



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07198

Date and time of decision: 1 November 2019 14:40:00

J Bishop, Reviewer

**Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

*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

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. He arrived in Australia [in] July 2013. On 26 April 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 19 September 2019 the delegate refused to grant the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
3. Section 473DB of the Act provides that, subject to Part 7AA, the IAA must review decisions by considering the review material without accepting or requesting new information and without interviewing the applicant. Section 473DC provides that the IAA may obtain new information – defined to mean information that was not before the delegate when the decision was made and I consider may be relevant – but it does not have a duty to get, request or accept any new information, whether the IAA is requested to do so by an applicant, or in any other circumstances. If I get or accept new information, I must not, pursuant to s.473DD of the Act, consider that new information unless I am satisfied that there are exceptional circumstances to justify its consideration. In relation to new information given to the IAA by the applicant I must also be satisfied that it:
  - was not, and could not have been provided before the delegate's decision was made; or
  - is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
4. The applicant provided new information to the IAA on 11 October 2019, 14 October 2019, 18 October 2019 and 28 October 2019. There were new claims in the IAA submissions and a significant number of new documents. Those documents related to the applicant's business and financial dealings and to his claimed Christian conversion. For the reasons outlined below in this decision, I am of the view that - apart from the new information outlined in paragraph five - the rest of the new information is of no probative value when assessing the applicant's claims for protection. I am not satisfied that there are exceptional circumstances to justify considering that new information and I have not had regard to it.
5. However I have had regard to the following new information:
  - Letter from Mr AA dated 10 October 2019
  - Letter from LA (Executive pastor) dated 11 October 2019
  - Letter from Mr RP dated 12 October 2019
  - Letter from Mr JL dated 14 October 2019
  - Letter from Reverend IF dated 17 October 2019

- [Social media] posts from 2013, 2016, 2017 and 2018
6. The new information outlined in paragraph five is personal credible information. Although some of that information could have been provided prior to the delegate making his decision, the new information is relevant to his claim of Christian conversion and is of substantial probative value. I am satisfied there are exceptional circumstances to justify considering this new information and have had regard to it.
  7. I have had regard to the IAA submissions that contain argument based on the evidence that was before the delegate.

### **Consideration**

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8. The applicant has provided a copy of his Iranian birth certificate, his national identity, his military service card and Iranian driver's license. He provided a translation of his birth certificate. Based on the evidence before me, I am satisfied of the applicant's claimed identity and find he is an Iranian citizen. I find the receiving country is Iran.

### **Conversion to Christianity**

9. The applicant said during his SHEV interview that he stopped practising as a Shia Muslim about 10 years ago when he was about [age] or [age] years old. His parents reacted negatively and he would try and reduce the amount of time he spent living at their home. His mother was more moderate but would agree with his father 80% to 90% of the time. When the delegate asked the applicant if he attracted adverse attention from the Iranian authorities because he was not practising he responded that he did not.
10. The applicant said the rejection of his family and other issues made him feel depressed and he was trying to fill the gap. He met an Iranian person in Australia called H in 2013. H invited him to church. He declined at first because it was of no interest to him but, in the end, he ended up going. He was surprised by how happy and welcoming the people at the church were. After a couple of weeks he met a person called P. P told him about weekly Bible classes and he attended those classes for a year. He became a volunteer tour guide for the church and in 2014 decided to become a Christian. He asked P to baptise him because he considered Christianity to be the most complete religion. He said everyone is equal and he can communicate with his God in his own language as a Christian. He did investigate other Christian religions like Catholicism, but Catholics have to confess their sins to a priest. He believes Jesus Christ is a God who died on the cross for 'our' sins and rose from the dead three days later. He said the Bible has four main books written by the apostles Mathew, Mark, Luke and John. The Bible is a guide.
11. The applicant said he regularly posts religious content on his [social media] page. The delegate put to the applicant that he had looked at his [social media] page and found one post in 2014, four posts in 2015, eight posts in 2016, two posts in 2017, no posts in 2018 and 17 posts after the applicant was invited to attend his SHEV interview. In post SHEV submissions it was submitted the applicant's [social media] page is public and that the applicant had 357 posts in 2017, 196 posts in 2018 and 137 posts in 2019. The applicant's representative provided evidence of the applicant posting 13 religious posts in December 2018. Regardless of whether the applicant's [social media] page was or was not public, the evidence before me is that he has continued to post religious content on his [social media] page on a regular basis since 2013.

12. In support of the applicant's claimed Christian conversion the IAA was provided with several letters. The letter from Reverend IF (Minister of [Church 1]) was dated 17 October 2019 and on church letterhead. Reverend F states that he first met the applicant in 2013 when he attended [their] church. The applicant then started to attend Sunday worship and became involved in a number of church activities. The church had a small group of Iranian Asylum Seekers with limited English and Reverend F decided to establish a Persian language Bible study group which he led with the assistance of an interpreter. The applicant attended this group. Reverend F said one evening the applicant came to dinner and a faith reflection and, through an interpreter, spoke about his growing passion for Jesus Christ. The applicant then moved away from [Church 1] and started attending [Church 2]. Reverend F states he had little contact with the applicant until reconnecting with him in 2019 when he returned to worship at [Church 1]. He believes the applicant is a hardworking faithful Christian. His new faith is an important part of his life and one that he is passionate about. He nurtures his faith through worship, Bible study and service in the church.
13. The letter from Mr AA was dated 10 October 2019. Mr A states he has been a member of [Church 2] since 1999 and a very active church member. He is a close friend of the applicant and sees him on Sunday serving people and [Church 2] community. He states that there is no doubt in his mind that the applicant is a Christian.
14. The letter from Mr PB was dated 5 May 2019. Mr B states the applicant joined [Church 2] in 2013 and was baptised [in] February 2014. He states the applicant attended church on a regular basis between 2013 and 2018 and attended mid-week small groups/Bible studies. He also served as a volunteer on their [specified teams]. He states that the applicant moved to another church in his local area after he relocated to a new address. He has had the pleasure of being a mentor to the applicant since 2013 and has met regularly with him to encourage him in the Christian faith and assist him with understanding the Bible.
15. The letter from Mr RP was dated 12 October 2019. Mr P states he has been the leader of [a volunteering] Team for [Church 2] since 2014. He met the applicant in 2014 and was impressed by his willingness to get involved with and enjoy the church activities and Bible studies. He believes he is a committed and genuine Christian.
16. The letter from Mr JL states that he met the applicant at [Church 2] in June 2016 when Mr L started volunteering in [a specified team]. He states that the applicant is connected with Pastors and people from the church.
17. The letter from Ms LA (Executive Pastor of [Church 2]) was dated 11 October 2019. She states that she has known the applicant for about seven years after meeting him at a Christmas day event. He was attending [Church 2] at that time. She states that she has had many interactions with the applicant when he was serving and attending her church. He volunteered on two Sunday Service Teams, [specified]. She states the applicant hasn't attended [Church 2] over the past year.
18. The evidence before me is that the applicant has attended either [Church 1 or 2] and been involved with church activities since 2013. He was baptised in 2014 and has maintained social relationships with Christian people. He has posted Christian based posts on his [social media] page since 2013 on a regular basis. He has attended Bible classes and demonstrated a good theoretical knowledge of Christian beliefs in his SHEV interview. He is perceived by those around him, including a Reverend, as a faithful and committed Christian. Based on all the evidence before me, I am satisfied the applicant is a genuine Christian convert.

## Refugee assessment

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19. 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

20. 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.

21. I have found that the applicant is a genuine Christian convert. In relation to his intention to continue identifying as a Christian or engaging in Christian activities, I place weight on his attendance and volunteering at either [Church 1 or 2’s] Sunday services since 2013 (a period of about six years), his regular and continuous religious posts on his [social media] account since 2013 and his continued social engagement with Christians over the last six years. I accept the applicant has studied the Bible in the past and continues to read the Bible now. I am satisfied that if the applicant returned to Iran he would continue to read the Bible and would seek to engage in Christian activities as he has done in Australia. I am satisfied he will seek out a house church or another likeminded community where he can worship, discuss the Bible, become involved in communal activities and/or socialise with other Christians.

22. DFAT<sup>1</sup> reports a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy, but that such cases are rare.<sup>2</sup> According to the Iranian Penal Code, it is a capital crime for a non-Muslim to convert a Muslim and for this reason, none of the country’s three recognised minority religions proselytise or accept converts as members. A citizen who was not a registered member of one of these religious minorities or who cannot prove their family was a member of these religious minorities prior to 1979, is considered a Muslim. The only means by which a Muslim convert to Christianity can attend communal Christian worship in Iran is via attendance of one of the non-recognised churches known as underground or house churches. A credible source has advised that if an individual wished to seek out an unregistered church, it would probably not be difficult to find someone who is

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<sup>1</sup> DFAT Country Information Report Iran, 7 June 2018, CIS7B839411226

<sup>2</sup> Ibid

involved in a network.<sup>3</sup> DFAT assesses that Christians belonging to unregistered churches are at higher risk of adverse attention from officials and face considerable official discrimination. DFAT states that there have been credible reports that many house churches come under surveillance by authorities. In 2013, 42 Christian converts were arrested and 35 of those were convicted for participating in informal house churches, associating with churches outside the Islamic Republic of Iran, perceived or real evangelical activity and other Christian activities. In 2014, 69 Christian converts were arrested.<sup>4</sup> DFAT is unable to assess the extent to which this surveillance affects Iranians who worship in this way, of whom there may be up to 150,000 in Iran.

23. Iranian authorities periodically crack down on house churches, with an emphasis on their leaders when the church has actively been proselytising or seeking out new members.<sup>5</sup> DFAT<sup>6</sup> indicates that crackdowns on house churches increased under the Rouhani government. In July 2017, eight Christians were convicted with 'acting against national security through the establishment of a house church' and 'insulting Islamic Sanctities.' They were sentenced to ten to 15 years imprisonment and, as at December 2016, approximately 90 Christians were in detention or awaiting trial because of their religious beliefs and activities.
24. According to a US Department of State 2018 report<sup>7</sup>, human rights organisations and Christian NGOs continue to report arrests of Christians in Iran for their religious affiliation or activities, including members of unrecognised churches. News reports state that authorities subjected arrested Christians to severe physical and psychological mistreatment, which at times included beatings and solitary confinement. That report stated that in February 2018, the UN special rapporteurs on freedom of religion or belief, on the situation of human rights in Iran, on minority issues and on the right to health issued a joint statement publically expressing their concern over lengthy prison sentences issued to Christian converts and leaders in Iran, reports of their mistreatment in prison and more broadly, the targeting of religious minorities, especially Christian converts.
25. I accepted that the applicant has converted from Islam to Christianity and that, if he returned to Iran, he would seek to practise his faith in Iran by engaging in communal worship. On the evidence before me, I am satisfied that Christian converts in Iran face a real chance of arrest if they engage in open Christian worship. Upon arrest a person like the applicant would likely be forced to sign an undertaking renouncing his conversion in order to secure his release and would face further arrest and extended periods of detention if he continued to engage in open Christian communal worship<sup>8</sup>. I am satisfied that such harm would amount to serious harm. I am satisfied that the essential and significant reason for this harm would be the applicant's religion and that it would involve systematic and discriminatory conduct on the part of the Iranian authorities.
26. Section 5J(3) of the Act provides that a person will not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour so as to avoid a real chance of persecution. However, this does not include a modification that would require the person to

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<sup>3</sup> DFAT Country Information Report Iran, 21 April 2016, CIS38A8012677

<sup>4</sup> Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015, Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 1 September 2015, CISEC96CF13622

<sup>5</sup> Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Danish Refugee Council, Landinfo and Danish Immigration Service, February 2013, CIS25114

<sup>6</sup> DFAT Country Information Report Iran, 21 April 2016, CIS38A8012677

<sup>7</sup> International Religious Freedom Report 2017 – Iran, US Department of State, 29 May 2018, OGD95BE927512

<sup>8</sup> Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Danish Refugee Council, Landinfo and Danish Immigration Service, February 2013, CIS25114

alter or conceal his or her religious beliefs, including by renouncing a religious conversion or cease to be involved in the practice of his or her faith. In these circumstances, requiring the applicant to engage in communal worship secretly to avoid a real chance of arrest, or renouncing his religion to secure his release from arrest, would constitute an impermissible modification of behaviour. Accordingly, I find that s.5J(3) of the Act does not apply. I am satisfied that if the applicant returned to Iran he would face a real chance of persecution for reason of his religion.

27. Because the harm feared emanates from the Iranian authorities operating under laws that apply throughout the country, I find that the applicant cannot obtain effective protection from the harm he fears, and that there is nowhere in Iran where he could relocate and safely and practise his religion. Sections 5J(2) therefore do not apply to the applicant.

28. The applicant has a well-founded fear of persecution for the purpose of s5J.

29. As I have found that the applicant has a well-founded fear of persecution in Iran owing to his Christian beliefs, it is not necessary for me to consider whether he would face harm for any other reason.

#### **Refugee: conclusion**

30. The applicant meets the requirements of the definition of refugee in s.5H(1).

#### **Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

## Applicable law

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### ***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.