



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07617

Date and time of decision: 5 February 2020 10:47:00

S MacKenzie, Reviewer

**Decision**

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

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He arrived in Australia [in] March 2013 as an unauthorised maritime arrival. On 5 May 2017 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 29 November 2019, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Iran.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. On 14 January 2020, the IAA received a written submission from the applicant's representative (IAA submission). The IAA submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material. I have had regard to these aspects of the submission.
5. Included with the IAA submission is a letter, dated [in] January 2020, from [Pastor A], Pastor at [Church 1] that was not before the delegate. It is new information that post-dates the delegate's decision. The letter primarily addresses aspects of the delegate's findings and on that basis I accept it could not have been provided to the Minister. The letter also attests to the applicant's involvement with the church, related activities, and his commitment to the Christian faith. These matters are material to issues under consideration and given the letter also provides clarification from the Pastor about issues he had previously discussed with the delegate I am satisfied there are exceptional circumstances to justify its consideration.
6. The representative also provides to the IAA hospital discharge documents to confirm the applicant underwent [specified treatment] on 17 December 2019, and a letter from [a named] Hospital, dated 20 December 2019, as confirmation that he has a physiotherapy appointment on 9 January 2020. It is also new information that post-dates the delegate's decision and I accept it could not have been provided to the Minister. The applicant suffering from [his specified] condition was information before the delegate and insofar as the new information provides an update about the status of his [condition] and treatment, I am satisfied there are exceptional circumstances to justify considering it.
7. In the IAA submission, the applicant's representative refers to the applicant's Pastor's letter dated [in] January 2020, provided to clarify information he had previously provided about the applicant, and invites the IAA to contact the Pastor if it has any concerns about those matters. The representative, as a registered migration agent, would be aware that the IAA provides a limited form of review which, as a general rule, does not involve accepting or requesting new information. In the circumstances of this case, I note the delegate had before her a letter about the applicant from the Pastor dated [in] December 2018. She also spoke to the Pastor about the applicant [in] August 2019, as evidenced by a record of telephone conversation included in the review material. As noted above, I have also considered a new letter from the Pastor which seeks to address and clarify matters. Having carefully considered all of the circumstances of this case, I have decided not to invite the Pastor to provide further information to the IAA

about these matters. I am satisfied the Pastor has now had ample opportunity to address issues and any concerns. I am also satisfied that the applicant was able to provide information and respond to the relevant issues throughout the SHEV application process, such that I do not consider it necessary to exercise my discretion to obtain new information under s.473DC.

### **Applicant's claims for protection**

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8. The applicant's claims can be summarised as follows:

- The applicant was born as a Shia Muslim and is a national of Iran;
- In Iran, his [business] was compulsorily acquired in order to build a road. He was dissatisfied with the level of financial compensation received;
- In Iran, he felt pressured to adhere to Islamic values. He did not accept Islam as his religion but had to pretend to practise in front of others;
- After he arrived in Australia he was not afraid of speaking against Islam amongst friends and in public;
- In 2017, he became a Christian;
- If returned to Iran, he fears he will face harm due to past events in Iran and due to his conversion from Shia Islam to Christianity.

### **Refugee assessment**

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9. 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**

10. 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.

## *Identity*

11. Since his arrival in Australia, the applicant has consistently claimed to be an Iranian citizen from Tehran. On the evidence before me, I accept that the applicant is a national of Iran and that his identity is as claimed. I find Iran to be the receiving country for the purpose of this decision.

## *Events in Iran / Conversion to Christianity*

12. Included with the applicant's SHEV application is a statutory declaration dated 12 April 2017 (SHEV statement) where he outlined written claims for protection. In his SHEV statement, he claimed to fear harm on return to Iran due to his conversion from Shia Islam to Christianity whilst in Australia.
13. On 10 December 2018, the applicant's representative provided a 30 page written submission which included excerpts of country information and a reiteration of the applicant's claims (pre-SHEV interview submission). The representative stated that the applicant had a well-founded fear of being persecuted due to his conversion to Christianity in Australia. It was submitted that the applicant's Christian beliefs are contradictory to the Iranian religious government line of thought and that he is concerned that the Iranian authorities might have details about his conversion and Christian activities in Australia and, for this reason, he would be considered as an anti-government activist or spy. The representative also advanced the following claims not included in the SHEV statement:
  - the applicant had a well-founded fear of being persecuted due to his 'issues when he was in Iran'
  - the applicant would be interrogated and persecuted because he would be identified on return as a failed asylum seeker 'from the west'.
14. On 12 December 2018, the applicant was interviewed by the delegate in connection with his claims for protection (first SHEV interview). I have listened to the audio recording of that interview and note that at various times the applicant's representative raised concerns with the quality of the interpretation, despite the applicant advising at the commencement of the interview that he understood the Farsi speaking interpreter and agreeing to notify the delegate if he had difficulty understanding him. Specifically, the representative said that as a Farsi speaker himself he could identify that the interpreter was speaking in Dari and not Farsi. Following the interview, the representative sent an email to the delegate reiterating his earlier concerns and claimed that as a result of the purported interpreting issues the applicant became stressed and confused, and provided incorrect information such as confusing Christmas and Good Friday. The representative requested a copy of the audio recording of the first SHEV interview and requested the applicant be invited to attend a second interview.
15. At the first SHEV interview, the applicant provided a Certificate of Baptism recording that he was baptised at [Church 1] [in] February 2017 and a number of documents that evidenced his participation in bible study classes. He also provided a reference letter, dated [in] December 2018, from [Pastor A].
16. The representative sent an email to the delegate on 20 December 2018 further reiterating his earlier concerns about the interpreting in the first SHEV interview. He said there were many issues in regards to interpretation during the interview. He also said that he was not an accredited Persian interpreter himself and had encouraged the applicant to seek service of an accredited interpreter to highlight the particulars of interpretation issues at the interview, but

that he could not afford to do so. He also said that the applicant sought to rely on the December 2018 reference letter from [Pastor A] and that he wanted the delegate to contact the Pastor in respect of his commitment to Christianity.

17. In a statutory declaration dated 20 December 2018 (December 2018 statement), the applicant responded to a number of concerns raised by the delegate in the first SHEV interview. He also confirmed that he had listened to the audio recording of the first SHEV interview and reiterated information previously provided by his representative on his behalf about being confused and stressed. He attributed this to the quality of the interpreting, and also due to his age and health. He requested another interview with a 'proper interpreter'. Ultimately, the delegate agreed to the request for a second interview and this was conducted [in] August 2019 (second SHEV interview).
18. Having had regard to all of the information before me, I accept the applicant's consistent evidence that his [business] in Iran was compulsorily acquired in order to build a road and that he was dissatisfied with the level of financial compensation received. His evidence in his SHEV application is that he ceased operating this business in February 2007, about six years prior to coming to Australia. I also accept his evidence in his SHEV statement that after he lost the [business] he became anxious about his finances and his family's future. Consistent with information he provided in an interview on 18 April 2013 (entry interview), soon after he arrived in Australia, the applicant indicated in his SHEV statement and in the first and second SHEV interviews that these events weighed heavily towards his decision to leave Iran and I accept this to be the case.
19. I found the applicant's claim to have genuinely converted to Christianity in Australia unconvincing. In particular, I find the following claims raised by him in his SHEV statement and reiterated in the pre-SHEV interview submission about his life in Iran and Australia inconsistent with other information before me:
  - a. In Iran he had problems with Islam as a teenager and felt pressured to adhere to Islamic values;
  - b. In Iran he was of the view that Mullahs were trying to 'brainwash' him and others during military service;
  - c. that when he completed military service in Iran he did not accept Islam as his religion but had to pretend to practise in front of others;
  - d. In Iran he questioned his mother about certain Islamic stories;
  - e. In Iran he hated Islam and was of the view that Iranians had been 'brainwashed' by the Iranian government. He tried not to think about religion;
  - f. His wife shared his views about Islam and religion;
  - g. After he arrived in Australia he was not afraid of speaking against Islam amongst friends and in public;
  - h. Since being in Australia he has spoken to his friends in Iran about his conversion;
  - i. He regularly attends bible studies;

20. In respect of a – e, the applicant claimed in the first SHEV interview that in Iran he was forced to pray and fast. This was consistent with his evidence in his SHEV statement. He said he disliked Islam and was suffering and indicated this contributed to his decision to leave Iran. He said that if returned to Iran he feared that the government authorities would push him around and indicated he had resented the government following the acquisition of his [business]. Towards the end of the interview, the delegate put to him that the information he provided in the entry interview indicated that he had left Iran primarily for economic reasons. The delegate read a transcript of the applicant's evidence from that interview and noted he had made no mention of the difficulties he faced in connection with his religious beliefs and faith. In response, the applicant said that at the time of the entry interview he was confused and didn't know what was going on, he had fear from his time in Iran and from his imprisonment in [a transit country]. He also stated that he was worn out from the boat journey and could not control what he was saying. The delegate also put to the applicant that, according to a property receipt signed by him [in] April 2013, he was in possession of a prayer mat, and that a case management plan, conducted [later in] April 2013, evidenced that he had requested to attend a (Muslim) place of worship. She advised the applicant that this did not support his claim to have had problems with Islam from a young age and that he was forced to practise religion in Iran. In response, he said that he requested a prayer mat because he needed to pretend to be a Muslim because of the other detainees around him. He also indicated that prior to coming to Australia he did practise Islam through a sense of duty to his family and not by force.
21. In his December 2018 statement, the applicant confirmed that part of the reason as to why he left Iran was due to his religious views as indicated in the first SHEV interview. As to why he made no mention of this in the entry interview, he said this was because he was scared and confused. He reiterated his evidence in the first SHEV interview that he feared the Iranian authorities. I note that other than being unhappy with the decision to demolish his [business], the applicant made no mention of fearing the authorities in his entry interview. According to the transcript, he claimed that he was anxious about street crime and said it was not the government he feared but 'normal people'. He added that he didn't want to raise his children in that sort of environment. In his December 2018 statement, the applicant also reiterated his claim in his SHEV statement that he did not accept Islam and only pretended to be a practising Muslim in Iran. He reiterated that he was still pretending to practise while in immigration detention, including through the use of a prayer mat. He claimed that he had said in the first SHEV interview that he did this because there were detainees from his neighbourhood who knew his family and he was worried they might inform the Iranian authorities which would cause an issue for them. However, having reviewed the audio recording of the interview it is not clear when the applicant mentioned knowing people from his neighbourhood while in immigration detention. While I note the applicant's objection to the quality of the interpreting in the first SHEV interview, I also note his evidence in the entry interview was that he didn't know anyone in Australia.
22. In the second SHEV interview, the applicant advised the delegate that during school and military service he openly practised Islam but it was just for show. He said nobody really knew what was going on in his heart. He also stated that he attended mosque every one to two months in Iran and sometimes participated in Shia celebrations/festivals. The delegate asked the applicant whether he had practised Islam since his arrival in Australia. In response, he claimed that on arrival he was a Muslim and still had that religion in his heart. He added that at the time of the entry interview he had not been exposed to Christianity. The delegate raised a concern that he had continued to practise Islam given his other evidence that he had problems with Islam from a young age. In response, he said that he only did so because the other detainees were judging him and that he did not believe what he was doing in his heart.

23. In respect of **f**, the applicant claimed in the first SHEV interview that his wife and children were Muslim and practising Muslims. In the second SHEV interview, he advised the delegate that when in Iran they attended/participated in the same religious celebrations and festivals that he did. He also claimed that his wife and children weren't very religious because of the influence he had on them. However, when asked whether they continued to attend such events now that he was in Australia he said that, although he was in contact with them several times a month, he didn't know because he is not there. Later in the interview, the applicant claimed that he had evangelised his wife and adult children but was unsure whether they had changed their religion.
24. In respect of **g**, as noted above, his evidence in both the first and second SHEV interviews was that he continued to practise Islam after he arrived in Australia. At the end of the second SHEV interview, the delegate put to him that she had an in-depth conversation with [Pastor A] earlier that day who advised her that he is aware that in 2016 the applicant had vigorously defended Islam to his friend and that it took six months for him to accept the errors of Islam. In response, the applicant said it was not true. The delegate asked the applicant in the second SHEV interview how he involved himself in the Christian community. In response, he said he evangelises people by speaking to them about Jesus Christ and that he invites people to become Christian. He said he does this with other people from his church every week or second week. He also said he goes to [a location] for this same purpose every two to three weeks. The delegate questioned the applicant about how he communicated with people given his English language skills. In response, he said he doesn't speak with the people directly but that he reviews the paperwork. The delegate raised a concern that his earlier evidence was that he spoke to the people about Jesus Christ. The applicant clarified that he only spoke to the Farsi speaking people.
25. In respect of **h**, the applicant claimed in the first SHEV interview that he had told all of his family in Iran and his friends in Australia of his religious conversion. He gave no indication that he had mentioned the conversion to his friends in Iran. However, in his December 2018 statement, he claimed that all his friends in Iran knew of his conversion. In the second SHEV interview, consistent with his evidence in the first SHEV interview, the applicant advised the delegate that he had only told his family in Iran, not his friends. When asked why he hadn't told people in Iran other than his family, he indicated that he had nobody to tell and that sometimes the internet connection is not good.
26. In respect of **i**, the applicant claimed in the first SHEV interview that he had attended every bible class since Baptism. In his December 2018 statement, he claimed that he was a regular attendee at bible class and this could be confirmed by contacting the church. In the second SHEV interview, he advised the delegate that he regularly attended Tuesday, Thursday and Sunday bible classes lead by [Pastor A] and had attended as recently as last Thursday. He said he attended even more frequently since his Baptism and that at the end of each session the attendees name is ticked off on an attendance register. At the end of the second SHEV interview, the delegate put to the applicant that she had spoken to [Pastor A] earlier that day who confirmed he could find no record of the applicant attending bible study in 2019. In response, consistent with the first SHEV interview, the applicant said he had attended "every session" and that he had in his possession a photograph on his phone of him and the Pastor from the Thursday bible class which he showed to the delegate. The applicant said that the Pastor must have made a mistake and that he had the photo to prove it. He also asked the delegate to make further enquiries with the Pastor. At the end of the second SHEV interview, the applicant said he may not have attended some bible classes due to it being raining or because he was in pain.

27. In both the first and second SHEV interviews the applicant was asked about his experiences converting to Christianity, his participation in church and Christian life, what Christianity meant to him personally, and Christian rituals. While he demonstrated some basic knowledge of the Christian faith, he was confused as to when Good Friday and Christmas were celebrated. As noted above, this was later attributed in part to interpreter issues although I note at the time the applicant said he was confused because of [medical symptoms]. In the second interview, he appeared to be confused between the testaments and gospels of the bible. In both interviews he spoke a lot about Jesus Christ but appeared to have limited knowledge about the teachings of Christianity and explained in very general terms about why the faith appealed to him. However, overall, the applicant did demonstrate some knowledge of Christianity which supported his claim that he attended Sunday mass for two years.
28. I have also considered the evidence from the applicant's Pastor and [Church 1]. According to [Pastor A's] letter dated [in] December 2018, he first met the applicant [in] February 2017 and baptised him six days later. He confirmed that the applicant had brought three persons to the church and indicated two had become Christian. The Pastor also confirmed the applicant's 'good attendance' record at Sunday morning church services and at Sunday bible class where he had attended 19 times since May 2018. He also noted 'regular attendance' at Tuesday and Thursday bible class/study. He said the applicant had attended Thursday bible study 19 times since May 2018. The Pastor stated that the applicant had passed out gospel papers in the local area on three occasions and had put 'Bible truths' on [social media platforms]. However, I note the applicant's evidence in the second SHEV interview that indicated he met with people to spread the word on an almost fortnightly basis. I also note his evidence in the same interview that he does not have any social media accounts. The Pastor further stated that the applicant had told his family and friends in Iran that he is Christian. However, as noted earlier, the applicant's evidence in the second SHEV interview was that he had not told any of his friends in Iran about his involvement with Christianity. The Pastor stated that his wife is slowly coming to accept the truth of Jesus Christ. However, the applicant's evidence in the second SHEV interview indicated that he was unsure of his wife's belief or involvement with Islam or Christianity. The Pastor also stated that the applicant paid money to the church. He said he views the applicant as a dedicated and practising Christian who has never caused him any problems, and believes he is worthy of protection in Australia.
29. According to a record of telephone conversation between the delegate and [Pastor A] [in] August 2018, the applicant 'was seriously defending Islam' when he and the Pastor met [in] February 2017. The Pastor stated that the applicant took six months to become a regular at church and to attend bible studies. The Pastor advised that while the applicant continued to attend Sunday mass, he had no record of him attending Tuesday, Thursday or Sunday bible classes in 2019. He also indicated that the applicant's attendance at bible class was more regular in 2017 than it was in 2018. As indicated in his letter dated [in] December 2018, the Pastor also advised the delegate the applicant had told him that his wife was 'in the process' of believing in Christianity.
30. In response to the concerns raised by the delegate in the second SHEV interview about her earlier conversation with [Pastor A] about his 2019 attendance at bible class, the applicant provided a further statutory declaration dated 16 August 2019 (August 2019 statement). He stated that he could confirm that he had attended bible class at least twice a month and reiterated his claim in the interview that he had attended four days before the interview. He also stated that he spoke to the Pastor after the second SHEV interview and was told by him that he advised the delegate that while there was no record of any attendance he had probably attended a few sessions. The applicant indicated that there was likely no record of his



attendance because due to health issues he leaves the class as soon as it ends and before the names are ticked off on the attendance register.

31. In his letter dated [in] January 2020, [Pastor A] states he has read the delegate's decision and believes the information he provided over the phone [in] August 2019 was misunderstood by the delegate. The Pastor states that it was the applicant's friend who spoke to the applicant for six months in order to convince him about Christianity, and that it was after this he met the applicant [in] February 2017. This appeared to differ from the applicant's evidence in his SHEV statement and the first SHEV interview that in late 2016 he was feeling depressed and so his friend took him to church and after attending a few services he was at peace. The Pastor also states that his records show that the applicant attended 18 bible classes in 2019, and that he probably attended more classes than that. He provides no reasons as to why this information differed from what he told the delegate in August 2019 other than to say that the applicant showed him some photos of his attendance at bible class which confirms his presence. The Pastor adds that the applicant may have left at the end of the classes with asking him to tick his name. This appeared to differ from the applicant's evidence in the second SHEV interview that at the end of each session his name is ticked on an attendance register. The Pastor also states that it was difficult for the applicant to attend bible classes because he does not have a car. However, I note the applicant's evidence in the second SHEV interview that he had to obtain a mobility parking permit which he uses for hospital visits. The Pastor also reiterates information previously provided that the applicant 'explained some Christian truths' to his friends in Iran over the phone that would place his life in danger if returned to Iran. As noted above, the applicant's evidence in the second SHEV interview was that he has not told his friends in Iran about his involvement with Christianity.
32. While I accept the applicant was baptised at the [Church 1] in February 2017, that he has regularly attended and participated in Sunday church services for a period of around two years, that he attended some bible classes in 2017 and 2018, that he was photographed with the Pastor four days prior to the second SHEV interview, that he has paid money to the church, that he demonstrated some knowledge of the Christian faith in the first and second SHEV interview, that he introduced others to the church, and that he has handed out gospel papers on three occasions prior to 2019, when I consider the evidence cumulatively I am not satisfied that his conversion to Christianity is genuine or that he has any desire to practise his new faith on return to Iran, or would invite others to it.
33. In particular, I find the applicant's continued practise of the Islamic faith following his arrival in Australia not supportive of his claims that he that he tried not to think about religion in Iran and/or that he had been forced or brainwashed. I also find is reasons for his continued practise as a Shia Muslim and his failure to mention his problems with Islam in the entry interview unpersuasive and not supportive of his claim that he was not afraid to speak out against Islam after arriving in Australia. Further, I find it difficult to accept the applicant felt the need to practise Islam in front of other detainees. Country information indicates that many Iranians have a secular attitude, rejecting all religions, including Islam and that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion, as many Iranians do not regularly attend mosques. The information also noted that non-practising Muslims form a large part of the cities and generally lead normal daily lives without being pressured to observe Muslim precepts.<sup>1</sup> Even if I were to accept the applicant only pretended to practise Islam while in immigration detention, I find this difficult to reconcile this with his

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<sup>1</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622, p.15, 31

claim that he was not afraid to speak out against Islam in public and amongst friends, for example, after he left detention. The applicant left immigration detention in June 2013 but has not claimed to have spoken out against Islam until after he was baptised in 2017 following being introduced to the church by a friend. I also find the applicant's claim in the second SHEV interview that he had Islam in his heart on arrival in Australia because he had not been exposed to Christianity difficult to reconcile with his claimed views about Islam when he was living in Iran. I agree with the delegate's assessment that the applicant's explanation in the second SHEV interview about why he had disengaged from Islam was vague and he seemed to attribute his problems with Islam to the fact his [business] was compulsorily acquired to build a road. Although denied by the applicant, I find [Pastor A's] evidence that the applicant was 'defending Islam' for a period of six months and his later evidence that the applicant's friend took six months to 'convince' him not supportive of his views about Islam prior to his conversion or that he found peace after only attending a few Christian church services.

34. Of significant concern is the applicant's claim to be heavily involved in bible classes and evangelism, which is not supported by the evidence of [Pastor A] before the delegate. I also note in his August 2019 statement the applicant's claim that he attended bible class twice a month is different to his evidence in the SHEV interviews that since baptism he attended most, if not all, bible classes on Tuesday, Thursday and Sunday. I also find [Pastor A's] claims that the applicant spreads Christian beliefs to his friends in Iran and on in social media not supported by the applicant's own evidence in the second SHEV interview about these matters. Nor did the Pastor's report about the applicant's level and frequency of evangelism in the community align with the applicant's own evidence. I also found the applicant's claim to not know about his wife's religious beliefs or practises unconvincing and inconsistent with [Pastor A's] evidence that he had told the Pastor that his wife was coming around to accepting Jesus Christ. Further, I found the Pastor's evidence to the IAA unconvincing. For example, it is not clear why he initially advised the delegate that there was no record of the applicant attending bible classes in 2019 only to later advise that the records indicated a certain level of attendance. He also indicates that any absence from bible class was in part due to the applicant not having a car, or access to a car. However, as noted above, the applicant's evidence in the second SHEV interview was that he had a special parking permit for his hospital visits. The Pastor also appears to speculate that it may be the case that the applicant leaves the bible classes before the record of attendance is taken; however, I note the applicant indicated in the second SHEV interview that his name was ticked off when he attended. While I note the applicant showed the delegate a photograph of him with the Pastor taken only four days before the second SHEV interview, I am not satisfied this evidences a frequent attendance at bible class as claimed. Nor is it clear why the applicant took a photo with the Pastor four days prior to the second SHEV interview. However, considering the concerns the delegate put to the applicant in the first SHEV interview about aspects of his claims I find the fact that he took the photo, the timing of it, not insignificant. It appeared the applicant suspected he would be challenged by the delegate about his claimed attendance at bible class. I also have concerns that the applicant appears to have told the Pastor certain information that differs from what he has put forward in his SHEV application. For example, that he has evangelised to friends in Iran and on social media [platforms], and that his wife is coming to accept the truth of Jesus Christ. This leads me to doubt on what information the Pastor relied on when he assessed the applicant as a dedicated and practising Christian in December 2018. I also note more recently the applicant advised the Pastor that he was prevented from attending bible class in 2019 in part because he did not have a car, which was different from the other reasons put forward to the delegate. As noted above, the applicant's evidence in the second SHEV interview indicated he had a car or access to one.

35. The applicant also indicated in his SHEV statement that he seeks to change the government of Iran by informing people about the difference between Islam and Christianity. However, I note the applicant's evidence is that since converting his religion in February 2017 he has not informed anyone in Iran other than his family despite his evidence in the second SHEV interview that he was regularly in contact with friends and neighbours in Iran. I also note the applicant was asked in the first and second SHEV interview about why he feared returning to Iran. In the first SHEV interview, his response was that he hated the government and was upset that they took away his [business]. When asked if there was any other reason, he said that he cannot return because he converted his religion and he was concerned that because his family knew that information it would leak to the authorities. He also claimed that on return to Iran he would privately practise his Christian faith and would seek to evangelise people from his home. In the second SHEV interview, his response was that he feared the government would start pushing him around and he referred to the incident in 2007 where his [business] was acquired. He said that nobody is happy with the government in Iran. When he was asked the same question again towards the end of the second SHEV interview, he said he feared that the government had discovered about his conversion and that he would be hung. When asked how the government would know, he said that some of his friends who know of his conversion have returned to Iran and for this reason it will become known. He later said that he would practise his religion in Iran by evangelising people in a hidden way. When asked how, he said he would pray together with people who love Jesus Christ in their heart. I agree with the delegate's assessment that the applicant's evidence in the second SHEV interview about how he would practise his faith in Iran was vague and unconvincing.
36. Included in the review material is medical certificate, dated 16 August 2019, confirming the applicant suffers from [a specified condition]. The certificate confirms the applicant had an operation two years earlier (approximately August 2017) and that due to pain and mobility issues he was scheduled for a further assessment in November 2019. An accompanying letter from [a second named] Hospital, dated 10 July 2019, informed the applicant that he had [surgery] planned within the next few months. Discharge documents provided to the IAA confirm the applicant underwent a [specified surgery] on 17 December 2019. The documents indicate that the operation was a success and the applicant recovered well post-operatively. A letter from [the first named] Hospital, dated 20 December 2019, confirms the applicant's appointment for outpatient physiotherapy on 9 January 2020.
37. Having considered all of the evidence, I am not persuaded by the various explanations put forward as to why there may be problems with the applicant's evidence throughout the SHEV application process, including due to age and health concerns [specified]) and purported problems with the interpreter in the first SHEV interview. I note at the beginning of the second SHEV interview the applicant said that his health concerns were not a barrier to him participating in the interview. I accept the applicant misses his family and that separation from them has been difficult. The applicant also claimed at the end of the second SHEV interview that he had difficulty articulating his claims because of the language barrier. In response, the delegate reminded the applicant he had been given ample opportunity to present his case through an accredited interpreter, that he was legally represented, and that he had been granted a second interview. I agree with the delegate's comments in this regard and note the applicant also had the benefit of engaging a registered migration agent who spoke the same language. I further note the applicant also claimed to not be in control during the entry interview, conducted three weeks after he arrived in Australia, for various reasons. However, having had regard to the evidence discussed, I am not satisfied these reasons explain why he failed to mention his purported problems with Islam in Iran which in some respect appear central to his claims for protection. In the IAA submission, the applicant's representative takes issue with the fact that the delegate referred to in her decision the applicant's evidence from

the first SHEV interview in circumstances where complaints were made about the interpreting. As noted earlier in this decision, neither the applicant nor his representative highlighted any specific errors and the representative, while he said he could speak Farsi, noted he was not an accredited interpreter. Nor are specifics provided to the IAA. Even accepting there may have been errors in interpretation in the first SHEV interview, on the evidence before me, I am not persuaded this adequately explains the other numerous difficulties with the applicant's evidence as identified above. Further, as outlined in this decision, I considered much of the applicant's evidence in the first SHEV interview consistent with other information provided at various times, including in the second SHEV interview. Having listened to the audio recording, I disagree with the representative's assertion in the IAA submission that the delegate put unnecessary pressure on the applicant to respond to questions in the second SHEV interview. While I acknowledge that [Pastor A] is generally supportive of the applicant's claims to have genuinely converted to the Christian faith, I am not satisfied that he is aware of the applicant's full history, his full claims for protection, or other motivations he may hold for initially joining the church and his current participation in church life. In the light of the evidence discussed, I also find the timing of the applicant's interest in church life and baptism not insignificant. He was first invited to apply for a protection visa in early 2016 and eventually lodged his application in May 2017, a few months after he became involved with [Church 1].

38. Given the evidence discussed, I consider that the applicant does not have a genuine ongoing interest in Christianity and I am not satisfied that his baptism and his participation in church activities were undertaken otherwise than for the purpose of strengthening his claims for protection. I consider they were all undertaken solely for that purpose. Therefore pursuant to s.5J(6) of the Act I have disregarded this conduct. Further, I am not satisfied that the applicant has spoken to his family or friends in Iran about his religious or church activities in Australia and I do not accept it. Nor am I satisfied the applicant has friends in Australia who have returned to Iran and spoken about his involvement with Christianity.

#### *Return to Iran*

39. I have accepted that the applicant's [business] was compulsorily acquired in order to build a road and that the applicant was dissatisfied with the level of financial compensation received. These events occurred in around 2007 and on the evidence before me I am not satisfied he faces a real chance of harm in connection with these events now, or in the foreseeable future. I note that after the applicant worked as a [businessman] he held a managerial position in the retail trade for over five years before coming to Australia. He confirmed in his December 2018 statement that he was never harmed by the Iranian authorities when he lived there. I am not satisfied the applicant held an adverse profile with the Iranian authorities when he departed the country in 2012.
40. The delegate found it 'plausible' that the applicant has disengaged from Islam and accepted that he is a non-practising Muslim. As noted by his representative in the IAA submission, the applicant advanced no such claim and nor does the claim arise on the material. I have come to a different conclusion to the delegate. I am not satisfied that prior to his departure from Iran the applicant was disengaged from Islam or that he truly held the beliefs as outlined in his SHEV statement. Nor am I satisfied that his views about Islam have changed since being in Australia. I find that prior to his departure from Iran and after he arrived in Australia he practised his Shia faith because he genuinely identifies as a Shia Muslim. I am not satisfied the applicant 'pretended' to practise Islam in Iran and nor am I satisfied he would have been required to. In April 2016, DFAT assessed it is highly unlikely that the Iranian government would monitor religious observance by Iranians – for example, whether or not a person

regularly attends mosque or participates in religious occasions such as Ashura or Muharram.<sup>2</sup> As noted above, other sources indicate that many Iranians have a secular attitude, rejecting all religions, including Islam and that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion, as many Iranians do not regularly attend mosques. The information also noted that non-practising Muslims form a large part of the cities and generally lead normal daily lives without being pressured to observe Muslim precepts.<sup>3</sup> The applicant advised in the second SHEV interview that in Iran he practised his faith openly by attending mosque and participating in festivals with his family. I find that if he returned to Iran he will continue to do so.

41. In the pre-SHEV interview submission, the applicant's representative claimed that the applicant faced harm as a returned failed asylum seeker from the west. It was submitted he would be interrogated and persecuted for this reason. I accept that if the applicant returned to Iran he would do so as a failed asylum seeker returned from Australia.
42. According to DFAT, Iran has historically refused to accept involuntary returnees, and while officials provide assistance to Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. In March 2018 Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia. The applicant does not fall into this category and I am satisfied there is not a real chance he would be forcibly returned to Iran.
43. In 2016, DFAT indicated that the claiming asylum abroad was, in itself, unlikely to attract adverse interest or mistreatment from the Iranian authorities. DFAT reported that whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have stated they will generally only be questioned if they had done something to attract the specific attention of authorities, and that the vast majority of people questioned would be released after an hour or two.<sup>4</sup> DFAT's more recent report<sup>5</sup> similarly states that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. International observers have reported that the authorities have little interest in prosecuting failed asylum seekers for activities conducted outside of Iran, including in relation to protection claims. DFAT assess that persons with an existing high profile may face a higher risk of coming to the official attention of the authorities in Iran; however, as already noted, I am not satisfied that the applicant holds a profile that would raise the concern of the Iranian authorities and I am mindful that he was able to depart Iran legally in 2012 without difficulty.
44. While I accept the authorities may question and in this process may even briefly detain the applicant as a voluntary returnee, I am not satisfied that this treatment would amount to or lead to serious harm. I am not satisfied the applicant faces a real chance of harm as a failed asylum seeker, or due to his time spent in a western country like Australia now, or in the foreseeable future, should he return to Iran.
45. Although not raised as a claim for protection, the delegate considered the applicant's health and whether he would be able to access adequate health services in Iran. In 2018, DFAT reported that health care is a major government priority and that Iran has good health

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<sup>2</sup> DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 3.52-3.53, 3.55

<sup>3</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622, p.15, 31

<sup>4</sup> DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 5.34

<sup>5</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 5.25

indicators by regional standards. All Iranian citizens are entitled to basic health care coverage provided by the government. DFAT also reported that health care and public health services are delivered through a nation-wide network, based on a referral system that starts at primary care centres in the periphery and proceeds through secondary-level hospitals in provincial capitals and tertiary hospitals in major cities. While the government remains the main provider of primary health care services across the country, the private sector also plays a significant role in health care provision, mostly through secondary and tertiary health care in urban areas. Numerous NGOs are active on health issues, particularly in specialised fields.

46. I accept the applicant had [specified surgery] in December 2019 and physiotherapy the following month. The information before me indicates the [specified] procedure went well. The applicant also indicated in the second SHEV interview that he takes medication for his [condition] and I accept he may continue to do so. The applicant has not raised any claim in respect of his health and nor is there any credible evidence before me to indicate he will be denied medical treatment in Iran if required. I am satisfied on the country information that he can access healthcare in Iran if required. On the evidence before me, I am not satisfied that the applicant faces a real chance of harm in Iran due to any health condition now, or in the foreseeable future.
47. Although not specifically raised as a claim for protection throughout the SHEV application process, I have considered the he claim raised by the applicant in the entry interview that he could not return to Iran because he was anxious about street crime. Specifically, that he might be robbed of his money at knife point. I also note he mentioned in the second SHEV interview that at the time he left Iran the situation was not calm and there was a risk of being attacked on the street. In 2018, DFAT reported that although official statistics on crime are not readily available, observers assess that Iran has a relatively low rate of violent crime. DFAT also stated that anecdotal evidence suggested that Iran's economic difficulties had led to a rise in petty crime in recent years. The evidence from DFAT and other sources before me indicates that perpetrators of violent crime in Iran are subjected to severe punishment. The applicant has not claimed in his SHEV application that any of his family or friends have been recently harmed as a result of crime in Iran, or that he fears harm on return for this reason. While I accept the applicant may be concerned about being the victim of street crime in Iran, on the evidence before me, I am not satisfied he faces a real chance of harm on this basis now, or in the foreseeable future.
48. I find that the applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

49. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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50. 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**

51. 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.

52. While I accept the applicant may be subjected to questioning or be briefly detained on return to Iran, I am not satisfied that this amounts to or would lead to significant harm as defined. I am not satisfied that the treatment he may face would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I also do not accept that the treatment he may face would involve pain or suffering that could reasonably be regarded as cruel or inhuman in nature, or severe pain or suffering or that would cause extreme humiliation, even when considered in a cumulative sense.

53. While I have accepted that the applicant was baptised and attended church services and bible classes in Australia, and participated in handing out pamphlets and encouraged people to attend church, I have concluded that he does not have a genuine ongoing interest in Christianity and will not practise Christianity on return to Iran. Further, I am not satisfied that he will disclose his baptism or his participation in church activities in Iran, or that he has or will come to the attention of the Iranian authorities on this basis. Having regard to all of the evidence, I am not satisfied that the applicant will be identified as a Christian in Iran, or that he faces a real risk of significant harm in Iran as a result of his church attendance and activities in Australia. It follows that I do not accept the claim in the pre-SHEV interview submission that the applicant will be considered as an anti-government activist (or spy) because of his Christian activities in Australia. I have concluded above that the applicant was not being truthful in respect of his claim to have informed his family and/or friends of his religious conversion and/or activities in Australia, and I do not accept it. Nor am I satisfied the applicant has friends in Australia who have returned to Iran and spoken about his involvement with Christianity. I find that he does not have a real risk of suffering significant harm in Iran for these reasons.

54. I have otherwise found that the applicant does not face a real chance of any harm in Iran for the reasons claimed. Based on the same information, and for the reasons set out above, I find he does not have a real risk of suffering significant harm in Iran.

55. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

## **Complementary protection: conclusion**

56. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

## **Decision**

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



## Applicable law

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### ***Migration Act 1958***

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

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.