



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03149

Date and time of decision: 19 September 2017 10:53:00

Rebecca Mikhail, Reviewer

Decision

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

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] December 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). [In] July 2017 a delegate of the Minister for Immigration and Border Protection refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 25 July 2017 the IAA received a submission on behalf of the applicant.
4. In part, the submission repeats aspects of the applicant's original claims for protection, written submissions to the delegate, legal argument, elements of the protection visa interview and the delegate's findings in her decision which I do not consider to be new information.
5. The submission also states that if the IAA is not satisfied as to the applicant's credibility, then it should invite him for a further interview to make its own determination as to his credibility as a witness and test the veracity of his claims. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. I am satisfied the applicant has had an opportunity to present his claims orally at the protection visa interview and provide his response to the delegate's decision to the IAA. I am satisfied of the applicant's credibility and do not consider an interview is required or necessary in the circumstances.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He is an Iranian citizen of [certain] ethnicity and Shia faith and lived in [Town 1], Khuzestan.
 - He experienced discrimination due to his [certain] ethnicity.
 - He completed his military service between [years]. On one occasion towards the end of his military service, [Agency] officers asked him to interpret in [language] when questioning some [foreigners]. They gave the applicant money not to tell anyone about the incident and so that he will assist them again. He interpreted for them on [number] more occasions during his military service.
 - After completing military service in [year], [Agency] continually asked him to work for them which he did until he left Iran in March 2013. On one occasion they tried to send him to [Country 1] by boat but the boat was shot at and returned to Iran. Part of his work for [Agency] included [duties]. He left Iran to avoid having to continue to work for

[Agency] as he did not want to be part of this intelligence network and was afraid they would “exterminate” him if he stopped.

- When he was in Australia the [Agency] officers called him but his phone was switched off. They then came to his home looking for him but was told he was on holiday in Iran. They came again to his home and his family told them that he had travelled outside Iran and they took his [relative] for questioning and asked him about the applicant’s whereabouts. His family believe that they are monitoring their phones.
- His [relative] then fled Iran to Australia and was on [location] for [time] then returned to Iran. When he returned to Iran, the authorities seized him and detained him and questioned him about where he went and the reasons. They tortured him and asked him whether he went to see the applicant and whether the applicant had told his [relative] to go to Australia. He told them “I went for no reason; I just went to go there”. It has been about [number] years since his [relative] returned and they still have not given him his passport back. He has been taken a couple of times for further questioning about the applicant since then.
- He will be imputed with a political opinion as failed asylum seeker/returnee from the west.
- At [another location] he was afraid to talk about these things so he did not say these details in his entry interview. Being in [the other location], he did not really feel like he was in Australia and did not know if he could trust the authorities. He feared that it could get back to Iran so he was very careful about what he said until he knew it was safe.

Refugee assessment

7. 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

8. 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.
9. I have found the applicant to be a credible witness. Although the claims he raised in his entry interview [in] May 2013 did not include the work that he did for [Agency], I have given more weight to the detailed statement of claims he provided with his application for protection and the fact that his oral evidence during the protection Visa interview was highly consistent with his statement. In assessing his credibility I have also given weight to the nature of his oral evidence which I found to be natural, with little hesitation and exaggeration. I agree with his agent's submission that during the protection visa interview he was able to answer all questions in a coherent and consistent manner. When questioned by the delegate as to why he did not raise his claims in regards to his work for [Agency] in his first entry interview, the applicant responded that when he first arrived he was full of fear after his difficult journey by boat to Australia and was in fear that he would be transferred to an offshore processing centre or returned to Iran as he witnessed others being returned to Sri Lanka and Vietnam. Although he did not disclose the main reason he claims to have left Iran in his entry interview, given my assessment of his overall credibility, I have decided to give the applicant the benefit of the doubt in regards to why he did not raise these claims in his entry interview and have also considered that, given the nature of his involvement with [Agency], that it is plausible he would have been hesitant to disclose this when first asked why he left Iran.
 10. On the evidence before me, I accept that the applicant is a citizen of Iran and of [certain] ethnicity and that he lived in [Town 1] in Khuzestan. I am satisfied that Iran is the receiving country for the purpose of this assessment.
 11. I accept the applicant's claim that he completed his military service in Iran between [years] and that during his military service he was stationed at [city] on the border of Iran and [Country 1].
 12. The applicant claims that towards the end of his military service sometime in [year] he was woken up one night by some officers who asked him to interpret for [Agency] officers who were speaking to [foreigners]. The [Agency] officers were asking these [foreign] men to provide them with information about the [military] forces in [Country 1] during that time and were paying these [foreigners] for the information. The applicant was told to not tell anyone about what happened on that occasion and he was also paid money not to say anything and that the [Agency] officers offered to pay him when they needed him to interpret again. They trusted him as he was the [occupation] for [an] officer. The applicant interpreted for them on several more occasions during his military service. He was too afraid to refuse their orders to help them. On one night he was sent to [Country 1] but returned after being shot at by [Country 1] officers. After completing his military service the same [Agency] officers asked him to sit the test to join their forces but that his family were not happy with that and he refused. Nonetheless, they continued to contact the applicant and asked him to do jobs such as [duties] and paid him for this work.
 13. When the delegate highlighted to the applicant in the protection visa interview that she found it hard to believe that [Agency] officers would ask him to do such work when they have their own intelligence unit and resources including [language] speakers, the applicant responded that they use everybody no matter whom and that everybody is resource for [Agency]. He also pointed out that he was the [occupation] of the [senior officer] and was therefore trusted by the [senior officer] and by them. Country information that was before the delegate indicates that the key forces in internal security in Iran are the Police, the Islamic Revolutionary Guards Corps (IRGC) ([Agency]), the Basij, the Army and Ministry of Intelligence and Security forces.

The lines of authority between the various security bodies can be blurred, with overlapping and competing responsibilities and sometimes unclear command and control structures.¹ [Agency] controls Iran's ballistic missile arsenal, mounts foreign and domestic intelligence operations, and is responsible for protecting the regime.² Its powerful intelligence arm carries out domestic intelligence operations and operates largely separately from other organisations and carries out arrests and maintains its own detention facilities.³ Country information indicates that not all of [Agency]'s activities are seen as aboveboard and has been described as a "shadowy behemoth".⁴ Sources also indicate that Iran helped establish many of the Shiite militias that fought the United States during 2003-2011 and their alleged involvement in Iraq was a particular point of contention between Washington and Tehran.⁵

14. On the basis of my favourable assessment of the applicant's credibility and the above country information, I accept that he was asked to interpret in [language] for [Agency] officers during his military service on several occasions in relation to their intelligence-gathering operations regarding the [military] forces in [Country 1] at the time. I accept that after completing his military service, although he refused their offer to sit the test to join [Agency], he continued to be paid to assist them in the work he has described including [duties]. I find his activities for [Agency] also consistent with his work experience as a [occupation] during and after his military service.
15. I also consider it plausible that the applicant's parents were concerned about his work for [Agency] and that he would be in danger if he decided not to continue to work with them. I accept that the applicant left Iran for this reason in March 2013 as he was afraid of what would happen if he refused to continue working with them.
16. Although the applicant's work for the [Agency] officers was of a relatively low level, I am satisfied that as a result of the nature of his work he was aware of [Agency]'s discrete operations and intelligence gathering during the period he worked for them. I accept the applicant's claim that one of two months after his departure from Iran, [Agency] officers came to his home and asked about his whereabouts and that his family told them that he had been on holiday in Iran. I consider it plausible that these officers would be concerned about his whereabouts given the nature of the work that he was doing for them and he was not answering his phone. I accept that they approached his family a second time asking for his whereabouts and his family had told them that he had travelled outside Iran. I accept that his [relative] was consequently taken in for questioning by the [Agency] officers about the applicant's whereabouts. In accepting these claims I consider it plausible that the applicant's sudden departure from Iran would have been a cause for concern for these officers. I accept that his [relative] then departed Iran with the view to coming to Australia but was taking to [location] and stayed there for [time] after which he returned to Iran. I accept that when he returned to Iran he was detained and questioned about the applicant's whereabouts and that he was tortured and his passport confiscated and not returned. I accept that the applicant's [relative] has been taken for questioning on [number] occasions in relation to the applicant.
17. The applicant fears he will be seriously harmed by the Iranian authorities because of his imputed political opinion as anti-government and against national security. He fears that if he

¹ Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, p.25

² Council on Foreign Relations, "Iran's Revolutionary Guards", 14 June 2013, CX320951

³ DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, pp.25-26

⁴ Council on Foreign Relations, "Iran's Revolutionary Guards", 14 June 2013, CX320951

⁵ Kenneth Katzman, "Iran: U.S. Concerns and Policy Responses, Congressional Research Service", 5 March 2014, CIS27650, p.38; Council on Foreign Relations, "Iran's Revolutionary Guards", 14 June 2013, CX320951

was forced to return to Iran the [Agency] would take him straight from the airport and he would be killed because he defied them and would not continue working for them and left the country without their permission. He claims it would be even worse that he sought asylum in a western country as they would suspect that he had given information to the government of Australia and that he is against Iran. He was forced to do security work that was about the [western] forces so it is going to be highly suspicious that he has come to a western country and hid this from them.

18. Country information indicates that Iran remains highly sensitive to the security situation in its region and the potential impact that events in its neighbours may have on Iran.⁶ In June 2011, the United States designated [Agency] and Basij as human rights abusers.⁷ Country information indicates that torture is common within prisons in Iran security authorities use torture in Iran to extract confessions.⁸ Some prison facilities, including Evin Prison in Tehran and Rajai Shahr Prison in Karaj, were notorious for the use of cruel and prolonged torture of political opponents of the government, particularly Wards 209 and 2A of Evin Prison, which news organizations and human rights groups reported [Agency] controlled.⁹
19. I accept that the applicant no longer has his passport which he claims was taken by the people smuggler and that there is a real chance he will return to Iran on a temporary travel document. Country information sources indicate those who return to Iran on temporary travel documents are questioned by the authorities in regards to their identity.¹⁰ I am satisfied that there is a real chance the [Agency] officers will become aware of his return to Iran. Given the nature of the work the applicant was doing for the [Agency] for a number of years, his sudden departure from Iran and his subsequent residence in a western country and [Agency]'s continued interest in him through their detention and questioning of his [relative], if returned to Iran, I am satisfied there is a real chance [Agency] will detain him, either at the airport or on return to his home area in [Town 1]. I am satisfied there is a real chance they will question him about why he left Iran and what he was doing in Australia and whether he had passed on any information to the Australian government about their intelligence operations that he had previously been involved in. I am satisfied they will impute him with a political opinion against the regime as a consequence of his previous work for them and sudden departure and residence in a western country. Given their treatment of his [relative] and the above country information, I am satisfied there is a real chance he will be tortured during his interrogation. I am satisfied that such harm would amount to significant physical harassment and significant physical ill-treatment. I am satisfied that such harm would amount to serious harm and is systematic and discriminatory conduct carried out by the Iranian authorities against the applicant for the essential and significant reason of his imputed political opinion.
20. The Australian Department of Foreign Affairs and Trade (DFAT) has stated that the centrally-organised Iranian state security services exercise effective control over almost all areas of the country and has assessed that it is unlikely that an individual who faces state-directed adverse attention would face less adverse attention if he or she internally relocated to another part of

⁶ DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, p.6

⁷ Council on Foreign Relations, "Iran's Revolutionary Guards", 14 June 2013, CX320951

⁸ UK Home Office, "Country Information and Guidance - Iran: Prison conditions", 16 February 2016, OGD7C848D4; DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, p.24

⁹ US Department of State, "Iran - Country Reports on Human Rights Practices 2015", 13 April 2016, OGD95BE926169, p.5

¹⁰ Immigration and Refugee Board Canada, "Iran: Treatment by Iranian Authorities of Failed Refugee Claimants and Family Members of Persons who have Left Iran and Claimed Refugee Status", 10 March 2015, OGFDFC61A11

Iran.¹¹ I am satisfied that the real chance of persecution relates to all areas of the receiving country and do not consider there to be effective protection available to the applicant.

21. I also consider that the applicant cannot modify his behaviour to avoid a real chance of persecution as the persecution relates to his past work for the [Agency] in Iran and departure from Iran and residence in Australia.

22. I am satisfied the applicant's fear of persecution is well-founded.

23. As I have found the applicant's fear of persecution on the basis of his previous work for [Agency] in Iran to be well-founded I have not considered the other aspects of his claims for protection.

Refugee: conclusion

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

Decision

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

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

¹¹ DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, pp.6, 28

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.