



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA17/03062

Date and time of decision: 1 March 2018 11:20:00
Inge Sheck, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) is an Arab Shia Muslim from Basra province, Iraq. He departed Iraq [in] July 2013 and arrived in Australia [in] August 2013. [In] February 2017 he lodged an application for a protection visa (PV).
2. [In] July 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate did not accept that the applicant had been blamed for the death of a member of [Tribe A] and subsequently targeted and threatened by members of this tribe. The delegate concluded that the applicant did not face a real chance of persecution or a real risk of significant harm due to this, or for any other reason.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (“the review material”). On 28 July 2017 the IAA received a submission on behalf of the applicant from his [representative]. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant except in limited specified circumstances. The submission by the applicant’s representative addresses the delegate’s decision and findings. As such, it may be regarded as argument rather than new information and I have had regard to it.

Applicant’s claims for protection

4. After his [arrival] the applicant was interviewed by officers of the then Department of Immigration and Border Protection (now part of the Department of Home Affairs) (“the Department”) [in] September 2013 and [in] December 2014. Together with his PV application the applicant lodged a statement of claims dated [in] February 2017. [In] May 2017 he attended an interview (“the PV interview”) with the delegate at which his representative was present. The applicant claims:
 - He fears sectarian violence in Iraq. The violence and chaos makes no area safe;
 - Although he is a Shia Muslim, his family name is associated with Sunnism. He has been harassed at checkpoints because of his name;
 - He was involved in a motor vehicle accident [in] May 2013 in which [an individual] died. He was subsequently blamed for the [man’s] death by his family. The family are part of a very influential tribe and wanted to kill him. He was forced to flee the country. He has now been disowned by his own tribe and would have no protection if he were to return to Iraq.

Factual findings

5. Based on the information provided in his visa application and identity documents, which is not disputed, I accept that the applicant’s background is as follows: he was born on [birth date] in [Town 1], Basra province and grew up in Basra as well as in Najaf, where he lived with his grandparents. He is of Arab ethnicity, Shia faith and an Iraqi national. He has [a sibling], born in [a particular year]. His father died when he was very young and his mother remarried. He

has [a number of] half-siblings. He completed both primary and secondary schooling. He worked in a [business] while he was at school and then was [Occupation 1] at [Town 1] from 2003 to 2005. From 2005 until his departure from Iraq he was a [Occupation 2] in Basra. He married in 2004. His wife and [children] remain in Iraq.

6. The applicant's central claim is that he was involved in a motor vehicle accident and was blamed for the death of a man in that accident by the man's relatives. In relation to how the accident occurred, there appears to be some variation in the applicant's evidence. In his arrival interview in 2014 the applicant stated that "I was treated unjustly. There was a car accident and someone [in another vehicle] hit me on the back of my car, he was driving fast and he passed away". In his statement of claims as well as in the PV interview the applicant has stated that he was buying some [goods] when [another vehicle] drove into the back of his parked car. He did not claim to have seen the accident occur. After the PV interview the applicant provided a further document, this being the decision of his tribe to disown him for "failing to present himself and to take responsibility for running over [the [individual]]". This does not appear to accord with either of the applicant's versions of events. The variation in evidence does cause me some concern as to whether this event occurred as claimed.
7. The applicant has then consistently claimed that he took the injured man to hospital. He states at his PV interview that "people gathered around us and I put him in the back seat of the car and took him to hospital". The applicant has never explained why he took this step or why neither he nor any of the witnesses called an ambulance. The [other vehicle driver] then died at the hospital and his family blamed the applicant. This is the basis of the applicant's claimed fears: the family involved are "like gangs or mafia" and are well connected with militia groups such as the Asa'ib Ahl Al-Haq (AAH). At the PV interview the delegate asked why they would have blamed him for the accident, given that he was not even near his vehicle at the time, and the applicant responded "In Iraq it's tribal in nature".
8. The applicant then claims that he was taken to the police station for questioning but one of the police officers, who was [an associate] of his, helped him "escape". He had not been charged with any offence. In his statement of claims he states that the policeman involved was sacked for his action in assisting the applicant however at his PV interview he stated that the police officer was gaoled. After returning home from the police station the applicant took his family to Najaf and continued on to Baghdad. He stated that he did not intend to leave the country: "I just wanted to get someone to try and mediate and solve the problem". He contacted a senior member of his own clan and asked him for advice. The elder looked into the matter for several weeks but subsequently advised the applicant that "there is no reaching an understanding" with the other tribe and he had to leave. The applicant stated that "according to the tribal rule" the applicant's tribe then decided that his blood "could be shed in vain".
9. During the course of his PV interview the applicant made a number of assertions regarding the "tribal" nature of events in Iraq and "tribal traditions", including that because he was the owner of the parked vehicle into which the [other vehicle] had crashed, then he is considered to be responsible for his death. He further asserts that the only recourse sought by the family of the deceased is his (the applicant's) life. This claim is not supported at all by the review material. An article from the Middle East Journal provides comprehensive information on the settlement of disputes under tribal law, and states in part:

There appears to be relatively little variation in the structure, specifics, or processes of law from tribe to tribe, and this facilitates the settlement of disputes between them.' Processes center on shaykhs working with the parties involved 1) to determine the facts of the case, 2) with reference to tribal legal codes, to set out the amount of money that the perpetrator's tribe or

family must pay to the victim's to avoid retribution (often referred to as "blood money" in English but called either fasel or the Qur'anic term diya in Iraq), and 3) to enact communal rituals of reconciliation. The Arabic term for this entire process is sulha, or settlement, but Iraqis often use the term fasel to refer not only to the "blood money" paid but also to the process for determining its amount. Sulha may address premeditated or accidental injuries or killings as well as damages to honor. ... In a culture requiring that honor be restored after a wrong through the taking of revenge against the perpetrator or his extended family, sulha helps the community avoid feuds. ...

The central step in sulha is setting the amount of the fasel payment, which may be determined either during shuttle diplomacy or in a large communal gathering traditionally held in the victim's house (as a sign of goodwill), a tribal meeting house, or a shaykh's house. The starting point for negotiating compensation is clear, as the costs of very specific types of wrongs are written into each tribe's legal code or may have been set in long-term bilateral agreements between the two tribes. The process of setting the amount of a fasel is not just one of mathematics and memory; the final sum is also influenced by the reasons for the incident, the behavior of the perpetrator, the suffering of the victim's family, and the status of the victim. For example, the fasel for manslaughter is generally lower than that for murder, and those who confess quickly or somehow help their victims — by taking them to the hospital or notifying the police or the family — may pay reduced amounts, whereas failure to take responsibility can result in a higher fasel.¹

10. As can be seen from the above excerpt, had the motor vehicle accident occurred in the manner stated by the applicant it is likely that any fasel set would have been comparatively low. The applicant claims that the deceased was of [Tribe A] and that they are a very powerful and influential tribe. If this is the case then I do not accept that they would refuse to participate in the sulha as the applicant claims. As noted above, the applicant also provided after the PV interview a document purporting to disown him from his tribe. This is dated [in] July 2013, however the applicant made no mention of having been disowned from his tribe until his PV interview in May 2017. This document also notes in part that he was disowned “for failing to pay tribal damages (Fasl)” which directly contradicts the applicant’s claim that no settlement could be reached with [Tribe A]. In any event, due to the very recent provision of this document I am not satisfied that it is genuine. I do not accept that the applicant has been disowned by his tribe.
11. Due to the number of inconsistencies in the applicant’s evidence as well as the implausibility of his claim that his life was sought by [Tribe A] due to the death of one of their members, I do not accept the applicant’s claim that he was involved in a motor vehicle accident [in] May 2013, that he was blamed for the death of [the driver], that the [driver]’s tribe sought to harm him or that he was forced to flee Basra and then Iraq due to this. I conclude that the applicant was not of interest to any militia or tribal groups prior to his departure from Iraq in July 2013.
12. The applicant also claims that his family name is affiliated with Sunnism, so “when there is an explosion I would be questioned at checkpoints”. I accept that this was the case. Country information from 2013 indicates that today, Iraqi youth have lived through civil war. They carry more than one ID with different names, to prevent their sectarian affiliation from being identified.² The applicant has stated that from 2005 he was a [Occupation 2] and carried out home builds and renovations. I conclude that he would need to travel around Basra in order to

¹ Middle East Journal, ‘Tribal Law and Reconciliation in the New Iraq’, Winter 2011, CIS21853

² Al Monitor, Iraq's Sunni-Shiite Killings: When It's Based on a Name', 24 September 2013, CX318801

undertake this work. He did not indicate that he carried two sets of identity papers in order to minimise potential harm caused by his name and I conclude that he did not.

13. At the PV interview the delegate noted that in February 2014, a report released on the Department's website unintentionally enabled access to certain personal information about people who were in Immigration Detention on 31 January 2014 (the data breach). That information was removed from the website eight days later. As the applicant was in detention on 31 January 2014, his personal information (name, date of birth, nationality, gender, detention details and details of any other family members in detention) may have been accessed from the Department's website during the period of the data breach. In relation to this, the applicant stated that the people who sought him were already aware that he was not in Iraq. I accept that the applicant's details would have been available on the website at that time and if accessed, may reveal that he has sought asylum in Australia. Details of the applicant claims for protection would not have been available. I accept that the applicant may be identifiable on re-entry as a person who sought asylum in Australia, due to the manner of his return.

Refugee assessment

14. 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

15. 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.
16. The applicant is an Iraqi national and Iraq is his receiving country. I have not accepted the applicant's central claim that he was involved in a motor vehicle accident [in] May 2013 and was targeted for harm due to this. Although I accept that the applicant's family name may be associated with Sunnism, I am not satisfied that he has ever been discriminated against or harmed due to his name or that there is a real chance that he would be harmed in the foreseeable future for this reason.

17. The applicant is a Shia Muslim. He has not claimed to fear harm on the basis of his religion. He does state that he would not feel safe or secure in Basra (or indeed anywhere in Iraq) due to violence and killings therefore I have considered whether the security situation in southern Iraq would give rise to protection obligations. The latest DFAT Country Report notes generally that the security situation in Iraq is fragile and susceptible to rapid and serious deterioration with large scale conflict in some areas³. In mid-2017 it reported that ISIS and associated Sunni extremist groups were currently in control of a number of areas in northern, western and central Iraq,⁴ however the southern provinces including Basra remained under the control of the Iraqi Security Forces. Violence between opposing Shia militias occurs and is more pronounced in Shia areas such as Basra. This is sometimes linked to other criminal activities, including robberies and kidnappings. However, the DFAT report suggests that the risk of being caught up in this is predominantly borne by those who are actively involved in the militia or tribal group, rather than ordinary civilians.⁵ I have not accepted the applicant's claim to be involved in a feud with such groups. Overall, I am not satisfied that the applicant faces a real chance of serious harm from Shia militias, Sunni groups or otherwise arising from sectarian violence. Although violent crime, including kidnappings and killings, does occur in Basra province, on the basis of the material before me I conclude that it is not so widespread as to give rise to a real chance that the applicant would face serious harm, should he return.
18. Although not raised by the applicant, the delegate also considered whether he will be harmed, should he return to Iraq, on the basis that he sought asylum in Australia. The DFAT country report indicates that the practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. DFAT has limited evidence to suggest that voluntary returnees from the West face difficulties in assimilating back into their communities.⁶ I am not satisfied that the applicant faces a real chance of harm on the basis that he has spent time in Australia or that he unsuccessfully sought asylum in Australia.

Refugee: conclusion

19. 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

20. 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

21. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life

³ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 2.33

⁴ Ibid; 2.33

⁵ Ibid; 3.33

⁶ Ibid; 5.25

- 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.

22. I have concluded above that the applicant does not face a real chance of serious harm from having a family name associated with Sunnism, from general or sectarian violence, due to the Department's data-breach or because he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard⁷, I am not satisfied that the applicant would face a real risk of serious harm. I am equally not satisfied that the applicant faces a real risk of being killed, seriously injured or facing any other form of significant harm on return for the purposes of s.36(2)(aa) for these reasons, including when considered cumulatively.

Complementary protection: conclusion

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

Decision

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

⁷ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

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.