



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

MYANMAR

IAA reference: IAA18/06174

Date and time of decision: 11 February 2019 14:11:00

M Brereton, 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 Muslim of the Bamar ethnicity from Myanmar. He left Myanmar in about May 2007 and went to [Country 1] where he lived illegally until about September 2013. He departed [Country 1] in about October 2013 and arrived [in Australia in] December 2013. On 26 June 2017, he applied for a Safe Haven Enterprise Visa (SHEV). A delegate of the Minister for Immigration refused to grant the visa on 13 December 2018.
2. The applicant claimed to fear harm as a Muslim and because he left Myanmar illegally. He also claimed that his brother had disappeared during violence in Myanmar.
3. The delegate accepted the applicant's claims as to identity, origin, race and religion. The delegate found that the applicant embellished aspects of his evidence in relation to the disappearance of a brother and did not accept that the applicant had left Myanmar illegally. The delegate considered the applicant's race, religion, status as a failed asylum-seeker and imputed political opinion but found that he did not face a real chance of serious harm or a real risk of significant harm for those reasons. The delegate found that the applicant is not a person in respect of whom Australia owes protection obligations.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. No further information has been obtained or received.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He was born in Yangon, Myanmar, in [year]. He is of the Muslim religion and the Bamar ethnicity. He has a Burmese name and a Muslim name.
 - His father and one [sibling] remain in Myanmar and [one sibling] lives in [another country]. His mother [and other siblings] are all deceased.
 - He has faced substantial discrimination because of his ethnicity and religion. There is ongoing anti-Muslim violence throughout Myanmar. His brother was killed in 2012 and he believes that he will be next.
 - The violence is condoned by the Buddhists and the State. He cannot seek help from the authorities.
 - He will have no access to employment opportunities and will face discrimination.
 - He left Myanmar illegally and has no passport.
 - If he returns he will be killed or seriously harmed by the Buddhist religious extremists, backed by the authorities, given that they have killed his [brother] because of his Islamic faith and ethnicity. He will continue to face substantial discrimination and severe

persecution by the authorities because of his religious and ethnic background. He will have no access to employment opportunities to earn his livelihood.

Refugee assessment

7. 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

8. 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.
9. The applicant claims to be a citizen of Myanmar who is of the Bamar ethnicity and a Muslim. He has provided his Myanmar Citizenship Scrutiny Card (CSC), a divorce certificate, a student identity card, marriage certificate and a copy of his family registration list. He also provided an affidavit from his father to corroborate his Burmese and Muslim names. He told the delegate that his documents are genuine and that his parents are citizens of Myanmar. I am satisfied that the applicant is a Bamar Muslim citizen of Myanmar and that Myanmar is the receiving country for the purposes of this review.
10. The applicant claims that his brother has disappeared and that he will be next. At his entry interview on 23 October 2014 (the entry interview), he said that his brother had been arrested and was still missing. When the family went to the police station the police said they would look for the brother but if the family came back, they would be arrested. In his written statement with his SHEV application he referred to violence which he said claimed the life of his brother. He said that his brother was killed because of his Islamic faith and ethnicity and that he (the applicant) will be the next to be killed. At the interview with the delegate on 7 December 2018 (the interview), he said that his brother had been a bystander at a protest or a riot. His brother had disappeared and the family do not know where he is or if he is alive or in prison. The applicant said that he went to the police station to make enquiries and when he was returning home he was stopped by a group of people who beat him. He suffered [specified injuries].

11. The delegate asked the applicant about his family's political profile and the applicant said that none of his family members had ever attended any political meetings or had any involvement with any organisations. He was clear in his evidence that his brother was a bystander and was not participating in the protest/riot in any way. He did not claim that any other member of his family was ever involved in any protests or riots. I also take into account that after his brother's disappearance, the applicant went to the police station to seek help, and that his father continues to live in the same house in Yangon. The applicant has never claimed that the authorities or any other group or person has come to the house to enquire about him, his brother or to threaten or harass the family for any reason. Even if I accept that the applicant's brother disappeared during civil unrest, I am satisfied on the evidence before me that this was a result of being a bystander and was not linked to any real or imputed political profile. I am not satisfied that the applicant has any real or imputed adverse profile arising from the disappearance of his brother or any other reason. I do not accept that he was stopped and beaten.
12. The applicant claims to fear harm because of his ethnicity and religion. The Australian Department of Foreign Affairs and Trade (DFAT) reports¹ that identity is complex in Myanmar, and is informed by elements of race, nationality, ethnicity, religion, language and geography. DFAT assesses that official discrimination on the basis of ethnicity against people recognised as citizens (as is the case with the applicant) is rare. In general, DFAT assesses that people in Myanmar, other than those who identify as Rohingya, typically face a low level of official and societal discrimination based on their race or ethnicity.
13. The applicant has consistently claimed to be a member of the Bamar ethnicity which, according to DFAT, is the dominant ethnicity in Myanmar. The applicant has not provided any evidence that he or any other member of his family has ever suffered any harm, harassment or adverse interest for being Bamar. The information before me does not indicate that persons of the Bamar ethnicity are subjected to harm or discrimination for any reasons relating to their ethnicity. I am not satisfied that the applicant faces a real chance of harm because of his ethnicity.
14. In terms of religion, DFAT assesses that Muslims (other than those in Rakhine State) experience moderate levels of societal discrimination and low levels of official discrimination. The applicant is not from, and does not claim that he will return to Rakhine State.
15. The applicant said in his statement that he had to hide his religious identity and live discretely, and could not seek help from the authorities because they are part of the violence. He claimed that he was prevented from completing his secondary education, practising his religion and could not find work. He referred to general reports of violence and discrimination targeting Muslims in Myanmar. At the interview he said that Muslims are discriminated against and abused. He said that he was called "kalar"² and was unable to find employment because of his religion. The delegate asked the applicant several times why he had left Myanmar and the applicant repeated that the situation was bad for Muslims and it is not safe to be in Myanmar.
16. DFAT reports that there are currently no legal barriers to government employment for non-Buddhist citizens in Myanmar; however, DFAT also indicates that no Muslim candidates have been elected to the government. While Muslims (and Christians) are rarely promoted to senior levels in government, the military or the police, discrimination is less severe in

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Myanmar - January 2017 ", 10 January 2017, CISED50AD28.

² A pejorative term for people of south Indian origin.

professional services. Muslims and Christians occupy senior positions in professional fields such as medicine, finance and legal services. Muslims outside of Rakhine State can generally access a similar level of government services to other ethnic groups. While there are credible reports of authorities discriminating against people from Muslim groups, DFAT assesses these incidents represent informal, societal discrimination by Bamar public officials and do not represent official government policy.

17. The applicant claims that he was discriminated against, including in relation to education and employment. He told the delegate that he completed schooling in a government school up to [level]. He has not claimed to have suffered any mistreatment, harassment or discrimination at school. Although he claims that he was prevented from continuing his education, he has not provided any evidence of how he was prevented, who did this or how it related to his religious profile. He also said that he was unable to find employment because Muslims cannot obtain work, but he told the delegate that he had occasional work [in an industry]. He described this role as being similar to a [specified role]. I accept that there may be some difficulties for Muslims seeking employment in Yangon and that some of these may relate to their religion. The information before me does not indicate that any such difficulties would be of such a level that they would threaten the applicant's life or liberty, constitute significant physical harassment or physical ill treatment, significant hardship that would threaten his capacity to subsist, a denial of access to services or capacity to earn a living, or any other harm that may rise to the level of serious harm.
18. According to DFAT there is a high level of anti-Muslim sentiment in Myanmar, particularly outside the major cities. Buddhist nationalist groups are vocal and influential advocates of discrimination against Muslims and have advocated boycotts on Muslim-run businesses. Anti-Muslim sentiment is not restricted to Rohingyans and can affect Muslims of other ethnicities, although DFAT does not indicate if this includes Bamar Muslims. DFAT assesses that anti-Muslim sentiment is widespread and entrenched, especially outside of major cities but also reports that societal violence between Muslims and Buddhists has not occurred in every town that has a Muslim population, nor does it occur on a daily basis. Credible sources have told DFAT that Muslim and Buddhist communities that are mutually dependent for trade and other livelihood purposes generally live together without violence while Muslim communities in major cities (like Yangon) generally live peacefully. DFAT assesses that Muslims outside of Rakhine State face a low risk of societal violence on a day-to-day basis.
19. I accept that there has been religious and ethnic violence in Yangon in the past and I take into account that the applicant's brother may have been caught up in such violence as a bystander. The applicant has not himself claimed to have been caught up in, or to have been in the vicinity of that protest or to have experienced any other ethnic or religious violence, apart from the beating incident which I have not accepted. I accept that he may have been subject to name calling in the past but he has not provided any evidence to support his claims that he was prevented from practising his religion or harmed for doing so. While he claims that he had to hide his identity and live discreetly, he also told the delegate that he wore a beard which identified him as a Muslim, which is inconsistent with living discreetly. I do not accept his claim that he had to hide his religious identity and on the evidence before me, I am not satisfied that he was ever subject to harm beyond some name calling because of his religion.
20. The information before me indicates that the likelihood and severity of ethnic or religious violence is higher outside Yangon, particularly in Rakhine State. I have noted above that the applicant is not from, and has not claimed that he will return to anywhere other than Yangon. While I accept the possibility that violent incidents may occur in Yangon in the future, the

information before me does not indicate that ethnic or religious violence is common or ongoing in that city, or that Muslims or Bamar Muslims in Yangon continue to experience ongoing or systematic serious harm at the hands of the community, Buddhist extremists or other groups. Having regard to all of the above, I am not satisfied that the applicant faces more than a remote chance of being caught up religious or ethnic violence. I am not satisfied that the applicant faces a real chance of harm from religious or ethnic violence.

21. The applicant claims to fear harm because he left Myanmar illegally. The applicant claimed that he left Myanmar in 2007 to travel to [Country 1]. At the interview he said that he did not have a passport when he left Myanmar and that he has never returned to Myanmar. The delegate put to the applicant that during the entry interview the applicant said that he had returned to Myanmar for about two weeks while he was living in [Country 1]. The applicant said that he had said that he thought about going back but did not say that he had gone back. He stated to the delegate that he had never returned to Myanmar since leaving there in 2007.
22. I have listened to the audio recording of the entry interview. The applicant was assisted at that interview by an interpreter in the Burmese language and confirmed that he could understand the interpreter. At the commencement, the interviewer told the applicant that if he gave information at a later time that was different to the information given at the entry interview, this could affect any visa applications. The interviewer asked what year the applicant went to [Country 1] and the applicant said that he went there in 2007, then went back to Myanmar and then came back to [Country 1] again. The interviewer asked how long the applicant had spent in Myanmar when he returned and the applicant said a few days. The interviewer asked how many times the applicant had gone back to Myanmar and the applicant said just once, for maybe two weeks. The entry interview does not indicate what year this trip occurred.
23. I have had regard to the Court's observations in *MZZJO v Minister for Immigration and Border Protection*³ concerning the circumstances in which entry interviews are conducted and the caution required by decision-makers in relation to omissions or inconsistencies at entry interview. I take into account that the applicant was asked direct and specific questions, including clarification questions, about whether he had ever returned to Myanmar. While he was unsure of the duration of the return visit, he was not in any way unsure that he had in fact returned. Given the context and content of the questions, I do not accept that the applicant said or meant that he had only thought about returning. I am satisfied that he clearly indicated he had returned and this, taken with the fact that he has valid Myanmar identity documents leads me to conclude that he was attempting to obfuscate a legal return to Myanmar in order to support his claim to fear harm as an illegal departee. Having regard to all of the evidence before me I do not accept that the applicant departed Myanmar illegally.
24. Even if the applicant was suspected of having departed illegally, DFAT reports that illegal departees are technically subject to criminal penalties of up to five years imprisonment, but this provision has not been enforced in recent years. In March 2015, a number of migrant workers who had departed illegally were returned from [Country 1] after the Myanmar and [Country 1] governments reached an agreement. The workers were processed in Yangon and the government provided them with limited funds to cover transportation costs back to their homes. While the information before me does not indicate whether illegal departure charges

³ *MZZJO v MIBP* [2014]FCAFC 80.

will be enforced in the future, I consider that there is only a remote chance that the applicant will be arrested and prosecuted for having left Myanmar illegally.

25. DFAT is not aware of any credible reports of mistreatment of failed Rohingya asylum-seekers stemming specifically from their having sought asylum overseas. The DFAT report does not contain any information which suggests that other Myanmar citizens have faced mistreatment, harassment or harm for any reason arising from having sought asylum overseas. There is no other information in the review material which indicates that failed asylum-seekers are subjected to harm for that reason in Myanmar. I am not satisfied that the applicant faces a real chance of harm as a failed asylum-seeker and/or for having, or being suspected of having departed Myanmar illegally.
26. I am not satisfied that the applicant faces a real chance of harm for any reason arising from the disappearance of his brother, any imputed political opinion, from religious or ethnic violence in Yangon, or as a failed asylum-seeker who may be suspected of having departed Myanmar illegally. I am not satisfied that he faces a real chance of serious harm as a Muslim or a Bamar Muslim. I am not satisfied that he has a well-founded fear of persecution in Myanmar.

Refugee: conclusion

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

Complementary protection assessment

28. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

29. Under s.36(2A), a person will suffer 'significant harm' if:
 - the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
30. I have found above that the applicant does not face a real chance of harm for any reason arising from the disappearance of his brother, any imputed political opinion, from religious or ethnic violence in Yangon, or as a failed asylum-seeker who may be suspected of having departed Myanmar illegally. As 'real chance' and 'real risk' equate to the same threshold and for the same reasons as given above, I am not satisfied that there are substantial grounds

for believing that, as a necessary and foreseeable consequence of the applicant's removal to Myanmar, he will face a real risk of significant harm for these reasons.

31. I accept that the applicant may face low and moderate levels of official and societal discrimination on the basis of his religious profile. I have found that any discrimination that he may face on the basis of that profile would not amount to serious harm. The information before me indicates that such discrimination would not involve violence or other serious harm, would not threaten his ability to find or maintain employment, that he would be denied access to basic services, that it would threaten his capacity to subsist or earn a livelihood in Myanmar or that he would be prevented from practising his faith. I accept that the applicant may find such experiences challenging and frustrating and that these may cause him some anxiety, but having regard to his individual circumstances, including past experience living in Yangon, family connections in the city, his lack of any adverse political profile, and the country information before me, I do not accept that such discrimination would involve being arbitrarily deprived of life, subjected to the death penalty or torture, nor would it involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering, or be intended to cause extreme humiliation, or otherwise amount to significant harm as defined in the Act, even when considered cumulatively. I am not satisfied that the applicant faces a real risk of significant harm from official and societal discrimination in Myanmar.

Complementary protection: conclusion

32. 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.