



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10089

Date and time of decision: 22 December 2021 10:06:00

N Micallef, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Arab who was born and grew up in Iran. He arrived in Australia as an unauthorised maritime arrival [in] May 2013. On 1 December 2016 he lodged an application for a sub-class XE-790 Safe Haven Enterprise visa (SHEV) claiming to fear harm in Iran.
2. On 15 October 2021 a delegate of the Minister for Immigration (the delegate) refused the visa application. She had interviewed the applicant about his protection claims on 31 May 2021 (the SHEV interview). The delegate did not accept that the applicant was stateless; and found that he was a citizen of Iran. She was not satisfied that he would face a real chance of serious harm or a real risk of significant harm for any reason if returned 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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - His parents were from Najaf, Iraq, where their families had gone to from Iran in the 1920s.
 - When Saddam Hossain began persecuting and expelling Iranians from Iraq his family returned to Iran, but had no documents.
 - Although his mother had Iranian nationality, his father had no identity documents to gain citizenship, in Iran or Iraq, and was stateless, which also rendered the applicant and his brother (M.A.AM, who also came to Australia with him) and his sister stateless as well. He has no rights of citizenship or residency anywhere.
 - He was born in Iran, in Tehran, in [year]. He is a Shi'a Muslim. Throughout his life in Iran, he faced discrimination and lack of human rights, due to both his Arab ethnicity and to being undocumented and stateless.
 - He was bullied, abused and sexually harassed at school because he was an Arab. He was humiliated in social settings because of his Arabic name.
 - The family moved to Iraq in 2006 but are not recognised as Iraqi. They have no Iraqi documentation. They returned to Iran but were no longer documented with the White Card, which had been cancelled when they went to Iraq.
 - Due to being undocumented and stateless, he was denied a graduating High School Certificate and denied ability to seek formal employment or to obtain a driving licence or a travel document in Iran. He is also not allowed to have a bank account, legally marry or purchase property. Any children he might have would also be stateless in Iran.

- He departed Iran illegally through the international airport in April 2013, on an Iraqi passport issued in a false name but bearing his photograph, organised by the smuggler who arranged his journey to Australia.
- If returned to Iran, he would be arrested and imprisoned for being undocumented and stateless.
- He will face discrimination, problems and denial of human rights on this basis, as well as discrimination due to his ethnicity. There is nowhere in Iran he would be protected from these harms.

Refugee assessment

6. 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

7. 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 and Nationality

8. The applicant’s claimed identity and age have been generally consistently maintained since he arrived in Australia, although his evidence varied concerning the date of his birth, as between [two specified dates]. The delegate accepted the former. As do I, for the purpose of this review, notwithstanding I retain considerable credibility concern at the variation in his birth date across several different accounts to the Department. I note this was the date listed in the SHEV application. I accept his name as claimed in the SHEV application and that the applicant is [an age]-year-old man. His evidence was given through a Farsi (Persian) interpreter, and I accept his evidence and claims that he was born in Tehran, in Iran. I accept the applicant grew up in, and lived in Iran, mainly in Qom, before he came to Australia, arriving in May 2013 with his brother, M.A.AM.

9. However, the issue of the applicant's identity as it relates to nationality and citizenship is the main crux of the applicant's protection claims and the contention in this review.
10. His claims revolve around an account that his mother and father were both born in Iraq, in Najaf. The applicant's evidence, including in the SHEV interview, was that his parents' families' origins had formerly been in Iran but they had settled in Najaf back in the days before there were these borders and any requirements of birth certificates or documentation. That his mother's family were expelled back to Iran in the 1970's, during the time of the Shah of Iran, and were able to reclaim their Iranian citizenship at that time. That his father was expelled during the Iran-Iraq war in the 1980's, and had been imprisoned in Iraq at that time and then when released had crossed illegally into Iran. The inference arising from this evidence is that his parents met and married when in Iran. That his father was unable to prove his Iranian heritage and, so, could not get Iranian citizenship. His father had been stripped of his Iraqi documents in Iraq and could not get any proof of his status there, even after the fall of Saddam Hussein and even after having paid money to people, on two occasions, to bribe a process to access such documents and genuine records, and so could not reclaim his Iraqi citizenship. Consequently, his father was stateless. Because of this the applicant and his siblings were also stateless, living in Iran. His father continued to live in Iran, with the applicant's mother, until his death about two years ago.
11. I note, as context to the claim of living as refugees in Iran, that refugees in Iran live either as registered refugees, with legal recognition and identity documentation that establishes certain rights and restrictions, or unregistered and therefore with minimal rights. Country reporting refers to two different "White cards" for refugees. One reference is to a very early refugee recognition, in the form of a booklet, the 'Daftar Che Panahendegan', which was issued to refugees who arrived in the pre-revolutionary period before 1980, and was also sometimes referred to as a White Card.¹ And the other is to a card, introduced much later, under the Amayesh card (temporary resident card) system, which system was introduced in 2002/2003 in a comprehensive registration program of refugees in Iran, and which replaced the Green Cards that had been issued to most Iraqi refugees arriving during the Iran-Iraq war period. Amayesh cards are white.² The children of Iraqi refugee fathers holding valid Amayesh cards were also issued Amayesh cards.³ The applicant claimed his father had arrived in Iran during the Iran-Iraq war.
12. The delegate found that the applicant was not a witness of truth regarding his status and circumstances in Iran, was concealing important relevant information from the Department, namely that he was in fact an Iranian citizen, and had done so in order to enhance his chances of obtaining protection in Australia. For reasons to be discussed below, I agree with this assessment. However, I do not agree with the aspects of the delegate's reasoning that accepted the account of the applicant's father's claims to Iraqi citizenship.
13. The detailed account given by the applicant in his SHEV application Statement of Claims (SHEV statement), and SHEV interview, concerning the general history of migration between Iran and Iraq, the rise of the Ba'ath party and Saddam Hussein and expulsion of non-original

¹ United States Committee for Refugees and Immigrants (USCRI), "World Refugee Survey 2000 – Iran", 1 June 2000, CX237017; DFAT, "Iraqi refugees in Iran", 24 October 2001, CX59585

² USCRI, "World Refugee Survey 2008", 19 June 2008, CX203209; DIBP Tehran, "Feyli Kurds—obtaining identity travel documents", 17 September 2015, CISEC96CF13392; Department of Foreign Affairs and Trade (DFAT), "IRN10867 Faili Kurds - Pink Cards", 16 November 2010, CX253443; DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

³ DFAT, "Status of Faili Kurd refugees and documentation issued to them in Iran", 19 October 2011, CX274742

Iraqis from Iraq is accepted.⁴ And whilst I accept that the applicant's mother's family may have been part of the history of that migration, I have significant concern that this extended also to his father.

14. There is documentary evidence in the review material corroborative of the applicant's claim that his mother was an Iranian citizen of Iraqi origin, namely, copies of her Iranian National Smart Identity Card and a document described in its translation as an Iranian Citizenship Card. These were referred to by the delegate in the applicant's refusal decision record as evidence that was before her. These documents had been provided to the Department by the applicant's brother, M.A.AM, as part of his own SHEV application. As well as demonstrating her Iranian citizenship⁵, the documents also indicate that the applicant's mother was born in Najaf, as claimed. They indicate that her parents were Iranian citizens. I accept that the applicant's mother was born in Najaf in Iraq, that her family were Iranian and returned to Iran in the 1970s, and that she is an Iranian citizen. There is no credible or reliable evidence before me that she is an Iraqi citizen. I find she is not.
15. Otherwise, the applicant has not provided any documentary evidence in support of his claims of his father's Iraqi origins, or that his father was a stateless refugee in Iran or of the applicant's status as a stateless refugee in Iran. Noting his claims that they were documented until 2006, I do not consider it credible that the applicant would have no documentation or evidence at all to establish his father's claimed long status as stateless refugee in Iran or his own claimed status as having lived for about [number] years in Iran as a refugee child of an Iraqi-born refugee, particularly given his years of schooling there (which would at the least involve enrolment records), and noting there is no indication before me that the applicant left Iran in any state of dire emergency at last minute; and I also note that his parents remained living there in the family home after his departure.
16. I note from country information that the births of all children born in Iran are required to be registered, including those of refugees.⁶ Although *shenasnameh* are generally not issued to children born to refugees, the birth record or hospital certificates are required to be issued, and these record the birth date, time and place and the parents' details, and which, significantly, include their *shenasnameh* and national identity card numbers. For babies born at home a doctor's certificate with the necessary details is required for the compulsory registration of birth. I consider it telling that the applicant has not provided any evidence of his birth record. Moreover, given that his mother is an Iranian citizen, she will have a *shenasnameh*, as this is the primary document upon which national identity cards are issued.⁷ *Shenasnameh* record the details of any marriage, divorce, children born. I consider it telling that the applicant has not provided any relevant such pages from his mother's *shenasnameh*.
17. I consider the applicant's claims were internally contradictory as to why his father was not documented as an Iranian citizen. His written explanation that this was because when his father was expelled from Iraq the Shah of Iran was anti-Arab and there were too many people expelled from Iraq at the time, was contrary to his interview evidence that his mother was able to obtain Iranian citizenship because the Shah was sympathetic to the plight of those expelled from Iraq, and further contradictory to his evidence that his father was

⁴ Including: United Nations High Commission for Refugees (UNHCR), 'Faili Kurds seek way out of identity impasse', 28 May 2008, CX234148; DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722 (albeit these deal with Faili Kurds the general information applies to refugees from Iraq)

⁵ DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132 (DFAT Iran Report 2020)

⁶ DIBP Tehran, "Feyli Kurds—obtaining identity travel documents", 17 September 2015, CISEC96CF13392; DFAT Iran Report 2020

⁷ DFAT Iran Report 2020

expelled during the time of the Iran-Iraq war, which was after the revolution and fall of the Shah. And his written claim that his father did not feel urgent need to obtain Iranian identity because he was given the Green card is not credible. That this was a satisfactory substitute for obtaining citizenship is entirely inconsistent with his claims regarding the lack of citizenship, and also with considerations in the country advice that these cards were subject to revocation at any time, and refugees were subject to limitations on freedom of movement and some employment.⁸ Moreover, he gave no indication that his father had made any effort to obtain recognition of his Iranian nationality, claiming only efforts to obtain Iraqi citizenship. Given the family lived in Iran, the claims that only the applicant's mother was Iranian, and of disadvantage to being not documented as Iranian, I find this very surprising, and it raises credibility concern.

18. I take into consideration that the applicant's brother, M.A.AM, also made claims that their father was born in Iraq and had no Iranian citizenship. This is potentially corroborative and is before me in the review material (as it was also before the delegate), from M.A.AM's own Irregular Maritime Arrival & Induction Interview of 31 May 2013 (M.A.AM's Entry interview) and in a written submission of 8 October 2021 from their joint representative in response to concerns under s.57 of the Act raised with M.A.AM by the delegate (M.A.AM's s.57 response). Noting that M.A.AM's own claims for protection in Australia, as indicated in that Entry interview, were predicated on the same basis as the applicant's of being a stateless non-citizen in Iran, their close relationship, and that they had arrived together in Australia, I do not place weight on M.A.AM as an independent, uninterested witness. I am not satisfied that any corroboration offered in his evidence outweighs the significant concerns I have, discussed here in this review.
19. Relevantly, I also note that in M.A.AM's own Entry interview he listed the applicant as his brother, and in answer to the question asking M.A.AM his brother's citizenship, M.A.AM claimed "Iran". This was put to the applicant in the SHEV interview by the delegate. His explanation was that M.A.AM has mental health issues and cannot figure things out, or else why would M.A.AM also claim that he himself was stateless. He said he had a medical report from a GP that M.A.AM has no control or balance and is very stressful. However, I note the applicant provided no such report or medical evidence to substantiate this assertion. I do not accept M.A.AM suffers any cognitive difficulty from any mental health issues or that any such concern affected his Entry interview evidence.
20. Moreover, in the applicant's refusal decision record, the delegate took note of M.A.AM's own explanation of his own Entry interview statement, as expressed in M.A.AM's s.57 response. This was, as she noted, that M.A.AM and the applicant had not been offered or provided with any legal assistance for their Entry interviews; were unable to differentiate between words such as resident, national or citizen; and were not advised or aware that their Entry interview information would be used in assessing their protection claims, and their answers were only approximate to the best of their knowledge. I note also that M.A.AM raised no mental health issue in his s.57 response as explanation for that statement.
21. Those explanations also addressed other matters put to the applicant by the delegate in the SHEV interview, concerning contradictory claims made about their father – that both the applicant and M.A.AM claimed in their respective Entry interviews that their father was an Iraqi citizen; that both then claimed in their respective SHEV applications that their father was stateless; and further that M.A.AM had manually amended that claim on his own SHEV application form and stated their father had recently got back Iraqi citizenship. In addition to

⁸ Including: USCRI, "World Refugee Survey 2000 – Iran", 1 June 2000, CX237017

the above explanations, submissions by the representative for both the applicant and M.A.AM, in the applicant's interview and in M.A.AM's s.57 response, were that the Entry interview responses concerning parental citizenship reflected the convoluted history of their parents concerning Iran and Iraq, and their own changing beliefs about their father's status, noting that, as the applicant had claimed in the SHEV interview, his father had twice paid money to get documentary proof of his Iraqi citizenship and had been deceived and unsuccessful. M.A.AM's s.57 response added that his changed SHEV application claim had reflected that he believed, wrongly at that time, that his father had been successful in such an attempt.

22. I accept that M.A.AM and the applicant may not have had professional legal advice before their respective Entry interviews, and I am also mindful that there should be caution in reliance on inconsistency or omission arising from early arrival interviews, including that asylum seekers may be unfamiliar with the processes involved and later consequences. Nevertheless, as did the delegate, I also note that both M.A.AM and the applicant came to Australia as adults, with secondary education in Iran, where each had worked, and, given that the claimed issue of citizenship and lack of it and being stateless, was the source of their claimed problems in Iran and reason for their seeking protection in Australia, I do not accept that either M.A.AM or the applicant did not understand the question, nor the meaning of their answers to the question asking about the "citizenship" of each of their family members. Even acknowledging that the audio of these Entry interviews is not available, having regard to the interview submissions and s.57 responses, I am satisfied that it is appropriate to weigh the evidence from these Entry interviews with the evidence before me. I note that the status of their father is central to their own claimed statelessness. I acknowledge the applicant gave detailed account historical migration movements in both his SHEV statement and SHEV interview and it is not implausible that he did so in the Entry interview, and I accept this accounts for the claim in his Entry interview that his mother has dual citizenship of Iran/Iraq. Which is now denied. There is no reliable evidence before me that she is an Iraqi citizen and I have found she is not. Nevertheless, I consider it too remote that both brothers would be so misunderstood by reason of relating a history of their father's claimed background that in each Entry Interview both brothers would be erroneously recorded as claiming their father was an Iraqi citizen, if in fact their intended claims were that he is stateless, as later claimed, and which I consider suggestive of some concoction. I note that the s.57 responses of M.A.AM were not put to the applicant for comment by the delegate. However, I also note that they were prepared by the applicant's representative, who is shared with M.A.AM, and expressed a shared common response; that the aspects relied on here were fully set out in the delegate's decision record refusing the applicant's visa; and the applicant has had opportunity to provide any submissions to the IAA. He has not done so. In all the circumstances, I do not consider it warranted to invite any new information from the applicant.
23. Moreover, I note that Iraqi citizenship is passed from an Iraqi-citizen father to his child, whether the child was born in or outside of Iraq.⁹ If indeed their father was an Iraqi citizen when the applicant came to Australia, or they believed he had become one, I consider this to be inconsistent with the applicant's claimed statelessness.
24. I have concerns with the applicant's claims that his father unsuccessfully tried to regain Iraqi citizenship. I note that in 2006 the Iraqi government introduced legislation and legal framework to facilitate the process for people to reclaim Iraqi citizenship that they had been

⁹ DFAT, "DFAT Country Information Report Iraq, 17 August 2020", 17 August 2020, 20200817105936; DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

formerly stripped of, and actively encouraged their return.¹⁰ The process had reportedly become easier since 2011, and, for those without Iraqi national identity cards, other means to prove their nationality was facilitated, including through the identity cards of close family members, other documentation from the former regime, or evidence from credible local witnesses attesting to provenance.¹¹ Applications to the National Directorate for Nationality would be cross-referenced against local records. DFAT assessed that reclaiming Iraqi citizenship was possible for the majority (of Faili Kurds, which I consider applies equally to non-Palestinian former Iraqis, including Shi'a Arabs), and that those who might face difficulty would be the Iranian-born children of formerly Iraqi parents who had died or gone missing – which was not the claimed situation for the applicant's father, claimed born in Iraq.¹² And particularly given country reporting that older identity documents in Iraq had weak or no security features, and that fraudulent documents are commonly and cheaply available and that genuine documents obtained through fraudulent means are also common, and the active encouragement of the Iraqi government to recognise claims of former citizenship, I consider it very surprising and not credible, that the applicant would purportedly be able to obtain, through bribery, false identification documents with his photograph on which a genuine Iraqi passport was issued, and yet his father was not successful, even with bribery twice, in obtaining any identity documents or record, even genuine as claimed in submissions, sufficient for his claimed Iraqi citizenship.¹³

25. There is no documentary evidence, and I am not satisfied there is credible independent evidence before me to indicate that the applicant's father was born in or was from Iraq at all. Nor concerning any claimed efforts of the applicant's father to reclaim Iraqi citizenship. And even if his father had not kept copies or records of the claimed unsuccessful attempts to reclaim Iraqi citizenship, yet it is not credible that the family would not have still available the records, or copies of the records, on which those attempts, and his claims to assert that genuine registration of and citizenship his family in Iraq, were based. I do not accept that there would be no document available at all through the course of the many decades the applicant's father lived in Iran to demonstrate his claimed refugee status or origin from Iraq.
26. I have very considerable concern with credibility of the applicant's claims. I consider there is substance to the observation put to the applicant by the delegate that people can give confusing answers when trying to conceal the truth. I am not satisfied that M.A.AM describing the applicant and his sister as Iranian was due to interpreter error. I do not accept that the Entry interview claims concerning their father's citizenship status were because of confusion by the interviewing officer about what the applicant and M.A.AM were claiming about their father's citizenship, nor that either of them then held any belief he was an Iraqi citizen because of recent attempt to reclaim it. I consider the inconsistent and changeable claims to be more indicative of an effort to create the most favourable account that might strengthen a position to claim their own statelessness and enhance their claims to protection in Australia; and I do not accept the explanations for the discrepancies.
27. There are other material aspects of the applicant's evidence and claims that also raise credibility concern.

¹⁰ DFAT, "DFAT Country Information Report Iraq, 17 August 2020", 17 August 2020, 20200817105936; DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722 (Although this latter report is addressed to Faili Kurds, it holds for other Iraqis of Iranian ancestry including those of Shi'a Arab ancestry. Only Palestinians are reported by DFAT, in the Iraq Report of 17 August 2020, as being denied Iraqi nationality)

¹¹ DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

¹² DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

¹³ Including: DFAT, "DFAT Country Information Report Iraq, 17 August 2020", 17 August 2020, 20200817105936; International Crisis Group, "Iran in Iraq: How much influence?", Middle East Report Number 38, 21 March 2005, CIS14345

28. The applicant's SHEV application recorded a history of travel abroad out of and into Iran, including travel to and from [Country 1] where he lived for two years in 1995 before returning to Iran in 1997, that he went to Iraq in 2006 for a pilgrimage for 10 days and had previously gone to live in Iraq for 10 days in 2004 before returning to Iran. I do not consider this claimed travel abroad to be consistent or compatible with the applicant's claims of being stateless refugees in Iran, noting the restriction on movement placed on refugees, who were confined to particular areas in Iran, and more significantly were not eligible for international travel documents "*unless they had received refugee status before the 1979 Revolution and held a refugee booklet*" (otherwise known as the 'Daftar Che Panahendegan') – which I am not satisfied is indicated on the evidence before me.¹⁴ I do not consider it credible that all of these journeys were made illegally, in particular the journey by air to and from [Country 1], noting the extreme difficulty of exiting and entering the airport in Iran illegally, due to thorough security checks in place at the airport, and noting the required travel documents would include not just passports but also exit visas that accord with proper registration procedures, from Iran's Foreigners Service of the Ministry of Interior.¹⁵
29. Moreover, the applicant's claims about moving to live in Iraq were inconsistent, shifting from that they were forced to leave Iran by the Iranian authorities, to that his father wanted to return to Iraq to reclaim citizenship there. I also note that he varied between claims as to whether this occurred in 2004 and or in 2006. His SHEV interview evidence was that this was in 2006, they had to give up their white cards, which were cancelled, and thereafter when they returned to Iran, they were undocumented. Noting formal registration as a refugee is generally required to access education, the applicant's claims of being stateless and undocumented is inconsistent with his claim that he completed his high school education, which the SHEV application records was after the family had purportedly moved to and then returned from Iraq. Whilst DFAT suggested that in some instances for undocumented children birth and vaccination records might suffice for enrolment, it also observed this risked bringing the person to attention of authorities as undocumented, which does not accord with the applicant's claims that he tried to avoid interactions with any institutions or coming to any official attention, because he was undocumented.¹⁶
30. The applicant's evidence was contradictory - his written claims were that they had held Green cards and White cards, which differed significantly from his SHEV interview evidence that the only card he had had in Iran was a White card, until it was cancelled when they went to Iraq in 2006 and it could not then be reissued when they returned, and thereafter he was undocumented. He stated that this White card had afforded no rights – it had only his identity (name and address) and only let him study. This does not accord with country information that the benefits of legal registration and documentation as a refugee included not just rights of education for children, but also protection from deportation for being undocumented, the right to apply for work permit, rights of access to hospital and healthcare services and state benefits, and to open bank accounts, such as saving accounts, albeit that

¹⁴ USCR), "World Refugee Survey 2000 – Iran", 1 June 2000, CX237017; USCRI, "World Refugee Survey 2008", 19 June 2008, CX203209

¹⁵ Including: Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", April 2009, CIS17329; Immigration and Refugee Board of Canada, "IRN101053.E: Types of exit permits issued to individuals for travel abroad; the difference between an exit permit and an exit stamp; how these permits are obtained and whether they are placed inside the passport or take some other form restrictions applied to certain categories of applicants; the criteria for multiple and single-exit permission; exit fees; whether exit permission is set for a specified time period and the penalties, if any, for overstay; countries that Iranians can travel to without a visa (2004 - February 2006)", 3 April 2006, 20200331103921; DIBP Tehran, "Feyli Kurds—obtaining identity travel documents", 17 September 2015, CISEC96CF13392

¹⁶ DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

recognition or enforcement of such rights could be variable at different times.¹⁷ I am not persuaded that such a superficial description of the amayesh card was commensurate with a real lived experience of living under the temporary residence and amayesh system as a refugee with his own card, which I note on his claims included when he was an adult in Iran.

31. I also note the applicant gave contradictory evidence about whether he applied for Iranian citizenship himself. I accept that generally Iranian citizenship is passed at birth from an Iranian citizen father to the child, but that refugees who could prove paternal ancestry could be eligible. He varied from stating that he never applied because he knew that no-one had been successful to get it, to then stating that he tried many efforts to apply but had no success. These two positions are significantly contradictory and do not persuade me that the applicant is credible. Relevant to the applicant's claimed position in Iran, the delegate put to him that a law had been introduced to allow children born in Iran of Iranian-citizen mothers and foreign fathers to gain citizenship; however, he stated this was not in place when he was in Iran. I note DFAT reported on laws introduced in September 2006, and which applied to such children after they had reached the age of 18, which the applicant had by the time of that law, which was in place for the several years he lived in Iran before leaving for Australia.¹⁸ The applicant's evidence does not persuade me that he was concerned in any way to attempt to secure Iranian citizenship when he was in Iran before coming to Australia. And I consider this was because he was born as an Iranian citizen and national.
32. Overall, I am not persuaded by the applicant's evidence and I do not accept that it supports his claims of statelessness in any way. I do not accept that his father was born in Iraq or was ever of Iraqi citizenship. I do not accept that the applicant's father came to or lived in Iran as a stateless refugee. I am not persuaded and do not accept that his father was never an Iranian citizen. I note the applicant was born in and lived in Iran. I do not accept that the applicant was born as a stateless refugee in Iran. I find that the applicant is not stateless, and I do not accept that he was not born as an Iranian national and citizen. I am satisfied and so find that Iran is the applicant's receiving country for the purpose of this review and I accept that he has no rights of citizenship or entry or residence in any other third countries, including Iraq.
33. It follows from these findings that I do not accept that the applicant will face arrest or imprisonment, or any denial of any human rights, or any form of harm or persecution in Iran on the claimed basis of being stateless or undocumented.

Departure from Iran

34. The applicant claimed in the SHEV application that his departure from Iran had been illegal, on an Iraqi passport issued to him in a false name. I am willing to accept that the smugglers took his passport from him before he came by boat to Australia. However, as discussed, I do not accept the basis of the claim for using an Iraqi passport – which was that he was unable to obtain Iranian travel documents because he was stateless. I do not accept he was stateless. I do not accept that the applicant has been truthful about fundamental aspects of his identity. I also note that the applicant said he could not recall if the name in the passport he used was [Alias A names] or [the reversal of those names]. Even considering the claims that this was not his real name and that it was about eight years ago, nevertheless, given this was his claimed persona adopted for his claimed escape from Iran to a new life in Australia,

¹⁷ Including: USCRI, "World Refugee Survey 2000 – Iran", 1 June 2000, CX237017; DFAT, "Iraqi refugees in Iran", 24 October 2001, CX59585; DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

¹⁸ DFAT, "DFAT Thematic Information Report - Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

and to which name he would have to answer before authorities in airports in Iran and [another country], I find it very difficult to believe that he would not properly remember the name he had used, if he had used a false name to travel to Australia from Iran. Even at the time of his Entry interview, only some few weeks after using this claimed false name and false passport the applicant claimed he was unable to recall the full name used.

35. Moreover, whilst I accept fake Iraqi passports are possible to obtain, the applicant's claim was this was a genuine passport but issued in a false name. I do not consider this credible, even noting that there can be corruption in Iraq, noting that one has to apply in person for a genuine Iraqi passport, which was not his claim.¹⁹ More significantly, I place weight on country advice indicating that it would be extremely difficult or impossible for a stateless person to depart Iran illegally on a fake passport through any of Iran's airports, due to their robust and highly competent security measures.²⁰ Due to multiple layers of physical security and document checking (including checking whether a passport is false and whether the person standing in front of the officer is the same person whose name and photograph appear on the passport and checking entry/exit permits for non-nationals of Iran – and which would be the case for a person leaving on an Iraqi passport newly issued), numerous sources report that it would be difficult or impossible to pass through Tehran's international airport with a fraudulent passport.²¹ I do not accept the applicant's claims. I do not accept he is not Iranian and was unable to or did not obtain Iranian travel documents. I do not accept he departed Iran on an Iraqi passport issued to him in a false name. I do not accept he departed Iran illegally in any way when he journeyed to Australia in April 2013. I do not accept the applicant will face arrest or imprisonment or any harm in Iran on this basis.

Ethnicity

36. I have found the applicant not to be a credible witness. I have some doubt about the applicant's claim of being of Arab ethnicity. However, I am willing to accept that his family name is Arabic origin, using the prefix of "Al", and that he is of Arab ethnicity. I accept he is a Shi'a Muslim.
37. Whilst it may be that as a child in school the applicant faced some bullying or harassment or mistreatment, and which may then have had association to being Arab, otherwise his SHEV interview evidence was that he was outwardly indistinguishable from the Persian majority of Iran, having no distinct Arab accent or appearance, and was never of any notice to police or other authorities. He gave no evidence in his interview of any discrimination or harassment as an adult because of his ethnicity or Arab name.
38. I acknowledge that Iran is a Persian-centric society, and DFAT assesses that both official and societal discrimination against ethnic minorities does occur. However, it also reports that the experience of different groups is not uniform. The reporting indicates that harm from official

¹⁹ DFAT, "DFAT Country Information Report Iraq, 17 August 2020", 17 August 2020, 20200817105936

²⁰ DIBP Tehran, "Feyli Kurds—obtaining identity travel documents", 17 September 2015, CISEC96CF13392; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132 (DFAT Iran Report 2020)

²¹ Including: DFAT Iran Report 2020; Danish Refugee Council, Landinfo (Norway) and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; Immigration and Refugee Board of Canada, 'IRN101052.E: Exit and entry procedures at airports and land borders, particularly at Mehrabad International airport; identity documents such as birth certificates, and marriage and divorce certificates; incidence of bribery of Iranian border officials to facilitate departure by individuals with fraudulent travel documents or outstanding financial, military or legal obligations, or who are sought by the government for political reasons; the punishment for border officers caught taking such bribes (2004 - February 2006)', 3 April 2006; Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", April 2009, CIS17329

discrimination or economic neglect of Arab communities is particularly in the Arab-dominated areas of Iran such as Khuzestan, where there is significant under-development (largely due to lack of post-war reconstruction) and environmental degradation.²² However, the applicant has no association to Khuzestan. DFAT reported that Arabs in Iran are free to wear traditional Arabic dress, speak their language and engage in traditional cultural activities. DFAT assesses that Arabs are not specifically targeted for discrimination on the basis of ethnicity, including in ability to access government services and are afforded the same state protections as other ethnic minorities. Ethnic minorities, including Arabs, who are at risk of attracting adverse attention are those who are involved in political activism perceived to be dissident, anti-government and/or pro-separatist.²³ Otherwise, in DFAT's assessment, members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly when they are in the minority in the geographical area in which they reside. This may take form of denial of access to employment or housing, but is unlikely to include violence on the ground of ethnicity alone.

39. There is no claim or evidence before me that the applicant is, or ever was, a political activist of any kind. There was no indication in his evidence of any interest in any political, let alone anti-government or dissident causes or groups or activities or persons, or any desire to be involved in or with any such of those, either in Iran or since being in Australia. I find he is not politically interested or activist and would not be so on return to Iran.
40. As noted above, although he made written claims of humiliation in social settings because of his Arab name, the applicant otherwise gave no evidence in his interview of any discrimination or harassment experienced as an adult because of his ethnicity or Arab name. I also note that he had sustained employment in Iran and his family had stable accommodation. Further, factors mitigating against discrimination towards him would include that his religion is Shi'a Islam, the state religion of Iran, unlike many Arabs who are Sunni, and noting sectarian or religious difference as much as ethnicity can play part in discriminatory attitudes or treatment.²⁴ Moreover, I note that he has no profile of political activism, and I find there is no basis on which he would be imputed to have any such profile. I also note his evidence indicated he was not by any appearance obviously Arab, or distinguishable from Persian Iranians. On all the evidence and information before me, I consider there to be only a low chance that the applicant would face any official or societal discrimination on grounds of his Arab ethnicity on return to Iran, and I am not satisfied that there is a real chance that on return to Iran, or in the reasonably foreseeable future any such, or form of, discrimination would consist of, amount to, or lead to serious harm to the applicant.

Returnee Failed Asylum Seeker

41. Although the applicant did not claim to fear harm in Iran as a failed asylum seeker, the delegate considered this arose from the materials and assessed any chance of harm on this basis. I accept that if the applicant returned to Iran it would be as a failed asylum seeker. It is possible the authorities might infer on return, from the length of time he spent in Australia, that he had claimed asylum here.

²² DFAT Iran Report 2020

²³ DFAT Iran Report 2020; Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights, Minority Rights Group International, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441

²⁴ DFAT Iran Report 2020

42. There are reports of returnees to Iran facing interrogation at the airport, arrest or other harassment in Iran. However, these reports refer largely to persons with an existing profile of adverse concern for anti-regime political activism, religious conversion or criminal conduct in Iran, or for being active against the Iranian regime whilst abroad.²⁵ There is no indication the applicant was of any concern to any authorities in Iran for any reason when he left Iran, nor that he has been involved in any activities in Australia that would attract any adverse attention or interest of any Iranian authorities for any reason. I am satisfied that the overall weight of the country information before me does not indicate, or support, that returning asylum seekers from Australia are imputed with any profile of adverse concern because of their asylum claim, or for reason of living in a western country like Australia. It is not a crime in Iran to have sought asylum in another country.²⁶ DFAT reports that Iranian authorities pay little attention to returning failed asylum seekers, and that Iranian citizens have left the country in large numbers since the 1979 revolution, and the authorities accept Iranians may choose to live and work overseas for economic reasons.¹³ I consider there is nothing in the applicant's profile, including having regard to his ethnicity, to raise any adverse concern on his return. I am not satisfied that there is a real chance the applicant would face any adverse attention or any form of harm on return to Iran or in the reasonably foreseeable future on the basis of having sought asylum in Australia.
43. To return to Iran the applicant would require documentation to be issued to facilitate his travel, but country information advises that historically Iran does not accept involuntary returnees and does not issue temporary travel documents to involuntary returnees from Australia who arrived here before March 2018.²⁷ Consequently, I find that if the applicant is returned to Iran it would only be on a voluntary basis; and there is no indication in the information before me that voluntary returnees face harm on return. Country information indicates that people of interest may be questioned on return, but for all the reasons previously discussed I do not accept that the applicant would be of any interest to the Iranian authorities for any reason. DFAT reported it is possible the applicant may be questioned because of his temporary travel document, but I am not satisfied this would result in any adverse interest in the applicant, even considering his ethnicity, or that there is any real chance that he would be harmed during that questioning or process, or that such questioning or process would amount to serious harm.²⁸
44. Having carefully considered all the evidence, and the applicant's circumstances as a whole, I am not satisfied that the applicant would face a real chance of persecution in Iran on return or in the reasonably foreseeable future, on any grounds claimed or arising before me, considered singly or in combination.

²⁵ Including: DFAT Iran Report 2020; Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran', Center for human Rights in Iran (United States), 18 October 2017; 'Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway', Iran Human Rights (Norway), 20 September 2017; 'AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran', Amnesty International (United Kingdom), 6 May 2011; 'Teenager imprisoned after being deported to Iran', Ny Tid (Norway), 23 March 2011; 'The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail', Iran Human Rights (Norway), 19 June 2011; United Kingdom Home Office (UKHO), "Iran: Christians and Christian converts", March 2018, OG9EF767914

²⁶ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114

²⁷ DFAT Iran Report 2020

²⁸ DFAT Iran Report 2020

Refugee: conclusion

45. 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

46. 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

47. 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.
48. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
49. I have accepted that the applicant may face some official or societal discrimination in Iran on the basis of his Arab ethnicity, but I have found that this, or being questioned at the airport about the circumstances of his return to Iran on a temporary travel document, do not and would not amount to serious harm. I also find that, either considered alone or together, this does not amount to a real risk of significant harm, as I am not satisfied that any such acts or omission of discrimination, or in questioning on return, will amount to, lead to or include the applicant being deprived of his life, or the imposition of the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined. I am not satisfied the applicant will face a real risk of significant harm for any of these reasons if returned to Iran.
50. I have otherwise found that there is not a real chance that the applicant faces any harm in Iran for reason of having sought asylum in Australia. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information and analysis, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm on that basis if returned to Iran.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.