



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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BANGLADESH  
IAA reference: IAA21/08866

Date and time of decision: 26 February 2021 10:24:00  
I Sheck, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) is a Bangladeshi national born in Comilla district. He departed Bangladesh in July 2013 and arrived in Australia [in] August 2013. On 7 September 2017 he lodged an application for a protection visa (PV).
2. On 2 February 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate accepted that the applicant and his family were grass roots supporters of the Bangladesh National Party (BNP). The delegate did not accept that the applicant was of any adverse interest to members or supporters of the Bangladesh Awami League (AL) or the Bangladeshi authorities. The delegate concluded that the applicant would not face a real chance of harm in Bangladesh due to any real or imputed political opinion, due to his illegal departure or for any other reason.

### 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). No further information has been obtained or received.

### Applicant's claims for protection

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4. After his arrival in Australia the applicant was interviewed by officers of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 31 August 2013 and 22 November 2014. Together with his PV application lodged on 7 September 2017 he provided a statement of claims. The applicant attended interviews ("the PV interviews") with the delegate on 3 September 2020, 11 September 2020 and 23 November 2020. The applicant claims:
  - If he is returned to Bangladesh he will be harmed due to his political opinion. He and his family were supporters of the BNP. They had an ongoing conflict with the local head of the AL who threatened the applicant with death.

### Factual findings

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5. Based on the information consistently provided in his application, documents and oral evidence, I accept that the applicant's background is as follows: he was born on [Date] in [a] village, Comilla district. He is a Bangladeshi national. He is of Bengali ethnicity and Sunni Muslim faith. He is the eldest of six siblings: two brothers and three sisters. The applicant completed primary and some secondary education, completing his schooling in [Year]. The applicant assisted his father on the rice paddy that he owned. The applicant has not worked since arriving in Australia.
6. The applicant has consistently stated that he fears being harmed in Bangladesh due to his political opinion. In his interview of 22 November 2014 he answered no to the question "Have you or any members of your family been associated or involved with any political group or organisation?". Later in that interview he stated that he and his family supported "BNP, but because we have to support one or the other"; the other party being the AL. In his statement of claims the applicant notes that he is "a supporter of the BNP but I do not strongly support any political party in Bangladesh" and that his family "are nominal supporters of BNP, however they

were never actively involved with the party and they did not have strong political views.” The applicant has not stated that his own political activities and views differed from that of his family and I conclude that they did not. I accept that the applicant is a nominal supporter of the BNP party but has never been a member of that political party and was in no way politically active in Bangladesh. The applicant told the delegate that the BNP was the most popular of the political parties in his village but this may not be the case today.

7. Turning then to the harm that the applicant claims to have suffered, in his 2014 interview he stated that “5 years ago” some of the AL supporters told him that they would kill him. “Because they don’t like us as we are opposition to them”. In his statement of claims the applicant stated that five years before his departure from Bangladesh he was the captain of a [Sport 1] team which won the finals in their area. A supporter of the losing team, one [Mr A], was an AL supporter and unhappy at his team’s loss. “[Mr A] said to me that he would see me later. I interpreted this as a threat to my life.” The applicant reports no harm from [Mr A] or any other AL supporters, following this apparent threat, for some four years. As noted above, the applicant participated in three telephone interviews with the delegate in late 2020. The first and second were cut short due to technical problems. In relation to the events of 2008 or 2009, the applicant did not repeat any of the claims as set out above in any of the PV interviews. It also transpired that “[Mr A]” was the name of the agent who organised the applicant’s travel to Australia; the applicant clarified that the correct name of the AL supporter who he feared was “[Mr AA]”.
8. In his statement of claims the applicant also states that around one year before departure (2012) he intended to open a business but was extorted by members of the AL who required payment before he would be allowed to open a shop. The applicant did not pay them but instead reported the attempted extortion to the police. The following day these men came and severely beat him, causing damage to his [Body part 1] and a broken [Body part 2]. Due to his injuries the applicant was hospitalised for 17 days. During this period the men also went to the applicant’s family home, destroyed it and beat his family members. The delegate raised this claimed event with the applicant at the first PV interview and he advised that he was planning to open a [workshop] in [a nearby town]. When asked what happened next the applicant stated that he had already said this four times. He provided no information on the claimed beating and extended hospitalisation during any of the three PV interviews.
9. There was some variation to the applicant’s claims that [Mr AA] threatened him and/or his family in the first PV interview, however it was clear from the audio recording that there were some communication difficulties and the applicant at one point complained about the interpreter. I am consequently placing little weight on information given at that interview. In the second PV interview the applicant claimed that [Mr AA] and his cronies came to the applicant’s father one day while he was farming and demanded money: 80,000 Taka. The applicant’s father asked why [should he pay them] and they pushed him over. The following day the applicant was participating in a [Sport 2] match and [Mr AA] organised for some of the other players to pick a fight with the applicant and they hit him. His father complained to the local council chairman and party member, he also made a complaint to the police. The day after the complaint, [Mr AA] and his cronies came to the house and smashed it up. The second PV interview ended at that point as the interpreter could not be reconnected to the call.
10. At the commencement of the third and final PV interview the delegate asked when the event above had happened and the applicant responded that it was “nearly one year before my departure. It was in 2011”. This is not consistent with the applicant’s actual departure in July 2013. The applicant also stated that [Mr A] asked where he and his brother were and threatened to kill them. They were in the paddy fields at the time. The delegate asked the applicant if he was harmed in the year between this event and his departure and the applicant responded that

“they always planned to kill me but I was hiding so they couldn’t find me.” The delegate pointed out that he was living at home in this period and the applicant responded that he was not: he went to live with his auntie in a neighbouring village. This statement is at odds with his views as expressed in his statement of claims that he would not be able to relocate if returned to Bangladesh: “in our culture it is unthinkable for us to leave our land. I could not live away from my family in Bangladesh and go somewhere else.”

11. There has been considerable variation in the applicant’s claims in his various interviews and in his statement of claims, which cause concern as to the accuracy of his narrative. He has stated that the initial extortion started with himself and that it was with his father. He stated that he was threatened with death after a [Sport 1] match in 2008 or due to his political views in 2009. There does not appear to be any reason why [Mr A] would single out the applicant for death as the applicant claims, or why he would then take no action on his threats for a further three or four years. The applicant did not mention at any point prior to late in his third PV interview that he had been in hiding in a neighbouring village for the year prior to his departure. Indeed, he had at all times before that positively stated that he lived in his [village] until shortly before his departure from Bangladesh. The applicant has sought to link the ongoing harassment and death threats with his family’s nominal support of the BNP but has also stated that the majority of his villagers similarly supported the BNP, so there is no logic to the claimed targeting of his family. Taking all of these points into account, I do not accept the applicant’s claims to have been harmed or threatened in any way prior to his departure from Bangladesh. I do not accept he went into hiding for a year. I do not accept that he or his family were targeted by one “[Mr A]” or “[Mr AA]” due to their support of the BNP or for any other reason. I find that the applicant was and is of no interest to members or supporters of the AL.
12. The applicant has also claimed that his sister [Ms B] was raped and subsequently hanged herself. There has again been some variation about when this occurred (either 2011 or 2012). The applicant stated during one of the PV interviews that [Mr AA] had asked for her hand in marriage but his father refused, so he and his men kidnapped and assaulted her for five days. Country information confirms that despite legal prohibitions, rape, sexual harassment and other forms of gender-based violence against women occur frequently.<sup>1</sup> Despite my concerns as to the accuracy of the applicant’s evidence, I am prepared to accept that one of his sisters was harmed as claimed and committed suicide as a result. I do not accept that this was part of a campaign of harassment against the applicant or his family or had anything to do with the applicant.

## Refugee assessment

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13. 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.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report Bangladesh, 22 August 2019, 2019082213243842; 3.119

## Well-founded fear of persecution

14. 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.

15. The applicant is a Bangladeshi national; it follows that Bangladesh is his receiving country. The applicant is not a member of and has never undertaken any activities for the BNP. I have accepted that the applicant is a nominal supporter of the BNP. Country information indicates that Bangladesh is prone to high levels of politically motivated violence, which manifests regularly in the form of violent clashes between supporters of different factions of the same party (intra-party violence), supporters of rival parties (inter-party violence), and between party supporters and law enforcement agencies. Fatalities and serious injuries resulting from these clashes are common. Politically motivated violence tends to peak during periods of heightened political unrest, including during elections, strikes, and blockades.<sup>2</sup> I have not accepted the applicant's claims that he was threatened, assaulted or persecuted by AL members or supporters in 2008, 2009, 2011 or 2012. I have not accepted that he has encountered any harm in the past due to his political views. I have not accepted that the applicant went into hiding for a year to escape persecution from members of the AL. I have found that the applicant was and is of no interest to AL activists, members or supporters.

16. Country information indicates that over recent years intra-party violence between AL factions has been the most common form of politically motivated violence largely due to the party's complete control over state institutions. Competition between rival factions and candidates for lucrative contracts, tenders and appointments to senior party positions, has superseded ideological differences.<sup>3</sup> The applicant has at no point claimed to have been involved with the AL. The country information does not support the conclusion that the applicant would face a real chance of harm from politically motivated violence in his home area of Comilla district. I conclude that the applicant does not have a well-founded fear of persecution on the basis of any actual or imputed political opinion.

17. Although not raised by the applicant, the delegate considered whether he faced any chance of harm as a returning failed asylum seeker or due to having departed illegally. I accept from his evidence that the applicant departed Bangladesh without a passport, which country information indicates may amount to an offence under the *Emigration Ordinance Act (1982)* (EO Act).<sup>4</sup> There

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<sup>2</sup> DFAT Country Information Report Bangladesh, 22 August 2019, 2019082213243842; 3.92

<sup>3</sup> Ibid; 3.94

<sup>4</sup> DFAT Country Information Report Bangladesh, 22 August 2019, 2019082213243842; 5.25

is no information in any of the material before me to support that the Bangladeshi authorities enforce the EO Act against returning Bangladeshi asylum seekers who left without a passport. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh due to having departed illegally.

18. The International Organization for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Bangladesh government, Bangladesh accepts both voluntary and involuntary returnees.<sup>5</sup> There is nothing in the material before me indicating any mistreatment of returnee asylum seekers. DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.<sup>6</sup> I am not satisfied that the applicant faces a real chance of any harm in Bangladesh on the basis of having made an application for asylum in Australia.

### **Refugee: conclusion**

19. 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**

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20. 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**

21. 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.
22. 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.
23. I have concluded above that the applicant does not face a real chance of harm on the basis of any actual or imputed political opinion, because he departed Bangladesh illegally or because he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same

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<sup>5</sup> International Organization for Migration, "Bangladesh", 1 August 2014, CIS29397

<sup>6</sup> DFAT Country Information Report Bangladesh, 22 August 2019, 2019082213243842; 5.30

standard,<sup>7</sup> I am equally not satisfied that the applicant faces a real risk of significant harm on return for the purposes of s.36(2)(aa) for these reasons.

**Complementary protection: conclusion**

24. 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**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

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<sup>7</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
  - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
  - (c) for the purpose of intimidating or coercing the person or a third person; or
  - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
  - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

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

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



...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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- (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.