



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04514

Date and time of decision: 12 September 2018 11:11:00

I 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 an Iranian national from Tehran. He departed Iran [in] November 2012 and arrived in Australia [in] December 2012. On 28 March 2017 he lodged an application for a protection visa (PV).
2. On 1 March 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant attended a protest related to the outcome of the 2009 presidential election. The delegate did not accept that the applicant was arrested, detained and tortured as a result of his attendance or that he had a political profile that was of any interest to the Iranian authorities. The delegate concluded that the applicant would not face serious harm in Iran due to his attendance at the protest in 2009, being a failed asylum seeker 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) (the review material). On 9 April 2018 and on 19 April 2018, the IAA received submissions and additional documents on behalf of the applicant from his [representative].
4. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. [The representatives]' submission of 8 April 2018 restates the applicant's evidence as set out in his statement of claims. As such, these elements may be regarded as argument rather than new information and I have had regard to them. [The representative] also provides the following claims, which were not before the delegate and are new information:
 - The applicant was a political activist. Prior to the 2009 election he was involved in the education of voters about Mir Hossein Mousavi and his political movement, including distribution of pamphlets;
 - He was not allowed to have a Facebook account in Iran but since arriving in Australia has posted political and religious posts that are critical of the Iranian government and the clergy. It is likely that his Facebook page is being monitored by the Iranian authorities;
 - The applicant met his wife in 2013 and they married [in] March 2018. She suffers from [health] issues and the applicant is an element in stabilising her [health].
5. In relation to the first claim, that the applicant was a political activist in 2009, the applicant has not in any way alluded to such a claim in his arrival interview, his statement of claims, during the interview with the delegate or in submissions to the delegate following that interview. I note [the representatives]' contention that the applicant "was not asked vital questions" in his interview with the delegate, however it is not the duty of the delegate to elicit claims that have not been made. The delegate asked the applicant several times whether he had any claims other than that relating to his stated arrest after the 2009 protests and he did not indicate that he had. I am not satisfied that the new information could not have been provided to the delegate. In his statement of claims the applicant states that the protests against the re-

election of Mahmoud Ahmadinejad ran for three to four days and he attended on the fourth day. Had the applicant been involved in Mousavi's election campaign as he now claims, I do not accept as plausible that he would not attend the protests until the fourth day. I am not of the view that the applicant's unsupported statement is capable of being believed therefore it is not credible personal information. The applicant has not satisfied me that either limb of 473DD(b) is met.

6. [The representative] also contends that the applicant has been politically active online since arrival in Australia and has posted articles critical of the Iranian regime. Again, there has been no previous mention of such a claim and I am not satisfied that the information could not have been provided to the delegate. In support of this claim [the representative] has attached 28 pages of screenshots from a Facebook account, at Annexure A. I note that the Facebook account name shares a first name with the applicant although spelled differently and the surname comprises part of the applicant's surname. As the text in the screenshots is in Farsi I am unable to evaluate its relevance or significance and therefore have decided not to accept the items at Annexure A. [The representative] has also included at Annexure E a document entitled "Monitoring of Social media by the Iranian authorities". This comprises quotes from a number of reports, including those published by Amnesty International, the Immigration and Refugee Board of Canada, Freedom House, the US Department of State and the International Campaign for Human Rights in Iran. As all of the reports quoted predate the delegate's decision, I am not satisfied that this information could not have been provided to the delegate. As the reports comprise general or country information they are not credible personal information in the relevant sense. The applicant has not satisfied me that either s.473DD(b)(i) or (ii) apply therefore I have not had regard to Annexure E.
7. This then leaves the applicant's new claim that he has been politically active online in Australia. I am satisfied that the claim is capable of being believed and if known may have affected the consideration of the applicant's claims. In relation to whether exceptional circumstances exist to justify consideration of the new information [the representative] points out that the applicant was not legally represented until after the delegate's decision. In view of his lack of previous representation I am satisfied that there are exceptional circumstances that justify consideration of the new information.
8. [The representative] has also submitted that the applicant is now married and his wife suffers from [health] issues. On 8 April 2018 he provided the applicant's marriage certificate and 11 pages of photographs of various people in various social settings: Annexure D. Together with his submission of 18 April 2018, [the representative] provided medical documents indicating that the applicant's wife suffers from [illness] for which she is prescribed [medication]. [The representative] asserts that the applicant is a means of stabilisation to his wife's [health] however this is not supported by the medical evidence. I am not satisfied that the applicant's marital status, his wife's documented [health] issues or the photographs may be relevant to the matter before me. They are therefore not new information for the purposes of s.473DC of the Act and I have not had regard to them.
9. I have also obtained the Department of Foreign Affairs and Trade (DFAT), DFAT Country Report, Iran, published on 7 June 2018.¹ This replaces the previous DFAT report on Iran published on 21 April 2016 and was not before the delegate. It is new information. The delegate referred to the then most recent report, this being the DFAT Iran Country Information Report 2016, published on 21 April 2016. The DFAT report updates that before the delegate, which is now more than two years old. It has been prepared specifically for the purpose of

¹ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226

assisting in the determination of protection status. I consider that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

10. After his arrival at [a detention centre] the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 17 January 2013. Together with his PV application he provided an undated statement of claims. On 15 November 2017 he attended an interview ("the PV interview") with the delegate at which a support person (his now wife) was present. A further document was provided to the delegate on 21 November 2017. The applicant claims:
- In June 2009 there were mass protests across Iran against the outcome of the presidential election. The applicant attended one of the protests. He was arrested, [detained], interrogated, tortured and starved;
 - When he was released he was told that he had to report to the police station each month. He continued to do this until November 2012. Each time he reported he was questioned and detained for a period of a few hours to two days;
 - He also received two summons to attend court. He did not attend. Since he left Iran the Ettela'at have been to his home looking for him and threatened his mother;
 - the applicant has been politically active online since arrival in Australia and has posted articles critical of the Iranian regime.

Factual findings

11. Based on the information provided in his visa application and identity documents, I accept that the applicant's background is as follows: he was born on [date] in Tehran and is an Iranian national. He is of Azeri Turk ethnicity and follows no religion. He completed primary and secondary education followed by one semester of [studies] at University. He completed his compulsory military service in Iran. He has [siblings], all resident in Iran. He worked [in several professions]. From 2008 until his departure from Iran in November 2012 he and his [sibling] ran their own [business]. The applicant travelled to [Country 1] on business in 2012. He is currently employed as a [occupation].
12. The applicant's central claim is that he attended the June 2009 protests against the re-election of president Ahmadinejad. This is consistent with country information which indicates that up to three million supporters of reformist candidate Mir Hossein Mousavi turned out on Tehran streets to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had won in a landslide.² In his statement of claims the applicant described his actions after the protest in great detail. Of interest is his claim that he was walking home at the end of the protest when two people were shot next to him. He appropriated a motorcycle and took the two wounded people to hospital. He then returned to the same location (where the people had been shot) and tried to hide. I do not find this sequence of events at all plausible and have serious doubts as to whether it occurred. The applicant then claims that he was arrested and taken by bus to Evin Gaol, where he was [detained].
13. In his arrival interview the applicant stated that he was detained in a small room for that period and mentally tortured. His evidence as given in his statement of claims differs markedly

² DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 3.52

from this. In this he claims that he was held in a cell with a number of other detainees. All of them were kept naked and were threatened with rape. Over the next [days] he was interrogated on several occasions and physically tortured, including being whipped. At the end of the [detention] his clothes were returned to him and he was released. He does not claim to have been charged with any offence or required to sign an undertaking that he would not participate in any future protests. At the PV interview the delegate put to the applicant that he had not claimed, at his arrival interview, to have been physically tortured. The applicant responded that he did not think it was important. I do not find this response persuasive and do not accept it. Although country information does indicate that thousands of Green Movement demonstrators were detained and thousands beaten and harassed by security forces in the aftermath of protests in both 2009 and 2010,³ I find that the significant embellishment of the applicant's claim reflects poorly on his credibility. Taken together with my concerns as to whether he left the protest, then returned and then tried to hide, I reject the applicant's claim in its entirety. I accept that he was one of many Iranians who attended a protest in June 2009 but do not accept that he was arrested or detained or that he came to the interest of the Iranian authorities in any way.

14. The applicant has then claimed that he reported to the local police station every month for the next 3 years. At his arrival interview he claimed that "every holiday they used to detain me to make sure I don't do anything against the government". As I have not accepted that the applicant was arrested in June 2009 or was of any interest to the authorities I also do not accept that he was required to present to the police monthly from July 2009 to November 2012. In his statement of claims the applicant states that "I received two letters from the court. One of the court letters I received stated that my [relative] and father were members of the Mojahedin Khalgh Forgone Group and previously arrested. I did not know my father had been arrested and in jail". The applicant had not previously mentioned receiving any notices from the Court. At his PV interview the applicant produced the two notices in question. There were three of them. They were dated 25 October 2009, 6 October 2010 and 6 November 2012. None of them mention the applicant's father or [relative] in any way. The delegate put to the applicant that he had previously stated that he only received two notices and the applicant responded that he had forgotten about the 2012 notice. The delegate also put that the notices did not mention his father or [relative] at all and the applicant denied saying that they did. In the face of such a blatant falsehood I must conclude that the applicant is not a witness of truth. I do not accept that the notices he has provided are genuine or that he was at any time summonsed to attend the Revolutionary Court. I do not accept that his late father or his [relative] were members of the Mojahedin-e Khalgh (MeK).
15. The applicant has now claimed that he has been politically active in Australia and has posted articles on-line against the Iranian government and clergy. There is nothing before me to indicate that the applicant's on-line activities would be known to the Iranian authorities or that he could be identified from his Facebook account. Aside from attendance at one mass protest in 2009 the applicant does not claim to have been politically active in any way prior to leaving Iran at [age]. He does not claim to have attended any rallies or protests against the Iranian regime in Australia. On the basis of his actions in Iran and in Australia I do not accept that the applicant would become involved in political activism on return to Iran.

³ DFAT "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; 3.65

Refugee assessment

16. 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

17. 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.

18. I have found that the applicant is an Iranian national; consequently, Iran is his receiving country. I have considered whether the applicant would be considered to be a political activist or imputed with a political opinion adverse to the State on return to Iran. I accept that the applicant participated in one protest against the 2009 election results in 2009. The applicant was not involved in organisation of any protests and was a participant only. I have found that he was not arrested or detained, or suffered any other adverse consequences. There is no evidence before me to indicate that the Iranian authorities were aware of his attendance. I am satisfied that the applicant does not face a real chance of harm on return due to his participation in the “Green movement” protests of 2009.

19. I accept that the applicant has posted material adverse to the Iranian State on Facebook, since arriving in Australia. There is no evidence before me to indicate the applicant participated in any anti-government protest activities prior to leaving Iran, other than attendance at the one protest in 2009, or any actual protests against the regime in Australia. He has not claimed that he will participate or have any interest in participating in any activities in which he would be perceived to be opposed to the Iranian government or its policies on return to Iran. I conclude that he would not do so. I am not satisfied that he faces a real chance of harm on this basis.

20. With the exception of some 2018 arrivals, Iran does not generally accept involuntary returnees. In the applicant’s case, not being a recent arrival, the evidence indicates that if he is to be returned to Iran it is highly likely that it would only be on a voluntary basis. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in

Iran, nor any specific barriers to prevent voluntary returnees from returning to their home region.⁴

21. Although not raised as a claim by the applicant, the delegate considered whether he would face a real chance of harm on return due to his seeking asylum in Australia. Recent reports indicate that Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government – heavy internet filtering means most Iranians will never see them. Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.⁵ I have found that the applicant will not be considered to be a political activist on return to Iran. I am not satisfied that the applicant faces a real chance of harm on return to Iran because he has lived in Australia for several years or has sought asylum overseas.

Refugee: conclusion

22. 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

23. 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

24. 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.

25. I have concluded above that the applicant does not face a real chance of harm on the basis that he attended a protest rally in 2009, that he posted on-line material adverse to the Iranian regime or that he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,⁶ I am equally not satisfied that the applicant faces a real risk

⁴ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 5.24

⁵ Ibid; 5.25

⁶ *MIAC v SZQRB* (2013) 210 FCR 505

of significant harm on return for the purposes of s.36(2)(aa) for these reasons, including when considered individually or cumulatively.

Complementary protection: conclusion

26. 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

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.

...

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.