



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03419

Date and time of decision: 13 June 2018 15:34:00

R 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 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 citizen of Iran. On 7 February 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 18 August 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) 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 21 September 2017 the IAA received a submission on behalf of the applicant. In part, the submission restates the applicant's original claims for protection as presented before the delegate, parts of the delegate's findings and includes legal argument. I do not consider the above to be new information.
4. The submission also refers to general uncited country information about custody arrangements under Iranian law, when a "Mahriyeh" (dowry) is to be paid, the treatment of those who kill out of honour and how members of Sepah operate. The submission also cites an excerpt from a report published in 2009 about honour killings in Iran. I consider the above to be new information. As I have found the applicant has a well-founded fear of persecution in regards to his Christian conversion, I am not satisfied there are exceptional circumstances to justify considering this information.
5. The submission also claims that the applicant's ex-wife's family could also bring charges against him for having publicly made statements about his ex-wife's infidelity and refers to uncited country information in relation to the related offence for this under the Islamic penal code. I note the applicant did not raise this claim previously and I am satisfied it is new information. No information has been provided as to why this was not raised earlier and the applicant has not raised this claim in his new statutory declaration to the IAA discussed below. I am not satisfied the applicant genuinely holds such a fear and I have, nonetheless, found the applicant has a well-founded fear of persecution in regards to his Christian conversion. Given this, I am not satisfied there are exceptional circumstances justify considering this new claim.
6. Also provided to the IAA was a statutory declaration by the applicant dated 11 September 2017 which I am satisfied is new information. As this declaration post-dates the delegate's decision I am satisfied that it could not have been provided to the Minister before the Minister made the decision. The majority of applicant's new declaration restates aspects of his original claims for protection that were before the delegate. The applicant also provides further detail about the role of the dowry in Islamic law in Iran and honour killings in Iran. He also claims that his ex-wife still has visitation rights in regards to his daughter which I note he did not claim previously. The applicant also claims that he continues to practise his Christianity. I accept that this information could not have been provided to the delegate as it refers to his religious practise since the delegate's decision, and as I have made different credibility findings to that of the delegate in regards to the applicant's conversion to Christianity, I am satisfied there are exceptional circumstances to justify considering the applicant's new statutory declaration as it refers to more recent evidence of the applicant's Christian practise which is central to assessing this aspect of his claims.

7. Also provided to the IAA was a new letter from [Mr A] who is a member of the pastoral team and church board of [a] Church which is dated [in] September 2017. I am satisfied this letter is new information. As this letter post-dates the delegate's decision I am satisfied that it could not have been provided to the Minister before the Minister made the decision. I note that [Mr A] previously provided a letter of support in July 2017 that was provided to the delegate. Other than the date, the above new letter has been written in the exact same terms as the July 2017 letter. Nonetheless, I am satisfied that the information he has provided in this letter is credible. As I have come to different credibility findings in regards to the applicant's claim to have converted to Christianity in Australia to that of the delegate, I am satisfied there are exceptional circumstances to justify considering this letter as it provides more recent corroborative evidence of the applicant's Christian practise and engagement with this church.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
- He is a citizen of Iran who resided in Tehran.
 - He was born a Shia Muslim.
 - He married his wife in 2003 and they had one daughter born in [year].
 - Their relationship broke down and they divorced on [date] September 2012 after the applicant discovered that his wife was having an affair. As part of the divorce agreement, they agreed that the applicant would not make his ex-wife's infidelity public and she would forego the dowry and that she would look after their daughter until she was [age] years old.
 - His ex-father-in-law (a senior Mullah) started to harass him claiming that the applicant had brought dishonour and shamed his family and that he had to pay the dowry. He subsequently received a formal letter from the court stating that he had to pay this money which he did not have the means to pay. An arrest warrant was issued to force the applicant to go to court and his ex-father-in-law called him and threatened to shoot him if he did not attend. The applicant then went into hiding.
 - The applicant departed Iran in June 2013 out of fear from his ex-wife's family.
 - After he left Iran, members of the Basij with his ex-brother-in-law entered his parents place looking for him. His wife eventually relinquished custody of their daughter and now the applicant's father is her official guardian.
 - He abandoned Islam approximately a year after arriving in Australia and in late 2016 was introduced to Christianity and has been attending church regularly since then and was baptised [in] February 2017.

Refugee assessment

9. 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

10. 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.
11. The applicant has provided a number of original identity documents from Iran and I accept his claimed identity and that he is a citizen of Iran. There is no evidence before me to indicate he has the right to enter and reside in any other country. I am satisfied that Iran is the receiving country for the purpose of this assessment.
12. During the protection visa interview the applicant claimed that he practised Islam when he lived in Iran and when he first arrived to Australia. I accept these claims and have given weight to the fact that he travelled to Iraq on pilgrimage in 2011 and claims he made during his arrival interview held in August 2013 that he was a Shia and was fasting at the time of the interview.
13. The applicant claims that he stopped believing in Islam one year after arriving to Australia. He claimed that since he has been in Australia he has had the freedom to question religion. He felt emptiness towards Islam which is a religion that was forced upon him and he no longer believes in it. He claims he did not practise any religion for two years after that time. I accept these claims and note that the applicant provided the above oral evidence during his protection visa interview in a natural manner.
14. In his statement the applicant claims that, towards the end of 2016, he took an interest in Christianity and started attending a church in [a suburb]. When asked by the delegate why he went to church in the first place, he responded that it was because he does not believe in Islam and was without any religion and had an empty nest in him which he could not feel with anything and then one of his friends introduced him to the church. He claims he started attending church towards approximately October 2016 and attends every Sunday and attends weekly Bible study. During the protection visa interview he explained that his viewpoint about church and Jesus changed when he was told that he had to let God into his life as he previously he thought that he had to beg God to come into his life and since hearing this he felt committed to the faith.
15. The applicant provided his baptism certificate which states that he was baptised on 5 February 2017 in the [Church]. In a post interview written submission to the delegate, the applicant provided images of his baptism and of him attending this church. He also provided screenshots from his Facebook page which indicates that he has shared Christian images and videos on his Facebook page, one of which was dated in December 2016.

16. It appears the applicant started attending church regularly in October 2016 and was baptised two days prior to the lodgement of his application for protection. Whilst the timing of these events may raise some concerns, I have found his oral account of how he came to decide to be baptised to be transparent and genuine. He claims that he was offered the opportunity to be baptised shortly after attending his current church but he advised the church leaders that he was not ready and needed more time and claimed that at the time he did not feel that he was completely filled with Jesus or that he knew everything about him suggesting he gave serious consideration before taking this step and wanted to be completely convinced beforehand rather than taking the first opportunity to be baptised when offered which one might expect from someone who was merely engaging in this for the purpose of their protection visa application.
17. I also note that the applicant did not attempt to exaggerate this aspect of his claims. For example, although he claims that evangelism is important to him he claimed that he had not engaged in proselytising yet because he was not at that level yet. He also claimed that he had attended another church within the first year of arriving in Australia on two occasions but that it was just to have something to eat and was still practising Islam at the time. He also demonstrated a sincere engagement with the teachings of his church and gave an example of where he understands from their preaching that he needs to be a lamp that shines to everyone which symbolises the truth about Christianity.
18. The applicant also provided a letter from “[Mr A]” who belongs to the pastoral team of this church dated 31 July 2017 which is approximately six months after the applicant’s baptism. In that letter, [Mr A] states that he has known the applicant for some time and that the applicant was introduced through their community outreach program and has become a valued member of their fellowship. He also corroborates the applicant’s claims that he has regularly attended their church Bible study weekly meetings on Sunday services. In his opinion, the applicant is conscientious and expresses a genuine Christian faith.
19. In his new statutory declaration provided to the IAA dated in September 2017, the applicant claims that he is deeply committed to his new religion and is a practising Christian, with an acceptance within his church, and his faith is an important part of his daily life. Although written in the same terms as his first letter, I have also given weight to the fact that [Mr A] was willing to provide a second letter of support for the applicant in September 2017 which suggests an ongoing relationship with the applicant and that the applicant had continued to be attending the church regularly at that point in time.
20. Overall, on the evidence before me, I am satisfied the applicant has genuinely converted to Christianity.
21. I am satisfied that the applicant has attended church and was baptised in Australia and has shared Christian messages on his Facebook page otherwise than for the purpose of strengthening his claims for protection and I find that s.5J (6) of the Act does not apply
22. During the protection visa interview the applicant stated that he would practise his religion if he were to return to Iran and that he would face problems because it would not be as free there to practise as in Australia. I am satisfied that the applicant will continue to practise his Christian faith and, as he has engaged in regular communal worship in Australia, I am satisfied there is a real chance he will seek to engage in communal worship if he were to return to Iran.
23. The applicant claims that in Iran the punishment for converting to Christianity is apostasy which might lead to long imprisonment and possibly death.

24. Country information before me indicates that the official religion of Iran is Shia Islam and the government considers a child born to a Muslim father to be a Muslim and deems conversion from Islam to be apostasy.¹ In 2016, The Australian Department of Foreign Affairs and Trade (DFAT) stated most evangelical churches in Iran are not recognised and therefore cannot openly worship. Instead, some form underground 'house churches', which are illegal. The numbers of Christians belonging to unregistered churches cannot be definitively known but estimates suggest up to 150,000 Iranians may worship in this manner. Christians belonging to unregistered churches are at higher risk of adverse attention from officials and face considerable official discrimination. This is in part due to Islamic mores concerning apostasy and deep suspicion of evangelism. As the majority of house church members are converts from Islam (or children of converts), they are likely to be considered apostates. There have been reports, which DFAT assesses as credible, that many house churches come under surveillance by authorities.² Other country information sources before me also indicates that the Iranian government keeps a close eye on the "new" Christian churches, particularly on evangelical Christian denominations and evangelical Christians continue to experience high levels of harassment and surveillance and arrest. Official reports and the media continued to characterise Christian house churches as "illegal networks" and "Zionist propaganda institutions" and that arrested members of house churches were often accused of being supported by enemy countries.³ One source states that there have been no changes with regard to the situation in Iran for Christian converts since the election of President Rouhani in June of 2013 and the situation for converts has continued on a downwards trajectory which started in 2009. There is a public consensus, including the judiciary and law enforcement authorities, that conversion to Christianity and evangelical networks are politically motivated and linked to Iran's relations with the West. The authorities are likely to charge converts with vaguely worded and broadly defined charges such as "forming of illegal groups", "acting against national security through illegal gatherings" and other similar charges that are imprecise and potentially could capture a range of activities. One source states that, whilst detained, members of house churches will be forced to recant their faith and make a commitment not to engage in such activities again or to make false confessions against other members.⁴
25. In April 2016, DFAT assessed 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 to become known to Iranian officials.⁵ However, a number of other credible sources refer to numerous incidents of Iranian authorities raiding church services, threatening church members, and arresting and imprisoning worshipers and church leaders, particularly Evangelical Christian converts. Since 2010, authorities arbitrarily arrested and detained more than 500 Christians throughout the country. As of February 2015, approximately 90 Christians were either in prison, detained, or awaiting trial because of their religious beliefs and activities and human rights groups inside Iran reported a significant increase in the number of physical

¹ Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

² DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

³ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 01 September 2015, CISEC96CF13622

⁴ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

⁵ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

assaults and beatings of Christians in prison in 2015. Christian converts continue to report that they were sometimes subjected to physical and intense psychological abuse, including threats of execution, while in detention.⁶

26. I am satisfied that Christian converts in Iran who do not modify their behaviour (by acting discreetly and secretly in their worship) and who attend illegal house churches face more than a remote possibility of being subject to monitoring, a raid by the Iranian authorities, arrest and subsequent detention during which there is a real chance they will be subjected to torture or significant physical abuse. For these reasons, I am satisfied that there is a real chance the applicant would face monitoring, harassment, arrest, detention and torture or significant physical abuse for expressing his religious faith by attending an underground house church in Iran. I am satisfied that such harm would amount to significant physical harassment, significant physical ill-treatment, and a threat to his liberty and would amount to serious harm. I am satisfied that this harm is systematic and discriminatory conduct carried out by the Iranian authorities against Christian converts from Islam for the essential and significant reason of their religion.
27. DFAT states that the centrally-organised Iranian state security services exercise effective control over almost all areas of the country and,⁷ for this reason, I consider 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. I also consider that the applicant cannot reasonably be expected to renounce his religious conversion or conceal his Christian beliefs to avoid a real chance of persecution.
28. I am satisfied the applicant's fear of persecution on the basis of his conversion to Christianity is well-founded.
29. As I have found that the applicant has a well-founded fear of persecution in respect of his conversion to Christianity, I have not considered his other claims for protection.

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*.

⁶ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622; United States Commission on International Religious Freedom (USCIRF), "USCIRF Annual Report 2015 - Iran", 30 April 2015, CISEC96CF1675; UN Human Rights Council, "Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (Advance Unedited Version)", 12 March 2015, CISEC96CF1355

⁷ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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.

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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.

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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.