



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05853

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Date and time of decision: 7 December 2018 15:22:00

D Corrigan, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicants claim to be stateless. On 26 May 2017, they lodged an application for a Temporary Protection Visas (TPV).
2. In a decision dated 18 October 2018, a delegate of the Minister (the delegate) refused to grant the visas. The delegate did not accept that the applicants were stateless. He found the applicant father (the applicant) was not a genuine convert to Christianity. He found the applicant did not face a real chance of serious harm or significant harm on account of his Kurdish race, his non-practice of Islam, his interest in Christianity and due to being a failed asylum seeker returning from a western country.

### 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 IAA received submissions from the applicants' representative. To the extent that they discuss the findings of and other matters before the delegate this is not new information for the purpose of s.473DC(1) of the Act.
4. Various submissions for both applicants were made to the IAA which contains new information. This new information is:
  - A statement that the applicant has been baptised at [Church 1] after the decision.
  - A video showing the applicant being baptised and another showing the applicant and other men speaking in a foreign language.
  - A [social media] post of the applicant, dated [in] November (year not shown), showing a photo of him being baptised. It is claimed that he recently shared this and that a number of people in Iran including his family are likely to have seen the post and would be aware that he has baptised as Christian.
  - A statement of the [age] year old applicant child (the applicant child), dated 14 November 2018, about her Christian practices and belief.
  - A number of photos of the applicant child, including one of her wearing a crucifix and one of a painting she did that was posted on [Church 2's social media] page.
  - A letter from [Reverend A], dated 15 November 2018, attesting that "Over the last three to four years there has been a deep and growing relationship between [Child 1], his daughter and the people of the [Church 2]" and giving details of their involvement in the church. It states that he had taken the applicant to have conversations with an Iranian [Denomination] pastor and that he has been baptised.
  - Statements of the applicant child's friend and the friend's mother, dated 3 December 2018, attesting to her Christian belief and practice.
  - A letter from the Principal of [School 1], dated 4 December 2018, stating that it is the school's belief that both applicants are Christians who follow the faith. It also states that the applicant child's teacher has often heard her talking about going to church and she has the belief that the family are Christian. Attached is an enrolment form stating that the applicant child is a Christian and a permission form for the applicant child to attend an after school Christian instruction program.

- A statement by the applicant's partner, dated 3 December 2018, attesting to the Christian beliefs and practice of the applicants
5. The applicant child was not interviewed by the delegate about her Christian belief and practice, despite evidence of her participation in Christian activities in the statement of the applicant that accompanied the TPV application. No findings were made in the delegate's decision as to her religious beliefs and practice and whether she was a refugee or entitled to complimentary protection. The event of the applicant's baptism occurred after he made the decision and most of this new information post-dates the decision. The evidence provided by the School Principal and Reverend is supportive of the applicants' claims and are from independent and credible sources. The evidence goes to the level of engagement the applicants have with Christianity and is highly relevant to their claims. I am satisfied that all of this new information is credible (in the sense of capable of being believed) personal information which was not previously known, and had it been known, may have affected the consideration of the applicants' claims and that s.473DD(b)(ii) is met. I am also satisfied that there are exceptional circumstances to justify considering the new information and that s.473DD(a) is also met.
  6. In this decision, I have obtained new information, namely the latest United Kingdom Home Office (UKHO) report concerning Christian converts in Iran.<sup>1</sup> This report is recent and it is an authoritative source. As the delegate did not accept that the applicant is a genuine convert to Christianity or consider whether the applicant child is , there is only one item of country information in the decision as to the situation for Christian converts. I consider there are exceptional circumstances to justify considering this new information under s.473DD(a).

### **Applicants' claims for protection**

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7. The applicants' claims can be summarised as follows:
  - They are undocumented, stateless Faili Kurds who could not access government services.
  - The applicant's paternal heritage is Iraqi and his family was expelled by Saddam Hussein.
  - His family were never registered as refugees though they may have once held a green card.
  - He only had basic schooling through private teaching.
  - When he was young, his father, a [street] seller, was violently attacked by the police and had the [goods] confiscated and was forced to sign a document saying that he would not work and would return to Iraq.
  - He was married in Iran in a religious ceremony but the marriage was not officially recognised and he endured harassment for this.
  - As he was undocumented, he was often underpaid and was verbally abused and physically assaulted by other Iranian workers. He was beaten when he complained to his boss about needing money.
  - The police told him not to work and then later came and arrested, detained and beat him. He was released due to the intervention of his father and [another person]

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<sup>1</sup> United Kingdom Home Office (UKHO), "Iran: Christians and Christian converts", 1 March 2018.

- In about 2010-11, he was detained, taken to court and charged with being Kurdish and not having identity. He spent a week in jail but was released after his father paid a bribe.
- They departed [Airport 1] on fraudulent documents.
- After arriving in Australia, they were introduced to Christianity and have become Christians. They have told their family members in Iran of this.

## **Refugee assessment**

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8. 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**

9. 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.
10. At the TPV interview, the applicant was questioned in only a limited manner about his understanding of Christianity and what it was that appealed to him about the religion. His answers were not extensive but he displayed some understanding of the religion and why he was attracted to it. The applicant child was not interviewed at all. In making my assessment, I have given greater weight to the written evidence submitted in support of the applicants’ claims that they have genuinely become Christians.
11. In a letter dated 15 May 2018, the [Reverend A] has stated that he has known the applicants for 27 months and that he had frequent contact with them when they resided next to the church. He states that he had introduced the applicant to a [Denomination] pastor from Iran and that for two years the applicant has been studying the Bible. He states that the applicants have connected with the church community especially at Thursday night gatherings over meal. He states that several volunteers have told him that the applicant has

talked to them on a number of occasions about his spiritual journey and he has impressed them as having a genuine commitment. He states that the applicant had talked to him about baptism and they were in the process of exploring the meaning and practicalities of this step.

12. In a later letter, the [Reverend A] attests that “Over the last three to four years there has been a deep and growing relationship between [Child 1], his daughter and the people of the [Church 2]” and giving details of their involvement in the church. It states that he had taken the applicant to have conversations with an Iranian [Denomination] pastor and that he has been baptised. He states that the applicants have attended Thursday night congregations and that the applicant child was also a regular attendee at the art class that preceded it. He states that they also come to church on Sunday at other times during the week for prayer, Bible reading and consultation. Videos of the applicant have also been submitted that show him being baptised and speaking with others afterward.
13. A statement of the applicant child states, inter alia, that she believes in Jesus as her saviour and that she has been going to church on Sundays and Thursdays. She states that she prays, sings songs and likes this and that she has attended art classes and done drawings of Bethlehem and Nazareth. She states that she and her best friend talk about Jesus at school and that she reads the Bible. She states she has pictures of Jesus, Mary and the crucifix in her room and wears a crucifix necklace. She further states that she has told her relatives in Iran about her beliefs. A photo of the applicant child with the pictures and the crucifix has also been submitted as well as a photo of her painting that posted on the [Church 2 social media page]. The applicant child’s claims about her Christian belief and practice are supported by submitted statements by her best friend and this best friend’s mother.
14. A letter from the Principal of the applicant child’s school states it that the school’s belief that both applicants are Christians who follow the faith. Attached are copies of an enrolment form stating that the applicant child is a Christian and a permission form for the applicant child to attend an after school Christian instruction program. It also states that the applicant child’s teacher has often heard her talking about going to church and has the belief that the family are Christian. A statement of the applicant’s partner further attests to the Christian beliefs and practice of the applicants.
15. Given the evidence before me, I am willing to accept that both applicants have genuinely converted to Christianity from Islam. I am satisfied that they have engaged in religious conduct in Australia otherwise than for the purpose of strengthening their claims to be refugees and therefore that s.5J(6) is met.
16. The Australian Department of Foreign Affairs and Trade (DFAT) have commented that under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy. Separately, a person of any religion may be charged with the crime of ‘swearing at the Prophet’ (blasphemy) if he or she makes utterances that are deemed derogatory towards the Prophet Mohammed, other Shi’a holy figures, or other divine prophets. The Penal Code does not specifically criminalise apostasy, but provisions in the Penal Code and Constitution state that sharia applies to situations in which the law is silent, and judges are compelled to deliver sharia-based judgements in such cases. Although the Koran does not explicitly say that apostasy should be penalised, most Islamic judges in Iran agree that apostasy should be a capital crime. This ruling is based both on oral traditions attributed to the Prophet Mohammed and to Shi’a Imams, whom Shi’a consider the Prophet’s rightful successors. While apostasy and blasphemy cases are no longer an everyday occurrence in Iran, authorities continue to use religiously-based charges (such as

‘insulting Islam’) against a diverse group of individuals. In recent years, the group has included Muslim-born converts to Christianity.<sup>2</sup>

17. DFAT further state the Penal Code strictly prohibits proselytisation by religious minority groups – it is a capital crime for non-Muslims to convert Muslims. Iranian Christians who are not members of the recognised ethnic minority churches generally practise in underground ‘house churches’. The secrecy surrounding the house churches makes it impossible to provide an exact number of unrecognised Christians in Iran. Some international Christian advocacy groups estimate that between 800,000 and one million people worship in underground churches. While these numbers likely overstate considerably the true number, Iran nevertheless has a significant and growing unrecognised Christian population. DFAT understands a high percentage of unrecognised Christians in Iran are Farsi-speaking converts from Islam, or the children of converts. Local sources claim many converts are unhappy with being designated Muslim at birth, and wish to explore their religious identity. Others see adopting Christianity (albeit surreptitiously) as a means of rebelling against the government.<sup>3</sup>
18. DFAT also state that authorities have interpreted the growth in house churches as a threat to national security: official reports and the media have characterised house churches as ‘illegal networks’ and ‘Zionist propaganda institutions’. Authorities have periodically cracked down on house churches, focusing particularly on the leaders of churches that actively broadcast, proselytise, or seek out new members. Security forces have reportedly increased the frequency of these crackdowns under the Rouhani administration, although probably not as a result of any direct instruction from the government. The judiciary has handed down long sentences in relation to house church activities: in July 2017, the Revolutionary Court convicted eight Christians of ‘acting against national security through the establishment of a house church’ and ‘insulting Islamic sanctities’, and sentenced the group to between ten and 15 years’ imprisonment. According to international observers, as of December 2016 approximately 90 Christians were in detention or awaiting trial because of their religious beliefs and activities. Christian advocacy groups have reported that authorities have pressured some church leaders to emigrate, either through direct threats or through intentional harassment (including daily summons to security offices for questioning, confiscation of identity documents, or forcing them out of their jobs). Human rights observers have reported that authorities have subjected Christians in detention to severe physical mistreatment, including beatings and solitary confinement.<sup>4</sup>
19. DFAT further state that international observers advise that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from authorities upon return to Iran, provided they have not previously come to the attention of authorities for political activities conducted in Iran, maintain a low profile and do not engage in proselytisation or political activities within the country. DFAT assesses that small, self-contained house church congregations that maintain a low profile and do not seek to recruit new members are unlikely to attract adverse attention from authorities beyond monitoring and, possibly, low-level harassment. Members of larger congregations that do engage in proselytisation and have connections to broader house church networks are more likely to face official repercussions, which may include arrest and prosecution. The leaders of such congregations are at particular risk in this regard.<sup>5</sup>

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<sup>2</sup> Australian Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran”, 7 June 2018.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

20. UKHO have stated that Christians who can demonstrate that they would wear in public outward manifestations of their faith such as a visible crucifix will attract the adverse notice of the authorities on return to Iran and will be at risk of persecution. They state that there are reports of some Christian converts (and sometimes their family members) facing physical attacks, harassment, threats, surveillance, arrest, detention, as well as torture and ill-treatment in detention. They state that those persons who return to Iran having converted while abroad and who do not actively seek to proselytise and those who consider their religion a personal matter, who seek no public expression of their faith, may be able to continue practising Christianity discreetly. However the following activities could attract the attention of the authorities: any kind of gathering; sharing the gospel; possessing more than one Bible; studying theology; contact with Christian organisation; attending Christian conferences or seminars; or hosting or even attending house churches. Iranians who convert to Christianity outside of Iran are also viewed as more of a threat to the Iranian regime.<sup>6</sup>
21. On the evidence before me, I accept the applicants will engage in communal worship in Iran (as they have in Australia) and that the young applicant child will openly talk about their religion with others. I note they have told their family in Iran about their beliefs and that the applicant child and her friend openly talk about her religion and her going to church at school and that this is known to teachers and others. I note the applicant child has also expressed her Christian beliefs in artwork and dress. I consider that that there is a real risk that this type of conduct in Iranian schools by a Christian convert may be viewed as more than low profile by Iranian authorities given the presence of children with Muslim parents in this environment. I find that there is a real chance that the applicants will be viewed as apostates and Christian converts and face monitoring, arrest, being charged and detained for a period of time for reasons of their beliefs and for the public manifestation of those beliefs. I find that there is a real chance that the applicant may be tortured once he has been detained. I find that the harm the applicants may face is serious harm. I find that the essential and significant reason for the harm is their religion, and that it involves systematic and discriminatory conduct.
22. The harm that the applicants fear is from the Iranian authorities operating under laws which apply throughout Iran. As such, I find that the real chance of persecution relates to all areas of Iran and that s.5J(1)(c) is met.
23. As the Iranian government is the agent of harm and maintains control throughout the country, I am not satisfied that effective protection measures are available to the applicants in Iran and I find that s.5J(2) does not apply.
24. I accept that the applicants can avoid a real chance of persecution by not attending church and not talking openly about their new faith but this would involve an impermissible modification of behaviour. I find that s.5J(3) of the Act does not apply. I consider that requiring the applicants to modify their behaviour, either by concealing their Christian beliefs or by renouncing Christianity or ceasing to be involved in the practise of their Christian faith falls within a kind of modification that applicants cannot be required to make in s.5J(3)(c)(i).
25. Accordingly I am satisfied the applicants have a well-founded fear of persecution in Iran for reasons of their Christian religion.
26. Given these findings, I have not addressed the applicants' other protection claims.

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<sup>6</sup> UKHO, "Iran: Christians and Christian converts", 1 March 2018.

## Refugee: conclusion

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

## Decision

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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

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### ***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.