



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/02650

Date and time of decision: 14 February 2018 09:53:00

Patricia Tyson, Reviewer

**Decision**

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

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. [In] May 2016 he lodged an application for a Safe Haven Enterprise Visa (protection visa), claiming to fear harm on account of his anti-Islamic, atheist beliefs, anti-Iranian government political opinion, and because the Iranian authorities had become aware he had distributed prohibited books, and had discovered a copy of one such book in a raid on his home after his departure. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application in a decision [in] May 2017. The delegate found much of the applicant's evidence credible, but concluded there was not a real chance of the applicant facing treatment that would amount to serious harm, nor a real risk of significant harm.

### 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. The IAA received a submission from the applicant's representative on 7 June 2017 which responds to the delegate's decision and makes argument in respect of new information. Accompanying the submission is material that I find to be new information.
4. The applicant has submitted a document contain screenshots of his online activity on [social media] and a blog site. The submission refers to the applicant's online activity in Australia and provides links to a [social media] page and a blog page. One of the [social media] pages was referenced in the applicant's statement submitted with the visa application, and during the protection visa interview which took place [in] April 2017. The applicant also referred during that interview to second [social media] page that he had previously administered but then closed down, however no evidence was previously submitted of any of this activity. The delegate appears to have misunderstood part of the applicant's evidence relating to his online activity and proceeded on the basis that he had only one [social media] page which was now shut down. The delegate's belief that the page no longer existed was part of his reasoning for concluding there was therefore no real chance of harm to the applicant. In these circumstances, I accept that the screenshots and links are credible personal information in that they represent the applicant's online activity, that they may have affected consideration of the claims and that there are exceptional circumstances to justify their consideration.
5. The applicant has also submitted statutory declarations from himself, his partner and two associates. The applicant's statutory declaration reiterates some claims made before the delegate provides further detail regarding some of those claims, his beliefs and his online activity and sets out his reasons for not providing the information earlier. The supporting statements refer to his discussion of his beliefs. Both the applicant's statutory declaration and the representative's submissions refer to the applicant fearing harm as a failed asylum seeker, which is not a claim that has been raised previously.
6. It is argued that the applicant was not made aware that it was his responsibility to provide complete, personal and accurate claims and any information in their support, was not properly advised that he should present his claims clearly itemised and in an organised manner and did not understand that his activities in Australia could be relevant to determining whether he is a refugee. It is also argued that he was denied procedural fairness by the delegate in not

exploring whether he had publicised his views or putting him on notice of country information that would have led him to explain further about how he had publicised his views. I do not accept these claims. The applicant provided a statement with the protection visa application that chronologically set out his claims. Contrary to the applicant's claims, the applicant was told by the delegate at the commencement of the protection visa interview that it was his responsibility to provide complete, personal and accurate claims and any information in their support. The applicant was represented by a registered migration agent and I am not prepared to accept based only on his assertions that he was not properly advised. He was given the opportunity to submit further information following the interview, and a submission was made by his representative. While I am mindful that 'exceptional circumstances' in s.473DD(a) involves broader consideration than whether an applicant could have provided new information earlier, and that the statutory declarations post-date the delegate's decision, I do not accept the applicant's arguments as to why these documents should be taken into consideration. In the circumstances of this case I am not satisfied that there are any exceptional circumstances that justify consideration of the new information. I have not considered the statutory declarations or the parts of the submission that refer to this new information.

### **Applicant's claims for protection**

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

- The applicant is of Qashqai ethnicity and does not have a religion.
- In June 2009 the applicant and his father were involved in protests against the government following the election. They were not arrested but were recorded by the police, which meant they were already known to them and targeted.
- In 2010 while studying at university, the applicant asked the university's religious leader [a religious question]. [A number of] days later the applicant was suspended from the university. He was interviewed twice and subsequently expelled. He was told that intelligence services already had a record of him being anti-government and anti-revolution.
- In 2011 the applicant spoke to [a workmate] at the company where he worked about religion, again related to [a particular religious question]. The [workmate] threatened to call the intelligence service to report the applicant's views, although did not do so because, the applicant thinks, of his father's standing within the company. The applicant was [demoted] and let go by the company shortly after.
- In October 2011 the applicant was running [social media] pages, the most popular one having [a significant number of] followers. Although it was intended to organise cultural and social activities and focused on historical issues, was viewed by the government as anti-Islamic. This is something the government have on file against him.
- In [2012] the applicant was part of a group with a [business owner] that downloaded, printed and sold anti-Islamic and political books and prohibited historical books. He sold these books [online], mainly in hardcopy. Two more people joined the group but asked a lot of questions. [A number of] days before the applicant left Iran, he saw police cars outside the [business owner's business]. He quickly left and tried to contact the owner, but without success and learnt that the owner had been arrested. The applicant decided to leave Iran, departing [in] 2012.

- [Later in] 2012 the intelligence service came to the applicant's family's home with a letter authorising inspection. They took all of the applicant's books, including a copy of [Book 1], which is prohibited and has resulted in Iranian religious leaders calling for [repercussions against the author]. The applicant's father was sent a letter asking him to attend court, where they asked him about the applicant, where he was and why he had left Iran. His father went to the intelligence office a couple of times.
- The [social media] page the applicant runs is still active. Since he has been in Australia he has extended it to discuss anti-government or anti-Islamic things. The applicant has a [blog]. He also ran another [social media] page where he published news and commented on news sources, but he deleted this two years ago because he did not want to put his family in trouble.
- The fact the applicant is not a Shia Muslim means his opportunities have been limited; he has suffered psychologically as a result of his expulsion from university and inability to find a steady job.
- The applicant fears persecution, torture and death by police and intelligence services. Having been identified as the owner of [Book 1], he would face death. He will be arrested immediately at the airport. He is not safe anywhere in Iran because the intelligence services are everywhere and he would be arrested immediately on return. The authorities cannot protect him.

## Refugee assessment

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8. 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

9. 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.

10. The applicant's identity is not in issue. He has provided consistent information in this regard since his arrival in Australia and has submitted copies of his Iranian birth certificate, national identity card and military service exemption card as evidence. I accept the applicant's identity as claimed and find that he is a national of Iran. There is no evidence before me to suggest that the applicant has a right to enter and reside in a country other than Iran, and I find he does not (s.36(3)).
11. The delegate accepted the applicant's claims as credible, including that his home was raided after his departure from Iran and his father summoned to court, but did not accept that the raid was related to the raid on the [business] or that a copy of [Book 1] had been found. The delegate found it implausible that the applicant's family members would not have been investigated as potential owners of [Book 1], and did not accept the applicant's explanation that the authorities were likely aware of the applicant's activities following the raid on the [business] and so would have known the book was his. The delegate reasoned that if that were the case, the authorities would have come with an arrest warrant for the applicant, and would have mentioned the accusations against him to his father.
12. I do not share these particular concerns. Overall, I also consider the applicant a credible witness. The applicant attended an arrival interview [in] December 2012. Although not questioned about his reasons for leaving Iran in that interview, in response to other questions he naturally referred to matters relevant to his claims, including mentioning that he had been expelled from university for asking a religious question, that he had worked selling prohibited books and that the person he worked with had been arrested shortly prior to his departure, that his home had been raided and all his books taken after he left.
13. There is a potential inconsistency between the applicant's evidence in his written statement and at the protection visa interview regarding how he learnt that the [business] had been raided. On the version in the statement he said he saw police cars outside, whereas at interview he said he had been told by someone else that the owner was arrested and not to go near the area. He was not questioned on this and I accept it is possible that both are true. I note also that the applicant's statement implies that persons infiltrated the group that distributed books, whereas he made no such claim at the protection visa interview. Again, however, this was not explored with him and so I draw no inference adverse to his credibility from its omission. I further note that the written record of the arrival interview records the applicant being of Shia Muslim religion. However, he was not in fact asked that question, and a record of an earlier biodata interview states he is Shia but not practising. Some of the internet material submitted by the applicant, discussed further below, supports his claims to have held anti-religious views prior to his departure from Iran (noting one post from 2011).
14. Apart from these matters, the applicant's evidence at the protection visa interview was largely consistent with that in his written claims and at the arrival interview, it was detailed and spontaneous and he was able to readily provide credible and reasonable explanations for the various plausibility concerns put to him by the delegate. The applicant's claims regarding his sale of prohibited books and subsequent interest by the authorities is broadly supported by country information that books in Iran can be subject to censorship and require government approval for publication.<sup>1</sup>
15. The applicant has submitted to the IAA screenshots showing internet activity. The applicant has submitted screenshots of the [social media page], which has [a significant number of]

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report Iran ", 21 April 2016, CIS38A8012677, 3.81; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964, p.16.

followers showing himself as an administrator and editor. The applicant has referred to this page in his statement and at the protection visa interview, where he described it as a historical and cultural thing, about [certain aspects of history]. The applicant claimed during the protection visa interview that after he came to Australia he sometimes talked about anti-government or anti-Islamic things. He has presented no evidence of such content on the [social media] page. While his statement submitted with the visa application claims the Iranian government does not approve of the page because it perceives it as anti-Islamic, and that they have this on file against the applicant, it is unclear how the applicant is aware of this, and the claim seems contradicted by his evidence at the interview that prior to his departing Iran he had not published any political things and the page was focused on cultural and historic issues. I do not accept that the page is controversial or that it attracted any adverse interest while the applicant was in Iran. There are also shots from a [a social media] group which similarly do not have any overtly religious or political.

16. The applicant has also submitted posts he has put on his personal [social media] account dating between November 2011 and March 2017. I accept these could generally be described as atheist. The applicant also claimed at the interview to have had another [social media] page where he published news including some critical things, and followed political views. He said that he deleted it two years previously because of his family situation, saying they were not able to talk to him directly but had asked him not to do it. The applicant also submitted screenshots from a blog page to the IAA, and provided a link to the page, which I have accessed. The author of the page has a name similar to the applicant's first name and it contains a range of content which I accept is critical of the Iranian government. The first post on the blog dates from February 2016, after the applicant received an invitation to apply for a protection visa, and the last post visible on the page is from June 2017, around the time that the information regarding the page was submitted to the IAA. This timing suggests to me that the applicant's motivation in creating and maintaining the page is connected to the application. However, taking into account that the applicant did not submit this material to the delegate, that I have accepted he sold prohibited books in Iran, and that I accept he genuinely holds the views on the page and has claimed to have also published other material critical of the government, I am willing to accept that this was not the sole reason for creating the page and that he has engaged in this conduct otherwise than solely for the purpose of strengthening his claim to be a refugee. In light of this evidence, I am also willing to accept the applicant earlier had another [social media] page with political content.
17. Considering the evidence as a whole, I accept that the applicant is an atheist, that he was expelled from university and later lost a job following comments questioning [a particular aspect of the Islamic faith]. I further accept that the applicant holds views in favour of atheism and against both Islam and the Iranian government and that in the past he has voiced these views both in Iran and more publicly in Australia. I accept that the applicant sold prohibited books, that one of his associates had their [business] raided and was arrested, that after the applicant's departure from Iran, his home was raided and his father was summoned to answer questions about his whereabouts. I accept that this was in connection with his role in the distribution of prohibited books. While I have some doubt over the applicant's claim to have left prohibited books such as [Book 1] in his home at a time when he was fleeing the country because he was aware the [business] had been raided and feared harm for publishing such books, ultimately this does not impact my conclusion as it is evident from the raid and subsequent questioning of his father that the applicant's activities had come to the attention of the authorities and that he was subject to investigation following his departure.
18. According to DFAT, when a person returns to Iran with temporary travel documents (as would be the case for the applicant as he is no longer in possession of his passport), the authorities at

the airport are forewarned about their return because of Iran's sophisticated government systems. Returnees who have done something to attract the specific attention of the authorities would be questioned.<sup>2</sup> In these circumstances, I am satisfied that the applicant will be identified by Iranian authorities on return to Iran in relation to his selling of prohibited books and that in this context his internet activity in Australia, and the applicant's political and religious views, may also come to light.

19. Country information before me confirms that known atheists and others who espouse unconventional religious beliefs are at risk of targeting by the state, arrest and imprisonment.<sup>3</sup> Further, although the government of the day may be criticised robustly both in public and online, and Iran has an active civil society, authorities routinely suppress free speech and punish public criticism of the regime. Political activists perceived to cross red lines are often charged and sentenced under offences such as 'propaganda against the State', 'insulting Islamic values or prophets' and 'insulting the Supreme Leader', which can carry lengthy prison terms.<sup>4</sup> Security forces and the judiciary punish those who publicly criticise the system of government, supreme leader or official religion.<sup>5</sup> There is credible information that security authorities use torture to extract confessions, particularly against political prisoners and the government has taken few steps to hold officials accountable for such conduct.<sup>6</sup>
20. Considering this information, I am satisfied that if the applicant returns to Iran, there is a real chance that he will face serious harm in the form of arrest, imprisonment and/or torture, for the essential and significant reasons of his political opinion and religion, specifically the imputation of opposition to the government from the sale of books prohibited by the government and his atheist, anti-Islam and anti-government views. I find that the harm involves systematic and discriminatory conduct and amounts to persecution. There are no reasonable steps the applicant can take to modify his behaviour to avoid persecution, as it arises from matters already known to the authorities and to require the applicant to alter or conceal his beliefs would be contrary to s.5J(3)(c). As the harm will be inflicted by Iranian authorities which operate throughout Iran, I find that effective protection measures are not available to the applicant and the real chance of harm relates to all areas of Iran.
21. I am satisfied the applicant has a well-founded fear of persecution within the meaning of s.5J and that he is outside the country of his nationality and, owing to that fear, is unable or unwilling to avail himself of the protection of that country.

### **Refugee: conclusion**

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

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<sup>2</sup> DFAT, "DFAT Country Information Report Iran ", 21 April 2016, CIS38A8012677, 5.34.

<sup>3</sup> See Immigration and Refugee Board of Canada, "IRN105384.E - Iran: Situation and treatment of atheists and irreligious people by society and authorities, particularly in Tehran; state protection available (2014-December 2015)", 23 December 2015, OGFDFC61A76; 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.

<sup>4</sup> DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677, 3.60-3.61.

<sup>5</sup> US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964, p.15.

<sup>6</sup> Ibid; DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677, 4.14.

## Decision

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

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

...

***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.