



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON
IAA reference: IAA19/07149

Date and time of decision: 3 October 2019 09:35:00
S McNeill, 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) is a national of Lebanon. On 20 September 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. On 6 September 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

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

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in [year] in [Village], Lebanon and grew up in [Town], Akkar district. He is of Arab ethnicity.
 - Although born a Sunni Muslim he considers himself non-religious. He felt there was a lot of violence and killings in Lebanon based on religion and he started feeling this way when he was about 16.
 - In around 2011 he had an incident with some members of the Syrian Socialist Nationalist Party (SSNP); this group is a violent well known political party in Lebanon and considered a terrorist group.
 - The SSNP was trying to recruit young people and they tried to recruit him approximately five to six times. Different members would approach him on the street and they always knew his name. He refused to join them because he did not want to fight.
 - After he refused for the sixth time (approximately) he was beaten by some of them members in the view of other people. They beat him on his head with rifle butts and he was bleeding profusely. They left him bleeding on the ground and someone assisted him to get to hospital where he spent two months and had surgery. He had brain damage and couldn't speak for about 25 days. He has a scar on his head and suffers from bad headaches.
 - His father lodged a complaint with the police and the next day he received death threats from the SSNP. Due to these threats he withdrew the complaint.
 - It took him a while to organise his journey but two years after his release from hospital he left. During this time the SSNP continued harassing him. They came to his house two

to three times looking for him and each time his father said he was not home. During this time he also hid in the mountains.

- He fears the SSNP will harm him if he returns to Lebanon as his family has told him they are still looking for him and harass his family. He cannot relocate because the SSNP is very powerful and would find him and his extended relatives have denounced him so he could not stay with them.
- He also fears harm because his information was inadvertently released on the Department's website.
- He also fears harm because he is no longer a Sunni Muslim and there are many extreme religious groups in Lebanon he believes will target him.

Refugee assessment

6. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

7. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Lebanon and that Lebanon is the receiving country for the purpose of this review.
9. I have carefully considered the applicant's claims for protection but overall I find the applicant to be lacking in credibility. At his SHEV interview on 19 August 2019 the applicant's

oral evidence demonstrated a lack of familiarity with his written claims included in his SHEV application and there were numerous inconsistencies between the two accounts. These discrepancies are as follows:

- Whilst in his SHEV application his primary claim for protection stemmed from his refusal to join the SSNP; at his SHEV interview the applicant stated he was attacked by a civilian group because of his support for Al Hariri or the Hariri government and he made no mention of any forced recruitment.
- At his SHEV interview the applicant referred to it as the National Party and provided its name in Arabic which the interpreter translated into English as 'Al-Hizb Al-Qawmi'. It is plausible that the applicant was referring to the same party but just in an abbreviated format. However when the delegate pointed out in his statement of claims (SHEV application) that he had said he was afraid because he refused to join the SSNP, the applicant stated that when he fled Lebanon he did not have any problems with the SSNP and the only problem he faced was from the National party not from other political groups. He then confirmed this. Asked why he would have said this in his statement of claims, the applicant stated when they had to flee it was a difficult time and a hard journey and he could have said something but it was not intentional. Asked whether he had ever been asked to join a group (the SSNP), the applicant said they had tried with him but he hadn't listened and he didn't support these types of groups. Whilst the applicant may have mentioned the SSNP attacking him in his entry interview of 6 July 2013 it was in his statement of claims prepared on 19 September 2017 that he wrote about refusing to join the SSNP and their attack on him. By that stage the applicant had been in Australia over four years long after the 'terrible journey'.
- The applicant claimed that the group tried to recruit him approximately five or six times and different members would approach him on the street. On the approximately sixth time some members beat him up with the butts of rifles. At his SHEV interview the applicant stated prior to the only attack on him he had never seen them in person, they had only threatened him over the phone.
- In his SHEV application the applicant claimed the incident occurred in and around 2011 and he did not leave Lebanon until 2 years later but at his SHEV interview he stated the incident happened two months prior to his departing Lebanon in March 2013.
- In his SHEV application the applicant claimed that his father lodged a complaint with the police but the next day he received threats from the SSNP that if he did not withdraw the threats his family would be killed starting with him so he withdrew the complaint. Asked whether he had lodged a complaint or report at his SHEV interview, the applicant said some of the police offices came to the hospital so probably there would be a report in the system. The applicant stated so a number of times. Referred to what he had said in his SHEV application that his father had lodged a complaint and why he would say so if he didn't know who lodged it, the applicant said this was the first interview, he was unaware of his statement and he didn't know what to say. If the applicant was truly attacked and hospitalised as claimed I would expect him to go out of his way to provide

either evidence of a police complaint being lodged or medical reports from his hospitalisation.

10. Whilst I accept the applicant has suffered an injury to his head in the past I am not satisfied that it is as a result of a violent attack on him by either the SSNP for his refusal to join them or by the National Party who believed he supported Hariri. I reject this claim in its entirety. The applicant has fabricated this claim in order to provide a reason for departing Lebanon and seeking asylum. I find the applicant was of no adverse interest to any group including the SSNP, the National Party or 'Al-Hizb Al-Qawmi' at the time he departed Lebanon. I do not accept the SSNP has harassed or contacted his family about his whereabouts since he departed Lebanon. I do not consider the applicant to be a credible or reliable witness. I am not satisfied he faces a real chance of any harm on account of this claim.
11. The applicant claimed that he was notified by the Department that it had inadvertently released information about him on their website. The SSNP in Lebanon is very powerful and they could find out this information about him and this would make them want to hurt him if he returned to Lebanon. Given I have not accepted the applicant was of any adverse interest to the SSNP prior to his departure from Lebanon I do not accept the applicant faces a real chance of any harm on account of his details being released on the Department's website in February 2014 on his return to Lebanon now or in the reasonably foreseeable future.
12. The applicant claimed to have worked as [an Occupation] prior to departing Lebanon. I, like the delegate, am more inclined to find the applicant departed Lebanon because of a lack of employment opportunities which has been exacerbated by the influx of Syrian refugees. According to DFAT, unemployment is a major problem for Lebanon, particularly for the young. In 2017 the labour minister estimated that the overall unemployment rate was 25 per cent, within unemployment among those under 25 years of age is at 37 per cent.¹ The influx of Syrian refugees has led to increased competition of low skilled job, particularly in the informal sector and in areas of high refugee concentration such as the north of the country. Limited economic opportunity, exacerbated by the influx of displaced Syrian refugees, is a push factor for external migration.² Akkar, where the applicant comes from, is Lebanon's poorest region and the unemployment rate in 2015 reached 60 per cent.³
13. The applicant claimed he was born a Sunni Muslim but now considers himself to be non-religious. He is religiously married to [Ms A] an Australian citizen. They are not legally married but he considered her his wife. He felt that there was a lot of violence and killings in Lebanon based on religion. He started feeling this way when he was around 16 years old. He is afraid he would suffer harm because he is no longer a Sunni Muslim. There are many extreme religious groups in Lebanon and he fears he would be a target of them. In his SHEV application no religion is recorded.
14. At his SHEV interview asked by the delegate whether he would experience any problem in Lebanon for not being religious, the applicant did not respond directly to the question and

¹ Department of Foreign Affairs and Trade (DFAT), Country Information Report Lebanon, 19 March 2019, 20190319100208, 2.11.

² Ibid 2.12-2.13.

³ North and Akkar governorate profiles, OCHA, 04 August 2016, CIS38A80128136.

stated he used to be religious but not anymore. Asked again if he thought there would be any problems with that, the applicant stated it would be a problem. Asked again what sort of problems he thought he would experience, the applicant said family problems and comments from the community as well. The delegate noted the applicant stated he was a Sunni in his entry interview. The applicant said he became non-religious when he left the detention centre in 2014. In Australia he did not want to stick to one religious belief because here they respected all religious beliefs. Also his religion didn't allow them to drink alcohol and to be restricted and he wanted to free himself from these restrictions. He stated he drank a little bit of alcohol sometimes. He did not want to tell people his religion so they would treat them in a certain way and he wanted to give it up so he could freely live with someone.

15. At the beginning of his SHEV interview the applicant had advised he was no longer in a relationship with [Ms A] but that he had a new partner and they had had a baby [child] a few weeks earlier. Asked what religion [Ms A] was, the applicant said she was Muslim but believed she was giving up her religious beliefs. Asked about his comment that they had a religious marriage in Sydney when he said he didn't have any religion, the applicant said they had to be religious in the marriage because it was in front of the family and it was a formality but he did not want to be restricted to religion himself. The applicant stated that his current partner was a Muslim but was like him and didn't have restrictions upon her religious beliefs. They had not discussed religion for their [child] and he would teach [her/him] not to be restricted to one religious belief and be friendly with everyone and all religious beliefs. No one in his family knew he no longer practised and only two friends close to him knew. Asked wouldn't other people in the Muslim community be able to tell he was non practising, the applicant said if he told people he would have serious problems and he did not want his family in Lebanon to be aware otherwise it would create family problems.
16. I am willing to accept the applicant does not currently practise Islam but I am not satisfied he has abandoned Islam or renounced his Sunni faith altogether as evidenced by his religious marriage ceremony with his previous partner. I am of the view the applicant has exaggerated or embellished his claims in this regard to strengthen his claims for protection. The applicant responses were vague, generalised and lacked substance; he could only state there would be problems with the family and comments from the community. He did not add any depth or contextual background to his claimed fear of harm from religious extremist groups or state how there would be a problem with his family. I note in his SHEV application the applicant indicated he called his family in Lebanon using [Social media] approximately once every two or three weeks. The evidence before me does not indicate his contact with his family has changed.
17. According to DFAT Article 9 of the Lebanese Constitution states there shall be absolute freedom of conscience and respect for all religion and creeds and guarantees the state shall protect the free exercise of all religious rites provided that public order is not disturbed. The state officially recognised 18 religious confessions including four Muslim groups (Shi'a, Sunni, Alawites and Ismaili's) and 12 Christian groups. Unofficial estimates agree the combined Muslim communities now outnumber combined Christian communities with Muslim

population estimates ranging between 24 for 58 percent and Sunni (27 to 29 per cent) dominating Shi'a (27 to 28 per cent).⁴

18. Unlike most other Arab countries, Lebanese are able to change their religious affiliations legally, converting from Christianity to Islam and Islam to Christianity. Mixed marriages between the two religions are widespread resulting in religious pluralism. DFAT is not aware of any reports to suggest that either converts or those involved in mixed marriages are subject to any official discrimination.⁵ Human rights observers report that relationships between religious groups in Lebanon are generally peaceful, particular by regional and historical standards. In 2015 the UN Special Rapporteur on freedom of religion or belief noted the situation between religious groups was largely amicable and there was no religious persecution. Religious leaders have regularly condemned extremism. Violent clashes with religious overtone has occurred between communal groups (such as between the Alawites and Sunnis in Tripoli), it has generally been low-level and localised in nature. Lebanese religious leaders and state authorities are sensitive to the potential impact of communal violence on national security, including the possibility that external conflicts with sectarian dimensions (particularly the Syria conflict) could impact on the coexistence of religious communities in Lebanon. DFAT assesses that the Lebanese authorities are committed to preventing violence between religious communities. It also assesses that members of recognised religious groups do not face any official discrimination on the basis of religion.⁶ Country information before me does not suggest that non-practising Muslims are targeted for persecution; it overwhelming indicates religious tolerance in Lebanon.
19. Given the applicant's unconvincing testimony regarding his claims to fear harm from extreme religious groups because he no longer follows his Sunni faith, he inability to persuasively articulate any problems this would cause with his family or community in Lebanon, that I do not consider him to be a reliable witness, the country information that indicates Lebanese are allowed to change their religion and the authorities determination to prevent religious extremism, I am not satisfied the applicant has a real chance of any harm because he is a non-practising Muslim from religious extremists or his family members or the community in general.
20. Considering the applicant's circumstances and profile as a whole, in the context of the country conditions in Lebanon I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

21. 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).

4 DFAT, Country Information Report Lebanon, 19 March 2019, 20190319100208, 3.9-3.11.

5 Ibid 3.13.

6 Ibid 3.14-3.15.

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Complementary protection assessment

22. 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

23. 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.
24. I have concluded that the applicant does not face a real chance of any harm for the reasons claimed. Given 'real chance' and 'real risk' involve the same standard, I am not satisfied he faces a real risk of any harm on these bases.

Complementary protection: conclusion

25. 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

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(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.