



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09648

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Date and time of decision: 6 September 2021 16:42:00
M Anderton, 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 applicants, Pakistani citizens, are a family group, father and two young children. Applicant 1 arrived in Australia by boat in August 2013. Applicants 2 and 3 were born in Australia.
2. On 16 August 2017 applicant 1 lodged a safe haven enterprise visa. The children were joined to the application after they were born. The claims revolved around fear of harm from police and cousins. Due to a 2004 engagement family dispute, applicant 1 was wrongly accused of the murder of a cousin [Mr A] in 2011.
3. On 6 August 2021 the delegate the Minister for Immigration refused the visas. The delegate did not accept that the applicant had been accused of murder or that he had outstanding charges against him or that he or his family were hiding from his cousins and as such did not consider applicant 1 faced real chance of harm or was owed complementary protection obligations.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. I have obtained country information about the Pakistan citizenship for children born overseas to Pakistan citizens.¹ It is publicly available and relevant to confirm that the children's citizenship is Pakistani. I note other than identity findings, the delegate made no other findings about the children, including their citizenship. I consider there are exceptional circumstances to consider the information.

Applicants' claims for protection

6. The applicants are a family group- father and his two children. Applicant 1 (the father) made his own claims, but there were no claims in respect of the children.
7. The applicant married [a Country 1] citizen in 2018 in Australia. However, she has not been included in this application. It appeared from the file that she had applied for a [temporary] visa.
8. Applicant 1's claims can be summarised as follows:
 - He is Sunni Muslim born in Lahore. He owned a [farm] and worked on it from 2005 to 2012 and he most recently worked as a merchant.
 - He fears harm from the police and cousin [Mr A]'s family because of his imputed criminal involvement, status as a fugitive and being pursued by family members who have made death threats against him.
 - In 2004 the applicant's brother [Mr B] was engaged to a cousin [Ms C] for three years, but the engagement was broken off by [Ms C]'s family. The applicant's family visited

¹ [Directorate General of Immigration & Passports, Ministry of Interior, Government of Pakistan \(dgip.gov.pk\)](http://dgip.gov.pk)

[Mr B]'s home 2 or 3 times to try to make the marriage proceed. However, within 2 or 3 months of the engagement breakdown, [Ms C]'s family arranged her marriage to someone else. This was insulting to the applicant's family, so they stopped all contact with them.

- Four and half years later in 2011, [Ms C]'s brother, [Mr A], was murdered at a [location]. The applicant found out about it 3 or 4 hours later from witnesses who told what they saw to [Mr A]'s family and police.
- The applicant found out from relatives later that day that he and his brother [Mr B] had been charged with murder. His mum's cousin's sons, [Mr D] and [Mr E] were also charged as they lived in [Location 1] so could have been near the murder site. [Mr A]'s family blamed the applicant and his brother because of the engagement break up and as they had no other enemies. They assumed [Mr A] was killed in revenge. The applicant's brother, [Mr B] had an alibi at the time of the murder.
- To avoid wrongful imprisonment by police, the applicant was forced to flee, and he went immediately with his parents and [siblings] to Lahore. They rented a house in [Location 2], but could not spend much time outside for fear of being recognised. They kept their location secret from the maternal side relatives. Sometimes he travelled to his father's side of the family for a break in the monotony. After 5 or 6 months in [Location 2], they moved again because they feared a lot of family members had learned where they lived, and the news could spread. So, they rented a house in [Location 3] (also referred to as [alternative spelling]) where the applicant stayed for 7 or 8 months until he departed Pakistan (October 2012). In his protection interview the applicant said he lived at [Location 3] for year and then departed Pakistan.
- [Mr D] was caught and spent 2 years in jail. (In the protection interview the applicant said it was [Mr E] who was caught and jailed.) The judge later said he should not have been charged. There was still an active case against the rest of them. [Mr E] had run away for a few years but went back and handed himself in to the police, but they said the crime was not his fault. He is still in hiding though because he feared revenge from [Mr A]'s brothers.
- [Mr A]'s family paid the police and told them who they thought were responsible and the police pursued without any real investigation. The First Information Report (FIR) dated 2 March 2011 details a case as told to police by [Mr A]'s family and is full of lies.
- While in hiding, the applicant's family heard through distant relatives that [Mr A]'s brothers had threatened to kill the applicant on many occasions and that they still wanted to find the applicant. If [Mr A]'s family knew where the applicant's family were, they would have paid the police to arrest them. So anywhere in Pakistan is dangerous.
- Since arriving in Australia, the applicant heard through relatives that [Mr A]'s brothers are still seeking revenge. His parents say it is still unsafe to return. His brother [Mr B], cousins [Mr D] and [Mr E] are in hiding in Pakistan and cannot live a normal life.

If he returns to Pakistan he will be subjected to beatings, detention convicted of a crime he did not commit. He will be picked up at the airport, investigated and his charges discovered. He could be jailed at the request of [Mr A]'s brothers or delivered to them to be killed. He fears harm from the police and [Mr A]'s brothers.

Well-founded fear of persecution

9. 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.
10. Based on his identity documents, I accept applicant 1 is a Pakistan citizen. Applicants 2 and 3 are his children born in Australia as evidenced by their birth certificates. I note the Directorate General of Immigration and passports for Pakistan Ministry of Interior information states that children born of Pakistanis who are born outside Pakistan *are* citizens by descent. I find the receiving country is Pakistan.
11. I accept applicant 1 is a Sunni Muslim from Lahore. There were no claims made on the basis of religion.
12. Applicant 1's claims revolved around fear of harm from his cousins' family and the police as he had been accused of the murder of his cousin [Mr A]. Applicant 1 claimed in 2004 his brother was engaged to their cousin, [Ms C], but in 2007, three years later [Ms C]'s family cancelled the marriage plans and she was married to someone else. The applicant's family were insulted, and the families have not spoken since. Applicant 1 claimed when [Ms C]'s brother, [Mr A] was murdered in 2011, the applicant's brother, the applicant and the mother's cousin's sons, [Mr D] and [Mr E], were accused of the murder. This was because [Mr D] and [Mr E] lived in the same village as [Mr A] and because of the engagement dispute between the applicant's family and [Mr A]'s family.
13. However, the applicant's account was vague, lacked details and varied throughout the application and lacked credibility.
14. For instance, in his arrival interview the applicant claimed [Mr A] was murdered within a year of engagement break up. However, in his application, the murder occurred 4 years after the engagement break up. I am mindful of the observations in MZZJO about reliance on arrival interviews. However, the interview was nearly an hour long and many months after his arrival. The applicant told the delegate that he may not have remembered it correctly as it was a long time ago, but what he said was the truth. While I acknowledge that particularly with the effluxion of time accounts may vary, I find it difficult to believe that the applicant would make such a significant error in the timing of the key event. Further, it was not merely a mistake about the particular date or year, but about the timing of the event. I note in the

arrival interview that the applicant referenced the murder to within a year of engagement breakup, which is very different to the specific year dates in his statement and referencing. (2004 engaged, 3 year later break up, 2011 murder). I note he also stated that there was some time between the engagement end and the murder.

15. Further, the applicant's protection interview account differed from his statement about whether it was [Mr D] or [Mr E] who was caught and jailed. The applicant said it was a mistake in his statement and it was [Mr E] who was caught and jailed. I note the RACS statement note that there may be errors or omission in the statement due to limited time to prepare of three hours. However, the applicant's claims were not lengthy or complicated. Further, I note the statement was read back to him with an interpreter and he confirmed he agreed with its contents. Even accounting for the [Mr D] and [Ms E] mistake, other parts of the applicant's claims also varied.
16. The applicant's hiding claims also varied. According to his statement, the applicant went into hiding with his family at rented houses in [Location 2] for 5 or 6 months and then to [Location 3] for 7 or 8 months. However, in the protection interview the applicant said he went into hiding with the family at [Location 3] for a year and then departed Pakistan. The applicant explained this was due to memory lapses as it was a long time ago and they stayed in [Location 2] at his maternal uncle's place.
17. While I acknowledge some mistakes may be made, I find it difficult to believe that he would not recall the two places that he went into hiding before he left Pakistan.
18. Further, I consider the applicant's explanation that [Location 2] was at his maternal uncle's place did not match up with statement claims that they rented a house at [Location 2] (paragraph 18). I find it difficult to believe that he would say the family rented a house, if in fact they had stayed at a relative's house. Further, in his protection interview he had claimed they stayed at the maternal uncle's place for a few days and then rented a house at [Location 3]. However, his statement referred to staying at [Location 2] for 5 or 6 months, not a few days. I consider his protection interview hiding account differed in where he was in hiding. Further, his statement that they kept the [Location 2] location secret from his mother's side of the family is at odds with his protection interview explanation that they stayed at a maternal uncle's house there. I consider his explanation for the different account was at further odds with his statement. Having listened to the interview and explanations, I do not accept that memory lapses explains the varied accounts, rather I consider the difficulties were because he was not recounting a lived event.
19. Further, I find it difficult to believe that the whole family would go into hiding only a few kilometres (applicant's evidence at protection interview) from where they lived. Further, the applicant's explanations that they also stayed at a maternal uncle's house initially is difficult to believe if they wanted to hide from cousins who were on the maternal side and kept their location secret. It is not credible that he (and the whole family) was in hiding from March 2011 to November 2012 just a few kilometres away from their home.
20. Further, the applicant's account of how and when he knew he about the murder and murder accusation and FIR lacked details and was repetitive. Having listened to the interview I consider the applicant was evasive in his responses, not always answering the questions asked and repetitive. For instance, the delegate spent some time asking the applicant about the timing of the FIR. Initially the response was they took the body to hospital, a report is written and then the body returned home, and they found out from a phone call immediately after [Mr A] was murdered. The delegate asked again about the FIR, the applicant repeated

they heard they were being accused of murder. The delegate asked when the FIR report was given to him. The applicant said when [Mr A] was murdered, they found out straight away by telephone, but the report was a couple of hours after that. The delegate asked if the applicant received a copy of the FIR. The applicant's response was again evasive indicating they found out from they were being accused of murder. The delegate asked again if the applicant had seen the FIR and finally the applicant said he did not see it, but they were told about it.

21. The applicant's account of how he found out about the murder lacked details despite the delegate providing him with opportunities. The applicant said they received calls. When asked to explain how they found out they were accused of murder, the applicant was evasive saying they and others were surprised that they were accused. When asked for more details of whom, he said they got the information from his cousins and relatives.
22. Further, it is not credible that the cousins' family would accuse the applicant of a revenge attack 4 years after the brother's failed engagement. Further, it is not credible that the applicant and his whole family would go into hiding. Going into hiding would further implicate them rather than exonerate them. Further, the applicant's account that [Mr D] or [Mr E] was jailed and released with a judge saying he was wrongly accused lacked credibility. I note also that the applicant's account of how long the detention was varied from 2 years (statement) to 5 years (protection interview).
23. The applicant's account of the FIR report was also problematic. According to his statement the FIR was dated 2 March 2011 and he obtained a copy of it in Urdu and an English translation by the police department after he arrived in Australia. However, none was provided. Further, as noted above, the applicant's account of the timing of the FIR was evasive and he had said he had not seen it.
24. Further, I find it difficult to believe that he would be able to obtain a passport and depart Pakistan without difficulty if he were subject to outstanding murder charges. Country information in the review material indicates that the Exit Control List (ECL) prohibits citizens from departing Pakistan if they are wanted for crimes or facing charges. The applicant said anything is possible. However, the applicant departed without difficulty, made no claim of bribery either. I find the applicant's explanation unconvincing.
25. I consider the applicant's account was unconvincing and poor and lacked credibility. His account varied and his explanations for that were further at odds with his claims. I do not consider applicant 1 is a credible witness. I do not accept applicant 1 was accused of murder or threatened by his cousins or their family or anyone. I do not accept that a FIR or any murder charges were made against applicant 1. I do not accept that applicant 1's cousin was murdered. I do not accept that applicant 1 was or is suspected of any offence or had any outstanding charges. I do not accept he was a fugitive, imputed with criminal involvement or being pursued by family members or that family members made death threats against him. Even if there was an engagement break up for his brother, I do not accept the police, authorities or the cousins or their family threatened or were interested in any of the applicants or family for any reason.
26. There were no specific claims made in respect of the children. While I note they were born in Australia, I find they will have the support of their father upon return. I am not satisfied on the evidence that the children face a real chance of harm upon return from anyone for any reason.

Failed asylum seeker

27. While applicant 1 made no claims of harm as a failed asylum seeker subject to the immigration data breach in 2014, I note the delegate assessed it. I note in 2014 the Department of Immigration website published information (name, dob, gender, nationality and detention) of persons held in detention. There is no information to suggest that Pakistan authorities accessed the information or that even if accessed that the applicant faces a real chance of harm upon return. The applicant's claims were not disclosed, and he has not claimed to be anti-government or to fear any harm on that basis.
28. Further, the applicant departed Pakistan on his own genuine passport without difficulty and I find he departed legally and was not of interest to authorities or anyone. Further the country information indicates that returnees or failed asylum seekers reintegrated into the community without repercussions of their migration attempt or having lived in a western country. There are many thousands who depart and return to Pakistan, including from western countries. While I note country information that those returned involuntarily or on emergency travel documents may be questioned, if their exit was legal they are released. I note people who are suspected of criminal offences are likely to face questioning also. However, I have not accepted that the applicant was accused or suspected of any criminal offence and I have found that the applicant departed Pakistan legally.
29. I do not accept that the applicant 1 faces a real chance of harm from the authorities or anyone upon return as a failed asylum seeker, returnee from the west, subject to the immigration data breach.
30. I have had regard to all of the evidence before me including the totality of the personal circumstances and characteristics of the applicants. I am not satisfied that any of the applicants have a well-founded fear of persecution from anyone for reason or combination of reasons in s.5J(1)(a), now or in the reasonably foreseeable future, if returned to Pakistan.

Refugee: conclusion

31. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

32. 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.

Real risk of significant harm

33. 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.

34. 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.
35. I have found that none of the applicants have a real chance of harm on any of the bases claimed. For the same reason and applying the authority in *MIAC v SZQRB* [2013] FCAFC 33, I am not satisfied the applicants will face a real risk of any harm, including significant harm on any of those bases if removed to Pakistan.

Complementary protection: conclusion

36. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

37. 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 dependent children.
38. 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.