



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAQ

IAA reference: IAA17/03323

Date and time of decision: 17 October 2017 10:28:00

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 a Shia Muslim from Nasiriyah, Dhi Qar province, Iraq. He departed Iraq [in] October 2012 and arrived in Australia [in] November 2012. [In] July 2016 he lodged an application for a protection visa (PV).
2. [In] August 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant was a Shia Muslim and that his cousin [Mr A] had worked with the [western] forces as an [occupation] in 2011. The delegate did not accept that [Mr A] disappeared [in] December 2011 or that the family received a number of threatening letters addressed to [Mr A] as well as to the applicant. The delegate concluded that the applicant was not of any adverse interest to any militia groups and 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). Section 473DD of the Act provides that the IAA must not consider any new information from an applicant except in limited specified circumstances. On 12 September 2017 the IAA received a submission from the applicant's [representative]. The submission addresses the delegate's decision and findings. As such, it may be regarded as argument rather than 'information' and I have had regard to it. The submission does however reference an article from the magazine "PC Mag" dated 23 March 2016 entitled "Facebook Now Automatically Detects Imposter Accounts". The applicant was on notice during the PV interview that the delegate had before him a Facebook account in the name of the applicant's cousin [Mr A] and was represented at that interview. The magazine article in question significantly predates the delegate's decision and there is no explanation as to why this information could not have been provided to the delegate before he made his decision or why it may be regarded as credible personal information that was not known, and had it been known may have affected the consideration of the applicant's claims. The applicant has not satisfied me that either ss.473DD(b)(i) or 473DD(b)(ii) is met. I am also not satisfied that there are exceptional circumstances which justify consideration of the new information.

### Applicant's claims for protection

---

4. After his arrival [in Australia] the applicant was interviewed by an officer of the Department of Immigration and Border Protection ("the Department") [in] December 2012. Together with his PV application the applicant lodged a statutory declaration dated [date] July 2016. [In] July 2017 he attended an interview ("the PV interview") with the delegate, at which his representative was also present. The applicant claims:
  - He lived in Nasiriyah with his parents and siblings. His [other relatives] lived in the same house. His cousin [Mr A] worked as an [occupation] for the [western forces] and was based at [a certain area] during 2011. The family received threat letters from an unnamed group stating that [Mr A] should not work for the [western forces]. If he continued to do so he would be killed: "an eye for an eye";

- After receipt of the first threat letter the applicant's uncle called [Mr A] and advised him. He then stayed at [a certain area] and did not return home. [In] December 2011 [Mr A] did not return home. His uncle telephoned him but [Mr A]'s phone was turned off. The family has not seen or heard from [Mr A] since;
- The third threat letter was addressed to the applicant and his cousin [Mr B] ([Mr A]'s brother) and threatened them. A month after receiving this letter the applicant and [Mr B] left Nasiriyah to stay with a friend of the applicant's uncle in [an area] near Samawah. While they were in [that area] two more threat letters were delivered to their house. They left Iraq in October 2012;
- He cannot return to Iraq as both the Sunni and Shia militias are targeting the families of people who worked with the [western forces].

### Factual findings

---

5. I accept that the applicant's background is as follows: he was born on [date] in Nasiriyah. He is of Arab ethnicity, Shia faith and an Iraqi national. Iraq is his receiving country. He departed the country legally. He completed [schooling], ceasing school in [year]. He has never been in paid employment. He has [siblings], all resident in Nasiriyah. His parents and unmarried siblings remain in the family home. His father is [an occupation].
6. The applicant's central claim is that he and his family have been targeted by a militia group because his cousin [Mr A] worked with the coalition forces in Nasiriyah during 2011. He has consistently stated that [Mr A] received a threat due to this work and that the threat was received by [Mr A]'s father: the applicant's uncle. I accept that this occurred and that the two families resided in the same house: the applicant, his parents and siblings on the first floor and his aunt, uncle and cousins on the ground floor. At his arrival interview the applicant stated that there had been a threat against [Mr A] and that his uncle had the threat on a piece of paper. Country information from 2012 confirms that both Sunni and Shia armed groups are known to have threatened, kidnapped and killed interpreters, embassy workers, drivers, subcontractors and others affiliated with the coalition forces, foreign governments, international companies or organizations, reportedly to deter others from working for them.<sup>1</sup> I accept that [Mr A] was issued a threat letter in 2011 due to his work with the coalition forces.
7. In his statutory declaration of [date] July 2016 as well as his PV interview, the applicant has expanded his claims regarding the threat received. He stated that the family received two letters during 2011, these stating words to the effect of: "[Mr A]'s work as an [occupation] is in violation to the religion and that we as a family should be responsible for his actions, the letter threatened that if [Mr A] will not stop his work for the [western forces] then all of his family members should be punished, the letter mentioned also the words an eye for an eye". Despite [Mr A] ceasing work with the [western forces] in December [2011], the applicant claims that a further three threatening letters were received. At the PV interview the delegate put to the applicant that it was not plausible that a militia group would come to their house on five occasions and deliver letters of threat, but at no point make good on those threats or enter the house to see if [Mr A] was present. The applicant responded that this was not how militia groups worked: they would kill you if they saw you out, for instance going to the markets, but "they don't come in person. They don't come face to face and kill you", therefore would not enter a person's house to carry out their threats to kill. This contention is not supported at all by the country information, which notes that in cases where individuals do not comply with the

---

<sup>1</sup> United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", May 2012, CIS27173; p.17

demands received by threat letter, there are reports of violence or harassment, including killings.<sup>2</sup> I do not accept that over the course of 2011 and 2012 there were any further threat letters received at the applicant's house. I consider that this claim reflects poorly on the applicant's credibility.

8. The applicant also claims that [Mr A] resided at [a certain area] after receipt of the first threat letter but was never seen by his family again. He claims that after the [western forces'] withdrawal [Mr A]'s father phoned his mobile but it was turned off. The applicant has at no point indicated that his uncle telephoned [Mr A]'s employer, [or] that he reported [Mr A] as missing to the police, or made any other investigations into [Mr A]'s whereabouts. At the PV interview the delegate tabled some screenshots from a Facebook account in [Mr A]'s name, including posts by the applicant and [Mr B], and put to him that this was not consistent with his evidence that they had not seen or heard from [Mr A] since 2011. The applicant's initial response was that someone could have stolen [Mr A]'s identity or "it could be him but that doesn't mean I know where he is". I consider this response to be dissembling. I do not accept that [Mr A] "disappeared" [in] December 2011. There is nothing else before me to indicate that he was in any way harmed by any militia groups since he ceased work with the coalition forces in 2011 and I conclude that he was not.
9. I have found above that the family did not receive five threat letters as claimed. The applicant also claims that the third of these letters, [was] addressed to himself and [Mr B] and that as a result of this they fled to [a certain area] outside Samawah for ten months. When asked by the delegate what they did for those ten months the applicant responded that they did nothing. They just sat. They ate what was available: dates, yoghurt and rice. This evidence is in any event not consistent with the applicant's address history as discussed at his arrival interview, in which he stated that he lived at the family home in Nasiriyah from birth until departure from Iraq. He further stated at the arrival interview that he organised his passport in 2012, which would not have been possible were he [in] Muthanna province as claimed during that year. I do not accept that the applicant left his family home in Nasiriyah in early 2012. Given that he claims that he had to do so due to the letter that was received which threatened to kill him and [Mr B], I also do not accept that there was any threat against him or [Mr B]. At the PV interview the delegate asked whether [Mr A]'s other brother [Mr C] was also threatened and the applicant responded that he was: he also fled from Nasiriyah and the applicant does not know where he is. The applicant did not state which of the claimed threat letters had been addressed to [Mr C]. I do not accept that any members of the family other than [Mr A] were the subject of threat letters. The applicant does not claim that his remaining family in Iraq have been the subject of any adverse attentions from militia or armed groups since his departure and I find they have not.

## Refugee assessment

---

10. 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.

---

<sup>2</sup> United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", May 2012, CIS27173; p.26

## Well-founded fear of persecution

11. 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.

12. The applicant has claimed that on return to Iraq he would be targeted by Sunni or Shia militia groups because his cousin [Mr A] worked as an [occupation] with the coalition forces during 2011. I have accepted that in 2011 [Mr A] received a threat letter from a militia group but have not accepted that the applicant or any other members of his family were threatened. DFAT currently assesses that the risk of societal violence in Iraq to those who have worked with the international community is moderate<sup>3</sup>. Although I accept that, across the whole of the country, the risk to people who formerly worked for or with foreign companies or the coalition forces is moderate, the country information does not support the conclusion that this risk is extended to members of their family. Further to this, I note it has now been six years since [Mr A] worked with the [western] Forces and he has not been harmed or received adverse attention due to this since 2011. I am not satisfied that there is a real chance that the applicant would face harm due to his cousin's former employment, on return to Iraq.

13. I accept that the applicant is a Shia Muslim. He has not claimed a fear of harm on this basis although the delegate considered whether this, and the security situation in southern Iraq more generally, would give rise to protection obligations. Considering whether the applicant faces harm from Shia militias or Shia armed groups due simply to being a Shia, I am not satisfied on the material before me that this is the case. In relation to whether there is a real chance that the applicant would suffer serious harm from the security situation more generally, including from Sunni armed groups, the DFAT Country Report notes that the security situation in Iraq is fragile and susceptible to rapid and serious deterioration with large scale conflict in some areas<sup>4</sup>. ISIS and associated Sunni extremist groups are currently in control of large parts of northern, western and central Iraq, however the southern provinces including Dhi Qar remain under the control of the ISF.<sup>5</sup> Violence between opposing Shia militias occurs and is more pronounced in Shia areas such as Nasiriyah. 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.<sup>6</sup> I am not satisfied that the

---

<sup>3</sup>Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 3.56

<sup>4</sup>Ibid; 2.33

<sup>5</sup>UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14; p.12

<sup>6</sup>DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 3.33

applicant faces a real chance of harm from Shia militias, Sunni groups or otherwise arising from sectarian violence. Although violent crime, including kidnappings and killings, does occur in Nasiriyah, on the basis of the referred information I conclude that it is not at a level that would give rise to a real chance that the applicant would face harm, should he return.

14. 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.<sup>7</sup> I have found that the applicant's family remain in his home town of Nasiriyah. 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.
15. I am not satisfied that the factors as discussed above cumulatively raise the applicant's profile to a level such that he would face a real chance of serious harm on return to Iraq.

#### **Refugee: conclusion**

16. 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**

---

17. 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**

18. Under s.36(2A), a person will suffer 'significant harm' if:
  - the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
19. I have concluded above that the applicant does not face a real chance of harm on the basis that he is a Shia, that his cousin worked with coalition forces in 2011, from general or sectarian violence or because he has spent time in or claimed asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard<sup>8</sup>, I am also not satisfied that the applicant

---

<sup>7</sup> Ibid; 5.25

<sup>8</sup> *MIAC v SZQRB* (2013) 210 FCR 505

would face a real risk of significant harm for the purposes of s.36(2)(aa) for these reasons, including when considered cumulatively.

**Complementary protection: conclusion**

20. 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.

## 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.