 the applicant applied for a temporary protection visa. The applicant's claims revolved around his fear of harm of Sepah as he had been arrested for [number of] days due to pushing an officer at a family party in 2011 but escaped on his court day. He also claimed that he left Iran illegally as he used a friend's passport to depart Iran.
3. On 17 May 2019 the delegate refused to grant the visa because he was not satisfied that the applicant was a refugee or that the applicant faced a real risk of significant harm upon return to Iran.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). There was a s473GB certificate on file, but it appears to been issued in error as the identified document has not been provided to the IAA and the Department has advised that it is not relevant to the review. As such I have disregarded the certificate.
5. No new information was received.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He left Iran after conflict with Sepah Pasdaran. They came to his home when they were having a family party for [a family event]. Ten people attacked the house and hit the applicant's father, who is old, so the applicant got upset and pushed sepah police officer. After that sepah took the applicant in the car by force and arrested him for [number] days. Intelligence used to come and hit him on his hands. He was tortured, handcuffed hung from his fingers and has a [specified injuries].
 - A shift soldier offered to let him escape for [amount] toman. On the applicant's court day, the soldier opened his handcuffs and the applicant escaped. The name of the person who helped him escape was [name]. The applicant's older brother paid him the [amount]. He was not charged as he escaped on the date of court and did not go to court.
 - The applicant went to Tabriz for a year and to [City 1] after that.
 - The same people have been to his family home more than 10 times. They took his ID card and driver's licence. He fears arrest, detention, torture and mistreatment.
 - The applicant is fearful for his Australian citizen partner and their children if he returns to Iran as he is the principal breadwinner as [an occupation] working six days a week. He fears his family will not be able to safely migrate and resettle in Iran. His Australian wife is Christian and they will suffer if his protection visa is refused and he has to return to Iran.

- He departed Iran illegally on his friend's passport but had no difficulties going through the airport.
- At the protection interview he also added that he liked and shared some [social media] posts.

Refugee assessment

7. 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

8. 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.
9. The applicant has claimed that he is an Iranian national and he has submitted translated copies of his Iranian birth certificate and national identity card. I find that he is an Iranian national and that Iran is his receiving country.
10. The applicant claimed Sepah raided a family party for [a family event] at his home in September 2011. He claimed he was arrested because he pushed one of the police who had pushed his father. He claimed he was held for [number] days and escaped on his way to court when a shift soldier unhandcuffed him. He claimed his brother paid a bribe to the soldier unhandcuffed him.
11. However, I found the applicant's account was vague, lacked details and credibility and was inconsistent.
12. For instance, he claimed in his statements that the music was loud and it was [time] when the house was raided. However, at the protection interview the applicant claimed the music was not loud and had not disturbed anyone. Further, the applicant had difficulty remembering when Sepah raided the house, but finally said it was about one and a half hours after the party started. The applicant claimed he had developed a loss of memory as he had lost his

son in Australia. While I accept that his son passed away in Australia, there was no medical evidence that the applicant had developed loss of memory. Further, I find it difficult to believe he would recall so little of the trigger and key event of his protection claims.

13. The applicant's description of the raid, his arrest and detention was vague and lacked details. For instance, while he said he was asked many things, he did not articulate anything that he was asked or what happened during his [number] days detention. He did not remember what the authorities said or did when he was arrested and said he did not retain the information because he was shocked and it was awhile ago. However, I find it difficult to believe that he would have so little information about such a key event.
14. The applicant's description of his escape lacked details and credibility. The applicant said he escaped when he was being transferred to court by car as the officer unhandcuffed him and he got on a bus and went to Tabriz. He provided no description of how he managed to escape from the vehicle, avoid detection or how he got to the bus station undetected. I find it difficult to believe that even if unhandcuffed due to bribery that he could escape custody on the way to his court hearing from prison and not be apprehended. It is not credible that he could escape in those circumstances.
15. The applicant's account of his identity documents being taken by authorities was inconsistent. In his statement the applicant claimed that his ID and driver's licence was taken by authorities when they visited his parent's home more than 10 times. However, initially in the protection interview the applicant claimed the documents were taken the first time Sepah came to the house in September 2011. Then later in the protection interview the applicant claimed his identity documents were taken later from his parents home, when he was in Tabriz. I consider the applicant's account differed in when his documents were taken by Sepah and changed throughout the interview.
16. At interview the applicant claimed he only had a copy of his ID card. I note the applicant had provided a colour copy of the ID card and translation. Further, it was evident from the translation of it that the translator had sighted the original document in October 2017, when he translated the document. I do not accept that the applicant did not have the original ID document or that his documents were taken by the authorities.
17. Further, it is not credible that if he had escaped on the way to court that he would not have been found in Tabriz or [City 1] before he departed Iran in mid-2013. I find it difficult to believe that if he had escaped in such a manner that he would not have been found by authorities almost in two years later. He also worked in two [businesses] until his departure, so was not in hiding. Further, while the applicant claimed the authorities visited his family home many times and asked his friends about him, I find it difficult to believe that the authorities could not have found him in the two years he remained in Iran, if he were wanted for hitting an officer and escape from custody.
18. Further, that he had been living and working in Iran without harm since the claimed September 2011 incident further reinforces my view that he was not of interest to authorities.
19. I note the applicant claimed a few arrest warrants were issued for him and sent to his family at home. However, he had not seen it and did not have any copies. When asked about the warrants and claimed visits to his parents' home, the applicant avoided the question and said after a while he told his parents he did not want to talk about and put it behind him. I find it

difficult to believe that he would not have more interest in the visits to his home and his own arrest warrants, particularly given their apparent significance.

20. Further, I note the country information in the referred material that if not found at home summons are published in the paper and only left with family members if they acknowledge the accused whereabouts and undertake to deliver it to the accused¹. I find it difficult to believe that an arrest warrant would have been left with his family, particularly given the applicant's claims that he had not returned home since 2011 and he had received a copy or wanted to talk about it with the family. I do not accept an arrest warrant was issued against the applicant.
21. Further, if he had been arrested and held for [number] days and then disappeared, I find it difficult to believe that he would not have had some contact with his wife and child for two years to allay their concerns. I note he said he had some contact with his parents, but had none with his wife and child and made no mention that any message of his safety was provided to them.
22. I note at the protection interview the applicant said his wife divorced him after his absence from Iran and she had the paperwork. However, in his arrival interview he said he was already divorced. I note also that the applicant claimed in his 2017 statement that he had only three years of primary education and started work in his father's [business] when he was [age] years old. However, in his arrival interview he said he went to school [between specified years], completing [a higher school grade]. I consider these are examples of the applicant telling untruths.
23. The applicant claimed that he departed Iran on his friend's passport (who he claimed looked like him) and the applicant threw the passport away on his way [to Australia] on the instructions of the people smuggler. The applicant provided little information of why the friend would provide him his passport, the circumstances of him providing the passport or what happened to the friend afterwards. Further, it is not credible that the applicant could leave through so many checkpoints through Tehran airport on a passport that was not his and also through [another country] and other countries on a passport that was not his.
24. The country information in the referred material also reinforces my view that it is not credible that the applicant could have departed Iran illegally by air or in the way claimed. According to the report on entry and exit procedures from the Danish embassy, there are several check points in the airport and while it may be possible to leave by bribing airport personnel, a lot of them would have to be bribed if the applicant's account is to be believed. In any event, the applicant confirmed at interview that he did not receive any assistance and did not claim he bribed anyone. The report stated that Iranians abroad might be misinforming foreign authorities saying that they left Iran illegally through the airport as it is very difficult to do so given the thorough security checks. I note also that DFAT assesses that leaving Iran through irregular means is more likely to be achievable overland, than via air or sea. DFAT noted that while it may be possible to obtain a genuine identification document with the intention of impersonating another person, DFAT assessed that sophisticated border control procedures would make it difficult to use such a document in order to leave Iran. Further, all Iranian passports have been biometric since February 2011.

¹ UK Home office and Canadian Immigration Refugee Board Iran: circumstances under which court summons are issued by courts 6 May 2009

25. Given the applicant's poor account of his use of his friend's passport and the country information about airport checks and security, I do not accept that the applicant departed Iran illegally or on his friend's passport.
26. Late in the protection interview, the applicant claimed he shared a few posts about executing people in the streets and liked posts about the previous Shah. However, I do not accept the applicant has so shared or liked any anti-government [social media] posts. The applicant had not mentioned any such claims until the delegate asked the applicant a leading question about this. The applicant provided no detail and did not provide any evidence of such [social media] posts.
27. While he claimed in his application form that he owed military service to the government and that he had never enlisted for compulsory military service because he did not believe he should serve, the applicant made no claims to the effect in his statement or at interview. The applicant did not claim he feared harm on that basis. Further at interview, when the delegate asked him about military service and how he avoided it, the applicant said he did not escape military service, but when working and with a family, he did not complete paperwork and was not considered as escaping military service. I do not accept the applicant faces a real chance of harm or any adverse consequences in that regard.
28. Having considered the applicant's evidence, I consider the applicant is not a credible witness and has fabricated his claims in their entirety. I do not accept the applicant's home was raided in September 2011 or that he was taken into custody or escaped, had arrest warrants issued or that he was or is of any interest to authorities. I do not accept his family was visited by authorities. I do not accept he had only three years of education or that his wife divorced him while he was in Australia. I do not accept that he departed Iran illegally or used his friend's passport to depart. I do not accept that he has not completed military service or avoided military service or that he has or will be perceived to have any anti-regime political opinion. I do not consider the applicant faces any real chance of harm on that basis.
29. While the applicant claimed in his application form that he was no religion, he did not make any claims to fear harm on the basis of his religion or lack thereof. He confirmed at interview that his Australian family were Christian, but he was not. He did not claim to fear harm to himself on the basis of his religion, lack thereof or connection to his Australian family's religion. I note also the DFAT 2016 report states DFAT considers it highly unlikely that the government would monitor religious observance by Iranians, or whether or not a person attends mosque or observes religious occasions such as Ashura or Muharram. Thus it would generally be unlikely that it would become known that a person was no longer faithful to Islam. Country information indicates that there is a significant level of non-attendance at mosques in Iran with at least 40% reporting that they never attended and non-practising Muslims form a large part of the population and they lead normal daily lives and are rarely called upon to answer direct questions about their religious practice or pressured to observe Muslim precepts. I am not satisfied, on the basis of this information, that there is a real chance the applicant's non-observance of Islam will give rise to any adverse interest or harm.
30. The applicant was fearful for his Australian family as he was their main breadwinner in Australia and that they could settle in Iran with him and would have difficulties as they were Christian. The applicant confirmed he was not Christian. The applicant claimed that his family will suffer gravely if his protection visa is refused and he has to return to Iran. While the delegate dealt with the risk of harm to the applicant's Australian de facto wife if she returned, I do not consider it is relevant as she is Australian and not an applicant for protection. The applicant did not make any claims to fear harm to himself on the basis of his

defacto wife's religion or their relationship. Further, the applicant's Australian family are not applicants for a protection visa. Further, I do not consider that their capacity to settle in Iran or otherwise gives rise to a real chance of any harm to the applicant. While not claimed, for completeness and on the evidence, I am not satisfied that any such separation amounts to serious harm to the applicant.

31. I do not accept the applicant faces a real chance of harm on return to Iran on the basis of his experiences, personal circumstances, connection to his Australian family, religion or political opinion.
32. I accept the applicant may be identified as a failed asylum seeker upon return to Iran. It is unclear whether once refused the visa the applicant would return voluntarily or not. I have considered his circumstances as an involuntary or voluntary returnee below.
33. If a voluntary returnee, the DFAT 2018 report notes authorities will usually question voluntary returnees only if they have already come to official attention, such as committing a crime in Iran before departing Iran, which I am satisfied the applicant has not. The 2018 report also notes according to international observers, Iranian authorities pay little attention to failed asylum seekers on return and they have little interest in prosecution failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, which includes social media comments critical of the government, converting to Christianity. In such cases the risk profile for the individual will be the same as for any other person in Iran within that category. Given the applicant's lack of profile and the country information, I do not accept the applicant faces any questioning by authorities or harm from authorities upon return. Further, I have not accepted that he departed Iran illegally.
34. I note from the DFAT 2018 report that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. However, in March 2018 Iran and Australia signed a Memorandum of Understanding that included an agreement by Iran to facilitate the return of Iranians who arrived after this date and have no legal right to stay in Australia. I note the applicant arrived before this date, and would as such not be forcibly returned.
35. I find that if the applicant were to return to Iran in the foreseeable future, that would require the cooperation of the Iranian authorities and he would return using a temporary travel document issued by the Iranian authorities, who would be forewarned of his return. DFAT have advised that a returnee will only be questioned on return if they have already come to the attention of authorities, such as committing a crime in Iran. DFAT noted Iranians left the country in large numbers since 1979 and the authorities accept that many will seek to live and work overseas for economic reasons. International observers report authorities have little interest in prosecuting failed asylum seekers for activities outside Iran, including in relation to protection claims.
36. In the event that the applicant did return to Iran voluntarily, given the country information that authorities pay little attention to failed asylum seekers and his lack of profile, I do not accept the applicant faces any harm if he is returned to Iran. Further, the country information before me does not support a finding that person who sought asylum in Western countries are imputed to hold an anti-Iran political opinion. I find that the applicant does not and will not have a profile of interest to the authorities. Based on the DFAT information, I find he will not even be questioned upon return. I find that the chance that he will face harm on account of being a failed asylum seeker returning from residence in a western country to be remote and not real.

37. I have considered each of the applicant's personal characteristics against the country information before me. However, even considered together I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future for any of the reasons claimed.

Refugee: conclusion

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

Complementary protection assessment

39. 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

40. 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.
41. I have found there is no real chance of harm to the applicant. I note that the 'real risk' test imposes the same standard as the 'real chance' test. On that basis, I am similarly not satisfied that any of the applicant's claims would give rise to a real risk of significant harm for the purpose of s.36(2)(aa) of the Act. While not specifically claimed, for completeness and on the evidence, I am not satisfied that the applicant faces a real risk of significant harm (as defined) if he were to be separated from his Australian family.

Complementary protection: conclusion

42. 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.