



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA20/08502

IRAN
IAA reference: IAA20/08505

IRAN
IAA reference: IAA20/08504

IRAN
IAA reference: IAA20/08503

Date and time of decision: 15 July 2020 11:35:00
J Jennings, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants (the applicants) are a family unit comprising Applicant 1 (IAA 20/8502), his spouse Applicant 2 (IAA 20/8503), his son Applicant 3 (IAA 20/8504), and daughter Applicant 4 (IAA 20/8505).
2. Applicants 1 to 3 claim to be Iranian citizens who departed Iran and came to Australia in 2013. Applicant 4 was born in Australia and is said to be Stateless.
3. On 16 June 2017 the applicants lodged a combined application for a Temporary Protection Visas (TPV), Subclass 785. Applicant 1 advanced claims to fear harm in Iran on the basis of his Kurdish ethnicity and imputed anti-government political opinion. Applicants 2 to 4 did not advance their own protection claims and relied on their membership of the same family unit as Applicant 1. A delegate of the Minister for Immigration (the delegate) was not satisfied that Applicant 1 had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Iran and refused to grant visas to all applicants on 17 June 2020.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 8 July 2020 the IAA received a submission on behalf of the applicants comprising a statement and media report. Their representative also advised a letter of support would be submitted when available; however no letter has been received.
6. The statement addressed the delegate's findings and decision, particularly in regard to the delegate's findings regarding the ability of Applicant 1 to leave Iran in the context of the claims he was of adverse interest to the authorities and had been summoned to appear before the Revolutionary Court. The submission takes issue with the delegate's assessment and advances "that there is no evidence or country information to suggest that every [dissident] even though with pending proceedings or awaiting a court matter is necessarily placed on a travel ban list. Furthermore, it is also submitted that not being placed on a travel ban list at one stage does not hinder the placement of the person from being blacklisted at a later stage". To the extent that the submission addresses the delegate's finding and the country information the delegate had regard to this is essentially argument about matters that were before the department and therefore not new information and I have had regard to the sections of the submission that address the decisions and findings.
7. The submission contends "there are several instances of individuals who have been detained, summoned for political reasons and await the court outcome and yet were not blacklisted till a court verdict was issued" and as an example refers to the experience of an Iranian writer. In this regard the submission seeks to introduce new information being a report from the Centre of Human Rights of Iran outlining the experience of this Iranian writer and the representative advanced that this information demonstrates "it is not unlikely for the applicant not to have been blacklisted immediately or even several months after his arrest and detention by Sepah authority".

8. The Centre of Human Rights of Iran document is dated 28 April 2020. No information has been provided to explain why this information could not have been provided to the Minister before the delegate's decision was made, or why it may be considered personal information.
9. It is advanced that this information supports the claims made by the applicant regarding his ability to leave Iran because he was not 'blacklisted' at that time. I have had regard to the country information before the delegate regarding travel restrictions that may be placed on Iranian citizens and the report from the Centre of Human Rights of Iran outlining the circumstances of the Iranian writer. The Centre of Human Rights of Iran advised that the writer was released on bail in August 2019 and that later the Revolutionary Court sentenced him to a year in prison and banned him from traveling [outside the country] and from membership in political groups for two years. It is evident from this report that the writer's sentence from the Revolutionary Court included a travel ban. The country information before the delegate informs that travel bans may be imposed by the judiciary or alternatively by the Ministry of Intelligence and Security and the Islamic Revolutionary Guards Corps (Sepah) and that Iranians under travel bans are often unaware of their status until refused permission to depart at the airport. Therefore travel bans may constitute part of a judgment by a court, or be instituted by the authorities without recourse to a court. That the Centre of Human Rights of Iran report states the sentence the Revolutionary Court imposed on the Iranian writer included a travel ban does not preclude the imposition of such a ban by the authorities prior to the trial; the document does not address this matter and while it is not inconsistent with the argument advanced I am not persuaded it provides support to the argument that "there are several instances of individuals ... not blacklisted till a court verdict was issued".
10. I am not satisfied that this report supports the submitted contention that "while it is acknowledged that people of adverse interest to the Iranian authorities are usually prohibited from departing the country, there are many others who face real risk of persecution and yet not blacklisted and manage to depart the country". The country information before the delegate supports a finding that travel bans are common in court cases such as that the applicant claims he was subject to and I am not satisfied the report supports the representative's contention "there are many others who face real risk of persecution and yet not blacklisted".
11. This report pre-dates the delegate's decision and there is no information before me to explain why this could not have been given to the Minister or that it is credible personal information and none are apparent to me. The applicant has not satisfied me that s.473DD(b) is met. Furthermore I am not satisfied that the new information provides significant probative value in support of the applicant's claims. The new information reports on the court judgment of one person, it does not indicate the circumstances of "many people" as purported and I am not satisfied that there are any exceptional circumstances that justify considering the new information.
12. The statement seeks to introduce new information regarding Applicant 2 who has "instructed ... she has been attending church services and bible studies for a few years and is being prepared to be baptised and convert to Christianity". The statement advises that the representative sought the applicant's instructions as to why this information was not or could not be provided to the department and "were instructed that firstly she did not want to compromise her genuine and sincere journey of exploration of her Christianity for her protection claims and furthermore she instructed that even if she did not have qualm about compromising her journey to her new faith, [she] was under the impression and held that it could not be claimed because she had not yet [been] baptised; hence she did not seek advice from her former migration agent and chose not [to] raise it".

13. The representative acknowledges the IAA does not have an obligation to give the applicant a “second chance of attending an interview” but requests in the “in light the existence of new information that was not available before the department ... the Authority to consider the second applicant’s explanation as why the information regarding her church attended and building her belief in Christianity was not provided to the Department and grant her the opportunity to further elaborate on her new faith in an interview and take evidence from her Pastor”. It is stated the Pastor of the Iranian [Church] is prepared and willing to provide any information that might be required by the IAA.
14. As the statement recognises the IAA is a limited form of review. The IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances to justify considering the new information and the new information was not and could not have been provided to the Minister, 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.
15. The IAA does not generally conduct hearings. It does have the discretion to get new information from an applicant, including by way of interview. It is not apparent what information could be provided at interview that could not be submitted in writing to the IAA or what information the Pastor could provide by way of the IAA “taking evidence” from the Pastor that could not be provided in writing. In this regard I note that the email accompanying the IAA submission stated “a letter of support is being provided to our client for the purpose of submission to the Authority. We will submit it as soon as provided by our client's reference” although no letter has since been received by the IAA. As discussed below the applicant has had the opportunity to present information and in undertaking the review and noting my comments below I have considered whether an interview is necessary but have decided otherwise.
16. The stated reason or part of the stated reason for not advancing this claim earlier is that the applicant “was under the impression and held that it could not be claimed because she had not yet [been] baptised; hence she did not seek advice from her former migration agent and chose not [to] raise it”. Yet the statement advises that she is still waiting to be baptised and it is not explained what has changed in her circumstances such that she has now raised this claim, despite still not being baptised. Nor is it explained or apparent how she has now overcome the stated desire not to “compromise her genuine and sincere journey of exploration of her Christianity” which it is claimed inhibited her advancing this claim earlier.
17. I consider it relevant that it is claimed she is attending an Iranian church and as such would have contact with other Iranians and be able to communicate with them and church officers in Farsi, a language in which she claims to be literate. In these circumstances and with access to the support of these people I do not accept that she would be under the impression she could not advance a claim based on Christian activities because she was not at that time baptised. I also consider it significant that the applicant completed her protection visa application with the assistance of a migration agent and had the assistance of a migration agent at the protection visa interview, yet this claim was not advanced at these times.
18. The applicant did not advance her own protection claims in the TPV application, but along with Applicant 1 was invited to attend the protection visa interview with the delegate. The applicant attended and the delegate described her as a support person for Applicant 1 and acknowledged she had not advanced her own protection claims. I have considered if this may have limited her ability to advance her own protection claims. But I consider it significant that at a number of times during the protection visa interview she asked if she could speak and the delegate provided her the opportunity to do so. In this manner she assisted Applicant 1 to

explain various matters, for example she provided some detail about the establishment and running of the family business in Australia and she assisted with explaining when the interpreter asked for clarification of a word used by Applicant 1. She also intervened in the interview at one point to explain about her experience being alone in Australia with a young child to look after and at the conclusion of the interview spoke in some detail about coming to Australia and her concerns about harm Applicant 1 may experience should he return to Iran. As such I am satisfied that the applicant had and availed herself of the opportunity to engage in the protection visa interview. I also consider it significant that the delegate advised Applicant 1 and the migration agent of the opportunity to provide any further information after the interview, having at the commencement of that interview advised Applicant 1, the migration agent, and by extension Applicant 2 who was also present, of the limitations on providing new information or claims after the delegate's decision and of the importance of putting forward all protection claims.

19. I also consider it highly significant that the matter of religion was discussed with Applicant 1 at some length at the protection visa interview. The delegate asked Applicant 1 to tell him about his religious beliefs and why this may be cause for concern in Iran and Applicant 1 described not following Islam, having no religion and that for these reasons he could be executed in Iran. Applicant 1 commented that he did not know anything about any other religions, which clashes to some extent with the new claim that Applicant 2 has been attending a Christian church over an extended period and is preparing for baptism and conversion and has been vocal about doing so. Although Applicant 2 was present during this discussion she did not seek to provide any information about the now claimed religious activities. Earlier in the interview she had intervened unprompted to provide information about the family business but in the discussion about claims of serious persecution on the basis of religion she did not advance any information, even though it is now stated she had been attending a church for a few years. Her failure to do so, when she was willing and welcome to otherwise engage in discussion, puts the credibility of the now claimed activities and intended Christian conversion into serious doubt. I have difficulty accepting that not being baptised at the time or not wishing to compromise her religious journey explain her not doing so.
20. The extent of the information provided about the applicant's Christian activities is that she has been attending church services and bible studies at the Iranian [Church] in [Suburb] for a few years and is being prepared to be baptised and to convert to Christianity.
21. There is no information as to when she began to attend or engage in Christianity, beyond the assertion she has been doing so for a few years, and in the context of her declaration in her TPV application made three years ago in 2017 that she had "no religion" I consider this to be a significant factor and one relevant to an assessment of the limbs of s.473DD(b). I consider it significant that if she was engaging in Christianity at that time, noting it is stated she has been doing so for a "few" years, an explanation as to why she declared herself as having no religion in the TPV application would be relevant to an assessment of why this information could not have been given and also as to the credibility of the information. It is stated that the applicant has been "very open to the public about her attendance and her imminent conversion" and as such there is no indication that she may have been reluctant to advance this as a protection claim earlier due to any concern as to adverse reactions from her family or the community.
22. I have considered the applicant's explanation for not giving this information to the Minister but the applicant has not satisfied me that s.473DD(b)(i) is met. Additionally I am not satisfied that there is a cogent reason why the applicant would not have raised this as a protection claim earlier if true and that she has not done so leads me to a finding that this claim is not credible and that it is not capable of being believed. In this regard I have considered the lack of

explanation as to why she would declare No Religion in her TPV application if she has been attending church and making the journey to baptism over a “few” years; I have considered that Applicant 1 stated he knew nothing about other religions yet Applicant 2 has been vocal about her claimed activities. However even if I were to put these aside I simply do not accept that the applicant would not have mentioned her activities and “imminent” baptism at the protection visa interview, particularly in the context of Applicant 1 referring to the punishment of execution in Iran for not following Islam, if her now advanced claims were genuine. The applicant has failed to satisfy me that s.473DD(b)(ii) is met. In the light of my findings I am not satisfied that any exceptional circumstances exist that justify the IAA considering this information.

Applicants’ claims for protection

23. Applicant 1 advanced protection claims; Applicants 2 to 4 did not advance their own protection claims in their TPV applications but similar to Applicant 1 they are each Kurds and have been resident in a western country.
24. The applicants’ claims can be summarised as follows:
 - The applicants are ethnic Kurds. Kurds are a vulnerable ethnic minority in Iran and viewed with suspicion and as separatists and opposed to the regime.
 - Growing up in Iran Applicant 1 was discriminated against at school and was mistreated by the authorities for drinking alcohol and simple things such as wearing traditional dress.
 - Applicant 1 was born a Shia Muslim but no longer identifies as such.
 - Applicant 1 became frustrated with his life and began to resent the authoritarian regime. He spoke openly to others, including customers in his shop about his views and was critical of the government and the strict religious regime. He also participated in election protests.
 - Approximately eight to ten months before leaving Iran Applicant 1 was taken for questioning by members of Sepah who accused him of being a dissident and against the government. He was held for two days and tortured. The applicant was released after making a payment and giving an undertaking to stop talking against the government.
 - Around three months later Applicant 1 received a summons to attend the Revolutionary Court in June 2013. The applicant tried to engage a lawyer to assist him but none were willing to undertake such a sensitive case. The applicant was concerned as to his safety and began to make arrangements to leave Australia.
 - Applicant 1 renewed his passport and a relative who worked at the airport checked the records and advised the applicant he was not on the travel ban list. The applicant was able to leave Iran as he acted quickly before he was banned from travel.
 - Applicants 1 to 3 departed Iran in 2013 and came to Australia; they discarded their passports en route.
 - After his departure the authorities made enquiries with his family as to the whereabouts of Applicant 1 and they continue to keep his family under surveillance. He fears the authorities try people in absentia and he could have been tried and given a gaol sentence.
 - Applicant 1 fears that should he return to Iran he would be harmed by the authorities because of the Revolutionary Court matter. He also fears he will be imputed as a dissident opposed to the regime and that the authorities will be aware of the critical material he

has posted on social media. He also fears harm as a Kurd and that Kurds are viewed suspiciously as separatists. He also fears that because he has travelled to the west these suspicions will be reinforced.

- The parent applicants provided a fraudulent birth certificate for Applicant 3 when they arrived in Australia as they had been informed by the people smuggler he would be too old to access schooling in Australia. A copy of his genuine birth certificate with his correct date of birth has since been provided.
- Applicant 3 remains dependent on his parents, despite being an adult. At the protection visa interview Applicant 1 described the family relationship and the dependency of his son.
- Applicant 4 was born in Australia. Her TPV application declares her citizenship as Stateless and comments "I may be eligible for Iranian citizenship through my parents but I was born in Australia".

Factual findings

25. Applicants 1 to 3 have consistently claimed to be Kurds from Iran and to be Iranian citizens. They have provided identity documents in support of their claimed identities. I accept the applicants' identities and nationality as stated and that Iran is the receiving country for the purpose of this review.
26. Applicant 4 claims to be Stateless. I note that in his decision the delegate identified Applicant 4 as an Iranian citizen and no objection to this finding has been raised by the applicants or their representative to the IAA. A Victorian birth certificate has been provided for Applicant 4 which identifies both her parents. Country information confirms that children born to Iranian citizen fathers are Iranian citizens whether born in Iran or abroad. Limitations in the Nationality Law on attaining citizenship apply to children born to Iranian mothers where the father is not an Iranian citizen. I am satisfied that Applicant 4 is a citizen of Iran and that Iran is the receiving country for the purpose of this review. The shenasnameh is the principal form of identity documentation in Iran and I accept the applicant's parents would need to register Applicant 4 with the authorities in order to obtain a shenasnameh for her in Iran.¹
27. I accept that all applicants are ethnic Kurds.
28. I accept that Applicants 1 to 3 departed Iran in 2013 and came to Australia and no longer have their passports.
29. I accept that Applicant 1 no longer identifies as a Shia.
30. In his Arrival Entry interview Applicant 1 stated that in 2010 he was detained for one week for drinking alcohol. At this interview he stated a neighbour who knew he was a Kurd and not praying reported him to the authorities. The applicant did not repeat this claim in his statement of claims, although I note his statement of claims is prefaced with the caution it is only a summary of his claims and is not an exhaustive statement of reasons why he cannot return to Iran. At the protection visa interview the delegate noted discrepancies in the account Applicant 1 gave in the Arrival Entry interview to that in his statement of claims and provided him an

¹ US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964; Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 13 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran - COI Compilation", 1 July 2018, 20190326122102

opportunity to comment. Applicant 1 stated he was not aware the information he gave at the Arrival Entry interview could be used as part of the assessment of claims for protection; he did not consider this to be an official interview and only gave information of his experience in general terms, he thought he would be given an opportunity to provide more detail at a later interview. His then representative also commented in oral submissions at the protection visa interview that the applicant was asked general questions at the Arrival Entry interview and gave the alcohol account as an example of harm he had experienced. The statement of claims also informs that he was anxious and uneasy in the Arrival Entry interview due in part to the long and arduous journey, the conditions in the camp and lack of familiarity with the formal high pressure legal setting.

31. I am concerned that Applicant 1 did not recount the 2010 alcohol and detention incident in his statement of claims or in oral evidence at the protection visa interview when asked to recount his experiences in Iran. At the Arrival Entry interview he stated he had been detained by Sepah for one week for this reason and that after his release he was kept under surveillance. This is a significant claim and I am surprised that he did not include this incident in his statement of claims, if true, even taking into account the caveat his statement of claims is a summary only. That he did not mention an incident that resulted in detention by Sepah for one week casts doubt on the veracity of this claim, particularly taking into account Sepah as the Islamic Revolutionary Guards Corps is Iran's "most powerful security and military organisation, responsible for the protection and survival of the Islamic Republic".²
32. I am also concerned that at the Arrival Entry interview Applicant 1 did not mention the claimed interaction with Sepah in 2012 where he was taken from his workplace and detained and tortured for two days. Nor did he mention the claimed summons to appear before the Revolutionary Court at the Arrival Entry interview. These are significant claims and I am not satisfied his failure to mention them is explained by him giving only 'general' information or 'examples'. In that interview after he gave the 2010 account of the alcohol detention he was asked what made him leave Iran three years later and in response he stated he was under surveillance, had been given a hard time and decided to leave. I do not accept that even a 'general' account of 'examples' would account for the omission of these substantial incidents. Additionally at the Arrival Entry interview the applicant was asked if he had ever been arrested or detained and in response he gave only the 2010 incident. I accept that the applicant may have found conditions at the camp difficult and that he had undertaken an arduous journey to Australia but I am not satisfied that such would explain the omission of the 2012 detention and subsequent court summons if true. Nor am I satisfied his lack of familiarity with formal high pressure legal settings would explain the omission; at the Arrival Entry interview the applicant was asked simple questions about his experiences.
33. Similarly at the Arrival Entry interview Applicant 1 was asked if he had been involved in any activities or protests against the government and he responded No. It is difficult to reconcile the now claimed attendance at election protests and being outspoken against the government to his customers and others with his Arrival Entry interview response in the negative to a direct question asking if he had been so involved.
34. The inconsistency across these accounts as to the experiences of Applicant 1 is of concern. In addition to these concerns is the claim that Applicant 1 was able to depart Iran lawfully in May 2013 light of his claim that he was subject to a summons to attend the Revolutionary Court in June 2013. It is the applicant's claim he was able to do so because he acted quickly before he could be listed on the travel ban list, although from his account the summons was issued at

² DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

least five months before his departure. Submissions to the IAA are that not all persons are so listed.

35. The country information advises that citizens may be banned from leaving Iran for a number of reasons, including outstanding court for those released on bail.³ I take into account submissions that bans may not be applied in all cases, but the applicant claims to be subject to trial in the Revolutionary Court. The Revolutionary Courts are a 'higher' court than civil, criminal and military courts and deal with some of the most serious offences; they deal primarily with prosecutions involving acts against national security, as well as drug smuggling and espionage; they issue the most death sentences.⁴
36. I consider it significant that the applicant claims he was to appear before the Revolutionary Court, rather than a lower criminal or civil court, that his case was so sensitive no lawyer would assist him and that the case was brought by Sepah which is one of the organisations who can institute travel bans. The applicant already had a passport and a history of prior travel abroad indicating an ability to leave the country and had done so in November 2012. In these circumstances I would consider it highly likely the authorities would instigate a travel ban and noting the stringent security checking at Iranian airports I am not satisfied that a person so listed would be able to leave the country.⁵
37. Considered overall I am not satisfied that the claims made by Applicant 1 to have been detained by the authorities in either 2010 or 2012, or at any time, are genuine. The applicant has not provided any documentation to support the claim he was summoned to appear before the Revolutionary Court although he claims to have received such a summons. He claims to have acted quickly to ensure his departure from Iran before he could be listed as travel banned, but it is apparent the claimed summons was issued some five months prior to his departure. Applicant 1 claims to have posted material on social media critical of the regime that would be of concern to the Iranian authorities but has provided no evidence of such activity. Considered together with his omission of significant claims in his Arrival Entry interview and his failure to recount matters stated at his Arrival Entry interview in his statement of claims I am not satisfied he has provided a genuine account of his experiences.
38. I do not accept Applicant 1 was detained in 2010 for drinking alcohol. I accept that Applicant 1 is a social drinker of alcohol.
39. I do not accept that Applicant 1 was openly critical about the regime and was detained and mistreated by Sepah, or that he was made to give an undertaking not to be critical of the government or made any payment. I do not accept that Applicant 1 attended election or similar protests or has posted anti-government material, or other material of concern, on social media.
40. I do not accept Applicant 1 was summoned to appear before the Revolutionary Court or is subject to any action in that, or other courts. I do not accept the applicant was of interest to the authorities at the time he left Iran or that after his departure the authorities made enquiries with his family or that his family are under surveillance.

³ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

⁴ Joint Forces Quarterly, "Iran's Islamic Revolutionary Guard Corps: An Open Source Analysis" Matthew M. Frick, 1 January 2008, CIS28508; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

⁵ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

Refugee assessment

41. 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

42. 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.
43. I have accepted that the applicants are Kurds.
44. Kurds are a minority group in Iran, making up ten per cent of the population. Sunni Kurds, particularly those in the north, have historically supported a separate state resulting in militant groups who have promoted Kurdish self-determination, including through conflict with the regime. The Iranian regime is sensitive to such activism and seeks to control Kurdish political parties and political and cultural expression. Kurds involved in political or separatism activism may be of adverse interest to the authorities and be subject to harassment, including detention and prosecution for security offences.⁶
45. However it is important to distinguish Kurds from the north of Iran and other pockets in the country who are predominately Sunni Muslims in Shia dominated Iran from the applicants. The applicants are not Sunni, and Applicants 1 to 3 describe themselves as coming from a Shia background, although they no longer practice as such. Applicants 1 to 3 grew up and lived in urban Teheran rather than in the provinces where Kurdish activism is prevalent and Kurds subject to the scrutiny of the authorities.
46. Although Kurds who are active politically are likely to attract adverse attention from the authorities the country information does not support a finding that Kurds in general, particularly outside the Sunni dominated Kurd areas, are subject to harm for reason of their

⁶ DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132; Minority Rights Group International, “State of the World’s Minorities and Indigenous Peoples 2012”, 28 June 2012, CX290028

ethnicity.⁷ The Department of Foreign Affairs and Trade (DFAT) also assesses that Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities.⁸ Country information points to high levels of property confiscation and governmental neglect and Kurds experiencing e poor housing and living conditions because of forced resettlement, however this is largely in the Kurdish region in the north.⁹

47. I note the claim from Applicant 1 that he was discriminated against at school and his general comments as to cultural restrictions such as wearing traditional dress and education in the Kurdish language. Both Applicants 1 and 2 received only basic education, although both are literate in Farsi and able to speak Kurdish. Applicant 3 is also literate in Farsi and able to speak Kurdish and was educated to Year [grade] before leaving Iran. Applicant 1 was in regular employment in Iran, and he and his family were able to travel abroad and visit various countries.
48. Considering the country information overall and the applicants' own experiences I am not satisfied that any discrimination they may face as Kurds in Iran would amount to serious harm, or considered together would amount to serious harm. Nor am I satisfied that because of their Kurdish ethnicity they would be imputed by the authorities with a political or other profile of concern, even considered together with their residence in the west. The country information does not indicate that returning asylum seekers are imputed with an anti-government political opinion or harmed because of their asylum claim, or for reason of being in a western country. Reports of asylum seekers being arrested on return relate to those involved in anti-government activities, either in Iran or during their time abroad¹⁰ and "member[s]s of an oppositional political party or involved in political activities in other ways".¹¹
49. I am not satisfied that the applicants would experience serious harm in Iran now or in the reasonably foreseeable future on the basis of their Kurdish ethnicity.
50. Applicants 1 to 3 no longer have their passports and to return to Iran would require documentation to be issued to facilitate travel. Applicant 4 has not been issued with a passport and would similarly require travel documentation. I have already noted her parents would need to register her to obtain a shenasnameh but there is no indication that they would experience any harm in the process. Iran has historically refused to issue travel documents to facilitate the return of involuntary returnees and I find that if the applicants returned to Iran it would be on a voluntary basis.¹² The recent DFAT report notes that "according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to

⁷ Danish Immigration Service and the Danish Refugee Council, "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872; US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964; Reuters, "Iran executes Kurdish activist, wary of Kurdish gains in Middle East", 27 August 2015, CXBD6A0DE12731; Human Rights Watch, "Human Rights Watch World Report 2017", 13 January 2017, NG2A465F52

⁸ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

⁹ Minority Rights Group International, "State of the World's Minorities and Indigenous Peoples 2012", 28 June 2012, CX290028

¹⁰ Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970

¹¹ Danish Refugee Council and Danish Immigration Service, 'Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran', September 2013, CIS26587

¹² DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

Iran”.¹³ Since the 1979 revolution many Iranians have left the country in large numbers to live abroad and “international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.”¹⁴ As already noted the country information does not indicate that returning asylum seekers are routinely imputed with an anti-government political opinion or harmed because of their asylum claim. Reports of asylum seekers being arrested on return relate to those with an existing high profile, particularly political activists.

51. I have accepted that Applicant 1 no longer practises Islam and in their TPV applications the other applicants were identified as having no religion. Non-practising Muslims now form a large part of the population of urban Iranians and many Iranians do not regularly attend mosque or Friday prayers and DFAT assesses it is unlikely that the authorities would monitor religious observance, such as attendance at mosque¹⁵. In 2014 the Danish Immigration Service quoted an advocacy officer of the United Council of Iranian Churches who “assessed that there are more and more atheists in Iran and that this is more accepted among some Iranians”.¹⁶ A November 2014 article of the Economist newspaper notes that “Islam plays a smaller role in public life today than it did a decade ago” and the power of clerics has “waned” and while “Iranians remain a spiritual people who see Islam as part of their identity”, many have moved away from “institutionalised” religion.¹⁷
52. While apostates can be punished under sharia law for leaving the Muslim faith prosecution of cases is rare¹⁸; DFAT advises apostasy and blasphemy cases are no longer an everyday occurrence in Iran and that death sentences are rare. However, DFAT reported that in March 2017 the Supreme Court upheld the decision of a criminal court to sentence a 21 year old man to death for apostasy following his arrest for social media posts considered critical of Islam and the Koran while on military service. As at April 2020 the death sentence had not been carried out. The court also convicted two co-defendants of posting anti-Islamic material on social media, sentencing them to prison.¹⁹ Notwithstanding this case, overall the country information supports that apostasy and blasphemy cases are rare; reporting in 2016 DFAT advised that the last known application of the death penalty for apostasy occurred in 1990 and in 2011 an apostate was sentenced to death however, following international pressure, the conviction was subsequently commuted and the death penalty was dropped. The Austrian Centre for Country of Origin and Asylum Research and Documentation reported the execution in 2011 of an IRGC Commander who was convicted of apostasy but I note that this person was also claiming to be God and that he was charged with apostasy and “encouraging prostitution” and the “nature of [his] activities and religious claims are not clear”.²⁰ More recent reporting from the Austrian Centre for Country of Origin and Asylum Research and Documentation is that those of interest are prominent persons, Islamic scholars and members of the clergy who have

¹³ ibid

¹⁴ ibid

¹⁵ DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132; DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677; LSE Middle East Centre (United Kingdom), “The Revival of Nationalism and Secularism in Modern Iran”, November 2015, CISEC96CF14725

¹⁶ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

¹⁷ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

¹⁸ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

¹⁹ DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

²⁰ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

been critical of Islam.²¹ DFAT “considers it unlikely that individuals will be prosecuted on charges of apostasy”²² and the Danish Immigration Service noted that it was not aware of recent cases.²³ Country information indicates that apostates may come to the attention of the authorities through public manifestation of a new faith and I note the report of the arrest in 2019 of a returning asylum seeker Christian convert.²⁴ Notwithstanding such reports overall the country information does not point to the applicants experiencing harm on return to Iran for reason of their religious opinions and non-observance of Islam.

53. I have not accepted that Applicant 1 attended election protests, spoke openly against the government or has posted material on social media that would be of concern to the authorities in Iran, but I take into account that at the protection visa interview he expressed his dissatisfaction with the regime and strict application of Islam in Iran. Large-scale anti-government protests, post-election demonstrations and protests relating to the general economic situation have occurred in different parts of the country in recent years. These have often resulted in multiple arrests, fatalities and injuries. Action taken by the authorities to break up such demonstration has led to mass arrests and injuries of participants. However overall those who are of ongoing concern to the authorities are prominent activists, members of human rights groups, journalists and the organisers of protest action.²⁵ Although social media may be monitored Iranians remain high consumers of social networks with 50 million internet users; those who use social media to be critical of the regime generally conceal their identity by using aliases, although local sources inform that Iranians with foreign connections are the more likely to have their activity monitored.²⁶ Should the applicant/s decide on return to Iran to attend such protests or post material or speak to others about their opinions I am not satisfied that there is more than a remote chance they would be harmed for doing so. I am not satisfied that the applicants face a real chance of harm on the basis of their actual or imputed political opinion, even considered together with their Kurdish ethnicity and time in the west.
54. I have accepted Applicant 1 is a social drinker of alcohol. Local sources told DFAT that alcohol is readily available on the black market, can be delivered directly to the home, and prosecutions for alcohol consumption are not common. The World Health Organization estimates that Iranians over the age of 15, on average, consume 1 litre of alcohol per annum. Police generally only act if the activity comes to public attention or if specifically instructed to do so. Where enforced, the punishment for alcohol consumption is normally a fine, usually paid on the spot. Floggings may be imposed periodically, but are rare.²⁷ Noting the reports of widespread use of alcohol in Iran I am satisfied that should he return to Iran and consume alcohol in the future that the chance that he would face harm as a result is remote. Alcohol is widely available in private settings and noting Applicant 1 describes himself as a social drinker only I do not accept that the applicant faces a real chance of harm on the basis of alcohol consumption.
55. I have considered the applicants’ circumstances as a whole, and I am not satisfied there is a real chance of the applicants suffering persecution in the reasonably foreseeable future in Iran on any of the bases claimed.

²¹ Austrian Centre for Country of Origin and Asylum Research and Documentation, “Iran – COI Compilation”, 1 July 2018, 20190326122102

²² DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677

²³ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

²⁴ Article 18, “Convert refused asylum in Germany arrested on return to Tehran”, 24 July 2019, 20190806112832

²⁵ DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

²⁶ *ibid*

²⁷ *ibid*

Refugee: conclusion

56. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

57. Under s.36(2)(aa) of the Act, 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

58. 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.
59. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
60. I have found that any harm the applicants may experience in Iran on the basis of their Kurdish ethnicity would not amount to serious harm. I also find that, either considered alone or together, this would not amount to significant harm. The harm feared by the applicants does not include deprivation of life, the death penalty, or torture; nor am I satisfied they will be subject to cruel, inhuman or degrading treatment or punishment as defined.
61. I have otherwise found that there is not a real chance that the applicants face harm on any of the bases claimed. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test,²⁸ and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that they would face significant harm for these reasons.

Complementary protection: conclusion

62. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

²⁸ *MIAC v SZQRB* (2013) 210 FCR 505

Identity documents – bogus or destroyed documents

63. Although not strictly necessary, I have for completeness considered whether Applicant 3 is also prevented from being granted the visa on the basis of s.91WA of the Act. Under s.65(1), a visa must be refused if the grant of the visa is prevented by s.91WA. Section 91WA(1) relevantly provides that the Minister must refuse to grant a protection visa to an applicant if the applicant provides a 'bogus document' (defined in s.5(1)) as evidence of their identity, nationality or citizenship. However, that requirement will not apply if the Minister is satisfied that the applicant has a reasonable explanation for the provision, and either provides relevant documentary evidence or has taken reasonable steps to provide such evidence.

Application of s.91WA to this case

64. On arrival in Australia a birth certificate was provided for Applicant 3 which the applicants have since advised was fraudulent and provided an incorrect date of birth to represent him as younger. A copy of his genuine birth certificate with his genuine date of birth has since been provided. I am satisfied Applicant 3 has provided satisfactory evidence of his identity, nationality or citizenship and I find that s91WA of the Act does not apply.

Member of same family unit

65. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1).
66. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.