



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA18/04841

IRAN
IAA reference: IAA18/04845

IRAN
IAA reference: IAA18/04844

IRAN
IAA reference: IAA18/04842

IRAN
IAA reference: IAA18/04843

Date and time of decision: 14 December 2018 15:36:00
C Wilson, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- each of the referred applicants 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicants (the applicants) are a family group of parents (IAA18/04841, IAA18/04842) and three minor [children] (IAA18/04843, IAA18/04844, IAA18/04845). They claim to be stateless Faili Kurds, with either Iran or Iraq as their country of former habitual residence.
2. The applicants arrived in Australia [in] March 2013. On 16 June 2016 they lodged applications for Temporary Protection Visas (TPV). These applications were later withdrawn, and applications for Safe Haven Enterprise Visas (SHEV) were made on 28 August 2017.
3. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 24 April 2018. The delegate found the applicants were not credible witnesses. The delegate did not accept the applicants were stateless, and found they were citizens of Iran. The delegate accepted the applicants were Christian but found as they were not Christian converts and were not likely to proselytise or engage in illegal activities, they could return to Iran and continue to practice their religion without persecution.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The representative provided submissions to the Authority in relation to the three minor applicants. The representative requested the Authority interview the children, as they were not interviewed by the Department. I have considered the request. There has been no attempt by the representative to provide statements from the children or explain why an interview is the preferable way to present any information. I am not persuaded that any evidence they wish to give could not have been provided to the Department, or to the Authority as new information, in written form. I note the children are now age [age range] and were only [age range] when they left Iran. I consider it would be inappropriate to interview children of this age. I also consider it would be of little utility as they are unlikely to have knowledge of the current situation in Iran as relevant to their claims. I do not accept interviews are warranted in the circumstances.
6. On 20 June 2018 and 2 July 2018 the representative provided new information in relation to the three minor applicants. This new information included reference letters from Father [A] of the [Church 1] in [Town 1] and extracts from decisions of the UK Asylum and Immigration Tribunal decisions.
7. In relation to the extracts from the UK Asylum and Immigration Tribunal decisions, I note the decisions are quite dated, from 2004 and 2008. I am not satisfied dated decisions of another Tribunal are relevant, and I have therefore not considered them as new information.
8. I have considered the reference letters from Father [A] concerning each child, and find that they do contain personal credible information that may have affected the consideration of the claims. I acknowledge the delegate did not consider the minor applicants' claims, as they appeared to have been withdrawn. However as the claims form part of the information before me, and as the applicants indicated in their second applications that they still relied on everything provided in the withdrawn application, I consider I must address the minor

applicants' claims. Given the unusual circumstances of this case in relation to the children's claims not being considered by the delegate, I find there are exceptional circumstances to justify considering this new information.

9. On 7 December 2018 the representative provided two more pieces of new information: a petition from the parishioners of the [Church 1], and a copy of the Department of Foreign Affairs and Trade (DFAT) *Country information Report Iran* dated 7 June 2018 (the DFAT report).¹ I consider the petition does not add any further information than what is already known (that the family attend that church) and I am not satisfied there are exceptional circumstances to justify considering it. In relation to the DFAT report, I accept it could not have been provided prior to the decision being made, as it post-dates the delegate's decision. I am satisfied that there are exceptional circumstances to justify considering the new information of the 7 June 2018 DFAT report given the reliance of the delegate on the older DFAT report that has now been superseded.

Applicants' claims for protection

10. When the applicants applied for the TPVs in 2016 they all made claims for protection on the basis of their religion. In their later SHEV applications only the first and second applicants, the parents, made claims for protection. The minor [children] appeared to be applying only on the basis of their membership of the family unit of their parents. However, the SHEV applications also stated the applicants were relying on the claims and information provided in the 2016 TPV application. I consider that notwithstanding the withdrawal of the TPV applications, the assertion by the applicants in the SHEV application that they relied on the claims previously made means the [children's] claims for protection must still be considered.
11. The applicants' claims can be summarised as follows:
 - They are stateless Faili Kurds. Because of this they experienced discrimination, including being denied access to education, health care and employment.
 - As a child the second applicant was injured during the Iran-Iraq war and his father and other family members died from war injuries.
 - The first and second applicants were sexually assaulted by unknown men, possibly soldiers, in around 2008.
 - The first and second applicants were raised in Christian families, although they never attended a Church in Iran. Since being in Australia they have attended a Catholic church and their children have all been baptised in that church.
 - If they are returned to Iran they fear being harmed as Faili Kurds and as Catholics.

Factual findings

12. The applicants claim to be stateless. For the following reasons I do not accept this claim, and I find they are citizens of Iran.
13. The first and second applicants have been interviewed on a number of occasions: on arrival in April and May 2013; in September 2016 in relation to the TPV applications; and in February

¹ CIS7B839411226.

2018 in relation to the SHEV applications. The information provided in these interviews has been inconsistent and at times confused.

14. The delegate's decision sets out much of the inconsistent, vague and contradictory statements, written and oral, made by the first and second applicants. Of particular concern is their inconsistent evidence in relation to where they were born and where they lived. Both of the adult applicants have at different times claimed to be from Iran or Iraq and both have claimed to have been born in either Iraq or Iran. Neither could give a consistent or sufficiently detailed explanation of their family histories in terms of where parents or grandparents were from or what citizenship they had or how or under what circumstances they lost that citizenship. Even the composition of their families was inconsistent. The second applicant disclosed [brothers] living in Iran in his entry interview, but later denied this and said he had no living relatives. They disclosed the children had some education in Iran, but later denied this. Neither gave a consistent account of what villages or towns they had lived in. Although they applied for the TPVs in 2016 claiming to be from Iraq, the applicants settled on Iran as their country of residence for the 2017 SHEV applications. I consider the information given by the applicants orally and in writing has been so inconsistent that their credibility is adversely affected.
15. The applicants' accounts of how they left Iran for Australia have been inconsistent. At the arrival interview they claimed to have flown out of Tehran. In their TPV applications they claimed to have left from Iraq. In their SHEV applications they claim to have travelled by road from Iran to [Country 1]. Their accounts of how they made arrangements to leave have also changed over time and their explanations of how they paid the smuggler are implausible. They claim to have lived simple [lives], where they had no education, no employment, never travelled out of their home area and never to a large city, and lived a subsistence life herding animals. That such a family could amass the money required for the journey to Australia, including paying the smugglers, is completely implausible. That they would have the resources and contacts to find a smuggler is not adequately explained. I do not accept their account that one day a smuggler walked into their village and asked if anyone wanted to leave the country. Their explanation that they sold livestock to pay for the trip is implausible, as their account of their personal circumstances does not support a scenario where they would have had sufficiently large numbers of livestock to fund such a journey. I am not satisfied they have provided a consistent or truthful account of how they left Iran and how they funded it. I find they have concealed the true circumstances of their lives in Iran.
16. Although at times the applicants have claimed to be from Iraq, they have more consistently claimed to have been residents of Iran. They have spoken of the town [in] Ilam province, Iran, where they say they travelled for the births of each of the three children. In the absence of any documentation or other information on where they lived, for the purposes of this decision I find they are from Ilam province in Iran.
17. The applicants claim to have been stateless and to have never held any form of documentation. Their ability to depart Iran suggests otherwise. As noted above, they have given varying accounts of how they left Iran, but I find the account given when they first came to Australia is the most likely one. That is, I find they departed Iran through the Imam Khomeini International Airport in Tehran. I have considered country information on passports in Iran and the ability of the authorities to monitor persons exiting the country. DFAT advises Iranian passports have been biometric since 2011 and their security features make them difficult to manufacture for fraudulent use.² The applicants have at times admitted to the

² DFAT report

smugglers holding passports for them, although they claim there were fraudulent. I consider this most unlikely given the advice from DFAT. Country information confirms it would be almost impossible to pass through the Imam Khomeini International Airport with a fraudulent passport, due to the sophisticated security features in the passports and the computerised cross-checking.³

18. I find the applicants are from Iran. I find they departed Iran legally, and their ability to do so indicates they held Iranian passports. I find they are not stateless but are citizens of Iran.

Refugee assessment

19. Under s.36(2)(a) of the Act a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee. 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

20. 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.
21. I have found the applicants are Iranian citizens and I therefore find Iran is their receiving country. For the purpose of this decision I find the province of Ilam is the home area of the applicants and the area to which they would return.
22. As noted above, I find the first and second applicants have little credibility and much of their evidence cannot be relied upon. There are two matters however that I do accept: I accept their ethnicity is Kurdish, and I accept they are practising Catholics. I accept their ethnicity on the basis this is one claim they have been consistent about and their use of Kurdish interpreters when interviewed by the Department. I accept they are practising Catholics on

³ DFAT report; "Entry procedures and passport control at Dubai International Airport", *Australia: Department of Immigration and Citizenship (DIAC)*, 13 April 2012, CX286895.

the basis of the evidence provided by two priests from the church they have attended since 2013.

23. In their entry interviews, both the first and second applicants claimed to be Shia Muslims. They both deny this, but I have listened to the recordings and they both clearly stated Shia Muslim when asked about their religion. They do not claim to be Christian converts, but claim they both came from Christian or Catholic families. I note this would be unusual for Faili Kurds, who are predominantly Shia Muslim.⁴
24. The applicants' descriptions of how they practiced Christianity in Iran or Iraq discloses almost no engagement with the Catholic church, or indeed any church. The first applicant does not claim to have been to a church in Iran or Iraq, but says she was baptised in a river and learned about Christianity at home. The second applicant claims also to have been baptised in a river. He claims to have attended a Catholic church a few times with his father in Baghdad, but never in Iran. They were not married according to any Christian rites, and did not claim to have baptised any of their children in Iran.
25. I have doubts about the applicants' claims to have been Christian in Iran and to have come from Christian families. These doubts are in part because of their poor credibility generally, but also because they did not disclose this religion when first asked in Australia. Indeed on arrival they claimed to be Muslim. Their lack of Christian rites when marrying, and lack of baptism of the children until in Australia, also raises doubts. It is possible they identified as Christian in Iran, but I consider it is also possible they were Muslim and converted only once they arrived in Australia.
26. In support of their applications the applicants have provided references for the family and baptism certificates for the children from [Church 1] in [Town 1]. Father [B] wrote in 2016 that he had known the applicants since they arrived in [Town 1] in June 2013. He stated they actively attended church services every Sunday and the parents did charitable work for the church. The children were baptised and were on the roster to work [in a certain capacity]. Father [B] wrote that officers of the Department were welcome to come to the church and speak to members of the church community who could also vouch for the family. In June 2018 Father [A] wrote to the Authority stating he had taken over as the Parish priest at [Church 1]. He has personally known the applicants since holding this position in January 2018. He advised the two oldest [children] have now received the sacrament of confirmation in the Catholic Church, and the youngest one was preparing to do so in 2019. The younger two continued as [specified roles], and the oldest [child] [did other specified job]. Father [A] emphasised the importance of celebrating the Sacraments for Catholics, and how this can only be officiated by a Roman Catholic Priest or Bishop.
27. I accept the applicants openly identify as Catholics and openly practice their faith in Australia by regularly attending church services, receiving communion and other Sacraments, and participating in social and charitable activities in their church. I accept this has become an important part of their identity. I accept they would want to continue to practice their faith in Iran in the manner they have done in Australia. Noting the length of time they have now been involved in their local Catholic church, and their acceptance by that community, I accept their engagement with Catholicism is genuine. I make this finding even though I consider their credibility is questionable and have some doubts about whether they were Christian before coming to Australia, or only adopted Christianity as a pathway to refugee status. I rely particularly on the references from their church in Australia to find the applicants have

⁴ DFAT report

engaged in the conduct otherwise than for the purpose of strengthening their claims to be refugees.

28. The delegate accepted the applicants were Christian and would want to continue to practice their religion in Iran. However, the delegate found they were unlikely to receive adverse attention from the Iranian authorities because they were born into that religion. Christianity is one of the recognised religions in Iran and those born into the faith are tolerated by the authorities.⁵ For reasons given above, I have doubts about whether the applicants were born into Christian families. However, even if they were, they are not from ethnic or cultural groups that are officially recognised by the Iranian authorities, such as the Assyrian Christians or Sabeen-Mandean. As Faili Kurds they would likely be presumed to be Muslim, and I am not satisfied they would be able to prove their family was otherwise. Anyone unable to prove their family was Christian would be considered Muslim⁶ and their practice of Christianity in Iran would therefore be seen as that of Christian converts. Whilst Christians from Christian families in the limited recognised churches are tolerated in Iran, Muslims converting to Christianity are not.
29. In Iran 98% of the population identify as Muslim. DFAT describes Iran as a theocracy that mixes religion and state more completely than almost any other country in the world. There is pervasive structural discrimination against religious minorities. The Islamic Revolutionary Guard Corps, the Ministry of Culture and Islamic Guidance, and the Ministry of Intelligence and Security all monitor religious activity in Iran. The small number of Christian churches operating in Iran are prohibited from ministering to Iranians. The authorities have closed several churches in recent years for failing to comply with restrictions, which include no services in Farsi and the need to perform identity checks on person attending services. Christian converts can face physical attacks, harassment, threats, surveillance, arrest, detention and torture or mistreatment in detention.⁷ Whatever form of Christianity the applicants were practising in Iran, if at all, the evidence does not indicate it was a form of Catholicism. I am not aware if there is a Catholic Church in Ilam province, but I consider even if there were, the applicants would be unable to commence attending the church either because the church itself would refuse them in compliance with the restrictions imposed by the authorities or because the authorities monitoring religious activity would become aware of their attempts to attend the church.
30. I find the applicants' practice of Catholicism in Iran, if they could find a Catholic church to practice their faith in, could expose them to a real chance of harassment, official sanctions and/or physical harm. I consider the nature of the harm they may face amounts to serious harm because it would include significant physical harassment and ill-treatment. I find the essential and significant reason for this persecution would be their religion and that it involves systematic and discriminatory conduct.
31. I have considered whether the applicants could take reasonable steps to modify their behaviour to avoid a real chance of persecution. In this case it would require the applicants to practice quietly in their own home or house churches. I accept they could not openly attend a Catholic church to receive communion and could not practice Catholicism as conspicuously as they have in Australia. I accept the statement from Father [A] that for practising Catholics the regular participation in the Sacraments is fundamental. I find the inability to attend church and participate in the Sacraments amounts to a modification that cannot be required

⁵ DFAT report

⁶ DFAT report

⁷ DFAT report; *Country Policy and Information Note Iran: Christians and Christian converts*, UK Home Office, 27 February 2017, OGG6E7028813.

under s.5J(3)(c)(i). I find the applicants cannot be expected to conceal or modify to this extent their practice of their religion to avoid persecution.

32. I have considered whether the applicants can access effective protection in Iran. I find however the State cannot offer them protection in the circumstances where the Iranian authorities are the agent of persecution. There is no evidence before me of any non-state party of organisation in Iran that could offer the applicants effective protection. Also, as the Iranian authorities are the agents of harm, I find the real chance of persecution relates to all areas of Iran.
33. I find the applicants' fear of persecution for reason of their religion is well-founded. Given this finding, it has not been necessary to consider their other claims.

Refugee: conclusion

34. The applicants meet the requirements of the definition of refugee in s.5H(1). The applicants meets s.36(2)(a).

Decision

The IAA remits the decision for reconsideration with the direction that:

- each of the referred applicants is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.