



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05592

Date and time of decision: 11 December 2018 12:39:00

C Wilson, 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Faili Kurd from Iran. He arrived in Australia as an unauthorised maritime arrival on [date] January 2013. On 18 April 2016 he lodged an application for a temporary protection visa (TPV).
2. A delegate of the Minister for Home Affairs (the delegate) refused the application on 24 August 2018. The delegate found the applicant was not stateless but was an Iranian citizen. The delegate did not accept the applicant would face persecution as a Faili Kurd.

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. On 28 September 2018 the applicant's representative provide a written submission to the Authority. The submissions contained two pieces of new information: firstly the retraction of a claim; and secondly an extract of country information.
5. The first piece of new information is that the applicant retracts his claim to fear harm as a stateless Faili Kurd. I accept this is credible personal information and I accept that had it been known that he did not fear harm for being stateless, this may have affected the consideration of his claims. I also consider there are exceptional circumstances to justify considering the information, given its significance and centrality to the applicant's case.
6. The second piece of new information was a short extract from an Amnesty International report from 2008. I do not accept this country information could not have been provided to the Minister, noting it predates the delegate's decision by nearly 10 years. The information is not about an individual or reasonably identifiable individual and is therefore not credible personal information. I am not satisfied this information meets either s.473DD(b)(i) or (ii) and accordingly I must not consider it.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - He is a stateless Faili Kurd, born in Tehran in [year]. His parents were Iraqi permanent residents but were expelled from Iraq in the 1970s. His parents were given temporary residence in Iran.
 - As a stateless person he had no right to work or study. He received only four years of education. The only work he could obtain was [in a certain role] in a market.
 - He came to Australia because he heard he could get full rights and freedoms, and would be able to access work and education.
 - He fears serious harm in Iran because he is Faili Kurd.
 - As a Shia Muslim who has become secularised he fears harm from both radical Sunnis and fundamentalist Shias.

- He fears harm as a returning failed asylum seeker. He fears being imputed with an anti-regime political opinion because he left Iran illegally.

Factual findings

8. The applicant claimed in his application to be stateless. For the following reasons I find the applicant is not stateless but is an Iranian citizen.
9. In submissions to the Authority the applicant's representative stated the claim that the applicant feared harm as a stateless Faili Kurd is retracted. Whilst this retraction implies the applicant is conceding he is not stateless, it is ambiguous. It could also be read as stating the applicant is merely retracting the claim that he fears harm as a stateless Faili Kurd, not that he is retracting the claim to be stateless.
10. In his written statement the applicant claimed his parents were born in Iraq and were permanent residents there. He claimed they were expelled from Iraq when Saddam Hussein assumed power and passed laws to deport Faili Kurds. He did not know what year that occurred. He provided White Cards for his parents, which were issued in [1971]. At the TPV interview he said these were the only forms of identification his parents, or anyone in his family, had ever held in Iran.
11. The applicant's claim that his parents had only the one card issued in 1971 is not credible. White Cards were issued to Iraqi refugees who arrived in Iran in the 1970s, but they required renewal. In 2002 a new system of temporary resident cards, referred to as Amayesh cards, was introduced. From 2002-2003 this system replaced all previous refugee registration processes, becoming the sole system through which refugee status could be renewed. The cards require annual renewal and are essential for access to basic services and work permits.¹
12. As raised by the delegate in the TPV interview, the applicant has been sending money to his father's bank account in Iran, as well as to accounts held by siblings. His family's ability to have bank accounts in Iran indicates they have proper identification in Iran, either Amayesh cards or actual citizenship. I do not accept they were able to open and maintain bank accounts with a White Card issued in 1971 that had long since lapsed.
13. I find it implausible that were the applicant's parents granted White Cards in 1971 they would not have renewed those cards since that time. I consider the lack of any other identification being provided by the applicant is suggestive of him hiding other family documents that would show he and his family are in fact Iranian citizens.
14. The applicant provided a copy of a decision of the Refugee Review Tribunal from 2005 concerning his wife's family. In that decision the Tribunal Member found the family were stateless Faili Kurds. I give this no weight in my decision of whether the applicant is stateless, as I do not accept the citizenship status of his wife's family, who are not otherwise related to the applicant, has any evidentiary value for his citizenship status.
15. The applicant was able to depart Iran through the Imam Khomeini International Airport in Tehran without issue. At interview he claimed to have travelled on a genuine passport containing his photograph but in someone else's name. He claims to have found someone who looked like him, and when that person was renewing their passport they simply substituted the applicant's photograph into their genuine passport renewal application. I find

¹ 'Feyli Kurds – obtaining identity and travel documents', DIBP Tehran, 17 September 2015, CISEC96CF13392

this explanation highly implausible. It is implausible that he would be able to find someone who looked so similar to him that this ruse could succeed, that the authorities issuing passports would not notice the photograph substitution, and that the genuine passport holder would be willing to go along with such a scheme. Having their genuine passport used for someone else to depart Iran would have ongoing consequences for the original holder. The Department of Foreign Affairs and Trade (DFAT) advises Iranian passports have been biometric since 2011. They contain security features which make them difficult to manufacture for fraudulent use.² The Iranian authorities maintain a database of personal details of all citizens³ and have sophisticated border control procedures at the airport⁴. I find that the applicant's ability to depart Iran without issue indicates he was travelling on a genuine passport issued to him, and that he did not travel on someone else's passport.

16. Taking into account the implausibility of the applicant's claimed family history regarding identity cards, his ability to depart Iran on a passport, and his concession that he does not fear harm for being stateless, I find the applicant is not stateless and is an Iranian citizen.

Refugee assessment

17. 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

18. 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.
19. For the reasons given above I find the applicant is a citizen of Iran. I find Iran is his home country and Tehran, where he lived all his life until coming to Australia, is his home area and the area to which he would return.

² DFAT *Country Information Report Iran*, 7 June 2018, CIS7B839411226 (DFAT report)

³ National Organization for Civil Registration, Personal Status Registration Organisation (Iran), pp 35-47, CIS38A8012677

⁴ DFAT report

20. The applicant claims to fear harm due to his ethnicity as a Faili Kurd. He has consistently claimed to be of Faili Kurd ethnicity and has been interviewed with the assistance of a Kurdish (Faili) interpreter. On the basis of the consistency of the claim and his fluency in the Kurdish (Faili) language, I accept his ethnicity is Faili Kurd.
21. Faili Kurds are a subgroup of a larger Kurdish population. They originated in the Zagros Mountains which straddle the Iran-Iraq border, and because of this they typically reside close to the border. I note the applicant's family however reside in Tehran. The Faili Kurds are distinct from other Iranian Kurds because of their location, Shia religion, and dialect. Three groups of Faili Kurds live in Iran: Iranian citizens; those of Iraqi origin who are registered refugees; and those of Iraqi origin who are not registered.⁵ For the reasons given above I have found the applicant falls into the first group. In any event he has retracted the claim to fear any harm for being stateless.
22. DFAT advised in June 2018 they were not aware of specific instances whereby the Iranian authorities had singled out Faili Kurds for mistreatment.⁶ The applicant claimed he was disadvantaged in education and employment because of his ethnicity in Iran. He claims to have had only 4 years of education and to have worked only [in] a market, which he says was the same work his father and brothers did. Notwithstanding his claim to have been disadvantaged, he has had some education and employment in Iran, and his family had always lived at the same address in Tehran. On the basis of the history given by the applicant of his life in Tehran, it does not appear he or his family were disadvantaged to the point of being unable to subsist. Their ability to find or borrow money to send the applicant and a nephew to Australia also indicates they were a family of some means. He has claimed to fear returning and supporting himself in Iran with an economic situation that may not be stable, but I consider he has family who can assist him on return. I do not accept there is any evidence before me to indicate he would be disadvantaged economically to the point where he could not subsist, for reason of his ethnicity.
23. I accept that Faili Kurds, and members of the broader Kurdish population, can be targeted if they assert their ethnic or religious identity in a political manner, or are actively involved in Kurdish political movements. There is no claim the applicant has engaged in any such activity however. There is no claim or evidence before me that the applicant has engaged in any activity in Australia to promote Kurdish rights or oppose the Iranian regime. I find there is nothing before me to support a finding that the applicant would face a real chance of harm merely for being Faili Kurd. He claimed to have been stopped once or twice by police as a young man, but says he was able to run away. There's no suggestion of any charges or criminal history in Iran. The applicant was able to depart Iran without issue and I find this to be evidence he was not of interest to the authorities. I find there is not a real chance of harm for any actual or imputed political opinion of being pro-Kurdish or anti-regime as there is no evidence of any such political activity. I find he does not face a real chance of harm in Iran for reason of his ethnicity or for any actual or imputed political opinion.
24. The applicant claimed to fear harm because he has become 'secularised' and may be targeted by either radical Sunnis or fundamentalist Shias. The applicant comes from a Shia Muslim family, and whilst stating in his written application that he is 'secularised', he has also given evidence that he continues to be a practising Shia Muslim. I note from his marriage certificate that he married in Australia in an Islamic ceremony, which indicates he continues to practice and identify as Muslim. I accept he is a moderate Shia, but find this is not

⁵ DFAT report

⁶ DFAT report

uncommon in Iran nor a reason for him to be targeted. Iran has been described as the least religious country in the Middle East.⁷ Surveys conducted in 2003 found low rates of Mosque attendance, with just 6 percent attending weekly and 40 per cent never attending.⁸ The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) noted in 2015 that non-practising Muslims form a large part of the population of Iran's cities.⁹ DFAT assessed in 2016 that it was highly unlikely the authorities in Iran would monitor religious observance by Iranians.¹⁰ There is no evidence before me to indicate he has actively opposed or been a vocal opponent of radical Sunnis or fundamentalist Shias, and I do not accept such groups have any reason to be interested in him as an ordinary Shia Muslim. Whilst the applicant's views may have become more secularised, as noted above there are many Iranians who are moving away from institutionalised religion. I find the applicant does not face a real chance of harm from the authorities or radical Muslims in Iran for reason of his practice of Islam becoming somewhat secularised.

25. The applicant also claims to fear harm as a failed returning asylum seeker. Iran claims not to accept involuntary returnees, and will not issue travel documents to Iranians abroad who a foreign government is attempting to return involuntarily. DFAT's anecdotal observation is that returnees do not attract interest from the authorities amongst the large number of international movements of Iranians. Returnees may only be questioned if they have done something to attract the attention of the authorities.¹¹ As noted above, I find there is nothing in the applicant's profile to indicate he has or would attract the attention of the Iranian authorities. It is not an offence in Iran for an Iranian to seek asylum in another country.¹² There are reports of asylum seeking Iranians being arrested on return, but the reports concern persons involved in anti-regime activities.¹³ The Danish Immigration Service quoted an unnamed Western diplomat based in Iraqi Kurdistan as stating 'as long as a returnee has not been a member of any oppositional political party or involved in political activities in other ways, she or he would not face problems upon returning to Iran'.¹⁴ The applicant has not involved himself in political activity, either in Iran or Australia. I do not accept his time in Australia and having sought asylum here would be of interest to the Iranian authorities, even taking into account his Kurdish ethnicity. I find he does not face a real chance of harm for being a returning failed asylum seeker.
26. The applicant also claimed to fear harm in being separated from his wife and child, who are Australian citizens. However the separation and associated distress would be for reason of not having a visa to remain in Australia, and not for any of the reasons set out in s.5J(1)(a).

Refugee: conclusion

27. 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).

⁷ 'Religion: Take it or leave it', *The Economist*, 1 November 2014, CX1B9ECAB7499

⁸ Gunes Murat Tezcur, Taghi Azadarmaki and Mehri Bahar, 'Religious Participation Among Muslims: Iranian Exceptionalism', *Critique: Critical Middle Eastern Studies*, vol. 15, iss.3 2006, CIS21784.

⁹ 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September

¹⁰ DFAT *Country Information Report Iran*,

¹¹ DFAT report.

¹² "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", *Danish Refugee Council, Landinfo and Danish Immigration Service*, 1 February 2013, CIS25114.

¹³ For example: "The Kurdish asylum seeker Rahim Rostami charged with 'actions against the nation's security' released on bail". *Iran Human Rights*, 19 June 2011, CX274950; "Amnesty International – Urgent Action UA 125/11 Student activists held in Iran", *Amnesty International*, 6 May 2011, CX264288.

¹⁴ "Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", *Danish Refugee Council*, 1 May 2013, CIS26587.

Complementary protection assessment

28. 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

29. 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.
30. For the reasons given above I do not accept the applicant is stateless or left Iran on fraudulent documents. It follows I do not accept he faces a real risk of harm from the Iranian authorities for these reasons.
31. I have found the applicant does not face a real chance of harm for reason of his ethnicity, actual or imputed political opinion, religion, or for being a returning failed asylum seeker. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above, I find the applicant will not face a real risk of significant harm for reason of his ethnicity, actual or imputed political opinion, religion, or for being a returning failed asylum seeker.
32. The applicant claims he will be harmed in being removed from Australia and being separated from his Australian citizen wife and child. However the Federal Court has held that the act of removal from Australia to a receiving country does not engage s.36(2(aa)).¹⁵ I acknowledge the removal would cause significant distress in being separated from his family, but I find it does not amount to 'significant harm' as defined in the Act.
33. The applicant claimed to fear returning to a country where there is economic and political instability. At the TPV interview he said people generally are struggling financially in Iran and expressed fears about his ability to re-settle in a country where people are suffering. The applicant has provided little evidence to support his claim that were he to be removed to Iran he would suffer significant harm due to the claimed economic and political instability in that country. As noted above, the applicant has family that continue to reside in the family home in Tehran and I find they could assist him on return. He has also not provided evidence of how he would be personally exposed to any risk relevant to economic or political instability, as opposed to it being a risk faced by the population generally. I find there is not a real risk he would suffer significant harm because of the economic or political situation in Iran.

¹⁵ *SZRSN v MIAC* [2013] FCA 751.

Complementary protection: conclusion

34. 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.