



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA19/06774

Date and time of decision: 6 August 2019 17:33:00
K Juttner, 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 Faili Kurd from Iran. On 10 August 2017 he lodged an application for a Safe Haven Enterprise Visa.
2. On 19 June 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa. To the Department, the applicant claimed to be a stateless Faili Kurd. The delegate accepted that the applicant was of Faili Kurdish ethnicity, but did not accept that he was stateless, finding he was an Iranian citizen. He also did not accept that the applicant had converted to Christianity in Iran or was a genuine practising Christian in Australia, or that he faced a real chance or risk of any harm for being a failed asylum seeker returning from a western country.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 15 July 2019, the applicant provided to the IAA a new statutory declaration dated 15 July 2019 (2019 statutory declaration); his Iranian birth certificate (with translation); a certificate of baptism dated 26 February 2017 and a letter from [Pastor A] of [Church 1] dated 15 July 2019; a letter from [Pastor B] at [Church 2] dated 14 July 2019; and three page submissions about the new information and why the delegate's decision was wrong.
5. Part of the 2019 statutory declaration reiterates the applicant's claims and makes submissions about why the delegate's decision was wrong, and to that extent it is not new information and I have had regard to it. It also contains a number of new claims which were not before the delegate and are new information.
6. After referring to the Baptism certificate and two reference letters, the applicant submits that there are exceptional circumstances to justify consideration of the new information because he was not requested to provide it and did not know that it was important to present them to the delegate; was not represented at his SHEV interview and did not understand the issues and concerns put to him at the interview; and now understands that this evidence is important after obtaining legal assistance after the decision. The applicant submits that the two reference letters were written after the delegate's decision and could not have been provided earlier, although I note that [Pastor A]'s letter relates to the applicant's activities in 2017. He further submits that this information is credible personal information that, had it been known to the department, it may have affected the department's decision.
7. In contrast to his claims to the delegate, the applicant now says that he is an Iranian citizen and was born on [Date, Year 1], and has provided a copy of his Iranian birth certificate. He has also provided new information about his family's circumstances in Iraq and Iran, and about his employment status in Australia. This information was not before the delegate and is new information. To the Department, the applicant claimed that he was a stateless Faili Kurd and was born on [Date, Year 2]. He initially claimed that he had no identity documents in Iran, but provided a refugee identity document in his name at his SHEV interview on 11 April 2019. To the IAA, the applicant now submits that he provided incorrect information about his year of birth and true citizenship and said he was not an Iranian citizen on his arrival in Australia

because he heard rumours that people would not be sent back to Iran if they were stateless, and was afraid of being sent back to Iran. He regrets making this claim to be stateless, but was told that if he told the truth, all of his claims would be rejected and he would be returned to Iran.

8. While the new information about his citizenship and age is in direct contradiction to earlier statements, he has provided documentary evidence in support that on its face appear genuine. The information is central to the matters under consideration, and the integrity of the visa assessment. I am satisfied that this information is credible personal information which was not previously known and may have affected consideration of the applicant's claims and that there are exceptional circumstances to justify considering this new information.
9. The information about the applicant's claimed baptism and involvement at [Church 1] in Sydney, and attendance at a new church in Brisbane was not before the delegate and is new information. He has provided a baptism certificate from [Church 1] which specifies he was baptised in [in] February 2017 and a letter dated 15 July 2019 from [Pastor A] in support and a letter of support from [Pastor B] from [Church 2] dated 14 July 2019
10. The applicant submits that he was unrepresented at his SHEV interview and did not know until recently that it was important to provide evidence about his claims, and that the delegate made a decision without seeing the applicant's evidence of his Christianity. I note the delegate asked the applicant a number of questions about the his church attendance in Australia, although he did not ask the him any questions about his baptism, which was mentioned in the statutory declaration provided with his SHEV application (2017 statutory declaration). While the delegate clearly expressed doubts regarding the genuineness of the applicant's Christian beliefs and practise, he did not call into question the fact of his baptism in Australia. In these circumstances the applicant may not have been aware that the fact of his baptism was in issue, or of the need to provide documentary evidence in support. Both letters post-date the delegate's decision, and to that extent these documents could not have been produced to the delegate. The new information seeks to corroborate aspects of the applicant's claims that the delegate did not accept. It provides more recent information about his church attendance and practise of Christianity. In these circumstances, I am satisfied that there are exceptional circumstances to justify considering this new information and that it is credible personal information that was not previously known and may have affected consideration of the claims.

Applicant's claims for protection

11. The applicant initially claimed in his SHEV application he was a stateless Faili Kurd without identity documents who was born in Ilam, Iran. He said his parents were stateless undocumented Faili Kurds who were born in Iraq and were deported from Iraq to Iran. As such he claimed:
 - He faced discrimination in Iran for his Faili Kurdish ethnicity.
 - He has converted to Christianity, and was baptised in Australia. He came to the attention of the authorities for his Christian beliefs in Iran, and will be subjected to serious harm if he returns to Iran for his religious beliefs.
 - He will be arrested and detained upon his return to Iran because he left Iran illegally on a fraudulent Iranian passport and is returning as a failed asylum seeker.
12. To the IAA, the applicant subsequently retracted his claim to be stateless and now says that he is an Iranian citizen of Faili Kurd ethnicity. He also changed his evidence about his family

background, and said they were expelled from Iraq many years ago and were undocumented and stateless, but were able to obtain Iranian documents after a number of years.

Factual findings

Citizenship and ethnicity

13. To the Department, the applicant consistently claimed to be a stateless Faili Kurd. At his arrival interview and in his 2017 statutory declaration, he claimed that he had no identification documents in Iran and that being a stateless Faili Kurd without any identity documents has caused many problems for him in Iran. However, at his SHEV interview on 11 April 2019, the applicant provided a Faili Kurdish identification document in his name, issued by the “Ministry of the Interior – None Citizens and Immigrants Affairs Department, Ilam Governor’s Office”. It specifies that it was issued [in] 2012 and is valid from one year from date of issue, and that the applicant’s nationality is Iraqi. The applicant gave shifting evidence at his SHEV interview about the type of refugee identity documents he held and how often he renewed them. He initially claimed that he had a green card which he renewed every year, but later said that he only renewed his identification documents twice, and only had the identity card he provided to the Department and a letter or paper when he was young. Both versions are inconsistent with the country information that green cards ceased to exist in 2001 and that refugees have only been required to renew registration cards annually from early 2002, but not before.¹ The applicant also told the delegate that he did not know what an *amayesh* card was, which the delegate observed to be unusual, given that it is the name of the refugee registration system that replaced documents issued prior to 2001². The applicant also said that the document did not have any meaning or value and that it was not important in Iran to get the card, which suggests that he was unfamiliar with the access to services that a refugee registration card gave. The delegate expressed his concerns about the applicant’s credibility regarding his claim to be stateless and the authenticity of the identity document, which he seized on suspicion of it being a bogus document.
14. After the matter was referred to the IAA, the applicant retracted his claim to be stateless and said that he is an Iranian citizen. He has now provided a copy of his birth certificate (*shenasname*) (with translation), which DFAT notes is a passport-style book issued to all Iranian citizens. The applicant submits that he provided incorrect information about his true citizenship and said he was not an Iranian citizen on his arrival in Australia because he heard rumours that people would not be sent back to Iran if they were stateless, and was afraid of being sent back to Iran. He says that he regrets making this claim to be stateless, but was told that if he told the truth, all of his claims would be rejected and he would be returned to Iran. He says he was under enormous pressure to continue with his initial claim to be stateless out of fear. He has not explained why he has now decided to tell the truth.
15. He has also retracted his earlier claims about his date of birth, and now claims that he was born in [Year 2] rather than [Year 1]. He has also not provided any explanation about why he provided false information about his date of birth to the Department. To the IAA he claims that all the information provided previously about his family members, education and employment are correct. However, in his SHEV application, he says that he attended school between [year range], which, if his [Year 2] birth date is correct, indicates that he attended school between

¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722; DFAT, “IRN10867 Faili Kurds - Pink Cards”, CX253443.

² DFAT, “Status of Faili Kurd refugees and documentation issued to them in Iran”, CX274742.

the ages of 11 and 24, and suggests that he concocted evidence about his school attendance in his SHEV applicant to fit with his claim to have been born in [Year 1].

16. The applicant also retracted his claim that his parents are stateless undocumented Faili Kurds who were born in Iraq and were deported from Iraq to Iran. He now says that his family were expelled from Iraq many years ago and were undocumented stateless Faili Kurds, but were able to obtain Iranian documents after a number of years. The applicant's birth certificate refers to his father having Iraqi identification and I accept that his father may have been born in Iraq and deported from Iraq to Iran. However there is no credible evidence before me to support the assertion that the applicant's mother is Iraqi, and the documentary evidence now provided only link her to Iran. I am satisfied that his parents are Iranian citizens. Likewise I have considered the applicant's birth certificate, which country information suggests is only issued to Iranian nationals, and accept that it is genuine. I am satisfied that the applicant is an Iranian citizen and Iran is the relevant receiving country.
17. The applicant says that he provided the false information about his status as he believed it would result in the grant of a protection visa and that he would not be returned to Iran. He did not provide this evidence to the delegate even once presented with the delegate's concerns over his claims to be stateless. While he may well have believed this would achieve a positive outcome I am not convinced he did so out of a fear of harm. That the applicant has deliberately sought to mislead the Australian authorities about these matters reflects poorly on his credibility as a witness.
18. The applicant claimed to the Department that he left Iran illegally on a fake Iranian passport, and has not retracted this claim. I have significant concerns about the credibility of the applicant's evidence regarding the false passport, as he has provided a number of different accounts about the origins of the passport and how he obtained it. At his arrival interview, he claimed that the fake passport was in his own name, and that he went to Marvi Street, Tehran where fraudulent documents are made, and paid somebody for the fake passport. He said that he did not know how the passport was made, and could not recall how much he paid. In his statutory declaration, he claimed that he paid money to an agent in Iran who had connections to the passport office, who bribed officials to issue a forged passport, and that it was identical to a real passport that was issued at the passport office. However, the applicant provided a very different version of events at his SHEV interview, when he claimed for the first time that he used his friend's passport and paid someone to put the applicant's photo into the friend's passport, and suggested that the passport was in his friend's name. He said it was done by someone in Tehran in the area that he had mentioned in his statutory declaration, but that he could not remember the name of the area. He could not say whether the photo had been stuck or printed onto the passport page. When the delegate suggested that it would be a difficult process to put the applicant's photo into the friend's passport, as Iranian passports also contain a background image of the passport holder's photograph, the applicant said only that they had prepared the passport for him.
19. In addition, none of the applicant's accounts are supported by the country information that Iranian passports include sophisticated security features and would be difficult to manufacture for fraudulent use³. While it may be possible to obtain a genuine identification document with the intention of impersonating another person, DFAT assesses that sophisticated border control procedures would make it difficult to use such a document in order to leave Iran⁴. When asked if he had any issues when leaving Iran, the applicant said that he paid a lot of money,

³ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

⁴ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

and specified it was 10 million toman. He did not specify who he paid the money to, or suggest that he paid bribes to officials at the airport, although in his statutory declaration he asserted that he bribed officials to obtain the passport. I am satisfied that he passed through the International airport without incident and am not satisfied that bribery was involved. Considering all of the above matters, together with the country information, I do not accept that the applicant left Iran on a fraudulent passport. The fact that the applicant was able to pass through the airport without any difficulties also supports that he was travelling on a legitimate Iranian passport. I am satisfied that the applicant left Iran legally on an Iranian passport.

20. The applicant claims he is of Faili Kurd ethnicity. DFAT provides⁵ that Faili Kurds originate from the Zagros Mountains in Iran and are generally distinguished from other Kurdish groups by their Shia religion, and for their language. Faili Kurds in Iran typically reside in areas close to the border with Iraq, particularly in Kermanshah and Ilam provinces, as well as in major cities such as Tehran and Yazd. Other than a claim in his statutory declaration that he was a child when he was expelled from Iraq which he later denied that he had made, the applicant has consistently claimed that he was born and lived in Ilam, Iran, which is also supported by his birth certificate. He says that his family are Shia Muslim. He speaks Faili Kurdish and Farsi, and was assisted by an interpreter in Faili Kurdish/Kurdish at his arrival interview and SHEV interview. While the applicant's false claims to be stateless do in my mind raise significant concerns about his credibility, his claims as to his ethnicity have largely been consistent, and I accept that he is of Faili Kurdish ethnicity.
21. The applicant claimed at his arrival interview on 27 June 2013 that he had been arrested and detained for wearing traditional Kurdish dress and being a gangster four years before. He said he was harassed and detained for less than 24 hours but not charged. He initially claimed at the arrival interview that he had been arrested a couple of times, but later said that he was not arrested on any other occasions. He also claimed that the Basij and law enforcement would harass him because he had no identification. In his 2017 statutory declaration, the applicant claimed that he was exposed to humiliating treatment by police and gangs associated with the government for wearing Kurdish clothing, and that they would tear his clothes apart, but did not indicate that he was arrested or detained. He did not specify when or how often he was exposed to this humiliating treatment. At his SHEV interview, the delegate asked the applicant a number of questions about the harm that he would face in Iran as a Faili Kurd. The applicant told the delegate that his family don't live like humans, that the people don't like Faili Kurds, and that Faili Kurds with Iranian citizenship mock and joke at them. He did not suggest that he had been arrested or detained for wearing traditional dress, or had his Kurdish clothes torn by police or gangs. He also claimed at his SHEV interview that his work as [an Occupation]'s assistant at a [Workplace] was unpaid and that he did not earn money from any paid work in Iran, although he did not suggest that his employment was unpaid in his arrival interview or 2017 statutory declaration. In his 2019 statutory declaration, the applicant maintained that he was discriminated against for being a Faili Kurd, and that he would be persecuted and rejected for his race, but did not provide any specific information in support of this claim.
22. Given that the applicant now admits that he is an Iranian citizen, and has provided his birth certificate, I do not accept that he was harassed by the authorities for having no identification. I also do not accept that he was mocked or teased by Faili Kurds with Iranian citizenship, given that he was in the same position as them. I do not accept that the applicant's employment in Iran was unpaid. That the applicant failed to mention at his SHEV interview the more serious claims about being arrested and detained for his dress, or about coming into contact with

⁵ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722.

police and gangs associated with the government, raises serious doubts about whether these incidents ever occurred, and I do not accept that they did. Other than this, the applicant's claims about discrimination and harm as a Faili Kurd are very generalised and lacking in any specific detail. I do not accept that the applicant faced discrimination as a Faili Kurd in Iran.

Religious beliefs

23. The applicant fears he will be seriously harmed by the Iranian authorities and his Shia Muslim family if he returns to Iran and rejected by his community because he has converted from Islam to Christianity. He claims that he became a Christian in Iran and had to leave Iran because of his Christian beliefs, and that he has attended church and been baptised in Australia. The 2018 DFAT report⁶ provides that under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy.
24. While the applicant has consistently claimed that he became a Christian in Iran, he has provided shifting evidence about his experiences in Iran. At his arrival interview, he gave his religion as Christian and said that he wants to go to Christian church. When asked about his reasons for leaving Iran, he said that he loves Jesus and will be classified as an infidel and that it was one the reasons he left Iran. He gave more detailed information in his 2017 statutory declaration, claiming that he became a Christian about seven or eight years before, and was introduced to Christianity by a friend from Esfahan with whom he discussed Christianity over the phone or when his friend visited Esfahan. He said that the friend gave him a Persian Bible and invited him to his church in Esfahan to get baptised, but he was too afraid to go through with the baptism.
25. There are a number of contradictions and variations between the applicant's evidence in his 2017 statutory declaration and at his SHEV interview relating to this claim. In his statutory declaration, he claimed that a friend introduced him to Christianity. At his SHEV interview he said that he first became interested in Christianity at school, when he learnt about Jesus and the sacrifices that he made in religion class. He gave completely different names for the Christian friend who introduced him to Christianity, claiming in his statutory declaration that the friend was called [Given name 1 C], but saying at his SHEV interview that they would call the friend [Given name 2] and he was not sure of his name. When the delegate referred to the name given in the statutory declaration, the applicant modified his evidence and said that his friend was called [Given name 2 C], despite saying earlier that he did not know any other name for [Given name 2]. He also denied having said that the friend was called [Given name 1], which is contradicted by the evidence in his statutory declaration. The applicant also stated in his statutory declaration that he went to Esfahan to see his Christian friend after three months of friendship, but in his SHEV interview he said they had been friends for a year before he went to Esfahan. He did not suggest that he went to Esfahan on more than one occasion.
26. The delegate also asked the applicant a number of questions about his reasons for changing his beliefs from Islam to Christianity whilst he was in Iran. The applicant gave evidence that he stopped having an interest in Islam. He also did not like Islam because it was unfair and oppressive and hurt and killed people in the name of Islam, and that he became interested in Jesus for the sacrifices he made and for not hurting others. He claimed that his discussions with M about Christianity were about having mercy, being caring and living peacefully, and about the process of Christian practice. The applicant claims that his Christian friend gave him a copy of the Bible in Farsi. In his 2017 statutory declaration, he claimed that he read the Bible several times, and practised his Christianity by praying multiple times a day and reading the Bible, but

⁶ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

when asked about reading the Bible at his SHEV interview, he said that did go through it but did not memorise it, and read page by page but not the whole book. When asked about the things in the Bible that stood out and interested him, and made him decide he wanted to become a Christian, the applicant did not address the delegate's question, but said that he attempted to read and go through the Persian book, and then said that like the Koran he did not even look or open the book and was not even tempted. When asked a second time about the parts in the Bible that he found interesting, the applicant said that the whole thing interested him, and then referred to being nice to another person even if they are not nice to you. Overall his evidence indicated an extremely limited knowledge of the Bible, and not necessarily commensurate with his other claims. There is evidence before me that the applicant attended Bible classes in Australia, but notwithstanding this, the applicant did not appear able to provide any specific information to the delegate about the Bible that indicated that he had any knowledge of its contents. I accept that Christianity can mean different things to different people, but in this case the applicant seemed to have the barest of knowledge. His evidence in this regard was vague and generalised.

27. The applicant agreed with the delegate that his friend was an Armenian Christian. The 2018 DFAT report⁷ provides that Ethnic Armenians concentrated in Tehran, Isfahan, Tabriz, and Orumiyeh are the largest group of recognised Christians, and that recognised churches are required to deliver sermons in their traditional language rather than in Farsi. The applicant also agreed with the delegate that Armenian Christians are strict about not evangelising to Christians outside their community and that they follow the rules and don't convert people from Islam to Christianity. DFAT indicates that Iranian law prohibits citizens from converting from Islam to another religion. The applicant's agreement that Armenian Christians do not evangelise or try to convert Muslims to Christianity, together with the evidence discussed above about his friend not encouraging him to become a Christian, is on its face at odds with the applicant's other evidence that his Armenian Christian friend talked to him about Christianity, gave him a Bible and invited him to visit his church in Esfahan and be baptised.
28. The applicant claims that the authorities in Iran became aware of his Christian beliefs and came to his house looking for him. He has provided inconsistent evidence about these visits from the authorities, claiming in his 2017 statutory declaration that the authorities came to his house on two occasions when he was out and told his mother that they needed to speak to him, and came again on at least one occasion after he left Ilam. In contrast, at his SHEV interview he said that he was home on the first occasion and the authorities took an undertaking from him not to talk about it with anyone again, and that he was not home for the second visit. He did not claim that the authorities visited his family again after he left Iran. I do not find the applicant's evidence in this regard credible.
29. The applicant has also provided evidence about his Christian practice in Australia. At the time of making his statutory declaration in August 2017, the applicant claimed he had been going to church regularly since being in Sydney and was currently attending the [Church 1] in [Suburb] every Sunday. He did not mention any other specific churches that he had attended in Australia, or the periods he attended. When asked at his SHEV interview whether he goes to church, the applicant's first response was "not much". He gave evidence that he had been to two churches in Sydney, which is where he lived between August 2013 and February 2019. He claimed that he went to a [church] in [Suburb] a lot in his first year in Australia (2013/14), but then said that he only went for two to three months. The applicant claimed that he stopped attending that church because the people were saying that he was just there for a visa and were insulting him, and although he wasn't attending for that reason, he stopped going. I find

⁷ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

it surprising that the applicant gave up on going to church after only two to three months, and did not attempt to find another church where he was welcome, if he had a genuine commitment to Christianity following his arrival in Australia. While the applicant did not mention attending this church prior to his SHEV interview, or provide any documentary evidence in support of his attendance there, his candour about the reception he received and the length of time that he attended struck me as believable and I accept that he attended for two or three months.

30. According to his evidence at the SHEV interview, the applicant next attended church in 2017. The applicant provided a copy of his Baptism Certificate from [Church 1] dated 26 February 2017. At his SHEV interview, the applicant claimed that he went to [Church 1] for five to six months, but in his 2019 statutory declaration, he claimed that he attended from before he was baptised until he moved to Brisbane (February 2019), and that he did not go every Sunday but it was more than five to six months.
31. The applicant's claim that he attended [Church 1] between February 2017 and February 2019 is not supported by the letter from [Pastor A] at [Church 1] who states that he has known the applicant since he visited the church [in] February 2017. [Pastor A] states that he has a record of the applicant attending Bible classes on Sunday, Tuesday and Thursday in 2017; and that the applicant may have attended some Sunday morning services, but he does not keep a record of Sunday morning attendance. [Pastor A] does not otherwise specify when in 2017 the applicant attended Bible classes or church services or how long he attended the church, and does not indicate that the applicant continued attending Bible classes after 2017. I accept that the applicant attended [Church 1] on a number of occasions and was baptised in February 2017, but I am not satisfied that his attendance was sustained or that he attended [Church 1] for more than five to six months from February 2017.
32. When asked by the delegate whether he had attended churches other than the two mentioned above, that applicant said no. He then said that he had been to another church in Sydney by car with friends to learn English, but did not know where it was. He did not say when or how often he did this or indicate that he attended church services at that church. In his 2019 statutory declaration, the applicant claims that he has gone to different churches and changed churches but still went to church, although he did not provide any other information in the statement about the different churches he says he has attended. He also denies saying to the delegate that he only went to church for five to six months. I note that at the SHEV interview he did claim to have also attended a [church] for several months in the year after his arrival.
33. At the time of the applicant's SHEV interview on 11 April 2019, he said that he was not attending church in Brisbane and did not have a community of Christians with whom he interacts. He claimed that he had found two addresses of churches in Brisbane but was unable to attend because he had not been able to find the addresses. He also told the delegate that he would love to go to church, but suggested that there are problems because he cannot speak the language and because of experiences he had in Sydney, although his plan was to go to church. The applicant now claims that he has a new church in Brisbane. He has provided a letter from Persian [Pastor B] dated 14 July 2019 which says that he has known the applicant since April 2019. He states that after moving to Brisbane in February 2019 the applicant was introduced to [a named] church and that he attends the Sunday service every week. The Pastor also does not specify when the applicant first started attending the church in Brisbane or how long he has been attending. [Pastor B] also states that the applicant will be joining the young adults' bible study every Wednesday night, that he is eager to learn about his faith in God and Jesus and that his faith is genuine. Given that the applicant's own evidence that he was not

attending church at the time of his SHEV interview in April 2019, I am satisfied that he has only been attending the church in Brisbane in the last few months.

34. In addition to the questions about the applicant's Christian beliefs in Iran, the delegate asked the applicant further questions about his belief in Christianity. The applicant gave evidence that his understanding of the Christian religion is to live truthfully and honestly, and that he is living truthfully. When asked if there is anything else, the applicant said "a thousand things" but when asked to provide a couple of them, he said it was in his heart and he did not know how to put it into words. When the delegate asked the applicant what made him a Christian when he does not go to church or have a Christian community, the applicant said that he helps people with [certain activities] and makes sure that he is being a Christian. Again, the applicant's evidence about his understanding about the Christian religion was very superficial and lacking in detail, notwithstanding his claimed attendance at church in Australia. Furthermore, despite [Pastor A]'s evidence that he attended Bible classes three times a week at [Church 1] and that [a pastor] had provided explanations to the applicant about Jesus and the Bible, the applicant appeared to have little understanding or knowledge of the Bible. I note that [Pastor B] states that the applicant is eager to learn about his faith in Christ Jesus and that his faith is genuine. However, I find it difficult to put much weight on the letters of support from the two Pastors, given the disparities between the evidence of [Pastor A] and that of the applicant and the relatively brief time that they have known the applicant.
35. The applicant also claims that his relationship with his family has deteriorated because of his Christian beliefs, and that his family will kill him and tell the authorities he is not their son. While the applicant made claims at his SHEV interview that he does not have much contact with his mother and last had contact with his family a long time ago, when probed by the delegate, he said the last contact was one to two months before. In addition, the applicant gave evidence that his brother helped to fund his travel to Australia, and agreed with the delegate that he had been transferring money to his family in Iran, which includes AUD12,500 to his mother, with the most recent payment being a month before his SHEV interview. The applicant claimed that he was repaying a debt, although the reason for payment on the AUSTRAC records before me is "family support". On the evidence before me, there is nothing to suggest applicant's relationship with his family has deteriorated for any reason or that they want to cause him harm.
36. After considering the applicant's evidence about his Christian beliefs and experiences in Iran and Australia, the number of inconsistencies and differences in his account, as well as the very superficial account of his knowledge about the Bible and Christianity, I do not accept that the applicant had a Christian friend in Iran who introduced him to Christianity, or that he practised Christianity or became a Christian when he was in Iran. I also do not accept that he talked about Christianity to anyone in Iran, or was known to the authorities for his religious beliefs or that the authorities visited his home or made him sign an undertaking.
37. I do accept that the applicant has been baptised and attended the Persian and [Church 1] in Sydney and [Church 2] in Brisbane. However, given the lack of credible evidence about his attendance at any other churches, the applicant has not satisfied me that he attended any other churches in Australia, including for the purpose of learning English. Furthermore, I am not satisfied that his church attendance has been other than irregular and only for three short periods during the six years that he has been here. There was a significant period immediately prior to the SHEV interview where he did not engage with the church and he only recommenced worship after his SHEV interview in April 2019. The applicant's church attendance has coincided with key moments of his protection application history. In addition to the applicant's lack of commitment to attending church regularly, the applicant's

understanding and knowledge about the Christian religion was very superficial and ultimately unconvincing. I am not satisfied that the applicant had or has any genuine interest or commitment to Christianity. Furthermore I am not satisfied that the applicant's baptism, church attendance and engagement with Christianity in Australia has been for any reason other than to strengthen his claims for protection.

38. The applicant claims that his family are Shia Muslim, but gave shifting evidence about when he stopped believing in Islam. In his 2017 statutory declaration, he claimed that he did not go to mosque with his family in Iran, even as a child, as he did not believe in it, but at his SHEV interview, he said both that he started considering he was not a Shia Muslim about five years before he left Iran in 2013 (around 2008, when he was aged [age]) and when he was [age] or [age]. At the time of his SHEV interview, he claimed he was born in [Year 2], which suggests it happened in [year range], although on his correct date of birth ([Year 1]), he was aged [ages deleted] in 2003 or 2004. The applicant gave some generalised evidence at his SHEV interview about his reasons for not like Islam as a preliminary to his Christianity claim, and said that he did not practise Islam after he stopped believing in Islam. He provided little information in relation to his practise despite being asked whether he kept fasting or going to mosque and how it had impacted on his life. While I accept that the applicant may hold some anti-Islam views, the inconsistencies in the applicant's evidence about when he stopped having an interest in Islam, together with my findings that the applicant's concocted his claim to be stateless and engaged in religious activity in Australia to strengthen his claims, raise serious doubts about the applicant's credibility regarding his practise of Islam. I do not accept that the applicant has abandoned Islam.

Refugee assessment

39. 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

40. 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.

41. I am not satisfied that the applicant has attended church and was baptised in Australia otherwise than for the purpose of strengthening his claim to be a refugee. Accordingly, I have disregarded this conduct in determining whether he has a well-founded fear of persecution pursuant to s.5J(6) of the Act.
42. I do not accept that the applicant was involved in Christianity in Iran. I have also not accepted that the applicant has abandoned Islam. Accordingly, I am not satisfied that the applicant would face a real chance of harm for his religious beliefs from the authorities, his family or any other person if he returns to Iran.
43. I accept that the applicant is of Faili Kurdish ethnicity. DFAT states that it is not aware of cases where Faili Kurds who are also Iranian citizens, as the applicant is, have faced adverse attention specifically because of their ethnicity, and that they can access services on the same basis as other Iranian citizens and appear to face little to no discrimination in access to services on the basis of their ethnicity or religion. Faili Kurds who are Iranian citizens also have access to employment and state protection on the same basis as other Iranian citizens. On the societal treatment of Faili Kurds, DFAT assesses that this type of societal discrimination against Faili Kurds is not widespread, but cannot be ruled out in individual cases.
44. I do not accept that the applicant was arrested and detained or otherwise harassed or discriminated as a Faili Kurd. On the applicant's evidence, he attended eleven years of schooling and completed high school. The applicant's family continue to live in Ilam, Iran, where there is a large Faili Kurd population, and I am not satisfied that they have faced any harm. I am not satisfied that the applicant was in unpaid employment in Iran. There is no other evidence before me of any discrimination faced by the applicant for his ethnicity. Considering these matters, alongside the country information about the treatment of Faili Kurd Iranian citizens, I am not satisfied that there is a real chance of harm to the applicant for reasons of his ethnicity.
45. The applicant claims he will be arrested and detained upon his return to Iran because he left Iran illegally on a fraudulent Iranian passport. The delegate also considered whether the applicant will be harmed as a failed asylum seeker returning from a western country. I am satisfied that he left Iran lawfully on a lawful Iranian passport. The applicant claims that the people smuggler took his passport and he no longer has it, which I am willing to accept. DFAT reports⁸ that Iran does not permit the involuntary return of its citizens from Australia except for those who arrived in Australia after the signing of a memorandum of understanding in 2018. As the applicant arrived in Australia in 2013 I am satisfied that if he was to return to Iran it would be on the basis it was voluntary. Given that the applicant does not have a passport, the 2018 DFAT report provides that he will require a temporary travel document to be issued by Iranian diplomatic representatives overseas in order to return to Iran. DFAT also indicates that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of Iran's sophisticated government systems, and in these circumstances, it is possible that the Iranian authorities may infer that the applicant has sought asylum in Australia.
46. A report from the time that the applicant departed Iran indicates that at that time all asylum seekers were interrogated⁹, but more recent reporting in the 2018 DFAT report makes clear that this is no longer the case. The DFAT report indicates that the authorities will usually only

⁸ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

⁹ Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610.

question a voluntary returnee on return if they have already come to official attention, such as committing a crime and states that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran..

47. I do not accept that the applicant came to the attention of the authorities when he was in Iran, or subsequently. I do not accept that there is a real chance that he will be considered of interest because he is returning as a failed asylum seeker from a western country, for his Faili Kurdish ethnicity, or for any other reason or suffer a real chance of any harm for those reasons
48. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

49. 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

50. 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

51. 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.
52. I accept that the applicant has been baptised and on occasions, attended Christian churches since he has been in Australia. Nevertheless, as explained earlier in this reasons I am not satisfied the applicant's engagement with, and conversion, to Christianity is at all genuine. I am not satisfied that the applicant has any genuine interest in Christianity or would seek to practise Christianity or proselytise if he returns to Iran.
53. DFAT states that under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy.¹⁰ DFAT has previously reported¹¹ that perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or

¹⁰ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

¹¹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

via informants. There is no suggestion its subsequent reporting that this has changed. DFAT also states¹² that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including converting to Christianity. While the country information¹³ indicates that Christian converts who practise or publicise their Christianity in Iran risk coming to the adverse attention of the authorities in Iran, it does not suggest that those who have engaged in Christianity abroad who do not seek to practise on return or pursue their faith face any similar difficulties.

54. In light of the evidence before me, I am not satisfied that there is a real risk that applicant's religious activities in Australia would give rise to a real risk of any harm from the Iranian authorities, the applicant's family or anyone else.
55. Beyond this, I am not satisfied that there is a real chance of him experiencing any harm in Iran for any other reason. The Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment¹⁴. Having regard to the country information and findings above, I find that there is no real risk that the applicant will suffer significant harm.

Complementary protection: conclusion

56. 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).

Identity documents – request from Minister

57. Although it is strictly not necessary for me to do so in light of my conclusion above, I have also considered whether the grant of the visa would be prevented by the operation of s. 91W of the Act.
58. Section 91W prevents the grant of a protection visa to an applicant who, without a reasonable explanation, refuses or fails to comply with a request to produce documentary evidence of their identity, nationality or citizenship, or produces a 'bogus document' (defined in s.5(1)) in response to the request. However, that requirement will not apply if the Minister is satisfied that the applicant has a reasonable explanation for the failure or refusal, and either provides the relevant documentary evidence or has taken reasonable steps to provide such evidence.

Application of s.91W to this case

59. On 21 August 2017, the applicant was requested to produce documentary evidence of his identity, nationality or citizenship for inspection by an officer of the Department under s.91W of the Act, and was advised that if he refused or failed to comply with the request or produced a bogus document, and if the Minister was not satisfied that he had a reasonable explanation for this, then the Minister must refuse to grant the visa. I am satisfied that the applicant was given a request under s.91W(1).
60. In his arrival interview and SHEV application, the applicant claimed to the Department that he was a stateless Faili Kurd and without Iranian identification documents, which had caused

¹² DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

¹³ Ibid.

¹⁴ *MIAC v SZQRB* (2013) 210 FCR 505.

many problems for him. At his SHEV interview on 11 April 2019, he provided an identity document which he claimed was a refugee registration document. As considered above, the applicant provided conflicting evidence about the nature of his identification card and how often he renewed it, which is inconsistent with the country information also considered above.

61. As already outlined above, the applicant provided new information to the IAA that he is an Iranian citizen, including a copy of his Iranian birth certificate, and I have accepted that this is the case. In these circumstances, I find that the applicant produced a bogus document to the Department in response to the request to provide documentary evidence of his identity, nationality or citizenship, and also failed to comply with a request to provide documentary evidence of his identity, nationality or citizenship.
62. Section 91W(3) states that subsection (2) does not apply if the applicant (a) has a reasonable explanation for refusing or failing to comply with the request or produces a bogus document and (b) either produces the relevant documentary evidence or has taken reasonable steps to do so.
63. To the delegate, the applicant claimed that he provided the refugee registration card because he was told that he needed some form of his identity document for his SHEV application, so called his relatives in Iran who sent him the card. The delegate considered both the fact the applicant was unrepresented, and that the s.91W request might have created an obligation on the applicant to provide at least some form of document, were reasonable explanations. He found that s.91WA(2)(b)(i) was satisfied, although I note that s.91WA did not apply in this case.
64. To the IAA, the applicant claimed that he provided the false information to the Department about his status as he believed it would result in the grant of a protection visa and that he would not be returned to Iran. He has not provided any explanation about why he has now decided to tell the truth.
65. In assessing the reasonableness of the applicant's explanation, I have taken into account that the delegate asked the applicant a number of questions about his identity and citizenship. The delegate also raised a number of his concerns about the authenticity of the refugee registration document at the SHEV interview, and suggested that it was in the style of refugee registration cards that were issued in the 1980s or 1990s, that it lacked the security features of current cards, and appeared to have been printed on a home printer. He put to the applicant that the identity card was fake and seized the document on the basis it was a bogus document. Notwithstanding this, the applicant expressly denied that the identity card was fake and continued to deny that he was an Iranian citizen. He did not provide evidence of his citizenship even once presented with the delegate's concerns over his claims to be stateless. While I have accepted that the applicant may have believed that raising a claim to be stateless would result in the grant of a protection visa, I am not satisfied that he provided the false information about his status out of a fear of harm. I am not satisfied that this is a reasonable explanation for the purposes of s.91W. It was only after the delegate's decision, which rejected the applicant's claim to be stateless and found the applicant to be an Iranian citizen, did the applicant admit that he is an Iranian citizen. However, he has not explained why he has now decided to tell the truth.
66. Taking into account all of the information, I am not satisfied that the applicant has provided a reasonable explanation for providing a bogus document or refusing or failing to provide documentary evidence of his identity, nationality or citizenship in respect to the request under s.91W. I am not satisfied that s.91W(3) has been met.

67. Section 91W applies to the applicant. Therefore, the grant of the visa is prevented by that section.

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.