



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

**Decision and Reasons**

**Referred application**

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BANGLADESH  
IAA reference: IAA17/01711

Date and time of decision: 17 May 2017 18:24:00  
Patricia Tyson, 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 an 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 national of Bangladesh. [In] April 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV), claiming to fear harm in relation to a land dispute with a local opposition political leader which led to the death of that leader's [child]. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] December 2016, finding the applicant's claims not credible.

### Information before the IAA

2. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information was obtained or received.

### Applicant's claims for protection

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3. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
  - The applicant's family was involved with the Awami Krishok-Sromik League party, but did not have a good relationship with the leaders of other factions within the Awami League. His [cousin] had fought with the nephew of [the] local Awami Leader and member of parliament, on a number of occasions over party leadership.
  - The applicant's father and uncles had inherited land from his grandfather. [In] March 2012 the applicant and others were working on the farm when former Union member and local Bangladesh National Party (BNP) leader [Mr A], accompanied by others, came and claimed to now be the owner of the land. [In] July 2012 [Mr A] returned with a group of people armed with sticks and swords to take possession of the property. A physical altercation broke out and the applicant and his family were injured. The men took possession of the land.
  - The applicant's father indicated that the family did not have any legal documents for the land. The family approached [Mr B], the leader of the Krishok Sromik League. [Mr B] attempted to get help from the local Awami League leader, and to obtain legal assistance, but to no avail. He arranged a meeting with other members of the party and it was decided they would repossess the land.
  - [In] September 2012 the family returned to the land with [Mr B] and other Krishok Sromik members, and a fight broke out in which the [child] of [Mr A] was badly injured. Charges were filed against the applicant and others, they were suspected from the Krishok Srikom League party and [Mr B] was arrested.
  - Police came to look for the applicant and he and his brother went to stay at [a relative]'s house in Khulna. When returning to their village in November 2012 to see their father, who was unwell, they were told that the police and [Mr A's] gang from the BNP were looking for them. The following day, BNP members from [Mr A's] gang spotted the applicant and his brother at a bus stop. His brother ran away but the applicant was captured and beaten. He was told if [Mr A's] [child] died he would be killed. The applicant returned to Khulna. Neither the applicant nor his family saw his brother again between that day and when the applicant departed Bangladesh and the applicant has had no news of him since.

- [In] February 2013 [Mr A's] [child] died. [Mr A's] gang beat the applicant's parents and threatened to kill anyone involved in the death. The applicant's parents came to see him in Khulna and his father arranged for his travel overseas. The applicant departed Bangladesh by boat from [location] [in] March 2013. There are ongoing legal proceedings over the land dispute in which the applicant is named as an accused.
- The applicant's father has been told that if he disassociates from the Awami League, the police complaint will be withdraw.
- The applicant fears harm from BNP and opposing Awami League groups and because the police are looking for him.

## **Refugee assessment**

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4. 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**

5. 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 background*

6. The applicant's identity is not in issue. His evidence in this regard has been consistent, he has conducted interviews in the Bangla language and has referred throughout his evidence to various locations within Bangladesh. I accept his identity as claimed, that he is of the majority Sunni Muslim religion<sup>1</sup> and that he is a national of Bangladesh.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Bangladesh Country Information Report July 2016", 5 July 2016, CIS38A80121206, 2.6.

*Land dispute, altercation with [Mr A] and BNP, and murder charges*

7. The applicant's claims relate to his alleged affiliation with a faction of the Awami League, which he claims underpins a land dispute between his family and the local leader of the opposing BNP. The Awami League and BNP have dominated politics for most of Bangladesh's history. The relationship between these parties is characterised by longstanding enmity and personal rivalry between their respective leaders.<sup>2</sup>
8. The applicant has consistently identified a political basis to his claims since his arrival in Australia. In an arrival interview [in] April 2013 (April 2013 interview), he claimed that he was a supporter of the Awami League. He said he had left Bangladesh because of political problems, that he was implicated by the BNP in a case of gang fighting, he had been beaten in August and again in November and that the police were harassing him. A written record of a further biodata interview [in] May 2013 (May 2013 interview) indicates the applicant as saying that the opposition party fabricated a case against him and he had been in hiding.
9. While these statements bear some similarity to his current claims, there significant inconsistencies between the information he provided in those earlier interviews and that in the current application regarding the context for his altercations and dispute with BNP members.
10. At the April 2013 interview, the applicant was asked why the opposition party had beaten him. He said it was because they wanted him to join their party, and that was the main reason. During the SHEV interview, the delegate put to the applicant that he had made no reference in that interview to his earlier claim that the BNP had wanted him to join their group (nor is it referenced in his statement). The applicant conceded the claim was not true. He gave a number of explanations for why he had made it. He indicated that he did not know the law in Australia and was concerned to say that he had been named in a murder case. He also said that when he had arrived his head and body were weak and he did not know what to say. The applicant said that the BNP were occupying the land because of their political influence and suggested that his earlier claim that they were inviting him to join and current claim that they were occupying land because of the party were very similar. His migration agent similarly made an oral submission that the versions were generally consistent. I do not agree and find that the claim at the April 2013 interview presents a fundamentally different basis for the conflict with the BNP than what the applicant now claims.
11. The applicant was specifically told at the start of the April 2013 interview that it was his opportunity to provide reasons not to be removed, that he was expected to give true and correct answers, and that if the information he provided at future interviews was different, it could raise doubts about reliability of what he said. Even if I were to accept that the applicant did not want to mention the murder charges, his explanations do not account for why he made a fabricated claim to have been asked to join the party rather than presenting what he now says are the real circumstances of the conflict, relating to the land dispute. Although I acknowledge that the April 2013 interview was brief and that the applicant indicated the BNP wanting him to join them was the 'main' reason for them harming him, he was asked if he there was anything else and said no. This is not a case where the applicant simply omitted some details, or one element of the claim. He instead presented a fabricated version. I do not accept that the brevity of the interview, impact of his journey, lack of knowledge because of his recent arrival, weakness in his head or body, or memory problems as referenced in the May 2013 interview (such as forgetting where he left his phone), account for this. The inconsistency seriously undermines the applicant's credibility.

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<sup>2</sup> Ibid, 3.43.

12. When responding to the delegate's concerns, the applicant raised a new claim. He said his father was told that if he disassociated from the party, they would remove the case. That claim was made for the first time in response to the adverse information from the April 2013 interview. Earlier in the SHEV interview, the delegate had asked the applicant to explain the political element of the land dispute, and had asked the applicant why he thought that it was related to politics. The applicant referred to his family and the persons on the other side of the dispute being from opposing political parties yet made no mention of this claimed request to his father, which clearly indicates a political element. In any event, even if the applicant's father was asked to join the party, it does not explain why the applicant claimed that he personally had been asked to join and that that was the reason for the dispute, or why he omitted to mention the land dispute at all.
13. In addition, the applicant has given contradictory evidence regarding his brother. On the evidence given by the applicant, he has only one brother. His claim at the SHEV interview was that after he and his brother were spotted at a bus stop by the BNP gang in November 2012, his brother ran off and the applicant did not see him again. He claimed to have had no news from him since that time. These claims are inconsistent with the applicant's responses to questions at the April 2013 interview, the month following his departure from Bangladesh. In response to routine background questions, the applicant gave information that his brother is married but living with his parents and looking after them. In giving a contact number for his home in Bangladesh, he specifically indicated the number was that of his brother. He also agreed to have that number used as an emergency contact.
14. The applicant gave these details in response to simple background questions about his personal circumstances. He otherwise provided family details consistent with those given subsequently. It was the applicant who volunteered the additional information that his brother was married and looking after his parents. I do not accept that these responses were somehow impacted by the applicant's condition at the time of the interview, lack of knowledge of the law, or any other limitation on his ability to provide accurate details. I find them more reliable than the information he provided subsequently. Furthermore, a Bangladeshi Court Order Sheet dated [in] February 2016 and submitted by the applicant refers to his brother as having been bailed, rather than absconded, which would suggest that he is not 'missing'. These matters undermine the applicant's claim that his brother went missing following the November 2012 incident.
15. The applicant has submitted court and police documents which name him as an accused and contain details broadly consistent with his claims. The applicant also submitted to the Department a letter dated [in] June 2016 from a doctor who claimed to have treated him [in] July 2012 for injuries suffered in a physical assault. That is the day of the claimed altercation when the land was initially taken by [Mr A]. The letter makes no reference to the circumstances of the assault, and I note that although the applicant claimed to have been injured on that occasion, in contrast to other incidents he made no claim to have required medical treatment.
16. Considering the evidence as a whole, I find that the applicant has made inconsistent claims regarding the basis for his altercations with the BNP. On his own evidence he had fabricated one of those accounts. He has provided inconsistent evidence regarding his brother, relevant to the claims he now makes. Noting that various fraudulent documents can be obtained easily

in Bangladesh,<sup>3</sup> the existence of the documents he has submitted do not outweigh my concerns over the credibility of the claims.

17. I do not consider the applicant's claims credible. I do not accept that the applicant's family land was taken, that he was involved in altercations or fights with [Mr A]'s gang or BNP members relating to the land dispute or the injury of [Mr A]'s [child], that he has been charged over those altercations or has been implicated in a murder, or that he is being sought after by police, [Mr A] or by local BNP or gang members. I am not satisfied there is a real chance of the applicant being harmed in the reasonably foreseeable future in relation to any of these matters.

#### *Support for the Awami League*

18. The applicant claims that opposition party and internal Awami League conflicts put his life in danger and that he will be killed by either of these groups.

19. The applicant's evidence in his statement of claims and at the April 2013 interview suggest that he had some political involvement. The statement details disputes between the various factions and says that the applicant (among others) had been suspended from the Krishok-Sromik party. At the April 2013 interview the applicant said that he would occupy his time 'loitering around with the politically-motivated people and political parties and things like that' and referred to his being a supporter of the Awami League and to his family attending rallies in support of the government. However, at the SHEV interview the applicant stated that he was not a supporter of any party. He later said that he was just a normal supporter, which he clarified as meaning his parents had voted for the Awami League and he had also voted for the Awami League. He was asked if he had any political involvement at all in Bangladesh, and he said no.

20. Information from the Department of Foreign Affairs and Trade indicates that consistently with the applicant's claims, the Awami League is divided into various factions which violently compete with each other, and members of the Awami League's student and labour wings are said to face a moderate risk of internal party violence. DFAT also refers to violence between the BNP and Awami League during periods of heightened political unrest such as elections and strikes. However, DFAT assesses that despite an increase in political violence since 2013, the number of casualties remains low in proportion to the size of the parties.<sup>4</sup> On the applicant's own evidence he supports the Awami League in the sense that he votes for them, but has had no political activity or involvement. The prospect of the applicant being targeted for or caught up in political violence, whether internal party violence within the Awami League or between it and its opposition, is no more than remote. I am not satisfied there is a real chance of the applicant being harmed in the reasonably foreseeable future on the basis of his support for the Awami League, or any of its factions.

#### **Refugee: conclusion**

21. I am not satisfied the applicant has a well-founded fear of being persecuted within the meaning of s.5J.

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<sup>3</sup> Ibid, 5.24-5.28; Immigration and Refugee Board of Canada, "BGD105263.E Bangladesh: Reports of fraudulent documents (2011-2015)", 20 August 2015, OGFDFC61A41.

<sup>4</sup> DFAT, "DFAT Bangladesh Country Information Report July 2016", 5 July 2016, CIS38A80121206, 3.58, 3.61, 3.62.

22. 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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23. 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**

24. 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.

25. For the reasons given above I have not accepted the credibility of the applicant's claims regarding the land dispute, altercations or fights relating to that dispute or the death of [Mr A's] [child], or the charges he claims to face. I do not accept that he is wanted by police or that is sought after by [Mr A] his gang or the BNP. I have concluded there is not a real chance of the applicant being harmed in relation to any of those claims. I have also found there is not a real chance of him being otherwise harmed because of his support for the Awami League or its particular factions.

26. The applicant has not raised any additional claims under the complementary protection criterion. The standard for real risk is the same as that for real chance.<sup>5</sup> On the findings and information set out above, I am similarly not satisfied that there is a real risk of the applicant being harmed.

### **Complementary protection: conclusion**

27. 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.

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<sup>5</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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

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

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***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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...