



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03153

Date and time of decision: 28 February 2018 16:11:00

Dione Dimitriadis, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. [In] December 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV) claiming to fear harm for reasons of his religion.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] June 2017 and found that the applicant did not have a well-founded fear of persecution and there was not a real risk of significant harm upon his return to Iran.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He is the only son of his parents who separated when he was [age].
 - His father was addicted to [drugs] and was violent and abusive to the applicant.
 - The applicant lived with his mother, but from 2008 he either lived with his mother, or his father or his grandmother.
 - His mother remarried. His father had girlfriends.
 - The applicant left school in [a particular year] to support his father financially. He worked in [a shop] and his last job there was selling [goods].
 - The applicant's father threatened to kill him and attacked him a few times with [weapons] and the attacks left scars on the applicant's [body part].
 - At [a particular age], the applicant was arrested and detained by the Basij for being in public with his girlfriend. He was detained for [a number of] days and his girlfriend was detained overnight.
 - He departed Iran legally on an Iranian passport. He left Iran because he did not feel safe physically and because there are only low paying jobs there.
 - He came to Australia to have a safe and secure life.
 - The applicant claimed at the arrival interview that he feared returning to Iran because his father might kill him and he would have to start his life from zero.
 - The applicant was introduced to Christianity through a female friend and he started going to her church, [Church 1], in April 2015 with members of her family, and he decided to convert from Islam to Christianity.
 - The day he was baptised in [2015], a relative and his wife who were in Australia recorded a video of the baptism on their phone and when they returned to Iran they met the applicant's father and showed him the video of the applicant's baptism. The applicant's father managed to send a copy of the video to his phone and he showed it

to the police, after he made a commotion outside the house of the applicant's mother and her husband.

- The applicant's mother's husband, who is [in a certain publicly visible role], threatened to have the applicant punished as an apostate if he returned to Iran because he did not want his reputation damaged by the applicant. He sent copies of the applicant's identity documents and evidence of the applicant's religious conversion to the Iranian authorities.
- The applicant fears that his mother's husband will report him to the authorities if he returns to Iran.
- The applicant's father has promised to kill the applicant because the applicant has disobeyed him.
- The applicant fears that he will be arrested at the airport in Iran as he believes he has been blacklisted by the authorities of Iran. He fears that he would be imprisoned, charged and even put to death for converting from Islam to Christianity.

Refugee assessment

5. 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

6. 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.
7. The applicant's identity is not in issue and I accept on the basis of the identity documents that the applicant submitted to the Department of Immigration and Border Protection (now part of the Department of Home Affairs) (the Department) that he is a national of Iran and that his identity is as claimed. I find Iran to be the receiving country for the purpose of this decision. There is nothing before me to suggest that the applicant has a right to enter and reside in any country other than Iran, and I find for the purpose of s.36(3) of the Act that he does not.

Claims when the applicant first arrived in Australia

8. The applicant arrived in Australia in May 2013 and attended an arrival interview with the Department [in] June 2013. I have considered the applicant's claims about the attacks on him by his father while he was in Iran. The applicant's evidence is that his father was addicted to [drugs] and that he attacked and injured the applicant when the applicant was young. The evidence is that the applicant suffered family violence committed by his father. I am satisfied that the applicant's fear of his father was not for reasons of race, religion, nationality, membership of a particular social group or political opinion.
9. I have also considered the applicant's evidence that he was detained by the Basij because he was out with a girlfriend in public in Iran. He later claimed (in the SHEV application) that he was kicked and slapped by the Basij. I am not satisfied that the detention (or the kicking or slapping) of the applicant was because of his race, religion, nationality, membership of a particular social group or political opinion.
10. I find that, when the applicant came to Australia, he had not been harmed for reasons of his race, religion, nationality, membership of a particular social group or political opinion. I am satisfied that when he arrived in Australia, he did not have a well-founded fear of persecution in Iran.

Claims after arriving in Australia

11. The applicant lodged his SHEV application with the Department [in] December 2016 and attended a protection visa interview [in] May 2017. The applicant claimed that he converted from Islam to Christianity in Australia. He claimed that he spent most of his time in Australia trying to find peace, and through a female friend, [he] became interested in Christianity and mingled more with Christian friends. The applicant went to their gatherings, visited different churches, like [Church 1], and decided to convert to Christianity. He was baptised in [2017] and he has provided a Baptism Certificate and a letter dated [in] 2017 from [Ms A], [a religious official] at [Church 1]. [Ms A] stated that she is also a small group leader at the church and she leads a Bible study group for the Persian community at the church. The applicant also provided a letter dated [in] July 2016 from [a religious official], [Mr B], who confirmed the applicant's attendance at the church and Bible study group and stated that the applicant is a committed member of [Church 1].
12. The applicant provided to the Department a short video of a woman apparently being baptised. I do not know where that video was taken, who took it or who is being baptised. I am satisfied it does not show the applicant being baptised.
13. [Ms A] stated in her letter that she has known the applicant from late 2014 through his attendance at Bible study and the applicant started attending [Church 1] in April 2015. [Ms A] stated that she has "known him to be a committed member" of their church and he regularly attended Sunday church services and their fortnightly Bible study group as well as attending prayer meetings. [Ms A] stated that the applicant has been an enthusiastic participant and valuable contributor to his church community. She is also aware that he attends a Persian Christian Church on [a particular night of the week]. [Ms A] stated that this "demonstrates his desire and zeal to learn as much as he can about the Christian faith, and be part of a wider Christian community."
14. [Ms A] further stated that the applicant stays for the whole service or meeting and actively engages in them and truly participates in the service. She described the applicant's

involvement in the services or meetings. [Ms A] further stated that she has formed the view that the applicant has made a personal decision to commit his life to being a Christian and to make his faith an active part of his life. She also witnessed him being baptised in [2015] and she has prayed with him.

15. The delegate appeared to accept that the applicant had genuinely converted to Christianity. The delegate found that the applicant's conversion was not solely for the purpose of improving his chances of being granted protection in Australia. The applicant's knowledge of Christianity was not really tested during the protection visa interview. The applicant was not questioned in any detail about his religious beliefs or the knowledge he gained from attending Bible classes and church services. However, based on the statements from [Mr B] in 2016 and from [Ms A], who had known the applicant for over two years at the time she wrote the letter [in] May 2017, the applicant has genuinely converted to Christianity and is a committed Christian.
16. The applicant has described his commitment to Christianity following his upbringing where he was assaulted by his father and his search for safety and security. His evidence is that he found Christianity which provides him with love and kindness and these are qualities he wants to give to his children and his wife in the future. I accept that, at the time of the protection visa interview, the applicant had been attending church and Bible studies regularly for over two years and that he had been baptised in [2015]. This is supported by [Ms A]'s letter and the Certificate of Baptism dated [in] 2015 and signed by [Mr B], [a religious official]. It is evident that the applicant has the support of [Church 1] which has assessed him as a genuine convert to Christianity. I accept on the evidence before me that the applicant is a committed Christian and he has demonstrated this by his attendance and commitment to the church from early 2015.
17. Given these findings, I am satisfied that the applicant's conduct in Australia has been other than for the purpose of strengthening his claims to be a refugee. As I have accepted that the applicant has genuinely converted to Christianity in Australia, I find that s.5J(6) does not apply and I am not required to disregard this conduct.
18. I have also considered the applicant's claims that relatives, from Iran, were in Australia, filmed his baptism in [2015], took the video back to Iran and showed it to his father who showed it to the police in Iran. I do not accept this evidence and I find that the applicant is not telling the truth. I find it not credible that the applicant's relatives would have taken a film of the applicant being baptised back to Iran in light of the country information about conversions from Islam to Christianity.
19. The Department of Foreign Affairs and Trade (DFAT)¹ reports that under Iranian law, a Muslim who converts to another religion can be charged with apostasy, although such cases are rare. The US Department of State reports that the 'only recognized conversions are from another religion to Islam. Apostasy from Islam is a crime punishable by death.'²
20. I do not accept that these relatives of the applicant met the applicant's father and told him about the applicant's conversion. I do not accept as credible that the applicant's father forced them to show him a video of his son being baptised and that they did so. I also do not accept that somehow the applicant's father then transferred the video to his own phone. I do not believe the claim that his father then went to the applicant's mother's home and following an altercation, the police were called and he showed the police the video. I am satisfied that the

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

² US Department of State "International Religious Freedom Report for 2016 – Iran", 15 August 2017, OGD95BE927135.

applicant has fabricated all the evidence about a video being taken in Australia by relatives who took the video to Iran.

21. I also do not accept the claims that the police took his mother, her husband and the applicant's father to the police station and collected all the applicant's details from them. Because I do not accept any of this evidence relating to the video as credible, I do not accept that the applicant's mother's husband pledged that he would return the applicant to Iran as he was worried about putting his status in jeopardy because of his [publicly visible occupation]. I do not accept that the applicant's mother contacted the applicant and told him that her husband intends to hand him over to Iran's Intelligence Agency or that he provided the applicant's identity documents and baptism footage to this Agency. I find this evidence not credible.
22. I find that the applicant has been untruthful about his baptism being filmed and a video being taken to Iran and shown to the applicant's father, mother, the mother's husband, the police or the Iranian Intelligence Agency. I have significant concerns about the applicant's not being truthful about these aspects of his evidence.
23. However, I have carefully considered the evidence about his conversion and commitment to Christianity and I have found on the evidence from the applicant, and the evidence of [Ms A] and [Mr B], that the applicant is a committed Christian after having converted to Christianity in early 2015.
24. DFAT reports that although Christians are a recognised religious minority in Iran, recognised churches are not allowed to accept new members.³ Iran only recognises those Christian faiths and churches that existed in Iran prior to the Islamic Revolution. Most of the recognised churches belong to the minority Assyrian and Armenian ethnic groups, but there are also Anglican, Catholic and Orthodox churches. Most evangelical churches are not recognised and cannot openly worship, and some form underground 'house churches' which are illegal.⁴ DFAT reports that as 'the majority of house church members are converts from Islam (or children of converts), they are likely to be considered apostates.'⁵
25. DFAT further considers that 'Iranians who convert to Christianity outside Iran could face adverse attention upon their return if they join a house church, but that generally speaking the mere fact of conversion and worship in a house church would be insufficient to attract official attention. Additional activities are generally required, such as an attempt to proselytise or to otherwise speak out against the principles of the Islamic Republic, and for these activities become known to Iranian officials.'⁶
26. DFAT reports that 'Under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. While cases of apostasy are rare, Muslim-born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs have been charged with apostasy in the past.'⁷ However, convictions are uncommon, and the last time that death penalty was carried out for apostasy was in 1990.⁸

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran ", 21 April 2016, CIS38A8012677, 3.43.

⁴ Ibid, 3.47

⁵ Ibid, 3.47.

⁶ Ibid, 3.49.

⁷ Ibid, 3.52.

⁸ Ibid, 3.54.

27. DFAT has assessed that claims concerning the use of torture and abuse during detention in Iran are credible and that torture is more likely to be used against political prisoners, which include religious minorities.⁹
28. Having regard to the information before me, I am satisfied that although a convert to Christianity might be able to avoid adverse attention from the Iranian authorities by attending an underground house church and by not engaging in proselytising, such a person would face a real chance of arrest if he or she engaged in open Christian worship. Because I have accepted that the applicant is genuinely committed to practising Christianity, I am satisfied there is a real chance that the applicant would be arrested, detained and subjected to significant physical ill-treatment or harassment if he were to return to Iran in the reasonably foreseeable future. This amounts to serious harm within the meaning of s.5J(4)(b).
29. Requiring the applicant to worship secretly or to hide his beliefs or to conceal his true religious beliefs or to cease being involved in the practice of his faith would be an impermissible modification of his behaviour. Therefore s.5J(3) does not apply in this case. I am satisfied that the essential and significant reason for the persecution which the applicant fears is the applicant's religion and I am satisfied that the persecution would involve systematic and discriminatory conduct carried out by the Iranian authorities (ss.5J(1)(a) and 5J(4)). I find that the real chance of persecution relates to all areas of the country as the harm would be inflicted by the Iranian authorities which operate in all areas of the country, and effective protection measures are not available. Section 5J(2) does not apply. I am satisfied the applicant has a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

30. 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*.

⁹ Ibid, 4.14.

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.