



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/02968

Date and time of decision: 23 November 2017 18:11:00

Rosie Mathlin, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Faili Kurd who is a citizen of Iran. He arrived in Australia by boat, undocumented, [in] October 2012. [In] January 2016 he lodged an application for a temporary protection visa (TPV application).
2. The applicant's mother and brother are also applicants for protection visas. They arrived in Australia some months after the applicant and had not been invited to apply for visas when he was. The applicant inquired about the possibility of lodging a combined application, on the basis that they were members of the same family unit, but because he was informed that this would lead to a delay in the processing of his application, he decided to proceed on his own. His mother and brother subsequently lodged a combined application for Safe Haven Enterprise visas (SHEV applications) with the assistance of a legal representative appointed under PAIS, a government funded migration assistance service, on the basis that they were exceptionally vulnerable.
3. At the applicant's TPV interview the delegate of the Minister for Immigration and Border Protection (the delegate) suggested that he seek legal advice from his family members' lawyer with a view to being included in their application as a member of their family unit, subject to dependency being established. The delegate later determined that the applicant was eligible for PAIS representation because she was satisfied that he was a member of the same family unit as his brother and mother. The delegate provided the representative with information from the applicant's file, the representative was invited to provide written submissions on issues raised at the applicant's TPV interview, and the representative provided a submission in relation to all three applicants.
4. [In] June 2017 the delegate refused the grant of the visa to the applicant. She was not satisfied that he faced a real chance of serious harm on return to Iran for any reason including his ethnicity, his claimed political profile, or as a failed asylum seeker who had left legally. She made separate decisions, recorded in a separate decision statement, in relation to the applicant's brother and mother. Ultimately she found that none of them were owed protection obligations and therefore made no finding in the decision statements as to whether they were members of the same family unit. The delegate's decisions were referred to the IAA under s.473CA of the *Migration Act 1958* (the Act). Because of the way the delegate dealt with the applications, all material relating to the three applicants was before the delegate and I have considered it in respect of each of the applications. I have reviewed each of the delegate's decisions and recorded my decision in respect of the applicant's brother and mother in a separate decision statement (IAA17/02972 and IAA17/02973). I have concluded that none of the applicants satisfies the criteria for the grant of a protection visa.

### Information before the IAA

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5. I have had regard to the material given by the Secretary under s.473CB of the Act. No further information has been obtained or received from the applicant.
6. Included in the review material are documents which are the subject of a non-disclosure certificate issued under s.473GB of the Act. The delegate questioned the applicant about the content of those documents, and referred to them in her decision statement. According to the decision statement, the documents refer to information provided to the Department by the

applicant's [aunt], her husband who is his cousin and their child. Because I am unable to test or assess the truth of those relatives' claims, I have not had regard to them or to the contents of the documents in assessing this application.

### **Applicant's claims**

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7. In the first set of written claims provided in support of his TPV application the applicant stated that as a Faili Kurd he faced discrimination and was treated as a second class citizen. He was not issued with a birth certificate until one year after he was born, and his identity documents clearly identified him as a "refugee". He claimed that he faced racism and discrimination at school, especially during the Iran- Iraq war (because his parents were born in Iraq). When he graduated from university he was told that he had wasted his time and he would never get a job. The applicant found work as a [Occupation 1], but it was always short- term subcontracting work and when his employers found out about his situation they would refuse to pay him or cancel the contract. He stated that because his father was dead and his mother had [medical condition] it was up to him as the [status] child to find a way to secure his family and rescue them from this hell. He stated that if he returned to Iran he would have problems with the government or the intelligence service who would question him about his absence from Iran and might accuse him of being a spy. The suspicion would be worse because he is Kurdish and if he were known to have sought asylum.
8. In March 2017 the applicant submitted a further statement of claims. He stated at the TPV interview that he did not have legal advice in relation to the preparation of that document, however, parts of it were identical to his brother's statement of claims which was prepared in December 2016 with the assistance of his representative. He reiterated his claims to have faced discrimination as a Faili Kurd, additionally stating that he was rejected from enrolling in numerous schools because he was accused of having false documents. He stated that he was charged tuition fees when education in Iran is state sponsored. He said that he was cursed and sworn at on countless occasions because he is Kurdish and he was accused of being an Arab. He said that when he applied for government related jobs he was rejected simply because of his father's name or his parents' place of birth or his accent.
9. The applicant additionally claimed that he was arbitrarily questioned and detained by state authorities on countless occasions. The first time was in [school] when he was removed from class and questioned by the *basij* in the school about his background and family's origins.
10. In 2010 he was questioned by [a senior official] of [University 1], where he was studying, about his [involvement in] a social network website for alumni and current students of the university. "After a while" [a number of] people took him to "somewhere like detention" and he was interrogated under harsh conditions, beaten and accused of being a political dissident. He was detained for one day. This occurred in the aftermath of the 2009 Green Movement. The applicant believes that he was particularly under suspicion because he is a Faili Kurd. He believes that a file was created on him and that he has an adverse profile as a dissident because of this incident.
11. He stated that in his last job he was working [for] a company related to the *sepah*.<sup>1</sup> Six months before he left Iran he discovered financial corruption in his workplace. When he confronted his boss, his boss said that they knew all about the applicant's background and he would regret it if he took the matter further. A series of death threats followed and the applicant fled the country. The threatening letters and phone calls continued after his departure and his brother

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<sup>1</sup> *Sepah-e pasdaran-e enghelab-e eslami*, Iranian Revolutionary Guards Corps.

was interrogated about the applicant's whereabouts several times. He believes this happened because he was identified as a political dissident, in keeping with the government's suspicions about members of the Kurdish minority.

12. He claims that if he returns to Iran he will be under suspicion because of his long absence and he will be interrogated at the airport. He will be under particular suspicion as a Faili Kurd. The authorities will discover that he has an adverse profile with the *sepah* and intelligence because of the incident at university and because of his problems in his workplace. Because of this background, together with the fact that he is a failed asylum seeker, and also because he is a [Occupation 1] with expertise in [a particular area], he will be suspected of being a spy. He may be imprisoned, questioned and persecuted.

## Discussion of applicant's claims and findings

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### Discrimination as a Faili Kurd

13. The Australian Department of Foreign Affairs and Trade (DFAT) advised in its 2014 report on Faili Kurds in Iran that "Following discussions with a range of credible non-government sources, DFAT is not aware of cases where Faili Kurds who are also Iranian citizens have faced adverse attention specifically because of their ethnicity",<sup>2</sup> although DFAT could not rule out the possibility that individual members of the security forces might harass or discriminate against Faili Kurds.<sup>3</sup> Furthermore, DFAT advises that Faili Kurds who are Iranian citizens can access services and employment on the same basis as other Iranian citizens, and appear to face little to no discrimination on the basis of their ethnicity or religion.<sup>4</sup>
14. DFAT's 2016 Iran Report<sup>5</sup>, which does not distinguish between Faili Kurds and the larger Kurdish population, states that most Iranian Kurds either do not come to the attention of authorities or are subject to only low levels of adverse attention by the state, unless they attempt to publicly assert cultural or political rights that are perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic, in which case they face monitoring, summons for questioning, or arrest. In such cases, family members are sometimes threatened and, less often, imprisoned or forced into hiding.<sup>6</sup> There are reports of Kurdish political activists, actual and perceived being subjected to harsh mistreatment, however most reports appear to refer to members of the Sunni Kurdish population who are accused or suspected of connection or affiliation with Kurdish political parties.<sup>7</sup> The main Kurdish parties are generally active in Sunni Kurdish tribal areas of Iran and the membership of most parties (with one exception) is not drawn from the Shia Faili Kurd population.<sup>8</sup> The applicant is a Shia.
15. The applicant's claimed experiences of discrimination do not appear to reflect the situation depicted by DFAT, but more importantly, his own life experiences do not indicate that he has suffered significant discrimination. He is tertiary educated and holds [various qualifications].

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<sup>2</sup> DFAT, "DFAT Thematic Report Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722 at 3.6

<sup>3</sup> Ibid at 5.8

<sup>4</sup> Ibid at 3.53 and 3.62

<sup>5</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

<sup>6</sup> Ibid at 3.25-3.26

<sup>7</sup> Danish Refugee Council, "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", 1 May 2013, CIS26587

<sup>8</sup> IBID

Apart from a possible twelve month period during which he claims to have been unemployed,<sup>9</sup> his employment history as detailed in information provided to the Department, including in a resume which appears in the review material, shows that he has been consistently employed in his field. The residential addresses provided to the Department indicate stable access to housing, for the most part in Tehran. While I cannot rule out the possibility that the applicant has experienced some discrimination in his life as a Faili Kurd, given the objective evidence about his personal circumstances and the independent information indicating that Faili Kurds generally do not experience widespread or serious discrimination, I am not satisfied that the applicant has experienced discrimination such as to constitute serious harm. In particular I am not satisfied that he has been denied the opportunity to earn a livelihood or that he suffered economic hardship threatening his capacity to subsist, or that he was denied access to basic services that threatened his capacity to subsist. There is no evidence before me to suggest that his situation would be worse, such that he would be subjected to a level of discrimination that would constitute serious harm, should he return to Iran in the reasonably foreseeable future.

16. The applicant claims that he was subject to discrimination in wider society, cursed and sworn at. He said that it was apparent on his official documents that his parents were born in Iraq and this resulted in adverse treatment, especially during the Iran - Iraq war. DFAT advised in its 2014 report that societal discrimination against Faili Kurds was not widespread but could not be ruled out in individual cases<sup>10</sup>; DFAT was not aware of widespread official harassment on the basis that they were former Iraqi citizens, however in a later report DFAT noted the existence of community prejudice against some unspecified ethnic minorities, while noting that official discrimination against ethnic minorities tends to affect those who are not Shia Muslims, and those who live in remote or less developed regions, more severely.<sup>11</sup> The same report also states, however, that Kurds can face considerable societal discrimination and unfair day to day treatment.<sup>12</sup> I accept that the applicant experienced some prejudice within society from individuals such as students, teachers, some employers and other individuals with whom he had dealings. I accept that while at school he may have been bullied and even physically mistreated by students and staff, and on occasion he may have been questioned by the school *basij*. I consider that he has exaggerated the extent of this mistreatment, but in any case, any mistreatment that he experienced as a school student has no bearing, in my view, on the risk of harm he faces now or in the reasonably foreseeable future. I do not accept that the applicant faced institutional discrimination in relation to his education or that he was denied the capacity to earn a livelihood or that he was subjected to any other kind of serious harm in relation to employment. The evidence about the situation of his family overall does not reflect, in my view, that their lives were marked by deprivation and hardship as a result of either societal or official discrimination. Both the applicant and his brother were educated at tertiary level; they were consistently employed, albeit perhaps in somewhat insecure temporary jobs; the applicant said that their father was consistently employed as [occupation] until ill health prevented him from working; their residential record indicates that they enjoyed housing stability; and they were able to afford travel to Australia. Considering the evidence as a whole, I am not satisfied that he experienced mistreatment or discrimination in going about his ordinary business in society, such as to constitute serious harm including significant physical harassment or ill-treatment, significant economic hardship or denial of access to services threatening his capacity to subsist, or denial of capacity to earn a livelihood.

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<sup>9</sup> According to information provided in his TPV application he was looking for work between February 2011 and January 2012; at the entry interview he did not claim to have been unemployed during this period or at all.

<sup>10</sup> DFAT, "DFAT Thematic Report Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722 at 4.4-4.5

<sup>11</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677 at 3.1-3.6

<sup>12</sup> Ibid at 3.23

## 2010 interrogation about social media activities

17. In his March 2017 statement of claims, the applicant claimed that in 2010, or at the beginning of 2011, when he was [involved in a] “fan page” of [University 1], he was questioned by [a senior official] about some of the users of the page, their personal circumstances, their relationship to the applicant and their political views. At the TPV interview the applicant said that the [senior official] told the applicant that he had a letter from the security department of the university noting that some members of the web page had shared images or messages about the Green Movement; the [senior official] told that applicant that as he was [involved in] that page, he should be careful about what was shared on it.
18. In the written statement the applicant claimed that “after a while” [a number of] people took him to “somewhere like detention” and he was interrogated under harsh conditions, beaten and accused of being a political dissident. He was detained for one day. The applicant was asked further questions about this incident at the TPV interview but the information he provided was vague and lacked details. He said that the “[number of] people” were middle aged men in plain clothes, who did not introduce themselves. They put the applicant in a car and took him “somewhere else”; he said that his mind was “so busy”, he did not notice where they took him but he thinks it was somewhere north of Tehran, less than an hour drive. He said that they took him to a room in a [building] where they interrogated and beat him. He said that they were trying to “blame him” for the web page and make out that he had the intention to do something against the government. The applicant said that it was “on his mind” that he is from a minority group and so they wanted to blame him for something that he had not done. In the written statement of claims he said that this treatment is in keeping with the government’s typical suspicion against members of the Kurdish minority, and he believes that he was identified as a potential dissident. He said that he was released with no [explanation].
19. I have concerns about the credibility of this claim. The applicant did not mention this incident at the entry interviews conducted shortly after his arrival in Australia, or in the first version of his TPV application. Indeed, at the entry interview he specifically denied having ever been arrested or detained, having any political involvement, or that his daily life had been impacted by government security or intelligence services. If the incident had really occurred as described, and if it had the significance which the applicant now seeks to attribute to it - that it marks his identification as a political dissident - I consider that he would have raised it at an earlier stage, if not at the entry interview, then in his TPV application.
20. Nonetheless, it is broadly plausible and consistent with country information that was considered by the delegate about the aftermath of the Green Movement in which social media was widely used as a political tool, that the applicant would have been questioned within the university about his [involvement with] a web page used to connect past and present students, particularly if anti-government material had been posted. I do not accept that the applicant’s ethnic identity had anything to do with this questioning; he has not indicated that there was any overt reference to this in the course of the questioning and given the events of the time, I consider that his [involvement in] the web page would have been sufficient reason for him to come to the attention of the university authorities. Moreover, the country information does not suggest that Faili Kurds are routinely attributed with a profile as political activists, as the applicant claims. Rather, the independent information states that most Kurds do not come to the attention of the authorities unless they are politically active. I am prepared to accept that the applicant was questioned by [a senior official], but I do not accept his claim to have been removed from the university to an unknown location by [a number of] unidentified men who beat and questioned him further, given the lateness of the claim and the vague nature of the applicant’s account. The available credible information does not indicate that any adverse

interest in him over the web page had further repercussions for the applicant: he completed his studies, obtained his degree, and does not claim to have had any further related dealings with security or intelligence agencies during the subsequent years that he remained in Iran.

21. I am prepared to accept, at most, that the applicant was questioned by university authorities about material posted on a student web page that he [was involved in]. I do not accept that anything that occurred was connected with his ethnicity; I consider that his [involvement in] the website was a sufficient basis for him to come under scrutiny at that particular time. Nor do I accept that the applicant was attributed with a profile as a political dissident or activist as a result of this incident. I am satisfied that the applicant was cleared of whatever suspicion he was under, and I consider it extremely doubtful that any record of the matter was retained. I do not accept that, as he later claimed, he has a criminal file as a result of this matter when no charges were laid against him, let alone proven.

#### **Discovery of corruption in the workplace**

22. I find the applicant's entire account of his discovery of corruption in the *sepah* linked company where he worked prior to his departure from Iran, and the claimed consequences, to be highly implausible and generally problematic.
23. The applicant claims that he discovered financial irregularities which he reported to [a senior officer]; he said that he asked who was responsible and said that he would put in a complaint. He states that the [senior officer] told him to go ahead and make a complaint, but he told the applicant that they knew everything about him and his family background, and that he had been a "busybody" at university. The applicant took this as a threat and he said that he then realised why he had been employed: because of his minority status and his adverse record, he could easily be blamed for the disparity in the figures and he would have no right to complain. I do not accept this claim. In my view it is farfetched and highly implausible. I am satisfied that the applicant was able to obtain employment with the company because he was qualified for the job, because there was no criminal or political file on him and because he was not subject to serious, if any, discrimination as a Faili Kurd.
24. The applicant said that he took no further action in relation to the corrupt transactions over the period that he continued to work for the company. There are, however, a number of discrepancies in the dates provided by the applicant for the various key events. In the entry interview he stated that he worked there from January to July 2012, and in the TPV application from January to June 2012. In his resume he claimed to have worked there from January to September 2012. At the TPV interview he said that he worked at the company for one year. He said that he discovered the corruption and raised it three months before he left (which was in September 2012). He subsequently said that he continued to work at the company for three months after he discovered the corruption, and then resigned and was unemployed for three months before he came to Australia. His evidence, considered as a whole, suggests that he had worked at the company for some time prior to discovering the corruption. If so, the dates of employment provided in the entry interview and the TPV application are unlikely to be correct.
25. He said that "after a while" - but it is not clear whether this was while he was still working for the company or after he left - he started to receive threatening letters at his home. He said that the letters contained "lots of swear words", and threats to kill or "exile" him. He said that once he decided to leave Iran it took one month to make the arrangements. After he left, his brother began to receive threatening letters referring to the applicant, as well as phone threats and unknown people coming to the house asking about the applicant. The applicant suggested that the *sepah* were trying to link his complaint about corruption in the work place with his

presence overseas, the presence of a relative (his [relative]) in [another country] and his brother's arrests during his university years, together with their ethnicity, to construct allegations that they were plotting against the government and the *sepah*.

26. The delegate noted that the applicant had not mentioned any of these claims at the entry interview, where he had stated quite clearly that he had no political problems or problems with government agencies in Iran; he had stated that his reason for leaving Iran was that because of his Iraqi heritage it was difficult to find employment sufficient to support his family, particularly given his mother's ill health. He also stated that for about two years he had been researching the options for migrating to Australia legally but decided against this because of the long wait. The applicant responded, consistent with an explanation provided in his written statement of claims, that he had been afraid to mention these details at the entry interview in case he was deported and the information was provided to the Iranian authorities; he was also concerned about the possible impact on his mother and brother who were still in Iran at that time.
27. The delegate also put to the applicant that in his own application, his brother had not mentioned having had any problems prior to his departure that were related to the applicant – in particular he did not mention having received written or verbal death threats, or having been questioned by unknown people in relation to his brother, the applicant. The applicant said that maybe his brother, on legal advice, had kept his own claims separate. I note that at the entry interview the applicant's brother did refer briefly to problems he claimed to have experienced after the applicant's departure - when asked whether the police or security service had any impact on his day to day life, he said that "recently" after his brother had left, the phone only worked for incoming calls, and "after some time" they could not call overseas. Once he got a warning that if he talked to anyone overseas he would be in trouble and they could easily get rid of him. At his SHEV interview, the applicant's brother described much more extensive problems, saying that he was interrogated up until his departure from Iran, and towards the end the questions related to his brother. He said that "they" also contacted him over the phone and he received threatening letters. Asked about the letters, he indicated that they contained insults related to their ethnicity; asked when they received these letters, he said that they "used to receive a lot but it escalated after my brother left". In the phone calls, "they" said things like "tell your brother to shut up or we will shut him up".
28. Overall, I do not accept the applicant's account of the events which he says occurred in the months prior to his departure and which led to his decision to leave Iran. Even if he had concerns about confidentiality, I do not accept that the applicant would have made no mention at all of these events in his entry interview but, instead provided other, detailed reasons for leaving Iran and not wishing to return, which bear no relation to his later claims.
29. I do not accept that the applicant's brother would have omitted from his SHEV application any mention at all of having received death threats by letter and telephone, and threatening visits from people asking about the applicant in the months prior to his departure, if these events had really occurred. While I note that he made a brief reference to issues concerning his brother at the entry interview, the much more detailed version he provided at his SHEV interview was substantially different and seeks to portray the level of interest as much more serious. The applicant's brother was interviewed after the applicant, and it is evident from information in the post-interview submission that they had discussed the content of that interview, at which the delegate had raised these concerns. I am of the view that the information provided by the applicant's brother at his SHEV interview about the circumstances which led to the applicant's departure and how the events later affected him was fabricated so that their accounts would be consistent. Given that the claimed impact on the applicant's

brother was an integral and substantial part of the applicant's own claims, I consider that the omission of the relevant events from the brother's account is a major discrepancy for which no satisfactory explanation has been provided. In my view, this strongly suggests that the applicant's claims are not true.

30. I accept that some minor discrepancies as to dates or timing in an otherwise credible and plausible narrative may be explained on the basis that it is difficult to recall and repeat the precise timing of particular events on different occasions over a long period of time, in circumstances that may be stressful. However, I consider that the discrepancies in the dates of employment provided by the applicant, and of the timing of the key events prior to his departure are significant. In particular, on one version, his problems at work arose six months before his departure in September 2012, thus in March 2012. The applicant has consistently claimed that he commenced work at the company in January 2012, yet his evidence indicates that he noticed the financial irregularities going back over a period of some months. In my view, these discrepancies cannot be reconciled and indicate that the applicant's account is not reliable. While this would not, on its own, be a sufficient basis to reject the applicant's version of events, in conjunction with the other problems in his evidence it is, in my view, a further factor which indicates that he has not told the truth.
31. Finally, I have stated above that I do not accept the applicant's claim that he was specifically employed on the basis that his claimed vulnerabilities would mean that he could be used as a scapegoat. I find that this is a bizarre and farfetched claim; I do not accept that whoever employed him did so in order to protect themselves in the event of the potential future discovery of their own fraudulent activity. I also consider highly implausible the applicant's claim that those responsible for the fraud embarked on a campaign, involving the *sepah* more broadly, to harass and threaten not only the applicant, but his family, over a period of many months, even after it must have been evident that he was not going to take any further action in relation to the fraud – especially given that on one version of events he remained in Iran for six months after discovering it without taking any further steps to report it. The claim that his boss and possibly the *sepah* itself would involve his family is particularly incredible, in my view; and especially the claim that they would continue to harass his family members even after the applicant's departure from Iran, by which time it would have been even more evident that he was not going to report the fraud. Overall, I find that the applicant's claims that the security authorities have engaged in a major conspiracy against the applicant and his family – involving their ethnicity, manufactured political profiles, the fact that an [relative] lives in [another country], and the applicant's legal departure from Iran using a genuine passport – to be fanciful, highly implausible and generally not credible.
32. Given the problems in his evidence, I do not accept that the applicant discovered corruption linked to the *sepah* in his workplace, or that he threatened to expose it and was in turn threatened with harm on the basis of his ethnic and political background. I do not accept that either the applicant or his immediate family members were subject to death threats over a period of months which led to their departure from Iran. In suggesting that his family members were harassed and threatened and that their correspondence with relatives overseas was monitored, the applicant appears to be drawing comparisons with the treatment of Kurdish political activists as reported by some human rights agencies.<sup>13</sup> However, there is no suggestion arising on the credible evidence before me that the applicant has a political profile

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<sup>13</sup> See, for example, Danish Refugee Council, "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", 1 May 2013, CIS26587

anything like those of the Kurdish activists described in that report, most of whom are not Faili in any case, but Sunni Kurds who are agitating for a Kurdish independent homeland.

### **Cumulative profile as a Faili Kurd, political dissident and failed asylum seeker**

33. I do not accept that the applicant has acquired a profile as a political dissident. The independent country information that was considered by the delegate does not support the applicant's assertions that Faili Kurds are suspected for reason of their ethnicity alone of being opposed to the government. I do not accept that the applicant has done anything that would result in his being imputed to hold anti-government opinions. Even if I accept that he was questioned at university, as discussed above, I do not accept that this resulted in the creation of an adverse record, or a profile as a political activist or dissident. I am satisfied that he was cleared of any suspicion at the time. I do not accept that the applicant discovered and exposed corruption at work, making enemies of members of the *sepah*, or people linked to the *sepah*, and I therefore do not accept that the applicant acquired an adverse political profile, including one of being opposed to the *sepah* for that reason. I am satisfied that at the time of his legal departure from Iran, using his own passport, the applicant was not of interest to any branch of the Iranian security or intelligence authorities for any reason.
34. Because the applicant no longer has his passport I accept that he may be returning on a temporary travel document or *laisser-passer* and that he might therefore come to the attention of airport security authorities on return. DFAT advises that where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. However, the person will generally only be questioned if they have done something to attract the specific attention of authorities, and the vast majority of people questioned would be released after an hour or two.<sup>14</sup> The IOM, which runs a voluntary returns programme for people returning to Iran from countries including Australia, advises that people who left on their passport and return on a *laisser-passer* will be questioned at the airport, possibly for up to a few hours, but nobody returning in those circumstances has been arrested, to their knowledge.
35. I accept that the applicant may be suspected of having sought asylum overseas, given his long absence. There are some reports that failed asylum seekers have been harmed on return to Iran.<sup>15</sup> The country information refers to a 19 year old Kurdish man having been arrested after deportation from Sweden following the rejection of his asylum application.<sup>16</sup> Given the limited information available about this case, I am not satisfied that the circumstances of this person are sufficiently similar to those of the applicant to support a conclusion that the applicant faces a real chance of arrest and detention on return, particularly in the light of the other more recent information before me indicating that he is not. In February 2012 Amnesty International reported that asylum seekers risk arrest if they return to Iran, particularly if forcibly returned, if their asylum application is known to the authorities. Amnesty referred to an earlier report issued by a Swiss refugee agency quoting an unnamed Iranian judge as saying asylum seekers are interrogated on return, whether or not they have been political activists in Iran or abroad. If they have tried to conduct propaganda against Iran, then they are culpable and are detained until a judge decides the sentence. The same report referred to articles which appeared in

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<sup>14</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

<sup>15</sup> Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", February 2012, CIS22610, 56; Iran Human Rights, "The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", 19 June 2011, CX274950

<sup>16</sup> Ireland: Refugee Documentation Centre, "Iran: Information on the treatment of returned asylum seekers", 17 October 2014, Q18731, available at: <http://www.refworld.org/docid/549006604.html>, referred to in applicant's submission.

Iranian government run newspapers which expressed the view that Iranians are seeking asylum “on the pretext of supporting the opposition”, and another which recommended the use of existing laws that enable Iran’s judiciary to bring charges against Iranians for alleged violations of Iranian law committed while outside Iran.<sup>17</sup> However, DFAT commented on these reports to the effect that it was not aware of the authorities implementing the stated policies.<sup>18</sup> In the absence of subsequent reports of asylum seekers being treated in this way, and given that recent information from DFAT and the IOM suggests that this is not happening, I prefer their assessments. I also note that some reports which indicate that failed asylum seekers face harm on return do not distinguish between people who left legally and those who left illegally; or between those who have been politically active in Iran or overseas and those who have not. I consider it significant, in this case, that the applicant left Iran legally using his own passport. I have found that he has no history as a political activist inside Iran. As noted above, while I accept that he was questioned about online activity following the 2009 Green Revolution, I have found that he was cleared of any wrongdoing and I am satisfied that he had no adverse record as a political dissident or activist at the time of his departure. There is no suggestion that he has engaged in any political activity outside Iran.

36. DFAT’s most recent 2016 Country Information Report on Iran states that Iranians are not perceived as political opponents simply because they sought asylum in a western country, nor do they face a real chance of harm on this basis. Given the wide range of credible sources considered by DFAT and the currency of its report compared to some of the other reports, I give it significant weight. On the basis of this information I am satisfied that Iranians who return to Iran after having sought asylum in a western country will only be of interest to authorities if they have done something additional to attract the specific attention of authorities. While I accept that the fact that the applicant is a Faili Kurd could be a factor in the way he is treated on return, there is no independent information to support a conclusion that the mere fact that the applicant is a Faili Kurd would result in an unusual degree of scrutiny or result in serious harm, even if he returns on a temporary travel document and is identified as a failed asylum seeker. As set out above, I do not accept that the applicant was politically active in Iran, or that prior to his departure he was imputed with a political opinion that would be of concern to the authorities for any reason. I have considered whether the applicant’s training and occupation as [Occupation 1] might lead the authorities to suspect he has worked as a spy overseas but I can find no sensible basis for such a suggestion and consider that it is fanciful and farfetched. There is no suggestion that the applicant has been involved in any political or other activities outside Iran that might bring him to the attention of the authorities on return. There is no information before me to support the applicant’s contention that the fact that he has an [relative] who has apparently been granted asylum in [another country] would give rise to a real chance that the applicant would be suspected of plotting against the government or otherwise holding anti-government political opinion, and I do not accept that this is the case. DFAT advises that millions of Iranians travel in and out of Iran each year without difficulty, including Iranians with citizenship and residence abroad,<sup>19</sup> and presumably many Iranian citizens whose relatives have residence abroad, including people who have been granted asylum.

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<sup>17</sup> Amnesty International, “‘We are ordered to crush you’ Expanding Repression of Dissent in Iran”, February 2012, CIS22610, 56.

<sup>18</sup> DFAT, “Response to IRN 11738: Iran - Article on returned asylum seekers and people exiting Iran with false documents”, 19 April 2011, CX263145.

<sup>19</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677

## Harm from relatives

37. The applicant stated that he also faced harm because a distant relative had informed relatives in Iran that the applicant's family had escaped with stolen money to live in Australia; this relative's children in Australia have also threatened the family. When asked to expand upon this claim at the TPV interview, the applicant's evidence was vague. He indicated that his family barely knew the relative in question and the conflict seemed to have arisen between the applicant and his family, and the other family, in Australia. The applicant himself did not appear to be suggesting that he genuinely feared serious harm from these relatives, and on the basis of the evidence I am not satisfied that there is a real chance that the applicant would face harm of any kind on return to Iran because of this family conflict.

## Refugee assessment

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38. 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.

## Identity and nationality

39. The applicant has provided original identity documents to the Department and there does not appear to be any issue as to his identity and nationality. I accept that his identity is as claimed, and that he is an ethnic Failsi Kurd who is a citizen of Iran. There is no information before me to suggest that the applicant is a national of any other country, or that he has the right to enter and reside in any other country. Iran is the receiving country for the purposes of the Act.

## Well-founded fear of persecution

40. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

41. Because I have not accepted the applicant's account of the circumstances leading to his departure from Iran or the reasons why he left, I am not satisfied that at the time of his departure he had an adverse political profile as a person with pro-Kurdish or anti-government views. I am not satisfied that he was wanted by the *sepah*, or any

other arm of the Iranian security services, at the time of his departure, or that he would face harm of any kind from those organisations should he return to Iran now or in the reasonably foreseeable future.

42. While it is possible that the applicant has suffered some discrimination as a Faili Kurd, I note that as an Iranian citizen he is entitled to the same rights and access to services as any other Iranian. Based on the applicant's evidence about his past experience, I do not accept that there is a real chance that he would in the future suffer discrimination in relation to housing, education, employment or access to services; or insults or any other mistreatment from individuals or from government agencies that would constitute serious harm.
43. Based on the country information, I am not satisfied that the applicant faces a real chance of serious harm on return to Iran because he might be identified at the airport as a person who is travelling on a temporary travel document, is returning after a lengthy absence overseas and who may be identified, for those or any other reasons, as a failed asylum seeker. The country information indicates and I find that, at most, he may be questioned but I am not satisfied that there is a real chance that he would be subjected to harm in this process. I am satisfied that applying for asylum is not considered to be a crime, nor does it, of itself, cause a person to be imputed with an adverse political profile. As I have not accepted that he had an adverse profile with the security services at the time of his departure, I am not satisfied that his circumstances would be aggravated for this reason on return, such that he might thereby face an elevated risk of harm. Nor am I satisfied on the basis of the available evidence that his Faili Kurdish ethnicity would result in a real chance risk of serious harm on return, of itself, or in combination with his other personal circumstances including his status as an asylum seeker, his family connection with a possible refugee in [another country] and his brother, and his occupation.

#### **Refugee: conclusion**

44. 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**

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45. 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**

46. 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.

47. The applicant has made no specific claims that he requires protection under the complementary protection criterion, separate from those claims made in relation to the refugees criterion.
48. For the reasons set out above, I have not accepted that the applicant faces a real chance of serious harm on return to Iran because he has been identified as a political activist for any reason including his [involvement in] a university social media website; because of his ethnicity; his claimed role in exposing corruption in his workplace which caused enmity with members of the *sepah*; his long absence from Iran; or his family connections. I am also satisfied that there is not a real risk that he would face significant harm for any of those reasons.<sup>20</sup>
49. I have not accepted that he faces a real chance of harm on return from any arm of the Iranian security forces for any reason, including as a Faili Kurdish failed asylum seeker, who is [Occupation 1] and who has a relative granted asylum in [another country], who would be returning on a temporary travel document. I am also not satisfied that there is a real risk that he would face significant harm on return. Although I accept that he may be questioned at the airport, I am not satisfied that he would be subjected to any form of significant harm including cruel, inhuman or degrading treatment or punishment, and certainly not torture, the death penalty or being arbitrarily deprived of his life during or as a result of this process.
50. It is possible that the applicant has in the past suffered some minor discrimination as a Faili Kurd. However, as noted above, he is an Iranian citizen and is therefore entitled to the same rights and access to services as any other Iranian. Based on the applicant's evidence about his past experience, I do not accept that there is a real risk that he would in the future suffer discrimination in relation to housing, education, employment or access to services; or insults or any other mistreatment from individuals or from government agencies that would constitute significant harm, including cruel, inhuman or degrading treatment or punishment.
51. There is no basis arising from the credible evidence before me to support a finding that the applicant faces a real risk of significant harm for any other reason, or arising from his personal circumstances considered cumulatively.

### **Complementary protection: conclusion**

52. 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).

### **Member of same family unit**

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53. Under s.36(2)(b)(i) or s.36(2)(c)(i) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who is mentioned in s.36(2)(a) or (aa) and holds a protection visa of the same class as that applied for by the applicant. I have found it unnecessary to determine whether the applicant in this case and his brother and mother (the applicants in IAA17/02972 and IAA17/02973) are members of the same family unit in the relevant sense. As I have found that none of the applicants meets the

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<sup>20</sup> In *MIAC v SZQRB (2013) 210 FCR 505* the 19 the Full Federal Court held that the "real risk" test in the complementary protection provisions imposes the same standard as the "real chance" test applicable to the assessment of "well-founded fear" (The Court in that case was considering the language in the Refugees Convention.)

refugee criterion in s.36(2)(a) or the complementary protection criterion in s.36(2)(aa), it follows that the applicant does not meet the family unit criteria in either s.36(2)(b)(i) or s.36(2)(c)(i).

## **Decision**

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

## 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.