



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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VIETNAM

IAA reference: IAA18/06118

Date and time of decision: 29 January 2019 15:49:00

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 is a citizen of Vietnam. The applicant left Vietnam [in] May 2013 and arrived in Australia [in] June 2013. On 4 May 2017 she lodged an application for protection visa (PV).
2. On 5 December 2018 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate accepted that the applicant was a Roman Catholic from Ba Ria/Vung Tau province, that she had suffered violence at the hands of her father, that she had left Vietnam illegally and sought asylum in Australia, but found that she did not face a real chance of persecution or a real risk of significant harm for these or any other reasons.

### 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 her arrival in Australia the applicant was interviewed by officers of the Department on 17 July 2013 and 12 August 2013. She set out details of her claims at questions 86 to 95 of her PV application. Written submissions were provided to the delegate on 17 October 2017. On 30 August 2018 she attended an interview ("the PV interview") with the delegate at which her then representative was present. The applicant claims:
  - Her father was abusive to her, her mother and her siblings. They reported him to the police but they were not of any use;
  - There are no human rights in Vietnam.

### Factual findings

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5. I accept that the applicant's background is as follows: she was born [in date] in Ha Tinh province, Vietnam and moved with her family to Ba Ria / Vung Tau province at around age [age]. She is of Catholic faith and Kinh ethnicity. Her parents remain in the family home in [a] village, Ba Ria/Vung Tau, as does her only brother. Her [sisters] are married and live with their husbands. She attended school for [a number of] years, then worked on the family farm, in retail [and] in a [factory]. She departed Vietnam illegally by boat and paid [amount] Dong for her passage.
6. In her 2013 interviews the applicant stated that she worked on the family farm in Ba Ria/Vung Tau after completing her schooling. In January 2011 she moved to Ho Chi Minh City and lived with her aunt while working in [a] market selling [items]. From January 2013 she worked in a factory making [goods]. In May 2013 her mother called her and told her that there was a boat leaving for Australia and asked whether she wanted to go. Her mother had sold some land to raise the [amount] Dong fare. The applicant came home for two weeks, before her mother took her to the boat in neighbouring Binh Thuan province. The applicant said that she had heard about Australia for a long time and wanted to come but did not have the opportunity "then an opportunity came and we had the money so I decided to make the trip".

7. The applicant's evidence as set out in her PV application was very different to that given in 2013. In her application form lodged in June 2017 she stated that she and her family members were the victims of abuse from her father and they reported this to the local police. Her father was not however punished due to the abuse but the family was offered mediation. The applicant contended that this occurred due to the sexist system of government in Vietnam, which undermines the role of women. Because of this she made many public allegations against the practices and system of government in Vietnam. She will be harassed and/or arrested on return to Vietnam because of this. The applicant then provided a written statement dated 17 October 2017 which contradicts this. In this she states that due to "the prevalent wall of silence" in Vietnamese families they did not report the abuse to the police.
8. In her PV interview in 2018 the applicant claimed that her father was abusive to all members of the family from when she was [age]. He would drink heavily and would "torture us daily". When the family moved to Ba Ria/Vung Tau they would report the abuse to the police daily but the police would not help. Her father did not allow the family to have their normal meals. He put poison in their lunchboxes. When they would go to work they would see that there was poison so did not eat their lunch. The police came to their house and talked to their father. The police also beat him, but it did not stop his abuse. Every night he would get a knife and chase them. He was referred to a hospital for a mental health assessment and it was found that he could not control his behaviour because he had been hit in the head by his siblings. He was prescribed medication but when he drank alcohol the medication ceased to have any effect.
9. As can be seen from the summaries above, there has been considerable variation in the applicant's evidence and her claims relating to her father's behaviour, in particular, have become very dramatic. Although she did not give any details of the abuse her father perpetrated in her 2017 claim, I do not consider it plausible that he tortured the five members of the family daily from the time that the applicant was [age], that he also tried to poison them regularly and chased them with a knife every night. I note that the applicant's mother and her [age] year old brother still live in the family home with the applicant's father. I do not accept that they would continue to do so if they were subject to the claimed level of abuse over the last 20 plus years. The inconsistency in evidence as well as the increasing embellishment of this claim causes concerns regarding the applicant's credibility.
10. Country information indicates that the law prohibits using or threatening violence against women or taking advantage of a person who cannot act in self-defence. Authorities treat domestic violence cases as civil cases, unless the victim suffered injuries involving more than 11 percent of the body. The law specifies acts constituting domestic violence and stipulates punishments for perpetrators ranging from warnings and probation to imprisonment for three months to three years.<sup>1</sup> It would appear from the applicant's 2017 evidence that the police did in fact respond to the family's complaint and offered mediation. I accept that this occurred. The applicant also claimed in 2017 that due to the lack of official response to their complaints, she made public statements against the government. This claim was however directly contradicted by the applicant in her PV interview. The delegate asked the applicant whether she had ever participated in anti-government activities and replied that she had not. In view of the inconsistency I do not accept that the applicant made any public statements against the Vietnamese government or its policies.

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<sup>1</sup> US Department of State, 'Country Reports on Human Rights Practices 2015 – Vietnam', 13 April 2016, OGD95BE926333; p.39

11. The applicant has also claimed that she had no human rights in Vietnam. When asked by the delegate what she meant by this the applicant stated that “we were not protected by the law”. Other than the abuse perpetrated by her father, the applicant did not provide any other examples of any denial of her human rights by the Vietnamese authorities or any failure by the government to protect her from other harms. The applicant also stated at the PV interview that she was not treated fairly but clarified that by this she meant that some of her work colleagues did not want to be friends with her.
12. The delegate noted at the PV interview that the applicant was of Roman Catholic faith. In answer to the delegate’s questions, the applicant advised that she had not been prevented from practising her faith and not suffered any adverse attention from the police due to her faith.

### **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.

### **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. I have found that the applicant is a Vietnamese national; accordingly, Vietnam is her receiving country. I am satisfied that the applicant is Catholic. She has not claimed to fear persecution on the basis of her religion, or that she would be punished or prevented from practising her religion. The applicant has not claimed to have been involved in any activities with the church that may be regarded as political activity. I have not accepted the applicant’s claim that she made public statements against the Vietnamese government. The applicant has not claimed to have been politically active in any way in Australia. I am not satisfied that she will participate or have any interest in participating in any conduct in which she would be perceived to be a political activist on return. I am not satisfied that the applicant faces a real chance of any harm

on the basis that she would be considered to be a political activist or due to her actual or imputed political opinion.

16. The applicant's central claim for protection is that she was the victim of abuse from her father from childhood until she left the family home aged [age]. Although I have not accepted that the level of abuse was as severe as the applicant claimed in her PV interview, I have accepted that the applicant's father was abusive to his wife and four children and that they reported this to the police. Country information confirms that, despite programs aimed at reducing domestic violence, such as training for police officers, lawyers and legal system officials in the legal framework and rights of victims of domestic violence, it remains a serious problem in Vietnam.<sup>2</sup> Credible reports by the UN and International Federation for Human Rights (FIDH) conclude that the frequent use of reconciliation methods favours men over women and the victim is often left with no access to justice and legal remedies.<sup>3</sup>
17. It appears from the applicant's evidence that the abuse carried out by her father is restricted to within the family home. The applicant left the family home at age [age] and moved to live with her aunt in Ho Chi Minh City, where she lived and worked for some years until shortly before departing Vietnam. She does not claim to have suffered any harm from her father while living in Ho Chi Minh City. Her sisters live near the family home in Ba Ria/Vung Tau with their own families and the applicant has not claimed that they are harmed in any way by their father. I conclude that the applicant would be able to avoid harm at the hands of her father by not residing in the same home as him, as she has done from the age of [age]. The applicant has not claimed at any point that she would reside in the family home on return to Vietnam and I find she would not. There is therefore not a real chance that the applicant would suffer harm at the hands of her father.
18. The applicant has also claimed that there are no human rights in Vietnam. This claim is not supported by the country information, which indicates that in November 2013, following a lengthy consultation process, the National Assembly adopted a new Constitution which included an expanded chapter on human rights, recognising human rights and guaranteeing their protection.<sup>4</sup> I reject the claim.
19. Although not raised by the applicant, the delegate considered whether she faced a real chance of harm, should she return to Vietnam, due to having departed illegally and having sought asylum in Australia. I have accepted that if the applicant returns to Vietnam the authorities will know or will assume that she has applied for asylum in Australia. Country information indicates that in December 2016, a new Memorandum of Understanding (MOU) was signed between the Australian Department of Immigration and Vietnam's Ministry of Public Security, which provides a formal framework for the return of Vietnamese nationals 'with no legal right to enter or remain in Australia, including those intercepted at sea'.<sup>5</sup> If the applicant is returned to Vietnam involuntarily, the Vietnamese authorities will inevitably be made aware of her personal details and will assume that she is a failed asylum-seeker.
20. The Constitution of Vietnam provides for freedom of movement, however there are penalties for Vietnamese nationals who depart the country unlawfully, including without travel documents or with false passports. Fines for departing without a travel document range between VND 2 Million and VND 10 Million (AUD \$120 to \$600)<sup>6</sup>, however DFAT understands

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<sup>2</sup> DFAT, "DFAT Vietnam Country Information Report", 21 June 2017, CISED50AD4597; 3.36

<sup>3</sup> Ibid

<sup>4</sup> Ibid; 2.25

<sup>5</sup> Ibid; 5.15

<sup>6</sup> DFAT, "DFAT Vietnam Country Information Report", 21 June 2017, CISED50AD4597; 5.16

that people who have paid money to organisers of people smuggling operations, as the applicant has, are not subject to such fines.<sup>7</sup> I accept the applicant departed Vietnam without a passport in violation of Vietnamese law. 'Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration' is an offence under Article 91 of the *Penal Code 1999*, however, DFAT is unaware of any cases where this provision has been used against failed asylum seekers.<sup>8</sup> In relation to people who have paid money to people smugglers, they are viewed by the Government as victims of criminal activity rather than as criminals facing the penalties allowed in the law for departing Vietnam illegally<sup>9</sup>.

21. Returns to Vietnam are usually done on the understanding that the returnee will not face charges as a result of their having made asylum applications.<sup>10</sup> While some returnees may be briefly detained and interviewed, DFAT assesses that long-term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people smuggling operations.<sup>11</sup> I do not accept that there is a real chance that the applicant will suffer serious harm on return to Vietnam. I conclude that possible imposition of a brief period of detention for interview purposes does not constitute serious harm. I am not satisfied on the basis of the country information that the applicant faces a real chance of serious harm on the basis that she departed Vietnam illegally, that she has spent time in Australia or that she unsuccessfully sought asylum in Australia.

#### **Refugee: conclusion**

22. 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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23. 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**

24. 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.

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<sup>7</sup> Ibid; 5.21

<sup>8</sup> Ibid; 5.15

<sup>9</sup> Ibid; 5.17

<sup>10</sup> Ibid; 5.15

<sup>11</sup> Ibid; 5.22

25. I have found the applicant does not face a real chance of harm at the hands of her father or due to her status as a returning asylum seeker now or in the reasonably foreseeable future. As 'real risk' and 'real chance' involve the application of the same standard,<sup>12</sup> I am also not satisfied that the applicant faces a real risk of significant harm on these bases.
26. As noted above, based on the information from DFAT, I accept there is real chance, and therefore real risk, that the applicant may be briefly detained and interviewed on arrival for her unlawful departure from Vietnam in 2013. However, on the basis of that information, I am not satisfied being briefly detained and interviewed constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, it does not amount to pain or suffering that is cruel or inhuman in nature, severe pain or suffering or extreme humiliation. I also find there is nothing in the applicant's profile which would lead her to face any extended detention or other harm that would amount to significant harm on return to Vietnam. I am not satisfied she faces a real risk of significant harm on return to Vietnam due to her illegal departure.

#### **Complementary protection: conclusion**

27. 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>12</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

...

- (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.