



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA20/07857

IAA reference: IAA20/07867

IAA reference: IAA20/07864

IAA reference: IAA20/07866

IAA reference: IAA20/07865

Date and time of decision: 5 March 2020 10:51:00

S McNeill, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants (the applicants) are a family of five (husband, wife and three children) and Lebanese nationals. On 29 August 2019 the family lodged a combined application for a Safe Haven Enterprise visa (SHEV application). The third child born on [date] was included as an applicant after the lodgement of the SHEV application. Only the applicant husband (IAA20/07857) has made claims for protection. The applicant wife (IAA20/07864) and three children (IAA20/07865, IAA20/07866 and IAA20/07867) have made no claims for protection but rely on membership of the applicant husband's family unit.
2. On 30 January 2020 a delegate of the Minister of 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.

Applicants' claims for protection

5. The applicant husband's (the applicant) claims from his statutory declaration of 22 August 2017 included with his SHEV application can be summarised as follows:
 - He was born in [year] in [Village 1] village, Lebanon and is an Arab and a Sunni Muslim.
 - He fled Lebanon because of threats received from various political parties with association to Daesh, Lebanon and Syria. They were trying to recruit him to their party because of his army training.
 - His problems first began around April or May 2013. He received a phone call from someone telling him he had to join their political party. They didn't say which party but he understood they were one of the political parties in the area that had joined forces with ISIS. He told them he refused to join.
 - He believes they targeted him because of his military training. He undertook compulsory military training with the Lebanese army from [November] 2003 until [November] 2004. He learned how to use a gun and about ammunition and these were seen as valuable skills by the political parties connected to Daesh/ISIS.
 - The political parties might have one or two thousand members who usually identified people with military training. He believes he was recommended in this way. He remained in the army after his training and received his "reservist card".
 - He was shot at on three separate occasions. Each time he was driving from his fiancée's house in [named town], [number] minutes from his house by [car]. The first time the shots were fired at the top of his car. He did not see who it was but a few minutes later he received a text message on his phone saying "this is a warning". He understood it to be a threat from a political party, if he did not join them they would harm him.

- The second time he was shot at was around four or five days later. On that occasion he received a text message which said “this is the final warning for you.”
- The third time he was shot at occurred around one week later. He believes the shots were intended to kill him. The shots hit the driver’s side window of his car, while he was sitting in the driver’s seat. He continued to drive home. He did not receive a text message that day but when he got home, he was so scared he smashed his phone.
- He began to make arrangements to leave about one week later because he knew it was not safe. Many people were leaving Lebanon at that time including his fiancée’s brother and some of his relatives.
- He married his fiancée [in] June 2013 and they departed Lebanon [later in] June 2013.
- Although he has many brothers none of them received threats like him. It is usual for the political parties to try and recruit one member of each family.
- He fears the same people who were trying to shoot him if he returns to Lebanon. There is nowhere safe in Lebanon. The conflict in the countries that border Lebanon is still ongoing.
- In the past it was just about going to Syria to fight but now they are killing army personnel in Lebanon. He saw on [social media] that just yesterday four people from his hometown were killed by a political party associated with Daesh.
- He is still a member of the army reserves until [2024] and if there is a large conflict with the Lebanese army he will be called up.
- The Lebanese authorities cannot protect him from the political parties or Daesh.

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. The applicant and the applicant wife have provided identity documents that verify they were born in Lebanon and are citizens of Lebanon. They have provided the birth certificate for all three children born in Australia. I accept that Lebanon is the receiving country for the purpose of this review.
 9. While in his statutory declaration the applicant claimed to have been born in [Village 1] village, the majority of information before me indicates he was born in [Village 2] (also spelt [spelling variations]). The applicant participated in an arrival entry interview with the Department on 1 September 2013 soon after arriving in Australia. The applicant stated he was born in [Village 2 variation], Northern Province of Lebanon. In his SHEV application form [Village 2] is recorded. The translation of his Lebanese ID card, Military Reserve card and marriage certificate lists his place of birth as [Village 2 variation], District of Akkar, North of Lebanon governorate. On the information before me, I find that the applicant was born in [Village 2 variation], Akkar, North Lebanon. The applicant wife's entry interview, SHEV application form, ID card and marriage certificate all indicate she was born in [Village 1], Akkar, North Lebanon and I accept that she was. I accept that the applicant and the applicant wife were married in [June] 2013. I accept the applicant and the applicant wife departed Lebanon [later in] June 2013.
 10. The applicant has consistently claimed to be Arabic and a Sunni Muslim and I accept that he is. The applicant has not claimed to fear harm on account of his religion or ethnicity and I have not considered his religion or ethnicity further.
 11. I have carefully considered the applicant's claim that he was targeted by political parties associated with Daesh, Lebanon and Syria for recruitment because of his army training prior to his departure from Lebanon but overall I find these claims to be lacking in credibility. My reasons are as follows:
 - The applicant oral evidence at his SHEV interview presented in a formulaic and simplistic manner, his answers were vague and provided no further substantive details than that already included in his statutory declaration.
 - I find it far-fetched that the applicant would have so little knowledge of the political parties from which he allegedly received threats from. While I accept the applicant is not politically active and has no interest in politics as per his oral evidence given at his SHEV interview on 29 July 2019, I find it unconvincing that he would not be able to provide any information of substance or relevance as to who these political parties represented or their party name. While the applicant in his statutory declaration claimed that he understood one of the political parties had joined forces with ISIS, when this was referred to by the delegate in his interview, the applicant said he had mentioned there were several (parties) but he didn't know who they were connected to and he hadn't mentioned ISIS. I acknowledge he has only a primarily level school education, given he has undertaken his military service and worked in Lebanon, however I do not find it credible the applicant has not attempted to obtain some knowledge of these parties who purportedly harassed him with phone calls, text messages and who then shot at him on three occasions prior to his departing Lebanon or in the six year plus period he has resided in Australia. I note the applicant claimed if he had indicated he was willing to join them during the phone call they would have come and collected him from home or approached him in the street, however, it does

not make sense that the people calling him would not introduce themselves in a way to advise the applicant who he would be joining.

- The applicant's account of events at his SHEV interview also differed from that presented in his SHEV application. In his statutory declaration, the applicant stated around April or May 2013 he received a phone call. He did not otherwise directly claim to receive any more phone calls. The first time he was shot at he received a text message which said "this is a warning", the second time he was shot at he received a text message which said "this is the final warning for you" and on third time he was shot at, he did not receive a text message on that occasion then he smashed his phone. At his SHEV interview, the applicant stated 'they' talked to him many times but found to no avail he did not cooperate with them. After the first time they shot at his car, they called him on his phone. Discussing the second shooting incident, the applicant said the same thing; they shot at him and then called him and told him it was his last warning. The applicant described the third incident. Asked whether he received any messages after, the applicant stated he remembered they either talked to him or sent him a message but he didn't remember which one. Asked what happened after the third shooting and whether he received contact from anyone, the applicant stated they were sending him messages but he wouldn't reply to them. The differences between the two versions, the applicant's written claims and his oral evidence, especially what happened after the third shooting, are not insignificant.
- I also find it unusual despite claiming to fear harm from this political party who on the third time shot at him intending to kill him and as per his oral evidence at his SHEV interview the first bullet broke the glass, he lowered his head, accelerated and was able to speed in front and it was 'God's work', he helped him and saved him, that he would delay his departure and get married. Whilst the applicant claimed these three shootings all happened in a two week period around May 2013 he did not state when the first shooting occurred only that he received a phone call around April or May 2013. The applicant then married [in] June 2013. If the applicant really feared for his life I am not convinced he would make arrangements to marry so as to delay his departure.
- The applicant claimed he had [number] siblings (including stepsiblings). He had many brothers but none of them received the same threats as him. It is usual for the political parties to try and recruit only one member of a family from every home. The applicant's SHEV application lists his [siblings]. He also has [stepbrothers]. County information suggests compulsory military service is mandatory for persons who have obtained the age of 18 years.¹ His brothers and stepbrother were all over the age of 18 in 2013. I would expect the majority of his brothers and stepbrothers would have undertaken their compulsory military service. Asked by the delegate whether anyone else had been caught up in a similar incident, the applicant stated all people who have served in the army are facing these problems not just him. Give this statement by the applicant that all who served in the military would face this problem; I am not convinced the political parties, especially those connected to Daesh or ISIS, would only target one member of each family and his other brothers would not have been targeted.
- The delegate observed there would be many people who had undertaken similar military training as himself and asked why he would be at greater risk of being targeted. The applicant stated he didn't say he was the only one targeted. Asked what characteristics or attributes he had that put him at greater risk, the applicant said in general whoever has done military service they have targeted but many had only done six months of service and he had done 18 months. I note the applicant claimed to have

¹ RRT Research Response Number: LBN31089, Lebanon, 21 December 2006, Refugee Review Tribunal Australia.

undertaken his compulsory military training with the Lebanese army from [November] 2003 until [November] 2004. In his SHEV application employment history the applicant lists compulsory military service – [specified] duties from late 2002 to 2003 and then six months in 2005. It is plausible the applicant has undertaken 18 months of military service. However the applicant only claimed he learned to use a gun and about ammunition. His Military Reserve Card states his rank is that of a ‘recruit’. That he undertook predominantly [specified] duties, learned only about guns and ammunition, and is a mere recruit, I am not persuaded the applicant acquired any specialist skills or knowledge that would make him stand out other than his extended period of service. Country information in the review material indicates the Lebanese Armed Forces (LAF), comprising an army, air force, and navy, consists of 96, 000 active personnel and 20, 000 reserve personnel, the majority serve in the army.² Given the rather large number of both active and reserve personnel and the applicant does not appear to possess any specialist skills I agree with the delegate that the applicant has sought to overstate his military training and embellish or exaggerate his claimed abilities and skills.

- Lastly, according to DFAT an unclear number of Lebanese supporters and opponents of the Syrian government have travelled to Syria to fight in the civil war. While groups such as Hezbollah or the Syrian Socialist Nationalist Party have recruited fighters, DFAT is not aware of any reports that they have done so forcibly. DFAT assesses that those who have done so have been motivated either by ideology or financial considerations.³ The country information does not support the applicant’s claim that he was threatened with death for failing to join the political parties who tried to recruit him. While the applicant claimed yesterday ([in] August 2017) that four people in the army from his hometown were killed by a political party associated with Daesh and he saw it on [social media], the applicant has not provided any corroborative evidence to support this claim.
12. Taking all these concerns into consideration, I do not accept the applicant received a phone call in around April or May 2013 from someone telling him to join their political party because of his military training. I do not accept that three times in May 2013 he was shot at while driving his car from his fiancée’s house and that he received two text messages or numerous telephone calls threatening him. I am not satisfied he fled Lebanon because of threats received from various political parties with association to Daesh, Lebanon and Syria because they wished to recruit him because of his military training. I am of the view the applicant has manufactured this claim in its entirety. I am not satisfied on his return to Lebanon the applicant would be targeted by any political parties associated with Daesh or ISIS, Lebanon or Syria for his failure join them. I am not satisfied he faces a real chance of any harm on account of this claim on his return to Lebanon now or in the reasonably foreseeable future.
13. The applicant claimed that he is still a member of the army reserves and if he returns to Lebanon and there is a large conflict which the Lebanese Army was required to become involved in, he would be called up. He does not finish his service in the reserves until [2024]. The translated copy of the applicant’s Military Reserve card states his reserve end date is [in] 2024. The card’s expiry date is [in] November 2015. While the war in Syria has had a significant impact on Lebanon since it began in mid-2011, and Lebanese supporters and opponents had travelled to Syria to take part in the civil war, and the war has on occasion spilled over in Lebanon and large numbers of refugees have taken refuge in Lebanon;⁴ I consider it highly speculative that Lebanon will be drawn in to a large conflict requiring the

² Department of Foreign Affairs and Trade (DFAT), Country Information Report Lebanon, 19 March 2019, 20190319100208, 5.2-5.3.

³ Ibid 2.47.

⁴ Ibid 2.4.

LAF to become involved now or in the reasonably foreseeable future. Country information notes in relation to the LAF that as a member of a voluntary organisation, an individual is formally entitled to resign from the LAF at any stage with the approval of their commanding officer. DFAT understands that, while this generally occurs without significant obstacle, there have been cases in which it has proven more difficult.⁵

14. The applicant stated at his SHEV interview that he had back problems and required surgery. The applicant has not presented any medical evidence to support this claim but I accept it as plausible the applicant has a back condition. The applicant did not otherwise expand on this claim at his SHEV interview. The applicant has been outside of Lebanon since 2013 over six years ago and his Military Reserve card expired four years ago. I am not satisfied he is still a member of the army reserves in Lebanon. Furthermore taking this into account and that he claims to have medical problems which might impede any military service, and that country information indicates that one is entitled to resign from the LAF and that this generally occurs without significant obstacle, I am not satisfied if he were to return to Lebanon and there was a large conflict he would be required to become involved. I am not satisfied he faces a real chance of any harm on account of this claim.
15. During his SHEV interview the applicant claimed he was asked to take part in a [government program] organised by the Department [details deleted]. People came to his house and interviewed him and his wife; their faces were covered but their voices could be heard. The applicant believed the [program] would be [known] everywhere. The applicant called his wife during the interview to ask if they had [evidence] of [his involvement] but his wife indicated they did not. The applicant stated that if people recognised him [through this program] they will harm him as they will think he is doing something against their interests. The applicant did not provide [details] of this [program] or any other corroborative evidence following his SHEV interview. Given the lack of evidence and that the applicant stated their identities would be concealed, I am not satisfied the applicant faces a real chance of any harm on account of this claim.
16. I am not satisfied the applicant faces a real chance of persecution now or in the reasonable foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

17. 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

18. Under s.36(2)(aa) of the Act, 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.

⁵ Ibid 5.6.

Real risk of significant harm

19. 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.
20. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
21. 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

22. 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).

Member of same family unit

23. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include
24. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.