



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA16/00124

Date and time of decision: 03 March 2016 13:15:32
Matthew Tubridy, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Pakistan. [In] August 2015 he lodged an application for a Temporary Protection (Subclass 785) visa. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] February 2016.
2. The delegate found that the applicant was a citizen of Pakistan and a Shia Hazara originating from the Pakistan city of Quetta. The delegate accepted that the applicant was present at [Location 1] in Quetta in [2011] when it was attacked by a militant group. He did not accept that the applicant was attacked by unknown gunmen outside his family home [in] October 2011.
3. The delegate found the applicant was not a refugee as defined by s.5H (1) of the *Migration Act 1958* (the Act). He found that, based on country information, the applicant did not face a real chance of persecution in Quetta for any of the reasons mentioned in s.5J(1)(a) of the Act. With regard to complementary protection, the delegate found that the applicant did not face a real risk of significant harm and was thus not a person in respect of whom Australia has protection obligations for s.36(2)(aa) of the Act.

Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the Act.

Applicant's claims for protection

5. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
 - He is a citizen of Pakistan and a Shia Hazara. He was born in the Pakistan city of Quetta.
 - In 2011 he was playing with a friend in front of his house when he was shot at by an insurgent. He was shot at because he is Hazara and from a different tribe. They were just targeting Hazara people specifically.
 - Earlier that same day a group made up of made up of Lashker-i-Jangavi and Lashker-i-Tayaba had shot at a [vehicle] when it was travelling to [a location]. This occurred on the [road], which is about [distance] from his house. They stopped the [vehicle], and picked out the Hazara people to kill. The people who conduct these attacks are an extremist religious group opposed to Shais who have targeted Shia Hazaras. He believes these persons are Pashtuns or Balochi people.
 - A few months earlier a similar incident happened when he was playing at a [location] a [distance] walk from his house. The shooting involved [cars] and he believes involved the same group.
 - His father sent him to Australia because of the deteriorating situation in Pakistan.
 - He knows people, and his family knows people, who have been killed for being Shia by Lashker-i-Jangavi or Lashker-i-Tayaba. He has been told that a friend of his was killed in this way.

- His religion is very important to him. He practises his religion daily.
- If he asked the police to help him they would do nothing. If he was to seek protection he could fill in a police report but the police would not follow up on it and catch the perpetrators.
- There are no areas in Pakistan where Hazaras live where he would be safe. The risk of harm extends to the whole country. He cannot rely on the protection of the Pakistan state and cannot safely relocate anywhere else in Pakistan.
- He fears physical harm and murder at the hands of Sunni extremist insurgent groups such as Lashker-i-Jangavi, Lashker-i-Tayaba, or the Taliban, for reason of his Shia religion and for being Hazara.

Factual findings

Identity

6. Following his arrival in Australia an entry interview was conducted with the applicant [in] December 2012 (the 2012 entry interview). The applicant indicated that he was a Shia Hazara and citizen of Pakistan who prior to his November 2012 departure from Pakistan had resided in the city of Quetta. He gave his date of birth as [Date 1], making him [a teenager] at that time. He stated that he could provide a birth certificate as evidence of his identity and that this was in Pakistan. He stated that he had travelled from Pakistan to [Country 1] on a genuine Pakistan passport in his own name but that this had been confiscated at the [Country 1] airport by a uniformed official.
7. [In] August 2015 the applicant lodged an application for a Temporary Protection (Subclass 785) visa (the 2015 visa application). As evidence of his identity the applicant supplied a copy of a document which presents as being his Pakistan national identity card giving his date of birth as [Date 2]. He also supplied a number of documents which present as being issued by [a] High School, Hazara Town, Quetta. These documents also give his date of birth as [Date 2]. In an attached statutory declaration dated 21 July 2015 (the 2015 statutory declaration) the applicant states that he was born in [Date 1] but his parents decided to change his year of birth to [Date 2] so he could access services, like schooling and work.
8. [In] October 2015 the applicant attended a Protection visa interview (the 2015 Protection visa interview). At this interview the applicant withdrew his claim to have been born in [Date 1]. He stated that he was born in [Date 2]. He stated that he had claimed he was born in [Date 1] after arriving in Australia so that he would be considered a minor and would not be sent to a regional processing centre such as Nauru. The applicant said that he did not possess a birth certificate giving his age as [Date 1], but that he had intended to ask his parents to obtain a fraudulent document in this regard.
9. I am satisfied—based on the applicant’s documentation and his account at interview of his former area of residence and his family and religious life in Quetta—that he is a Shia Hazara and a citizen of Pakistan who originates from the Pakistan city of Quetta, and who was born on [Date 2].

Attack at [Location 1] in Quetta

10. The applicant claims to have been playing at [Location 1] near his Quetta home when the area came under attack by Lashker-i-Jangavi and Lashker-i-Tayaba. At the 2015 Protection visa

interview the applicant was asked to describe what happened. The applicant stated that he was playing football with friends in an area near [Location 1] and that the area was busy with people that morning. He said that he heard gunfire and ran for cover. He said that when he looked up he saw two vehicles and that one of the men was preparing to fire a rocket. The event described by the applicant is broadly similar in detail to an attack which reportedly occurred on [date], and for which Lashkar-i-Jhangavi claimed responsibility.¹ I accept that the applicant was at the site of [Location 1] on [date] when Lashkar-i-Jhangavi gunmen fired on a crowd of Shia Hazaras.

2011 attack at Quetta home and [deleted] attack

11. The applicant's 2015 statutory declaration states that in 2011 he was playing with a friend in front of his house when he was shot at by an insurgent. It states that he was shot at because he is Hazara and from a different tribe. They were just targeting Hazara people specifically. At the 2015 Protection visa interview the applicant was asked to describe what happened. The applicant stated that he and friend were returning from a run. He said that they heard sirens and concluded that there had been attack. [Information deleted]. Given the extent to which such attacks reportedly occurred in 2011² I accept that the applicant was part of a crowd of Hazaras who were shot at by gunmen in Quetta in 2011.
12. I accept that the violence witnessed by the applicant in these two instances was perpetrated against the Shia Hazara community for reason of their race and religion. Given the extent of the violence which has affected the Shia Hazara community in Quetta, I accept that he knows people who have been killed in Quetta as a result of attacks targeting the Shia Hazara community for reason of their race and religion.

Refugee assessment

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.

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

¹ [Information deleted]

² [Information deleted]

- the person does not have a well-founded fear of persecution if effective protection measures are available to the person
 - 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 claims to fear physical harm and murder at the hands of Sunni extremist insurgent groups such as Lashker-i-Jangavi, Lashker-i-Tayaba, or the Taliban, for reason of his Shia religion and for being Hazara.
16. The applicant's home area of Quetta is reportedly home to some 700,000 Hazaras.³ Over the recent decade several hundred Shia Hazaras have been killed, and a larger number wounded, as a result of violent attacks in the area of Quetta.⁴ Lashkar-e-Jhangvi (LeJ) is believed to be the main perpetrator of anti-Shia violence in Pakistan, and has claimed responsibility for many of the attacks perpetrated against Shia Hazaras in Quetta.⁵ The violence has taken the form of mass casualty attacks targeting Shia festivals along with attacks by gunmen upon members of the Quetta Shia population going about their day-to-day lives. Some of these attacks by gunmen have targeted Shia Hazara policemen and also Shia Hazara political, community and religious leaders. But the bulk of the anti-Shia attacks in Quetta have reportedly targeted ordinary members of the Hazara community in an opportunistic fashion.⁶ I have accepted that the applicant was part of a crowd of Shia Hazaras who were attacked in this manner at the [Location 1] on [date] and on the street near his family home in Quetta in 2011. Recent years have seen reduced violence and an improving security situation for Shia Hazaras in Quetta with the number of attacks and casualties diminishing. Nevertheless, DFAT assesses that there is moderate level of sectarian violence in Quetta and that despite a decline in the number of sectarian attacks Hazara Shias remain a key target of militant groups.⁷
17. On the evidence before me, I am satisfied that the applicant faces a real chance of serious harm in Quetta for reason of his being Shia Muslim and/or a Hazara. However, pursuant to s.5J of the Act the real chance of persecution must relate to all areas of the receiving country. At his 2015 protection visa interview it was put to the applicant that DFAT reporting indicated that there are options for Shias to relocate to other areas of Pakistan where it is safe, such as Lahore, Karachi and Islamabad. The applicant was asked if there was any reason why he could not move to another part of Pakistan. He stated that he would relocate if his safety could be guaranteed. The applicant was again asked if there was any reason why he could not move to another part of Pakistan. He said that Hazaras had been targeted everywhere in Pakistan. He said that he did not know if there were Hazaras in Islamabad but that he knew that Hazaras had been attacked in Karachi and Lahore. In his 2015 statutory declaration the applicant has stated that he does not have much information about other areas of Pakistan and how secure it is to live there. He states that he does know that most areas inhabited by Hazaras are not secure or safe for Hazaras to live in. He states that his maternal uncle lives in Pakistan, but where his uncle lives is only about twenty-five minutes away from his house in Pakistan where his family lives.
18. Having considered the circumstances of the applicant and available country information I have concluded that the applicant would not face a real chance of persecution in Lahore, in the

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265,

⁴ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 16 August 2015, CISEC96CF1171.

⁵ DFAT, "DFAT Thematic Report Shias in Pakistan", 14 April 2015, CISEC96CF1561, 4.6, 4.8.

⁶ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 16 August 2015, CISEC96CF1171.

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 4.25.

province of Punjab. While Lahore did see a mass casualty attack upon a Shia festival in September 2010 (killing some 43 persons and wounding 230 others) it has otherwise seen very few instances of attacks upon Shia Muslims in the recent decade, and no specific attacks against Shia Hazaras. Of the targeted attacks by gunmen which have occurred upon Lahore's Shias, almost all have targeted political, community and religious leaders or professionals such as doctors and lawyers.⁸ The applicant does not have a profile of this kind. Neither is there any evidence to indicate that the applicant would not be able to freely practise his Shia Muslim religion in Lahore. DFAT assesses that in larger cities such as Lahore there is a higher level of communal integration between Sunnis and Shias; and that levels of generalised and sectarian violence are lower in Punjab relative to the rest of Pakistan.⁹ On the evidence, I am not satisfied that there is a real chance that the applicant would be harmed in Lahore for reason of his being a Shia Muslim and/or a Hazara, or for any other reason specified in s.5J now or in the foreseeable future.

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

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; or
- the death penalty will be carried out on the person; or
- the person will be subjected to torture; or
- 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 applicant claims to fear physical harm at the hands of Sunni extremist insurgent groups such as Lashker-i-Jangavi, Lashker-i-Tayaba, or the Taliban, for reason of his Shia religion and for being Hazara. On the evidence cited earlier on these reasons I accept that the applicant faces a real risk of being killed in his home area of Quetta. Such harm would amount to significant harm. However, pursuant to s.36(2B) of the Act there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if 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.

⁸ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 16 August 2015, CISEC96CF1171.

⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 4.21-4.22.

23. As has been noted above, at his 2015 protection visa interview was asked why he could not move to another part of Pakistan. He stated that he would relocate if his safety could be guaranteed. Asked again why he could not move to another part of Pakistan, he said that Hazaras had been targeted everywhere in Pakistan, including Lahore. As has been noted above, on the evidence before me¹⁰ I have concluded that the applicant does not face a real chance of suffering harm upon return to Lahore for reason of his being Shia Muslim and/or a Hazara. As 'real chance' and 'real risk' involve the same standard,¹¹ I find that there would not be a real risk of the applicant suffering significant harm in Lahore for reason of his being Shia Muslim and/or a Hazara. I have also considered whether the applicant's profile would result in his facing a real risk of significant harm in Lahore for any other reason. On the evidence before me¹² I am not satisfied that he would face a real risk of significant harm in Lahore.
24. Having considered available country information and the applicant's circumstances I am satisfied that it is reasonable for the applicant to relocate to Lahore. As is noted above, at the 2015 protection visa interview was asked why he could not move to another part of Pakistan, such as Lahore, and he responded that he had concerns for his safety. On the evidence before me¹³ I am satisfied that the security situation in Lahore is such that it is reasonable for the applicant to relocate to this city. In his 2015 statutory declaration the applicant stated that he has no family or relatives outside [his home area]. Nevertheless, the applicant is a [age] year old single male who speaks and reads Urdu, as well as Hazaragi. He has completed secondary schooling and has also completed several years of English language studies in Pakistan and in Australia. He has experience in [industry] having worked since his childhood until his departure from Pakistan at his father's [business]. DFAT reports that many large urban centres such as Lahore and Islamabad are home to mixed ethnic and religious communities and offer greater opportunities for employment, access to services and a higher level of state protection.¹⁴ DFAT reports that Lahore is home to a Hazara community and that some Hazaras from Quetta have relocated to Lahore.¹⁵ I am satisfied that it would be reasonable for the applicant to relocate to Lahore, an area of the country where there would not be a real risk that he will suffer significant harm.

Complementary protection: conclusion

25. 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.

¹⁰ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 16 August 2015, CISEC96CF1171; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 4.21-4.22.

¹¹ *MIAC v SZQRB* (2013) 210 FCR 505.

¹² DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264, 5.19.

¹³ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264, 5.19.

¹⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 5.4.

¹⁵ DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS27600, 2.13, 5.9.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

...

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.

...

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.

...

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 them 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 under the Refugees Convention as amended by the Refugees Protocol 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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
 - (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:

- (i) produces documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

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91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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