



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA20/08653

Date and time of decision: 24 September 2020 16:16:00

G Deal, 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 applicant (the applicant) claims to be from Nasiriya, Iraq. [In] May 2013 he arrived by boat in Australia. On 4 July 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (protection visa application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 26 August 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate accepted the applicant's background and that his family had received threats from Asaeb Ahl Al Haq (AAH) in 2011 and 2012, in connection with his uncle's [business] which had worked with the Americans in Iraq. The delegate did not accept the applicant would be in danger because of events related to a personal dispute between his father and a business rival's family. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm, and was not a person in respect of whom Australia had protection obligations.

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 is an Arab Shia from Nasiriyah, Iraq.
 - His ex-wife, and son live in Iraq. His father, stepmother and a handful of adult siblings, including half-siblings, live in Nasiriyah, Iraq. His mother died from natural causes many years ago. After leaving high school he worked in the family [shop] and in other [positions]. He now has a new partner in Australia and his own [business].
 - One of his uncles owned a [company] that worked with American businesses and [at] American bases. In about January 2011 the company received a threatening letter from AAH because of its work with Americans. In March 2011 his aunt's house was intentionally burnt down. His aunt died from injuries she sustained in the fire. The applicant [worked] in the business. In December 2012 his uncle was shot dead while leaving his home. The applicant believes AAH were responsible for his aunt and uncle's deaths. Another uncle received further threats in the post from AAH in February 2013, stating if they did not stop working with the Americans, more family members would be killed. His uncle organised for the applicant to flee Iraq for his safety in about April 2013.
 - In 2014, five of his close friends were abducted by Islamic State of Iraq and the Levant (ISIL) while training for the police force. They were subsequently executed by ISIL and the applicant believes this and his Shia faith may also make him a target for ISIL.
 - After he left Iraq, a business rival of his father's died of a heart attack after a fight with his father. The business rival's family want revenge on his father and the family as they blame

him for the death. The applicant has been told that he risks being the victim of a reprisal attack.

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. Based on the applicant’s evidence, including his documentary evidence, and the consistency of his claims, I accept he is an Arab Shia and Iraqi national from Nasiriyah, Iraq, married in Iraq and has since divorced, and his former wife remains there with their son, who he also worries about, and that his father, stepmother and a number of full and half-siblings continue to live in Nasiriyah, Iraq. I consider if he were to return it would very likely be to Nasiriyah and that Iraq is the receiving country. Based on the consistency of his background information I also accept his education and work history, including that he worked as a [job position] in his uncle’s [business]. The applicant has made claims regarding relocation, although I have not had to consider this issue.
9. The applicant fears harm from militia or the government because he and his family have been threatened and harmed in the past, by the AAH, because they worked with the Americans and this was why he fled Iraq in about April 2013.
10. The applicant has consistently claimed in his arrival interview and visa application that his family received a threat letter from AAH in January 2011¹, his aunt’s house was burned down in March 2011 and she passed away from her injuries, her husband was shot and killed in December 2012 and they received another threat letter from AAH in February 2013. Based on the consistency of

¹ While I was only able to listen to part of the recording of the arrival interview because, as advised by the Department, a full recording was unavailable, I have also had regard to a written record of the full interview.

the claim and given the applicant was able to spontaneously elaborate in some respects in the visa interview, for example, stating that the threat letter received by his uncle contained a bullet, and country information² which indicates the AAH attacked international and un-Islamic businesses at around that time, I accept the applicant's uncle had a [business] that received threat letters from the AAH and that the applicant's aunt died from injuries sustained in a housefire and his uncle was shot and died some 19 months after his aunt's death.

11. In his visa application the applicant said that they did not report his aunt's death to the police because they were "helpless to assist in situations" like that but they did seek the assistance of the Italian army forces who treated her injuries, but she did not survive. He said that his uncle, who was married to that aunt and worked in the family [business], was then shot and killed while leaving his home in December 2012. The police were notified of the shooting by the hospital, but he is unaware of any investigation taking place. The applicant has consistently claimed he believes AAH were responsible for the deaths. His visa application did not detail why he believed this, although, it states it is only a summary of his claims and that he would provide more detail at interview. However, when asked in the visa interview why he thought the AAH were responsible the applicant only said that his uncle knew the threat letter was from the AAH and they were the only militia operating in the area at that time. I note country information before me³ also indicates Iraq was subject to increased generalised violence around that time with a spike in sectarian violence after the withdrawal of the United States at the end of 2011. While the applicant said in the visa interview that he could not recall the details, because it had been some seven years, he said they only received the two threat letters. The applicant said he personally did not receive any threats but that given his uncle was killed his other uncle feared for the applicant's (and his cousins') safety and so helped them flee Iraq after these events. I note aspects of the applicant's claims appear confused; he stated in his arrival interview and visa application that he worked for his uncle from 2012 to 2013, however, in his statement of claims accompanying his visa application the applicant said that he was working for his uncle in January 2011 when they received the first threat letter from the AAH. It also appears the applicant only worked for the business for a year. I also note the gaps between his aunt and uncle's deaths as well as between the receipt of the first and the second threat letters. While the applicant vaguely indicated in the visa interview that his family still faced issues in Iraq and that the situation was "very bad", members of the family, including his other uncle who had owned the business, father and siblings remained in Iraq after these incidents, and the applicant has not particularised any incidents of them being abducted, detained or harmed by the AAH or anyone else in connection with these events. The applicant was not harmed in the years that he lived in Iraq after receipt of the first threat by the family business in 2011. I also note the country information before me⁴ indicates that the AAH was active from 2006, became particularly violent and active in late 2011, and that it sometimes still engages in violence. However, it is also reported that AAH took a more peaceful turn within Iraq as it sought to legitimise itself and enter politics in or around 2012, and was largely engaged in fighting ISIL when the insurgency re-emerged in 2013 and the government called on its assistance. On the evidence I consider the claim the AAH were responsible for his aunt and uncle's deaths speculative and I do not accept it, or that the applicant was targeted or wanted by the AAH or anyone else on account of his connection with the family business or otherwise when he left Iraq in 2013.

² Musings on Iraq, 'Asaib Ahl Al-Haq From A Breakaway Sadr Militia To Defenders Of Iraq', 30 December 2014, CX1B9ECAB11355; Department of Foreign Affairs and Trade (DFAT) 'DFAT Country Information Report Iraq (PDF), 17 August 2020', 20200817105936.

³ DFAT, 'DFAT Country Information Report Iraq (PDF), 17 August 2020', 20200817105936.

⁴ Musings on Iraq, 'Asaib Ahl Al-Haq From A Breakaway Sadr Militia To Defenders Of Iraq', 30 December 2014, CX1B9ECAB11355.

12. DFAT⁵ reports that Iraqis who work with the international community in Iraq take substantial measures to mitigate any risks they face, but that they are likely to face strong societal hostility which may include violence or a threat of violence. The security situation in Iraq is described as highly unstable and fluid. While militarily defeated in 2017 ISIL (also known as Da'esh) remains a major perpetrator of abuses and atrocities, and this is particularly evident in areas outside the south. The Popular Mobilisation Forces (PMF) are a state-sponsored umbrella military organisation comprising mostly Shia militia groups. There are reportedly rogue elements within the PMF, some groups are aligned with Iran, and they are perceived by some to be essentially Iranian occupation forces. When tensions more recently increased between Iran and the United States it is reported that some Shia militia leaders vowed to target and kill Iraqis who cooperated with foreign forces, although DFAT reports it is not aware of this threat being acted upon. Elements within the PMF have been accused of killing or harming certain high-profile people, including activists, demonstrators and high-profile women. While it occurs occasionally, sectarian violence between Sunni and Shia has reportedly reduced substantially since the mid to late 2000s. The government and those working with them have also reportedly responded strongly, and at times violently, to more recent large-scale protests in major cities, including in the south where the large majority of protestors are made up of millennials under 30.⁶ I do not accept the applicant was wanted by the AAH or anyone else when he left Iraq in 2013. It has now been many years since the events in Iraq concerning his uncle's business. There is no credible evidence to indicate his family is currently targeted whether by militia or the government or anyone else in this regard. The evidence does not indicate he is politically active. Based on the country information before me and the applicant's profile I am not satisfied the applicant faces a real chance of harm on account his and his family's past experiences in Iraq.
13. The applicant claims to fear harm from ISIL or other Sunni militia as a Shia and because five of his close friends were executed by ISIL while training with the police in 2014, which may also make him a target. I note while the claim was mentioned in his visa application in the context of claims regarding relocation, the applicant did not mention this claim in his visa interview, despite opportunities. DFAT⁷ reports that the ISIL insurgency re-emerged in 2013 when the security forces were sent to recapture part of Iraq from them, and that ISIL occupied large parts of Iraq in 2014 when the group committed numerous atrocities, including mass murder. I am willing to accept the applicant may have known people who, as part of Iraq's security forces, were killed by ISIL in 2014. I note the applicant was not in Iraq at the time of the claimed abductions or murders. Other than the applicant's assertion, there is nothing before me to suggest ISIL (otherwise known as Da'esh) would be aware of the applicant's connections to these people which I consider, on the evidence, to be highly improbable. DFAT reports that the Iraqi government subsequently militarily defeated Da'esh in December 2017, although they reportedly continue to pose a security threat within Iraq, particularly in Anbar, Baghdad, Diyala, Kirkuk, Ninewah and Salah al-Din Governments (outside the south). As detailed above I consider if the applicant were to return it would very likely be to Nasiriyah in the south of Iraq. Based on the country information detailed above and the applicant's profile I am not satisfied the applicant faces a real chance of harm at the hands of Da'esh or other Sunni militia on account of his faith, past friendships with victims or otherwise.
14. The applicant claims to fear he will be the victim of a reprisal attack in connection with a personal dispute between his father and a business rival's family. Other than its mention in his visa application in 2017 the applicant has not elaborated on this claim, and did not mention it in the

⁵ DFAT, 'DFAT Country Information Report Iraq (PDF), 17 August 2020' 17 August 2020, 20200817105936.

⁶ Maria Fantappie, International Crisis Group (ICG), 'Widespread Protests Point to Iraq's Cycle of Social Crisis', 10 October 2019, 20191105112041.

⁷ DFAT, 'DFAT Country Information Report Iraq (PDF), 17 August 2020' 17 August 2020, 20200817105936.

visa interview, despite opportunities. I also note the applicant's father, his stepmother and siblings continue to reside in Nasiriyah, and other than vaguely mentioning things were bad in Iraq when asked how his family were in the visa interview, he has not said they have since come to harm in connection with this dispute in the last three years. I also note the applicant had not been in Iraq for several years at the time of the claimed dispute. While I am willing to accept his father may have had a personal dispute with a former business rival and his family, I do not accept this posed as serious a threat as claimed or that it is an ongoing issue and I am not satisfied the applicant faces a real chance of harm on account of it.

15. While the applicant has not claimed a fear of harm on account of being a failed asylum seeker, I note that the applicant would be returning after having sought asylum in Australia. DFAT⁸ reports that it is well accepted among Iraqis that many return when conditions permit, after having sought asylum, and that there is considerable evidence Iraqis granted protection often return to Iraq, sometimes only months after securing residency abroad. Upon arrival all passengers have their identity information recorded and a returnee will reportedly only be arrested if they have committed a criminal offence and there is a warrant for their arrest. Those not in possession of a passport must apply for a *laissez passer* at an Iraqi embassy or consulate abroad. Upon arrival border officials will check the details of a *laissez passer*. *Laissez passers* are reportedly common and those returning on them are not questioned about how they exited Iraq or about documentation. While integration into new communities can be complicated, DFAT reports it has limited evidence that returnees face difficulties assimilating back into their communities on their return. I do not accept the applicant was wanted by AAH or anyone else when he left Iraq or that has a profile of adverse interest to the authorities or anyone else in Iraq. He left Iraq legally. I consider he would very likely return to Nasiriya where he is from and has family. The applicant has said he no longer has his original passport and I consider he may have to obtain a *laissez passer* to re-enter Iraq, although there is nothing before me to suggest he would be unable to do so. Details of this are very likely to be routinely checked at the airport on his return. Based on the country information detailed above and the applicant's profile I am not satisfied the applicant faces a real chance of harm as a returnee who sought asylum in Australia.

16. Overall, I am not satisfied the applicant has a well-founded fear of persecution as a Shia from the south, whether because of his or his family's experiences in Iraq or because he sought asylum in Australia.

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. 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.

⁸ DFAT, 'DFAT Country Information Report Iraq (PDF), 17 August 2020', 20200817105936.

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. In considering the applicant's refugee status, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Iraq for the reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

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).

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.