



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08641

Date and time of decision: 22 September 2020 11:30:00

J Jennings, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He applied for a protection visa on 16 August 2017. A delegate of the Minister for Immigration refused to grant the visa on 21 August 2020.

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).
3. On 14 September 2020 the IAA received a submission on behalf of the applicant. The submission included a statement which referred to case law and in which the applicant explained his objection to the delegate's decision. The submission also commented on the protection visa interview which was conducted by teleconference and the applicant's serious concern the circumstances of conference call dropout and interpreter under-performance "impeded a fair and reasonable assessment of the applicant's protection claims, in particular, his religious claims". I am satisfied 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.
4. I note the comments as to the protection visa interview and while there is no explicit request to obtain further information by way of an interview or otherwise I have considered whether to do so. The audio record of the protection visa interview shows the interview amounted to three hours. In this time the interpreters clarified some questions/responses with the delegate or the applicant and the delegate repeated some questions because he was not satisfied the applicant had responded to the actual question, but it is not apparent to me that there was a lack of understanding between the parties involved. I am not persuaded interpreter "under-performance" is apparent in this interview, nor have any interpreting errors or specific inadequacies that would point to under-performance been identified in the submission.
5. It is correct that the interview was interrupted due to disconnections: at 51 minutes the interpreter disconnected and the teleconference was reconnected after six minutes. At 62 minutes the interpreter again disconnected and after 16 minutes the teleconference was reconnected with a different interpreter; the delegate re-established that the applicant did not know the new interpreter, understood the interpreter and had no objections to the interpreter. While these breaks may have been frustrating there was no apparent disruption in the flow of questions; on both occasions the delegate picked up his questions from exactly where he was when drop out occurred. Nor is it apparent the change in interpreters disrupted the interview.
6. The most significant break occurred toward the end of the interview when the interview was paused for a break. On return from the break the delegate advised it had taken 20 minutes to reconnect the teleconference because the applicant had disconnected, for which the applicant apologised stating he did not know he had to keep the line open, but the applicant was then able to resume by giving his response to the concerns the delegate had stated immediately prior to the break. The delegate advised that time was limited but that the applicant had seven days in which to provide any further information by making written submissions to the

delegate, which he did by submitting a written statement of “additional answers to interview questions” and supporting documents.

7. I am satisfied the applicant was given the opportunity to put his protection claims and I do not consider the circumstances warrant the IAA obtaining further information from the applicant by way of interview or otherwise.
8. The IAA submission included copies of the applicant’s baptism and confirmation certificates and a photograph of his tattoo. This information was before the delegate and is not new information.
9. Other information provided is new information and included support letters and a statutory declaration from members of the congregation, and letters from Reverends [A] and [B] and [Ms C], Federal Member for [Electorate]. The submission advanced that these “are written in response to the delegate’s refusal decision and therefore could not have been provided to the department before the decision was made” and that they “are of substantive value”. I am satisfied that the contents are credible personal information in that they recount the authors’ knowledge and experience of the applicant and that had this been known it may have affected the consideration of the applicant’s claims. I also accept that they attest to the applicant’s claims Christian claims. I am satisfied that exceptional circumstances exist that justify the IAA having regard to this information.
10. The letter from [Reverend A] takes issue with the delegate’s decision noting the delegate had little basis for “drawing any conclusions about my knowledge of [the applicant’s] history, given that they did not bother to contact me” and goes on to advise he and other members of the church can be contacted as referees. Similar to above the applicant makes no explicit request to obtain further information from the Reverend or others in his submissions to the IAA and I am not satisfied that the circumstances warrant the IAA doing so.
11. The submission refers to reports which were not before the delegate and are new information, described as:
 - UK Home Office Report on Christians and Christian Converts in Iran published in February 2020
 - The UK Home Office’s Country Policy and Information Note, no date provided
 - March 2015 Christians in Parliament report on the persecution of Christians in Iran
12. Under the Practice Direction for Applicants, Representatives and Authorised Recipients (the Practice Direction) an applicant must attach a copy of new information such as country information reports referred to and identify the source and date of the document. No copies of the above listed documents were provided, and no date was identified for the second UK Home Office report. However, even if the information was provided in compliance with the Practice Direction, having carefully considered it, I am not satisfied there would be exceptional circumstances to justify its consideration, as discussed below.
13. The submission advised that the support letters were provided in response to the delegate’s refusal decision but does not refer specifically to this country information in that discussion. In considering if this information could have been provided to the delegate I place considerable weight on the information given by the delegate at the protection visa interview cautioning the applicant that it was his responsibility to put all his claims forward and provide supporting evidence and that he may not have another opportunity to do so should his application be refused. The applicant was given and took the opportunity to provide post-interview

submissions but did not give this information. I am not satisfied that the country information referred to contains credible personal information, nor has the applicant satisfied me it could not have been provided before the delegate's decision was made. Furthermore, I am not satisfied that any exceptional circumstances exist that justify the IAA considering the new information.

Applicant's claims for protection

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

- The applicant is an Iranian citizen born in the Tabriz area, Iran. He was around [Number] years of age at the time of the Iranian revolution.
- When he was a child the family moved to Tehran and lived among a community of people from his village.
- He is of Turkish ethnicity.
- One of the applicant's brothers did his compulsory military service during the Iran/Iraq war; his father refused to let him fight in the war resulting in adverse interest from the Basij. The applicant believes his family's problems with the Basij started from this time.
- The applicant's family is opposed to the regime in Iran. His father supported religious and tribal leader Ayatollah Kazem Shariatmadari who had links to the pre-revolutionary regime and who was opposed to the new regime. Ayatollah Shariatmadari was captured and imprisoned by the government.
- The applicant's father told the family not to support the new regime. Other members of his community also supported Ayatollah Shariatmadari and opposed the new regime.
- The applicant and his family came to the attention of the Basij and the Islamic Revolutionary Guards (IRGC)/Sepah. The Basij wanted community members to join them but the applicant's father refused to allow his sons to join. The applicant witnessed the Basij shooting a friend.
- The Basij closed the family's factory. Overtime his brothers moved to different cities as his father thought it would be safer if they lived separately.
- The applicant was arrested and detained by the Basij on multiple occasions because he and his tribe were opposed to the regime. The Basij questioned him about his objection to the regime and why he did not vote in elections. He was mistreated; he was tied to a chair overnight or denied food. On one occasion he was physically harmed and he has scars from this incident. The applicant has provided a photograph of his scarred [body part].
- Because of this harassment the applicant was forced to close his business.
- The applicant met some Christians who told him about Jesus. He has a Christian image tattoo on his [body part]. He did not adopt Christianity at this time because he was scared to do so but one time he attended church with these friends in Iran.
- The Basij saw this tattoo on one occasion and accused him of changing his religion. The applicant has provided a photograph of his tattoo.
- The applicant decided to leave Iran. He was not a political person or on any blacklist and was able to leave legally.

- The Basij asked the applicant's brother about his whereabouts around one year after he left Iran. His brothers have told the Basij he is travelling around Iran or have denied knowing his whereabouts.
- The applicant was afraid his brothers may be arrested and apart from his oldest brother did not contact them or tell them he was in Australia.
- After his release from immigration detention in Australia the applicant attended a church in Australia. He began to regard himself as a Christian convert about a year or 18 months later. The applicant ceased attending church services for a period due to work commitments on Sundays.
- The applicant delayed taking the steps of baptism and confirmation as his family told him they would disown him if he converted, but the applicant decided to proceed because of his love for Jesus and Christianity. He recommenced his church attendance and was baptised and confirmed in October 2019. He has provided certificates attesting to his baptism and confirmation and letters of support from church officers and members of the congregation and a person he introduced to Christianity.
- The applicant would continue to practise as a Christian should he return to Iran, but he would be viewed as an infidel and executed.
- The authorities have a big file on the applicant and will persecute him should he return to Iran. They know he does not support the regime and they have photographs of him. They will also know he has been away and in Australia for an extended period.

Factual findings

15. The applicant has consistently claimed to be an Iranian citizen. The applicant has provided documents in support of his claimed identity. I accept the applicant's identity and nationality as stated and that Iran is the receiving country for the purpose of this review.
16. I accept that the applicant is of Turkish ethnicity, noting he was born in the Tabriz area in the north of Iran and speaks Turkish.
17. I accept as plausible that the applicant along with his family is opposed to the regime in Iran and that his father supported Ayatollah Shariatmadari who had links to the previous regime. I accept as plausible that he and his family did not vote in elections.
18. I accept as plausible that his brother initially left his military service and then refused to fight in the Iran/Iraq war.
19. However I have difficulty accepting that the applicant, his family and community were targeted by the authorities for reason of their support of Ayatollah Shariatmadari and opposition to the regime, not voting in elections and his brother's military service record and I have concerns as to the veracity of the claims made by the applicant to have been targeted and arrested and detained on multiple occasions as claimed.
20. I have some concern as to the applicant's account of his brother's military service. It is stated his brother did not return to his service and was considered to be a deserter, but there is no indication he was prosecuted as a draft evader at the time. The applicant's account is that because his brother was only 16/17 years of age the military needed parental consent to send him to the front line but that his father refused to give this and advised the military that this was because he did not support the regime.

21. Compulsory military service is enshrined in the Constitution and requires all males to undergo service from the age of 18 years which calls into question the account the applicant's brother was undertaking military service at 16/17 years as claimed.¹ However accepting this claim on face value the applicant's account is that his father consented to the applicant's brother serving in a non-combat, non-front-line role. The applicant's account is that his brother then served two years and he does not indicate that he was sent to a combat or front-line role in contravention of his father's permission. As such there would seem to have been little purpose in his father telling the military he did not support the regime and I have difficulty accepting this claim. From the applicant's account the provision was available for his father to refuse sending the brother to the front-line and that he did withhold his permission for this, which was apparently honoured. It is not apparent why his father would need to engage in any discussion about his opinion on the regime, or that he would have done so and possibly attracted adverse attention. I accept that the applicant's brother initially left his military service but note that he subsequently served his compulsory period of service. Noting he was not prosecuted for the stated draft evasion I do not accept he was viewed as a deserter. I do not accept that as a result of this the Basij or other authorities began to take an interest in the family. Nor do I accept that his father told the military he was opposed to the regime.
22. Amnesty International reported Ayatollah Shariatmadari was an important figure in the religious opposition during the period under the former Shah and had many followers amongst the Azeri (Turkish) people in northwest Iran. Ayatollah Shariatmadari opposed parts of the 1979 Constitution and did not support clerics being active participants in the political running of the country. As a result unrest broke out in Tabriz after supporters of Ayatollah Khomeini attacked Ayatollah Shariatmadari's house; two of his supporters were killed in the violence which ensued from December 1979 to January 1980 and around this time Ayatollah Shariatmadari was placed under house arrest. He acknowledged being aware of a coup plot in which Sadeq Qotbzadeh, a former Foreign Minister, was implicated. The Ayatollah's son-in-law was tried in the same case and sentenced to imprisonment and later house arrest. Sadeq Qotbzadeh, and up to 70 army officers, were later executed. A number of Ayatollah Shariatmadari's relatives were arrested, but later released. Despite this unrest the country information does not indicate ongoing conflict with Ayatollah Shariatmadari's supporters beyond the initial conflict in 1979/1980. Ayatollah Shariatmadari died in 1986 and although his supporters were prevented from holding a public funeral and he was buried secretly there is no indication his followers were of ongoing adverse attention to the authorities or the supporters of Ayatollah Khomeini.²
23. While I accept the applicant and his family may have been distressed at the authorities' treatment of Ayatollah Shariatmadari there is no indication they were outspoken in this regard. Reports indicate that those of ongoing interest were those involved in the coup and other clerics who criticised the authorities' behaviour over the burial of Ayatollah Shariatmadari, but not that simple supporters came to adverse attention.³ Considering the independent country information before me it is difficult to accept the applicant and his family were of the claimed ongoing interest of the authorities because of their support of Ayatollah Shariatmadari.
24. The applicant made references to his tribe/community being supporters of Ayatollah Shariatmadari and opposed to the regime and I have considered if he was targeted by the Basij or others on the basis of his Turkish/Azeri race. The Azeri are a significant ethnic minority in Iran. Notwithstanding the 2017/2018 and the 2019 protests, which were largely economically

¹ Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008", April 2009, CIS17329

² Amnesty International, "Human Rights Violations against Shi'a Religious Leaders and their Followers", 3 June 1997, CX80390

³ *ibid*

based rather than ethnically based, the country information does not point to Azeris coming to adverse attention in Iran on the basis of their ethnicity.⁴ The US Department of State reported incidents of activists being arrested but the applicant has not claimed to have been involved in Azeri activism or protests.⁵

25. Similarly it is difficult to accept that the applicant and his family were harassed and targeted because of their political opposition to the regime. The applicant stated he was not a political person; there is no indication he was outspoken about political matters or involved in any protest action. There is no indication that he or any of his family members joined anti-regime protest events, such as the 2009 Green Movement rallies, or were activists in any way.
26. The country information does not support a finding that opposition to the regime itself would result in adverse attention from the authorities. In 2018 DFAT advised that Iranian are able to robustly criticise the government without coming to attention up to well established 'red-lines'.⁶ Other commentators advise that political activists may be charged with offences on imprecise grounds such as propaganda against the state or supporting opposition groups.⁷ While I accept it may be difficult to establish the 'red-lines', overall the country information points to outspoken political leaders and activists coming to attention, not simply those citizens who are opposed to the regime. The country information indicates that political activists involved in anti-regime activities or who insult the Supreme Leader may face prosecution or adverse attention. The applicant has not been outspoken, does not claim to belong to opposition or activist groups or to have attended protests or rallies and I do not accept he would have been viewed as being of concern to the regime or a security threat and harassed and targeted in the manner claimed. It is difficult to reconcile the claims he was repeatedly arrested with the lack of activist profile or other profile of concern.
27. Furthermore his ability to obtain a passport and travel abroad on multiple occasions indicates he was not of interest to the authorities or considered to be a dissident of concern or that his opposition to the regime was of concern such that the authorities would restrict him from travelling abroad.
28. Additionally I have considerable concern as to the account the Basij saw his Christian tattoo on one occasion and accused him of conversion. The applicant now claims that as a Christian convert the Basij will arrest and kill him on return to Iran, yet they did not do so when he claims they detained him, saw the tattoo and accused him of conversion. His account is that he denied changing his religion but that they "didn't believe me"; if such was the case it is difficult to accept that he was simply released from prison as is claimed. I am concerned that his claim the Basij saw his tattoo and accused him of converting to Christianity and then released him without any further action or prosecution is simply not plausible. This brings into doubt the credibility of this claim and leads to concern the applicant has fabricated this account of the Basij seeing his tattoo and accusing him of conversion in order to enhance his protection claims.

⁴ 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; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

⁵ US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964

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

⁷ Iran Human Rights Documentation Center, "IHRDC Translation of the Islamic Penal Code of the Islamic Republic of Iran – Book Five", 18 July 2013, CIS25936; Iran Human Rights Documentation Center, "Restrictions on Freedom of Expression in the Islamic Republic of Iran", March 2016, CIS38A8012530; US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964; Human Rights Activists News Agency, "8 Facebook Activists Sentenced to 133 Years Imprisonment", 28 January 2015, CXBD6A0DE783

29. Nor do I accept he attended church in Iran with these friends. The applicant first advanced this claim in June 2020. He did not advance this claim in his 2017 statement of claims despite providing other information about his interaction with these Christian friends and that he did not do so brings into doubt the veracity of this claim. Furthermore, I am not satisfied this claim is plausible considering country information; churches in Iran are cautious of spies and converts because of the adverse attention from authorities that may result and I am not satisfied that a Christian church would allow a Muslim to attend their church.⁸
30. I have concerns as to the account the applicant told only one of his brothers he was in Australia and for three years he did not tell his other brothers because of his concern “if my brothers were arrested they would tell the authorities where I am”. However, in his statement of claims he advised his sister sent identity documents to the Department while he was in immigration detention, which casts doubt on the claim he restricted knowledge of his presence in Australia for three years to his oldest brother because of his fear of the authorities.
31. That the Basij have an active role in monitoring the moral code in Iran is documented in the country information before me.⁹ The Basij were established under the IRGC as a “moral police” force of largely volunteers with a focus enforcing Islamic cultural codes of behaviour, particularly relating to requiring women to wear the veil in public and prohibiting male-female relations. Although they have been used to repress political activism their role is largely one of being a presence patrolling the streets and their presence increases at times such as Ramadan and during various crackdown campaigns. The information is that the Basij concentrate patrols on various areas to intensify their patrols and the applicant described the Basij as conducting checks in his area each Thursday.¹⁰ While their role is focussed on morality issues it is plausible that the Basij interfered in the running of the family factory and the applicant’s business. From the applicant’s account on one occasion the Basij told him to close his shop because of the late hour. I accept that the applicant was subject to monitoring by the Basij, including around his business, but I am not satisfied he was targeted by the Basij on the basis of his claimed profile. The country information advises that the Basij conducted checks across the community and I am satisfied that the applicant was subject to monitoring similar to that of an Iranian living in Tehran. The applicant has failed to satisfy me that his claim he was targeted by the Basij and arrested and detained by them on multiple occasions is genuine. As a resident in Tehran and as a business operator it is plausible he encountered the Basij as they went about their patrols, but I do not accept he was of specific interest to the Basij, that he was targeted by the Basij, arrested or detained by the Basij, or that they have a file on him or his photograph. If he was of the claimed ongoing interest I do not accept he would have been able to travel to and from Iran as he did in 2010 and 2011 and then depart again in 2013.
32. I note the photograph of a scar on the applicant’s [body part], but noting there is no other evidence beyond his statement that this scar was sustained in an incident with the Basij and taking into account my concern at the claimed harassment by the Basij the applicant has failed to satisfy me it was sustained in an incident with the Basij.
33. I accept that a friend of the applicant was killed by the authorities in Iran but I do not accept that at the time the applicant left Iran that he was of interest to the Basij, the IRGC or other

⁸ Danish Immigration Service, “Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008”, April 2009, CIS17329

⁹ DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132; DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677

¹⁰ Danish Immigration Service, “Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008”, April 2009, CIS17329; US Department of State, “Iran 2016 Human Rights Report”, 3 March 2017, OGD95BE926964

authorities, nor do I accept they have a file on him. It follows that I do not accept the authorities made any enquiries about him after his departure.

34. The applicant has provided evidence of his church attendance and baptism and confirmation in Australia and I accept he has undertaken these activities and that the members of the church who have written in support are genuine in their acceptance of the applicant as a member of the congregation and in their belief he is a committed Christian.
35. In his 2 June 2020 statement and the later Additional Answers to Interview Questions statement the applicant described looking into Christianity after arriving in Australia and looking to learn English and find friends and attending a church where people were welcoming and kind and which hosted English language classes. I accept that after his release from immigration detention the applicant may have engaged with a church in part for social support and to improve his English language skills. But that the applicant did not continue to attend regularly from this time brings into doubt the claim that he was seeking to engage in Christianity.
36. The applicant's account is that he commenced attending church around 2013/2014, ceased for a period due to Sunday work commitments, then recommenced. His account around the period and duration of his absence from church is non-specific and I am concerned the applicant has been vague in an attempt to conceal the extent of the absence which casts doubt on the claimed attachment to the Christian faith. At the protection visa interview he stated that he stopped attending for maybe a year or a year and a half. In further questioning the applicant indicated he initially attended about five months after his arrival in Australia (May 2013), attended for about two years and recommenced either 15 months or perhaps 18 months before his baptism; this would indicate at best attendance from October 2013 to October 2015 then recommencing around April 2018 and an absence period amounting to approximately two and a half years.
37. In his letter dated 26 May 2020 [Reverend A] stated the applicant attended for an "extended period from late 2013" and returned "more recently" without specifying what these periods entail. Similarly, [Reverend A]'s 4 September 2020 letter refers to the applicant attending for "an extended period" but gives no detail of what this period actually covers and then to the applicant "visiting" in 2018 and "returning" in early 2019. The statutory declaration provided by parishioners informs the applicant has been "involved with our local church since 2013" and requested baptism in 2018 and after a course of preparation was baptised and confirmed in October 2019, but similarly lacks clarity as to the period of absence after the first period of attendance. Nor do other support letters or the witness statement or the letter from [Reverend B] inform periods of attendance, the Reverend's letter referring only to the applicant's "continued" connection.
38. The indications are that the applicant did not attend church for a significant period and I note [Reverend A] while acknowledging "visiting" in 2018 dated the applicant as "returned" in 2019, indicating a longer absence than that indicated by the applicant in response to questions at the protection visa interview about this matter. The extent of this absence is of concern, particularly noting in response to questions at the protection visa interview the applicant stated he considered himself to be a Christian convert approximately 18 months after he commenced attending church.
39. I have considered the applicant's explanation that he could not attend church due to Sunday work commitments, but other information provided by him brings this explanation into doubt. In his protection visa application, completed in August 2017 the applicant declared he had not

been employed during any of his period in Australia. The applicant was provided an opportunity at the protection visa interview to address this seeming inconsistency with his claim he could not attend church because of work commitments and his response was that he stated he was unemployed as until he commenced working at the [workplace] he did not have a particular job and he described undertaking work such as gardening, cleaning and car washing. That the applicant continued to be supported by Centrelink benefits at this time, as he indicated in his protection visa application, indicates the casual nature of the employment and it is difficult to accept such casual employment prevented the applicant from attending church every Sunday for such an extended period, particularly as the applicant claims he considered himself a convert to Christianity at this time.

40. The indications are that the applicant recommenced church attendance either 2018 or 2019 but information before me indicates he ceased working Sundays earlier than this after having obtained employment [which] did not involve working Sundays. At the protection visa interview he stated he obtained his [Work task 1] licence after working at the [workplace] for a period and the copy of the [Licence] to [do certain work] shows this was issued [in] August 2017. The applicant has provided an employment reference letter from the [workplace] but this is not dated and gives no detail of period of employment and does not assist in this regard. However the letter from [Ms C] dated 11 June 2020 stated the applicant had been working “for over three years” in the [Suburb Workplace], indicating he was already working in this job when he completed the protection visa application in August in 2017 in which he declared he was unemployed; this also indicates he was not working Sundays from around 2017 and would have been able to attend Sunday church services should he wish to do so. The applicant has not indicated he was prevented from attending church for reasons other than the claimed Sunday work, but the information before me is that he started in the [position] which ceased his Sunday work around early to mid-2017 yet did not recommence church attendance at that time despite no longer working on Sundays.
41. I consider the extended absence from church attendance to be significant; it is not just that the applicant attended church for period, then paused before re-attending and from that point converted. The applicant has stated he considered himself to be a convert from an earlier point, either 12 to 18 months after first attending church, and professed to loving Jesus yet he was seemingly disengaged from the church for an extended period, and I am not satisfied that Sunday work commitments explain this disengagement.
42. In addition to my concerns as to the extended absence is the applicant’s description of himself as a Shia Muslim in the protection visa application completed in 2017, after his initial church attendance and after the period he considered himself to have converted. I have considered the submission to the IAA that the applicant “solely referred to Islam in a nominal fashion as the religion he had inherited from his parents when he responded to the relevant question in form 866” but while this may account for his response to Question 30 in the form this does not account for the information in the statement of claims where the applicant made the very specific statement he was of the Shia Muslim faith.
43. The IAA submission further contends “it is not a statutory requirement for the protection visa applicants to provide all information and evidence related to their protection claims at a certain time during the processing of the application. It has always been open to the protection visa applicants to provide detailed information and supporting documents with respect to their protection claims during their PV interviews as well as post interview submissions.” However, I am concerned that this is not simply a matter of the late advance of the Christian claim and I am concerned that other evidence undermines his claims. This includes the declaration in the statement of claims as to his Shia Muslim faith and that taking account of the country

information I have not accepted the claim the applicant attended a church in Iran. The statement of claims refers to the applicant's account of his Christian friends and obtaining the tattoo in the context of doing so because they were "nice friends". At the time he made this statement the applicant claims to have attended church in Australia for a period of two years and to consider himself to be a Christian, yet he did not advance this information in the statement of claims despite making reference to the claimed experience with Christians in Iran. That he did not do so brings into doubt that in 2017 he genuinely believed himself to be a Christian convert, moreover in giving an explanation for the tattoo in this statement and his recount of his encounter with his Christian friends the applicant very clearly described not converting and not being a Christian rather than indicating this as a part of his claimed journey to Christianity as he has now claimed.

44. When asked at the protection visa interview his reasons for not declaring his Christianity in his application the applicant referred to still attending classes and still learning about the faith and not being baptised. While this may point to explanation for not declaring himself to be a Christian I am concerned that he made no mention of his engagement with the church in his statement of claims. He stated that to lodge an application with the Department you need evidence, but it is not apparent why the applicant could not have obtained written testimony of his activities at this time, noting that he obtained such in 2020. In his statement of claims he made specific reference to his tattoo and the claimed Basij accusations as to his religion and if the applicant was genuinely attached to the Christian faith at the time he wrote the statement and the only reason he was not regularly attending church was work commitments (a claim I have not accepted) then it is difficult to accept he did not advance such claims in this statement.
45. As noted above I have not accepted some claims advanced by the applicant and I am concerned the applicant has been willing to fabricate his account of his experience in Iran in an attempt to raise or enhance protection claims. I also note he declared himself as unemployed in August 2017 whereas the letter from [Ms C] indicates he was working. I am also concerned that in order to enhance his claim to be a committed Christian the applicant's account seeks to purport a longer period of attendance at church than what other evidence indicates. I am not satisfied that the applicant is a genuine convert to Christianity.
46. The High Court held that an applicant seeking to rely on conduct engaged in while in Australia must satisfy the decision maker that the conduct was not engaged in for the sole purpose of strengthening their claim to be a refugee and places an onus on the applicant to show that their conduct was not for the sole purpose of strengthening their claim to be a refugee (that is, it was for purposes other than solely strengthening their refugee claim).¹¹ The applicant has failed to so satisfy me. Considered overall, from the information before me, I am not satisfied that the applicant has engaged in Christianity, including baptism and confirmation, attending church services and religious classes, and introducing another to Christianity otherwise than for the purpose of strengthening his protection claims. I have taken into account the statutory declaration from congregation members and letters of support from parishioners who have developed friendships with the applicant and church officers and the attestation the applicant introduced a friend to Christianity but this does not negate my very serious concern that his involvement in the church and his conversion to Christianity has been contrived to strengthen his protection claims. I accept that the applicant has been involved with services and activities but I am not satisfied that he is a genuine adherent of the Christian faith or that he would persevere with Christianity should he return to Iran.

¹¹ High Court in *Minister for Immigration and Citizenship v SZJGV*; *Minister for Immigration and Citizenship v SZJXO*

47. I have not accepted that the applicant is a genuine Christian and I do not accept that he has informed his family that he has converted to Christianity and that they have threatened to disown him.

Refugee assessment

48. 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

49. 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.
50. Under s.5J(6) of the Act, in determining whether a person has a well-founded fear of persecution, any conduct engaged in by the person in Australia must be disregarded unless I can be satisfied that the person engaged in the conduct otherwise than for the purpose of strengthening their claim to be a refugee. As already noted I am not satisfied that the applicant engaged in Christianity otherwise than for the purpose of strengthening his claims to be a refugee. I have therefore not considered that conduct in assessing whether he has a well-founded fear of persecution in Iran.
51. I have not accepted the applicant was of interest to the authorities when he left Iran and I am not satisfied he would be should he return now. There is no indication he has been involved in any political activities in Australia that would be of concern to the authorities. I do not accept that he would be harmed for not voting in Iran or for his political opinion. As already noted activists and political campaigners or protestors may come to adverse attention in Iran but the applicant has not been active in this manner, nor am I satisfied that he would be or wishes to be should he return to Iran. I am not satisfied that there is a real chance the applicant would be harmed on the basis of his political opinion or that he would be imputed with a political opinion that would attract harm.

52. The country information does not indicate Azeris face harm on the basis of race.¹² I have noted that Azeri activists may come to adverse attention but the applicant has not been so involved, nor am I satisfied that he would be or wishes to be should he return to Iran. I am not satisfied that there is a real chance the applicant would be harmed on the basis of his race.
53. I have accepted that the applicant was subject to monitoring by the Basij including in his business and I accept that the Basij continue to have a presence in Iran and that he may continue to be subject to such monitoring should he return to Iran, but I am satisfied such would amount to serious harm. While the applicant claimed he closed his business due to harassment by the Basij his employment history indicates that he was in regular employment/self-employment while in Iran and there is no indication he was subject to significant economic hardship or denied the capacity to earn a livelihood of any threatening his capacity to subsist or other serious harm. I do not accept that he would experience persecution for reason of Basij monitoring.
54. I note his concern that he would be harmed for reason of being an asylum seeker in Australia. However, the country information does not indicate that returning asylum seekers are imputed with a profile of concern or harmed because of their asylum claim. Reports of asylum seekers being arrested on return relate to those involved in anti-government activities, either in Iran or during their time abroad¹³ and “member[s]s of an oppositional political party or involved in political activities in other ways”.¹⁴ Amnesty International reported dissidents and student activists being repressed on return, similarly a campaign worker for the reformist Hossein Mousavi was arrested on return to Iran.¹⁵ The applicant departed Iran lawfully on his own passport in 2013, indicating that he was not of adverse interest at that time and there is no indication that he has been involved in any activities that would bring him to attention should he return to Iran. and I am not satisfied that there is a real chance he would be harmed on this basis
55. I have accepted that the applicant has a Christian symbol tattoo which he claims to have had for several years in Iran, but I do not accept this came to the attention of the Basij as claimed.
56. The tattoo is on the applicant’s [body part] and likely to be covered by [clothes]. I have considered whether covering the tattoo would amount to a modification of behaviour in the terms of s5J(3) that require the applicant to conceal an innate or immutable characteristic religious belief. But I do not accept the applicant has a Christian belief that he would be required to conceal by covering the tattoo.

¹² DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132; DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677; Danish Immigration Service, “Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008”, April 2009, CIS17329; US Department of State, “Iran 2016 Human Rights Report”, 3 March 2017, OGD95BE926964

¹³ 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

¹⁴ 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

¹⁵ Amnesty International, “We are ordered to crush you: Expanding Repression of Dissent in Iran”, 28 February 2012, CIS22610; Amnesty International, “URGENT ACTION: UA 125/11: Student activists held in Iran”, Amnesty International, 6 May 2011, CX264288; Radio Zamaneh, “Mousavi’s campaign worker arrested upon return to Iran”, 16 February 2014, CX318168

57. Furthermore the country information indicates that Iranians returning from the west would not come to attention unless the returnee had a profile as a dissident or activist/campaigner but I have not accepted that the applicant was of adverse interest when he departed Iran. Even considering the nature of the tattoo I am not satisfied he would face serious harm on this basis. I conclude that if his tattoo was noticed should he return to Iran he may face some low level harassment as reported by DFAT.¹⁶ But I note that tattoos are becoming more common in Iran and DFAT advised it was unaware of any recent, specific reports of people being targeted by security forces solely for having a tattoo.¹⁷ DFAT further advised it was unaware of specific penalties for having a tattoo, but considers that such penalties would likely be similar to those imposed for dress or hair styles that are deemed improper, such as a warning or a fine. I am not satisfied that any harm that may result from any harassment, fine or warning would not amount to serious harm; there is no indication of threat to the applicant's life or liberty, or physical harassment or ill treatment, or significant economic hardship, denial of access to basic services to capacity to earn a livelihood that threatens the applicant's capacity to subsist, or other form of harm that may be considered serious harm.
58. I have considered the applicant's circumstances as a whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on any of the bases claimed.

Refugee: conclusion

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

Complementary protection assessment

60. 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

61. 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.

¹⁶ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

¹⁷ *ibid*

62. 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.
63. In assessing whether the applicant has a well-founded fear of persecution in Iran under the Refugee criterion, I have disregarded conduct engaged in in Australia for the sole purpose of strengthening his refugee claim, being his baptism and confirmation, attending church services and religious studies, and introducing another to the church. However, I must have regard to that conduct in assessing his claims for complementary protection. As found above, I am not satisfied the applicant is a genuine Christian convert and I do not accept that he has any desire to practise Christianity in Iran should he return.
64. I have considered country information to assess whether his engagement in Christianity in Australia may result in significant harm to the applicant in Iran.¹⁸
65. In recent reporting DFAT advised international observers reported that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims and converting to Christianity. DFAT also advised a well-placed source was not aware of voluntary returnees being prosecuted for converting to Christianity or proselytising while abroad on their return to Iran.¹⁹ DFAT assesses the risk of execution for conversion/apostasy to be "low" and the Danish Immigration Service noted in 2014 that it was not aware of recent cases.²⁰
66. In regard to his statement as to being viewed as an infidel I note DFAT advises apostasy and blasphemy cases are no longer an everyday occurrence in Iran and that death sentences are rare and considers it unlikely that individuals will be prosecuted on charges of apostasy.²¹ The Danish Immigration Service cited a number of sources discussing treatment of returnees who had engaged with Christianity while abroad and the indications are that those who continue to pursue the Christian faith in Iran may come to attention and experience harm.²² However I am not satisfied that the applicant is a genuine convert to Christianity and I do not accept that he would be perceived as such on return to Iran.
67. Nor am I satisfied that his involvement would be known to the authorities, or that this would raise concern in Iran if known or would be viewed as genuinely converting to Christianity. I am satisfied the applicant would not pursue Christianity in Iran. I am not satisfied that there is a real risk that he would face significant harm for his activity in Australia.
68. I have found that any harassment or fine or warning the applicant may experience for his tattoo or monitoring by the Basij does not amount to serious harm. I also find that, either considered alone or together, this does not amount to significant harm. There is no indication harm would

¹⁸ UK Home Office, "Country Policy and Information Note: Iran: Christians and Christian converts", 27 February 2017, OGG6E7028813; Joint report from the Danish Immigration Service, the Norwegian LANDINFO and Danish Refugee Council's factfinding mission to Tehran, Iran, Ankara, Turkey and London, United Kingdom dated 9 November to 20 November 2012 and 8 January to 9 January 2013, CIS25114; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964

¹⁹ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

²⁰ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

²¹ DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

²² Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

include deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined.

69. I have otherwise found that there is not a real chance that the applicant faces 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, 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 he would face significant harm for these reasons.

Complementary protection: conclusion

70. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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