



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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MYANMAR

IAA reference: IAA19/06695

Date and time of decision: 9 July 2019 11:07:00

M Tubridy, Reviewer

**Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be an ethnic Rohingya who was born stateless in Myanmar (Burma) and who subsequently lived much of his life in Bangladesh before travelling to [Country 1], then [Country 2] and then [Country 3], and then Australia. He arrived in Australia [in] July 2013 as an unlawful maritime arrival (UMA). On 23 June 2017 he lodged an application for a Safe Have Enterprise visa (SHEV). A delegate of the Minister (the delegate) refused to grant the visa on 1 June 2019 because Departmental systems indicated that the applicant had departed Australia [in] May 2019. On 5 June 2019 the matter was referred to the IAA. Within the review material given to the IAA by the Department was a screen shot of the Departmental record which indicated that the applicant was outside Australia. On 13 June 2019 the IAA affirmed the decision not to grant the applicant a protection visa as the criteria for the grant of a protection visa require that the applicant for the visa is a "non-citizen in Australia". On 2 July 2019 the IAA was notified by the applicant's current migration agent of her appointment to represent the applicant. The applicant's representative also submitted to the IAA at this time that the applicant was in Australia. That same day the IAA sent a request to the Department for confirmation of whether or not the applicant had departed Australia. The Department responded that the applicant was in Australia and that the previously provided record (which indicated that the applicant was outside Australia) was incorrect. On 4 July 2019 the IAA reopened this matter (as its decision of 13 June 2019 was based on a factual error).

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. As has been noted above, new information has been provided to the IAA by both the applicant's representative and by the Department to the effect that the applicant did not depart Australia [in] May 2019 and that he remains in Australia. I am satisfied that there are exceptional circumstances to justify considering this new information.
4. I have also obtained new information in the form of country information about the situation in Myanmar and Bangladesh. The applicant provided no country information to the delegate. The delegate did not have regard to any country information as she made her decision acting on advice that the applicant had departed Australia. As I cannot assess the applicant's claims without country information I am satisfied that there are exceptional circumstances to justify considering the new information which I have obtained in this regard.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - He is an ethnic Rohingya who was born stateless in Myanmar and he subsequently lived much of his life in Bangladesh. In Bangladesh he and his family suffered continual harassment and mistreatment. He departed Bangladesh after an incident in which three Bangladeshi citizens beat him unconscious when he refused to give them his wages. He cannot return to Bangladesh or to Myanmar because he is not a citizen of either

country. Also, he has heard that the Myanmar military murder people and burn down their houses in Rakhine and elsewhere and that people are constantly killed by the authorities because of their Muslim religion and their Rohingya ethnicity. He fears this will happen to him if he returns to Myanmar and that the Myanmar authorities would shoot him immediately if he was returned there.

## Refugee assessment

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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.
8. As has been noted above the applicant claims to be an ethnic Rohingya who was born stateless in Myanmar. From what he has been told by his parents he and his elder siblings were born in [a village] near [Town 1] in the Rakhine State of Myanmar in around [year]. His family departed for Bangladesh when he was around [age] (in around 1991). He claims that thereafter, and until his 2012 departure from Bangladesh, he resided with his family in the [Name 1] refugee camp (which he also refers to in his written claims as the [Name 2] refugee camp though it is unclear why he also uses this label as none of the sources before me refer to such a place in this or any other regard). In 2010 the applicant met his wife (who is also stateless) in the refugee camp and they were married there in 2011 and had a child. Insofar as he is aware his wife and daughter and parents and several of his other siblings continue to reside in Bangladesh in the refugee camp. Two of his siblings are outside Bangladesh: a brother is in [Country 2] and one of his sisters resides with her husband in [Country 4] and is a citizen of [Country 4]. No explanation is offered for how the applicant's sister came to be in [Country 4] (or how she acquired citizenship of that country) but the applicant claims that in 2012 he and his brother (who remains in [Country 2]) exited Bangladesh in an irregular manner by boat. The applicant then travelled onward to Australia (arriving as a UMA [in] July 2017). He is in contact with his family by telephone. The applicant claims that prior to his departure from Bangladesh he had, since 2007, been employed (illegally for cash wages) as a

chef [at a named location] even though he was not officially allowed to work outside of the refugee camp. I note that in 2011 UNHCR advised that although officially the registered Rohingya do not have freedom of movement, or the right to work outside the camps, it is known that some of them did go out for work.<sup>1</sup>

9. As evidence of his claim to be a stateless person who originates from Myanmar (and who until 2012 was residing as a stateless person in Bangladesh where his wife and child and several other stateless family members remain) the applicant has provided several documents. Among these are scanned images of what present as being several 2016 NFI (non-food item) Data Sheets which were issued (in English) to his wife and child, and also to his parents and siblings (whose photographs are displayed). NFI sheets were first issued in Bangladesh in 2007 to all refugee families registered in the UNHCR database to ration the issuance of certain non-food items to such persons. The Danish Immigration Service (DIS)<sup>2</sup> has reported that it is aware of some fraud with regard to these paper documents; with some Bangladeshi citizens attempting to present themselves to as stateless Rohingyas (for the purpose of achieving a migration outcome by way of making an application for refugee status) by fraudulently inserting a photograph of themselves onto such documents. Such documents are thus known to be vulnerable to fraud. However, the applicant has also provided what presents as being a UNHCR 2008 issued refugee card which (in English and Bengali) presents the applicant's country of origin as being Myanmar. The DIS does not report that there has been a trend such cards being affected by fraud. Cards of this kind were issued in July 2008 to all refugee individuals (5 years and above) registered in UNHCR database, and the card provided by the applicant displays this documents various security features including the security hologram that consists of several UNHCR logos laminated on the ID card. The first three numbers of the eleven digit security code on the applicant's card are the numbers used to denote that the bearer is registered not just with UNHCR but with the government of Bangladesh. I give significant weight to this document.
10. The [Name 1] refugee camp is one of two camps in Bangladesh which continue to serve as residential facilities for the stateless Rohingya who were displaced from Myanmar during 1991 and 1992.<sup>3</sup> On the evidence before me I am satisfied that the applicant is an ethnic Rohingya who was born stateless in Myanmar (near [Town 1] in Rakhine State) in around [year], and that from 1991 to 2012 he resided in Bangladesh. As I have found that the applicant is stateless, and as the applicant formerly habitually resident in first Myanmar and then Bangladesh I find that both these are countries of former habitual residence for the applicant and that both of these countries are a receiving country for the applicant for the purpose of this review.
11. The applicant submits that he has heard that in Myanmar the military murder people and burn down their houses in Rakhine and elsewhere and that people are constantly killed by the authorities because of their Muslim religion and their Rohingya ethnicity. He fears this will happen to him if he returns to Myanmar and that the Myanmar authorities would shoot him immediately if he was returned there.
12. The Rohingya, who are predominantly Sunni Muslim, face substantial and long-standing official and societal discrimination in Myanmar which is largely ethnic Bamar and overwhelmingly Buddhist. Myanmar's Citizenship Law (1982) officially recognises 135 ethnic groups. The Myanmar government does not consider the Rohingya to be one of the country's

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<sup>1</sup> DIS, "Rohingya refugees in Bangladesh and Thailand", 1 January 2011, CISD9559B11859.

<sup>2</sup> DIS, "Rohingya refugees in Bangladesh and Thailand", 1 January 2011, CISD9559B11859.

<sup>3</sup> DIS, "Rohingya refugees in Bangladesh and Thailand", 1 January 2011, CISD9559B11859.

official ethnic groups and has denied them citizenship since 1982 (considering them to be Bangladeshi), effectively rendering the country's Rohingya population stateless (although as will be discussed below some Rohingya have been able to register themselves as Bamar or some other accepted ethnicity). The vast majority of Rohingya are Sunni Muslim, and live in Rakhine State (formerly known as Arakan State), particularly the northern area that encompasses the townships of Maungdaw and Buthidaung. If the applicant were to return to Myanmar then the Myanmar authorities would likely return the applicant to the area of [Town 1] (where he was born) or to some other locality in Rakhine (given the manner in which the Myanmar authorities have typically dealt with the question of how Rohingya should be repatriated).<sup>4</sup>

13. The situation in Rakhine State has been unfavourable for ethnic Rohingya for some time and this has been particularly so over recent years. In October 2016 the Arakan Rohingya Salvation Army (ARSA) (a Rohingya separatist insurgent group) attacked facilities of the Myanmar Border Guard Police (BGP) in Maungdaw. Following this, and in the manner of retaliation, there were widespread arson attacks against Rohingya villages which reportedly resulted in over 1,500 buildings destroyed between October and December 2016. The UN Fact-Finding Mission reported a range of serious human rights violations against the Rohingya population, including arbitrary arrests, ill-treatment and torture, forced disappearances and sexual violence. Around 87,000 Rohingya fled to Bangladesh. On 25 August 2017 the ARSA launched coordinated attacks on a military base and up to 30 security force outposts across northern Rakhine State. The security force response, launched within hours of the attack, was (according to DFAT) disproportionate, and encompassed almost the total Rohingya population across Maungdaw, Buthidaung and Rathedaung Townships. Rohingya villages in these areas were reportedly attacked with gunfire and arson. The same violations used by security forces in 2016 were again employed against men, women and children, on a significantly larger scale, including targeted and indiscriminate shootings, extreme sexual violence and gang rapes, and widespread arson attacks. Mass killings, some cases involving hundreds of people, reportedly occurred in at least five villages. Médecins Sans Frontières (MSF) estimated at least 9,400 Rohingya died in the initial month following 25 August 17 (the UN Fact-Finding Mission has described this as a conservative estimate). At least 392 villages (40 per cent of all settlements in northern Rakhine) were partially or totally destroyed. By August 2018, close to 725,000 people, mostly Rohingya, had fled to Bangladesh.
14. DFAT assesses there is a high risk of further violence for the remaining Rohingya in Rakhine State. Moreover, the size of the Rohingya population in Rakhine state, and in northern Rakhine in particular, has been greatly diminished by displaced of the Rohingya population into Bangladesh (the UN Fact-Finding Mission estimated that in September 2018 between 200,000 and 240,000 Rohingya remained in the northern townships of Rakhine State and 360,000 in central Rakhine). Further, DFAT assesses that official and societal discrimination on the basis of ethnicity against Rohingya in Rakhine State is currently high, endemic and severe. Rohingya typically lack citizenship, face severe restrictions on their freedom of movement and are the subject of systemic extortion and harassment. Given the current situation in [Town 1], and in Rakhine State more broadly, I am satisfied that for the foreseeable future the applicant would face a real chance of suffering significant physical harassment amounting to serious harm for reason of his being an ethnic Rohingya (that is for reason of his race) if he were to return to the area of [Town 1] or to another locality in Rakhine State.

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<sup>4</sup> DFAT, "DFAT Country Information Report: Myanmar", 18 April 2019, 20190418091206.

15. DFAT reports that Rohingya outside Rakhine State generally have higher incomes and better access to resources than those in Rakhine State, and are typically able to obtain identity documentation that allows them to live and work without facing the high levels of discrimination otherwise experienced by Rohingya in their day-to-day life. But very few Rohingya are able to travel legally outside of Rakhine State; and it would appear that those Rohingya who live in areas of Myanmar outside of Rakhine State are typically able to do so only if (typically by bribery) they are able to have themselves registered and issued documentation presenting them as ethnic Burmese or Bamar Muslim or as an ethnic Kaman. The applicant does not speak Burmese or Kaman. In any event, and even if this was possible, it would entail the applicant concealing his race and as such would be an impermissible modification of behaviour under s.5J(3). The applicant is a practising Muslim who cannot speak Burmese and whose preferred language is Rohingya. Given this, and given the pervasive nature of state regulation in Myanmar, the applicant would in such circumstances likely be detained and returned to Rakhine State (where he would face a real chance of serious harm for reason of his race) wherever he might go in Myanmar. This being the case, I am satisfied that the real chance of persecution relates to all areas of a receiving country. Further, and as the serious harm the applicant would face would stem from Myanmar's state authorities, effective protection measures against the persecution would not be available to him. Further, and as the real chance of serious harm arises from the applicant's race, there are no steps which he could take to modify his behaviour to avoid the real chance of persecution. The qualifications in s.5J(2) and (3) do not apply and I am satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J with regard to Myanmar.
16. Given this, and as the applicant is stateless, it is not necessary for me to consider whether the applicant has a well-founded fear of persecution within the meaning of s.5J with regard to Bangladesh.<sup>5</sup>

### **Refugee: conclusion**

17. The applicant meets the requirements of the definition of refugee in s.5H(1).

### **Third country protection**

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18. Section 36(3) of the Act (as set out in the attachment to this decision) provides that, subject to certain qualifications, Australia is taken not to have protection obligations in respect of an applicant who has a right to enter and reside in any country apart from Australia and has not taken all possible steps to avail themselves of that right.

### **Application of s.36(3) to this case**

19. As has been noted above, over recent years Bangladesh has largely tolerated the irregular arrival of large numbers of Rohingya from Myanmar. This does not, however, mean that Rohingya (who are not nationals of Bangladesh) have a right to enter and reside in Bangladesh. As has been noted above, the applicant was formerly a habitual resident of Bangladesh for almost three decades and, while residing in Bangladesh, he was registered as a refugee not only with UNHCR but also with the government of Bangladesh. Again, however, it is apparent from the available reporting<sup>6</sup> that this does not confer upon the applicant a

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<sup>5</sup> Al-Anezi v MIMA (1999) 92 FCR 283.

<sup>6</sup> DIS, "Rohingya refugees in Bangladesh and Thailand", 1 January 2011, CISD9559B11859.

right to enter and reside in Bangladesh. After departing Bangladesh, and before arriving in Australia, the applicant travelled through [Country 1], [Country 2] and [Country 3]. All of this travel was conducted in an irregular manner. He is not a national of any of these countries and it is not apparent that he has a right to enter and reside in any of these countries, or any other country. Section 36(3) does not apply to the applicant.

## Decision

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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



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

...

### 5J Meaning of well-founded fear of persecution

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

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

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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