



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA19/07243

Date and time of decision: 4 November 2019 15:19:00

M Wei, 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 an Iraq national. He arrived in Australia in August 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790 in June 2017. A delegate of the Minister of Immigration (the delegate) refused to grant the visa on September 2019. The delegate found that the applicant did not have a well-founded fear of persecution and was not at real risk of significant harm upon his return to Iraq.

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). No further information has been obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He was born in [date] in Basrah. He lived with his family in Karbala for the majority of his lives in Iraq but was living in Baghdad prior to leaving Iraq. He is a Shia Muslim.
 - He has been threatened, abused and harmed by militias and armed groups, Asaab Alhaq (also known as 'Asaib Ahl alhaq (AAH)). This is the main reason for his fear.
 - He was arrested and detained for 45 days in May 2013 because he stood up for a woman neighbour. He was 'tortured' and endured hard times inside the prison and [he was injured] as a result.
 - Following his release, he continued to be subjected to harassment and was stopped at checkpoints. He was separated from his tribe.
 - He was living in an area called [Suburb 1] in Baghdad, a mixed area. This area is segregated and dangerous. It was controlled by the militias on both ends. [In Occupation 1], he was always checked and questioned on both ends and asked to pay fees.
 - He holds secular views. He mixed with any one and had friends from the Sunni faith who were from well-known tribes. This angered the militias and he was threatened for befriending Sunnis.
 - The violence and chaos in Iraq leaves no area safe.

Refugee assessment

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

Well-founded fear of persecution

5. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
6. Based on the applicant's evidence and the personal documents provided, I accept he is a Shia Muslim and a citizen of Iraq. I find that Iraq is the receiving country.
7. The applicant gave evidence at the SHEV interview that, although he was born in Basrah, he moved with his family to Nasiriyah, Karbala and [Suburb 1] in Baghdad. He stated that his father moved to [Suburb 1] because it had farmland there and his father was engaged in [work] in [Suburb 1]. Although the applicant stated in the visa application that he was [in a different industry] in Baghdad prior to his leaving Iraq, he stated at the SHEV interview that he was actually working [in Occupation 1] at that time and he had been [employed in Occupation 1] for about seven to eight years roughly. When he was asked why he stated in his visa application that he lived in Baghdad for about five years, he then said that he started [in Occupation 1] from Karbala. He also confirmed that it was all in Baghdad that he [worked in Occupation 1]. I am willing to accept that the applicant lived in Baghdad with his family for around five years before he departed Iraq and worked [in Occupation 1].
8. The applicant told the delegate at the SHEV interview that since he left Iraq, his family had returned to Karbala in 2013, where they remain now. I note that the applicant also stated in his entry interview in November 2014 that his father, mother and siblings in Iraq were all living in Karbala at that time. The applicant's Iraqi identity documents were issued in Karbala, including his Iraqi driver licence which was issued in May 2012, during the time that the applicant claimed to be living in Baghdad. The applicant told the delegate that he obtained his driver licence in Karbala because his citizenship certificate says that he was from Karbala. He further told the delegate that he also obtained his passport from Karbala and that he was required to show his residency card and citizenship certificate in obtaining the passport. The applicant left Iraq for Australia via [an airport]. The delegate found that the applicant, if he were to return to Iraq, would return to Karbala where his family resides and where his Iraqi identity documents were issued. His family has now been living in Karbala for the last four years. The applicant's evidence also indicates that he and his family lived in Karbala for the vast majority of their lives. The applicant is single. Given his significantly strong ties in Karbala, I also find that the applicant would return to Karbala, a majority Shia area, and not Baghdad, if he were to return to Iraq now or in the reasonably foreseeable future.

9. The applicant stated in his entry interview of 2 November 2014 that he was detained a few times (held for about seven days each time) in 2000 or 2001 under the Saddam regime because he was selling things in non-permitted areas. The applicant made no reference to this in his visa application or in the SHEV interview. He does not claim to fear harm on this basis. Even accepting this had occurred, on his limited evidence and that the fact this occurred under the Saddam regime nearly 20 years ago, I am not satisfied that the applicant faces a real chance of harm on this basis if he were to return to Iraq now or in the reasonably foreseeable future.
10. The applicant claims that the main reason for his fear was because he has been threatened, abused and harmed by militias and armed groups. In his visa application and at the SHEV interview he named AAH as the group that harmed him. He claimed that it started at the beginning of 2013 when the AAH group regularly harassed a neighbour of his, who was a widowed woman and whose husband was a Baathist (who was also killed by the AAH). He told the delegate at the SHEV interview that in March 2013 he and his father stood up for this woman and confronted the AAH about their behaviour toward his neighbour. After that incident, the AAH started to target him and harass him and in May 2013 the police came and arrested him.
11. In the visa application, the applicant stated that he was detained by the police for 45 days where he was tortured and endured hard times inside the prison, as a result, [he was injured] and he had surgery done in Australia to fix this problem. He stated that he was not charged and it was an act by the militias who used the police to harm him. The AAH's administrator wanted to punish him 'more for intervening in their work and not abiding by their doctrine rules'. This administrator also separated the applicant from the tribe and said that he would not leave the applicant alone.
12. The applicant also initially told the delegate at the SHEV interview that it was the police who arrested him in May 2013. However, when the delegate asked him what happened when he was arrested, he said that they blindfolded him and tortured him. When asked why they arrested him, he said that they wanted him to be submissive and wanted him to join them. The applicant told the delegate that he attended court and was acquitted and released. When asked if he was charged with any offence, he replied that he was accused of being a terrorist. When asked, the applicant said that he was not given any documentation and he did not see the charges against him. When the delegate further asked him whether he actually attended the court or not, he said that he was in the court but was actually detained within the court and that he did not see the judge or the courtroom.
13. The delegate also put to the applicant that he did not give a reason why he was arrested when he was asked at his entry interview. The applicant then said that he did not know why they arrested him because he did not commit any offence. He also said he had been in detention in Australia for one and a half year at that time and the interviewing officer was very rude to him. He did not know at the beginning why he was arrested and that 'they added accusations' when he was in jail and that they said he was a terrorist. When the delegate asked who made these accusations, he said he did not know because he was blindfolded but he was sure it was the AAH. The applicant confirmed that the main reason for his ordeal was because he stood up for his neighbour.
14. The applicant also claimed at the SHEV interview that the AAH has continued to pursue him after he left Iraq and they went to his family home in Karbala looking for him regularly. He said that his father was kidnapped by them in 2018 and after that the AAH continued to harass his mother. They injured his mother and she lost sight in one eye. When the delegate

asked why the AAH would have kidnapped his father five years after the incident in 2013, the applicant said it was because they were busy earlier due to the war against Daesh.

15. I consider that the applicant's evidence as to the problems he and his family faced from the AAH is overall vague and unconvincing. On one hand he claimed that he was arrested by the police, on the other hand, he claimed that he was blindfolded and questioned by the AAH. He claimed that the main reason for his arrest was because he stood up for the neighbour but he also said that he did not know why he was arrested. He further said that they arrested him because they wanted him to join them. The applicant also provided no persuasive evidence as to his interactions with the court. He said he went to the court and was acquitted by the court and then was released. He also said that although he was in court, he did not actually go into a courtroom or see a judge, he was actually detained within the court. The applicant said he was not given any documentation from the court or the police. His evidence also does not explain why he would be detained for 45 days and then be acquitted and released.
16. The applicant told the delegate that he said at the entry interview that he did not know the reason for his arrest was because he had been in detention for one and a half years and the delegate was rude to him, however this does not explain that he was able to say that he was arrested in May 2013 and detained for 45 days and he was also able to provide other information at that interview, such as, the reasons why he was detained under the Saddam regime in 2000 or 2001, a much earlier period. I have taken into account that the entry interview took place over one year after the applicant's arrival in Australia and was held while he was in detention. I am also mindful that this interview predated the visa application and that the applicant did not have legal assistance at that time. However, given the claimed length of detention and the 'torture' he claimed to have experienced, which is said to have occurred not long before he departed Iraq, I am not persuaded that if it were true, the applicant would not have mentioned the incident that he had stood up for his neighbour and confronted the AAH group, given his late claim that this was the main reason behind his arrest. Notably, at that interview, the applicant, despite naming other militias groups, the Badr group and El Daawa, did not name the AAH. I consider the applicant's evidence at the SHEV interview was evasive and unreliable.
17. The applicant did not claim in the visa application that the AAH wanted to recruit him. He only raised this claim at the SHEV interview when he was asked why he was arrested. His evidence at the SHEV interview in this respect is also extremely vague. I am not satisfied that the AAH attempted to recruit the applicant.
18. I am not satisfied that the applicant or his father confronted the AAH to protect his neighbour. I am not satisfied that the applicant was arrested or detained for 45 days or was otherwise harassed by the AAH or any other militias group. I am not satisfied that the AAH tried to recruit him. I am not satisfied that the applicant faced court or was acquitted. It follows that I do not accept that the AAH continued to harass him following his release, he went to hiding, or they abducted his father and injured his mother while looking for him or his brother was in hiding. I am willing to accept that the applicant was subject to checks at checkpoints, I am however not satisfied that he has ever come to the adverse interest of the AAH, the police, other authorities or any other group while he was in Iraq. I am not satisfied that he was separated from his tribe.
19. Based on the medical evidence provided, I accept that the applicant had [an] injury and underwent surgery in Australia in 2016; however I am not satisfied his injury was caused in the way he claimed. The applicant has not provided recent evidence in respect of his

[condition] after the surgery or any other medical or mental health condition. I am not satisfied that he has ongoing health issues.

20. The applicant identified himself as a Shia Muslim in the visa application. He also claimed that he holds secular views. He claimed that he befriended Sunnis from large tribes and it was also for this reason he was targeted by the militias as he was watched due to his action in defending his neighbour and he was threatened for befriending Sunnis. However, the applicant's evidence in this respect was very vague. At the SHEV interview, when the applicant was asked about his religion, he confirmed that he identified himself as Muslim but he is rather secular. He confirmed that he did not go to mosques regularly and only went to mosques twice while in Australia. The applicant made no reference at the SHEV interview that he befriended Sunnis and was threatened for this reason. There is no suggestion that he has openly expressed his secular views. The applicant does not claim he faced any problem due to his secular views, or Sunni friendships, prior to the claimed incident in 2013 involving his neighbour. I do not accept he was involved in such an incident in early 2013. I am not satisfied that he came to the adverse attention of the AAH or other groups/ extremists in Iraq because of his secular view, Sunni friendships or non-regular religious practice.
21. Nevertheless, I accept that the applicant may hold secular views and does not attend mosques often. I am also willing to accept that he may have Sunni friends. I am not satisfied that the applicant has come to the adverse attention of any one for this reason in the past. The information in the European Asylum Support Office (EASO)'s March 2019 country of origin information report indicates that there has been a rise of secularism amongst Iraq's youth and there are venues where secular ideas are discussed, such as in bookstores, cafes and on Facebook. The information also suggests that secularism can be perceived as atheism and that atheists could be viewed with disdain and face threats. The applicant has not indicated that he has openly discussed his views in the past in Iraq and he provided no evidence that he has done so in Australia, or that he wants to do so in the future, either here or in Iraq. I am not satisfied that the applicant would openly express his secular views if he were return to Iraq, and I am satisfied his not doing so is not due to fear of harm but rather because he does not hold strong views or conviction. There is also an absence of information that having Sunni friends would cause a person to be perceived as an atheist. The applicant did not attend mosque often while he was in Iraq. He faced no problem in the past. In light of this information, I am not satisfied that the applicant faces a real chance of harm for this reason if he were to return to Iraq now or in the reasonably foreseeable future.
22. I am not satisfied that the applicant came to the adverse attention of the AAH or anyone while in Iraq. I am not satisfied that there is a real chance that he faces harm from the AAH or militias group due to his history. I accept that the applicant left Iraq due to general security concerns.
23. Country information before me including the more recent reports from the Department of Foreign Affairs and Trade (DFAT) (October 2018), the UNHCR (May 2019) and the EASO (March 2019) indicates that anti- Shia violence has significantly reduced in Iraq following the defeat of Islamic States (IS) and that only sporadic incidents of violence in Shia dominated areas continued to occur. The occasional attacks in the south were mainly targeted at Shia pilgrims during significant Shia religious festivals and pilgrimages. The applicant has not indicated that he would likely to attend these festivals. While intra-Shia violence does occur in the south, it predominantly affects those who are actively involved in a militia or tribal group. The applicant does not claim he or his family were ever involved in any tribal dispute or any militia groups. Although criminal activities and violence, some related to protests in the south do occur as indicated in the UNHCR report and the EASO report, the information

also suggests that there has been a reinforcement of local security and there was only occasional violence reported, also such a type of violence is also mostly related to Basrah and not Karbala. The applicant has not indicated that he would be interested in attending protests. DFAT also says that Shias face little official or societal discrimination in Shia areas. I am not satisfied that that the applicant faces a real chance of harm due to general or sectarian violence or discrimination if he were to return to Karbala now or in the reasonably foreseeable future.

24. The information before me indicates that the applicant was affected by the Department's data breach in January 2014, when some of his personal information was inadvertently disclosed through a document published on the Department's website for a short period of time. This included his name, date of birth, nationality, gender and detention location. However, the leaked information does not reveal that the applicant has applied for a protection visa in Australia or his claims for protection. Even accepting that that the applicant would be considered for having applied for asylum in Australia, there is lack of information before me to suggest that returnees are imputed with anti-government political opinion or otherwise specifically targeted by the government, militias, criminals or any other groups or persons, because they have applied asylum and stayed for a number of years in a western country including Australia. There is no suggestion that ordinary Iraqis face any difficulty when going through the entry processes on return. DFAT states that the practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. While DFAT notes there are limited employment opportunities in southern Iraq, the applicant has done varied work before and appears to be quite resourceful. DFAT also states that Iraqis who have sought asylum overseas and returned to southern Iraq have done so without significant difficulty. Although the applicant was living in Baghdad before he came to Australia, he had spent most of his years in Karbala while in Iraq. Even when he was living in Baghdad, he obtained his passport and driver licence in Karbala, most recently in 2012 about one year prior to his departure. His family is now living in Karbala and has been for the past several years. I consider that the applicant has strong connections in Karbala, which would help him in assimilating into his communities.
25. On the information before me overall, I am not satisfied that the applicant faces a real chance of any harm. He does not have a well-founded fear of persecution.

Refugee: conclusion

26. 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

27. 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

28. 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.

29. I have found above that the applicant does not face a real chance of any harm, if he were to return to Karbala. As real chance and real risk involve the same threshold, based on the same information discussed above, I am not satisfied that the applicant faces a real risk of any harm including significant harm, if he were to return to Karbala, Iraq, now or in the reasonably foreseeable future.

Complementary protection: conclusion

30. 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.