



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/03528

Date and time of decision: 22 March 2018 10:20:00

Urvi Bhatt, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be from Tehran, Iran. [In] February 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). This visa was refused by a delegate for the Minister for Immigration and Border Protection (the delegate) [in] August 2017.
2. The delegate did not accept there was a real chance of serious harm or a real risk of significant harm on the basis of the applicant returning 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).
4. No further information has been obtained or received.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - The applicant is from Tehran, Iran.
  - Prior to his departure from Iran, the applicant operated his family business.
  - He left Iran as he faced harassment by the Iranian authorities.
  - Six months prior to his departure, he was attending a party at a friend's place. They were listening to live music and drinking alcohol. The police came and raided the party. The applicant and his friends were arrested and taken to the police station. They were released a few hours later.
  - Also six months prior to his departure, the applicant failed to lodge his annual tax return and was issued a fine by the taxation office. The fine was [Amount 1]. He claimed that he made just enough money to get by so he could not afford to pay it. The authorities also demanded that he pay them bribes otherwise they would accuse him of tax evasion and selling alcohol.
  - He used to borrow money from friends to pay the bribes so the authorities would stop harassing him, however they continued to frequent his shop. On one occasion the authorities came to the shop and demanded a greater amount of money. They raided the shop and [vandalised the shop]. As a result of this harassment he closed the business and left the country.
  - Subsequent to the applicant's departure, the authorities went to his shop and saw it was closed so they went to his family home. They broke down the door and raided his home and asked his mother about his whereabouts. They verbally abused the applicant's mother and threatened to keep returning. His mother told them he had left the country to seek asylum and will not be returning.

- After sometime, his [sibling] reopened the shop but the authorities started harassing his [sibling] and have since fined him. He was unable to pay the fine so they seized the shop.
- He fears returning to Iran as the harassment would continue and he cannot continue to borrow money as he cannot afford to repay the money.
- If he returns to Iran he will be arrested and detained upon arrival in Iran. The authorities will charge him with propaganda against the regime as he has sought asylum in a western country, and also for failing to pay his tax. They have also falsely accused him of selling alcohol which is a crime in Iran and he will be punished for it.
- He departed Iran lawfully using a genuine Iranian passport.

### **Refugee assessment**

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6. 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**

7. 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.
8. The applicant has consistently claimed to be an Iranian national from Tehran. In support of his identity, the applicant provided copies and English translations of his shenasnameh, Iranian national identification card and his military service card. All three documents confirm the applicant’s identity. I am satisfied that Iran is the country of reference for the purposes of this assessment.
9. In his SHEV application the applicant claimed to fear returning to Iran on the basis that he was previously arrested while at a party in Tehran. While he was at the party, there was western music being played and people were drinking alcohol. The police came and raided the party. The applicant and his friends were arrested and taken to the militia offices where he was abused and beaten. He claimed that his family arranged for his release and he undertook to

the authorities that he would not attend any other parties, play western music or dance. In the post interview submission provided to the delegate, the applicant stated he was verbally and physically abused while at the militia offices during this arrest.

10. During the SHEV interview the applicant was asked about this incident. He stated that he was at a party drinking alcohol and [undertaking another social activity] when the police came and arrested him and his friends and took them to the police station. He stated that his family came [a number of] hours after the arrest and said he was free to go. His mother told him that the lawyer of one of his friends, who was also arrested, bribed the officers so they were all released. He claimed that this was the last chance he gave to living in Iran and after this decided to leave. The applicant stated this incident occurred four to six months prior to leaving but probably more like six months.
11. During the arrival interview the applicant was asked about the reasons he left Iran. He did not raise this incident during that time. Also during the arrival interview, the applicant was asked if he had ever been arrested to which he responded that he had not. In the SHEV interview, the delegate asked the applicant why he did not raise this incident during the arrival interview. He stated that he was stressed, was put under difficult conditions and did not know what was being said. Having listened to a recording of the interview, the applicant appeared to be able to present information to the interviewing officer in a clear and coherent manner. I do not accept the applicant's explanation and I find that the applicant did not mention this claim as it did not occur.
12. The first time this incident was raised was in his written statement attached to his SHEV application. When questioned about this incident at the SHEV interview, the applicant provided inconsistent details to his written claims. In his written claims he stated he was abused and beaten at the police station. He did not raise this during the SHEV interview when asked to describe the incident. Further, in his written claims he stated that his family arranged for his release. In his SHEV interview he stated that the lawyer of one of his friends arranged for his release. Based on the applicant's failure to mention anything about this incident at the arrival interview and the subsequent inconsistencies provided by the applicant, I am not willing to accept this incident took place. I do not accept the applicant was arrested at any party, nor was he beaten and abused by any police officers. I am not satisfied there is a real chance the applicant will face any harm upon return on this basis, now or in the reasonably foreseeable future.
13. In his arrival interview the applicant stated that he left Iran as he did not complete his tax return and six months prior to his departure was fined [an amount]. He could not afford to pay such a large fine and was fearful that his shop would be closed. In this interview he stated that his [sibling] was running the shop and was 'getting in trouble and has to pay instalments or the fine.' He claimed he did not want to think about going back to Iran as there were lots of problems.
14. During the SHEV interview the applicant was asked about his business operations. He stated that he used to earn [an amount] per month and out of that money had to purchase his raw materials so did not save a lot but it was sufficient for him to pay for the living expenses for himself and his mother who he was financially supporting. His mother was also receiving his father's retirement pension so they had an additional income.
15. He stated that six months prior to leaving Iran, he did not lodge his tax return and as a consequence the taxation office sent him a fine for [an amount]. He took the fine to the tax office and explained to them that he was unable to pay this amount. Two weeks later, a

taxation officer and a police officer came to his shop and asked for the money which he owed. He told them he did not have the money. The officers told him that if he paid them [a lesser amount] as a bribe, they would go away and not say anything, which he did. Every week or twice a week the officers would return to his shop demanding bribes. The applicant would borrow money in order to pay the bribes. He reached a point where he could not borrow any more money and the officers threatened to accuse him of selling alcohol if he did not pay them any bribes. At this point, the officers damaged the applicants store and as a consequence the applicant decided to close the shop and leave Iran.

16. The applicant continued to reside in Iran for six months subsequent to receiving the fine and paid bribes throughout this period. During the SHEV interview, the applicant stated in total he paid [an amount] in bribes. The applicant also stated during the SHEV interview that every year he used to pay [an amount] in tax but that particular year he could not afford to pay so did not lodge a tax return. The delegate put to the applicant that it seemed implausible that he was able to pay [an amount] in bribes but was unable to pay [amount] he would have owed as part of his tax return, which is an amount far less than the amount in which he paid in bribes. The applicant also stated that he earned a salary of [an amount] every month, again an amount greater than the annual tax owed. The applicant stated that he borrowed the money he used to pay the bribes. When asked exactly how much he borrowed he claimed to have borrowed [a particular amount]. The delegate put to the applicant why he could not borrow the [amount] to pay his tax, given it was a much lower sum of money. The applicant did not respond. During the SHEV interview the applicant also claimed to have borrowed [an amount] from his [relative] in order to pay for his journey to Australia and claimed to have travelled to [Country 1] on three occasions for holiday purposes. The delegate also asked the applicant, if his [relative] was able to lend him such a great sum of money to fund his trip to Australia, why was it he could not have borrowed money to pay for his tax return. The applicant responded by stating that his [relative] sold his car and some other possessions for the sole purpose of funding the applicant's travel to Australia and not to pay for his tax. During the SHEV interview, the applicant was asked if he had any paper work relating to his tax return, fines or any other documentary evidence to support his claims. The applicant claimed that he did not have any paper work but would ask his family in Iran. To date no such supporting evidence has been provided.
17. In the applicant's post interview submission the applicant stated that he agreed to pay the bribes so the officers could assist him in delaying the payment of the fine until he was able to secure the money. According to the evidence provided by the applicant at his SHEV interview he was able to secure a sum far greater than the fine amount and paid this amount to the officers as a bribe. He also claimed in this submission that he departed Iran as he was unable to continue borrowing money to pay for the bribes, yet during his SHEV interview stated that he borrowed [an amount] to fund his travel to Australia.
18. I find the applicant's responses to the questions put to him during the SHEV interview and the access he had to funds in order to pay his tax, the fine and/or bribes to be implausible and illogical. I do not accept the applicant did not lodge his tax return as he was unable to pay it, noting the money he earned and the far greater sums he was able to borrow. He was also able to fund three trips to [Country 1] for holiday purposes. I do not accept the applicant's claims to be credible and dismiss this claim in its entirety. As I do not accept this claim, I also do not accept the applicant was ever accused of tax evasion or charged of selling alcohol and I do not accept the applicant's mother was threatened by the authorities. I am not satisfied the applicant has a real chance of any harm upon return to Iran on this basis, now or in the reasonably foreseeable future.

19. The applicant fears returning to Iran as he has sought asylum in Australia, a western country. He claimed that the authorities are aware that he sought asylum as they had approached his family home and his mother advised them that he will not be returning as he is seeking asylum in Australia. I have not accepted this incident occurred. Nonetheless, I accept that upon return, due to his extended absence from Iran, the authorities may presume that the applicant has sought asylum in Australia.
20. The applicant has claimed to have departed Iran using his own genuine passport, however claims that this passport was taken by smugglers while on his way to Australia and he is no longer in possession of that document.
21. The United Kingdom (UK) Home Office, in 2016, and the Danish Refugee Council and Danish Immigration Service, in 2009, reported that a long stay abroad is not an issue as long as a person has left the country legally and that Iranians who left the country on their passports and are returned on a laissez passer will be questioned by the immigration police at the airport upon arrival but that according to the International Organisation for Migration (IOM) no one has been arrested when travelling back on a laissez passer. I note the applicant will likely be required to travel to Iran with a laissez passer.
22. The Department of Foreign Affairs and Trade (DFAT), in 2016, reported that Iran does not accept involuntary returnees however the authorities accept Iranians with valid travel documents or even those without documentation if persuaded they are Iranian. DFAT has also reported that they have strong anecdotal evidence that officials do not attempt to prosecute voluntary returnees as most failed asylums seekers leave Iran legally, such as the applicant. DFAT have further reported that voluntary returnees do not attract much interest from the authorities and that returnee's move quickly through airports, usually Tehran Imam Khomeini, without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of the document they return on, DFAT report that they will only be questioned if they had done something to attract the specific attention of the authorities. I do not find the applicant would fall into such a category.
23. If the applicant returns to Iran, he will be as someone who departed Iran lawfully through regular means using his own genuine passport, which I have noted is no longer in his possession. According to the country information cited above, it is clear the Iranian government do not accept involuntary returnees and therefore I am satisfied the applicant will be returning to Iran as a voluntary returnee. Nonetheless, I have found above the applicant is not of interest to the Iranian authorities for any credible reasons and based on the country information cited above, I am not satisfied the applicant will face any harm upon return to Iran on the basis of seeking asylum in Australia or for any other reason. I am not satisfied there is a real chance of harm on this basis, now or in the reasonably foreseeable future.

**Refugee: conclusion**

24. 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**

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25. 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**

26. 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.

27. I have found the applicant will be returning to Iran as an asylum seeker from Australia, a western country, but that he will not face any harm on this basis. As 'real risk' imposes the same test as 'real chance,' I am not satisfied there is a real risk of significant harm on this basis. I have not accepted the applicant's other claims as credible, and as such I am not satisfied that they give rise to a real risk of significant harm.

### **Complementary protection: conclusion**

28. 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**

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

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

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**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.