



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/06148

Date and time of decision: 4 February 2019 13:07:00

C Wilson, 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 Pashtun Sunni from Kandahar, Afghanistan. He arrived in Australia [in] June 2013 as an unauthorised maritime arrival. On 29 August 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. A delegate of the Minister for Home Affairs (the delegate) refused the application on 12 December 2018. The delegate found the applicant's claims to have been targeted by the Taliban were not credible.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. I note that copies of SHEV applications for persons the applicant lived with were also contained in the material given by the Secretary. I have not taken these applications into account in making my decision, except for the application¹ that contains claims similar to this applicant's, as discussed below at [13].
5. No further information has been obtained or received.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He was born in the [District 1] district of Kandahar Province, and lived there all his life until coming to Australia. [Details deleted]. His ethnicity is Pashtun and his religion is Sunni Muslim.
 - His father had a general [business]. His father passed away in 2004 and the applicant took over the business.
 - The Taliban controlled and occupied much of the Kandahar province and controlled the young people in his village to fight against the American and foreign forces. He and his father always opposed the Taliban.
 - The Taliban would come to his shop and demand financial support for their Jihadi fight against the Afghan authorities and Americans. His contribution was not money, but he gave them [free goods].
 - The Afghan authorities, including the Afghan National Police, were customers of his business.
 - In the summer of 2013 a group of 4 Taliban members came into his shop. The applicant was not there, but his son was. They told his son the applicant was a spy for the Americans and they would come again with further enquiries.
 - The applicant did not return to his shop and fled to Kabul [overnight]. He met a friend in Kabul who advised him to see a smuggler and leave Afghanistan. The friend made an

¹ Department's reference [number].

advance payment for him with the smuggler, who took photos to arrange a passport. He stayed in Kabul for 2 nights.

- The applicant returned to his village in [District 1]. He covered his face with a hat and shawl and hid in his house. He organised \$[amount] USD to pay the smuggler. After three nights he returned to Kabul for one night before flying out of Afghanistan.
- He cannot return to Afghanistan as the Taliban will kill him for being accused of spying for the Americans.
- His wife and [children] remained in Afghanistan, but have moved between Pakistan and Afghanistan since he left.

Refugee assessment

7. 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

8. 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.
9. The applicant has consistently claimed to be an Afghan citizen from [District 1], Kandahar. As evidence of this he provided an Afghan identity card, a *taskera*, which was assessed by a document examiner for the Department. The examination was inconclusive. In the absence of any evidence to indicate the applicant was not a national of Afghanistan, the delegate accepted his nationality as claimed. On the basis of his consistent claim to be Afghan, and taking the *taskera* at face value, I accept the applicant is an Afghan national and I find Afghanistan is his receiving country. The applicant claims only to have lived in [District 1] in Kandahar before leaving Afghanistan, and I find this is his home area and the area to which he would return.
10. The applicant claims he was targeted by the Taliban for selling [product] to the Afghan authorities, which gave him a perceived profile of being a spy for the Americans. He claims

also to have always opposed the Taliban. He claims that on one occasion the Taliban visited his [store] looking for him and told his son, when he wasn't there, that they would return to question the applicant. He claims that because of this threat he fled to Kabul and a week later he left the country.

11. Sources such as the UNHCR² provide information on the groups of people in Afghanistan who may be at risk from anti-government elements such as the Taliban. A common element of those who are targeted is that they are associated with or perceived as being supportive of the government or international forces or humanitarian groups. The applicant claims that in selling [product] to the authorities, including the police, he was perceived to be a spy for the government and international forces. Yet he also claims to have 'supported' the Taliban by allowing them to take free [product] (or at least not taking action when they did so) and providing goods [when] they called on him to do so. Given his claim that he ran a [store] in his town it is to be expected that all sorts of people and groups would buy from him, and this may have included the local authorities. But this would have been the situation for many years, including when his father ran the business, and since the applicant took it over in 2004. The applicant has not addressed how or why in 2013 he came to the attention of the Taliban after running this business for so long.
12. I have doubts about the genuineness of the applicant's claims because I find them to be lacking in detail. There is no information about whether the Taliban returned to the store, or his family home, after that initial visit. He has never mentioned what happened to the family business, whether his sons continued to run the store, or whether it was closed. There is no claim of any retaliatory action by the Taliban after he left, either against the business or against his family. There is no mention of what happened to his family home. He has not provided any information on how he and/or his late father allegedly opposed the Taliban. There is also inconsistent information about where his family have been living. At the interview the applicant said his family were currently living in Pakistan, but in his application forms he said they were in Afghanistan. In his statutory declaration he said they were living between Pakistan and Afghanistan. He has been assisted by a migration agent in Australia, who provided post-interview submissions. These submissions were also general in nature and did not address issues raised by the delegate at the interview. I acknowledge the applicant says he is illiterate and had no education, but he claims also to have been running a store, which would have required some level of numeracy, literacy and resourcefulness. In considering why his claims were lacking in detail, I have also taken his health into account. A letter was provided prior to the interview stating the applicant had hypertension and also that he may require frequent toilet breaks. There was also a letter from 2015 showing that he had been treated at [a clinic]. There was no evidence however that he was suffering the effects of a [disorder], or any mental illness, when he was interviewed in October 2018. I am not satisfied that his lack of formal education or health conditions, which on the limited information before me do not appear to be serious health conditions, account for the lack of detail in his claims. I consider the claims may be lacking in detail because they are not genuine.
13. I have some concerns about the speed with which the applicant organised to leave Afghanistan. He claims to have fled to Kabul on the night of the threat, found and met with a smuggler within 2 days, then returned home for 3 days to raise \$[amount] USD, before returning to Kabul to fly out of Afghanistan. I consider it unlikely the plan to leave Afghanistan

² "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", *UN High Commissioner for Refugees*, 30 August 2018, UN3079B839.

was made, paid for and executed in just one week. I consider it more likely the plan to leave Afghanistan was made earlier than one week before he left, and that his first trip to Kabul to arrange a passport with a smuggler was planned in advance.

14. At the time of the interview with the delegate the applicant was living with a group of men he had travelled to Australia with. He had been residing with them at the same address in [Australia] from October 2013. He denied knowing them in Afghanistan, but having lived with them for 5 years, it can be assumed they at least became friends in Australia. As put by the delegate to the applicant at interview, his account was remarkably similar to protection claims made by one of these [men]. That man had claimed the following in his visa application: he was from a village in Kandahar; his father ran a small shop where they sold [the same goods and products]; the Taliban occupied and controlled Kandahar province; he sold [product] to Afghan government [officials]; the Taliban wanted to recruit local young people to fight against the Americans and foreign forces; during the summer of 2011 four Taliban members came to his shop looking for him, but he wasn't there; they told his brother at the shop that he was a spy for the Afghan government and they would come back to make further enquiries; he did not return to his shop and fled to a small village on the border with Pakistan; the Taliban will kill him if he returns because he has been accused of being a spy. This information about the strong similarity between the two sets of claims was put to the applicant at the SHEV interview for him to respond to. In response the applicant denied ever speaking to his friend about his claims and said he did not copy the claims as it would not make sense for them to copy each other. There was no further information or response in his post-interview submissions.
15. I do not accept the applicant's explanation regarding the similarities in the claims. I find it implausible that the applicant never spoke to the people he shared a house with for 5 years about his experiences in Afghanistan. I accept the Taliban are active in Kandahar and it is possible for two applicants from Kandahar to have worked in similar jobs and to have had threats made to them by the Taliban. But the claims in these cases are so similar that they appear to have been copied or jointly concocted. If the similarities between his and [another man]'s claims were merely a coincidence I find the applicant would have conceded this, rather than say he never talked about his claims with his friends. It may be he did not speak directly about what he discussed with his migration agent, but I do not accept he never discussed his life in Afghanistan with his friends. If he and his housemate both had a background of working at their family's [stores], I find they would have learnt this about each other. From that shared experience I consider they would also have discussed harassment suffered or threats made to them by the Taliban in relation to those businesses. I find the applicant's denial of speaking to his friends about his claims, in circumstances where one of them made such similar claims, is not credible. I find this affects the credibility of his claims and suggests the claims were jointly concocted.
16. Overall, I find the applicant's claims are not credible given the lack of detail and the probable concoction. I do not accept he was targeted by the Taliban as a spy for the government or the Americans or their allies. I do not accept members of the Taliban came looking for him. I find he is an ordinary Pashtun from Kandahar, and I do not accept he had or would have any profile with the Taliban. I find he does not face a real chance of harm from the Taliban if he returns to his home area.
17. The applicant claimed the Taliban were controlling young people in his village to fight in their Jihadi war. There is no further detail on how the young people were controlled, or more particularly, how this personally affected him or his family. There is no claim the applicant was ever forced to fight, nor any claim that his sons were. I consider this claim is an embellishment and I do not accept the Taliban controlled the young people in his village. The applicant is not

a young man, but in any event I find the applicant does not face a real chance of being controlled by the Taliban and forced to fight in their Jihadi war, if he returns to his home area.

18. I have considered the general security situation in the applicant's home area of [District 1] in the province of Kandahar. DFAT advised the security situation in Afghanistan is complex, highly fluid, and varies considerably by location.³ The general security situation has deteriorated in recent years, with a significant and increasing number of high-profile attacks in Kabul. Attacks are generally directed at specific targets, with the most common targets being government institutions, political figures, Afghan and international defence and security forces, foreign diplomatic missions, and international organisations.⁴ The applicant said at the interview he would not be safe in Afghanistan, because even a government official such as General Abdul Razeq had been killed in Kandahar. His representative provided some reports on the General's death. I note General Razeq was a high profile police chief and known opponent of the Taliban. General Razeq had reportedly been targeted dozens of times previously by the Taliban.⁵ I do not accept his death and targeting has any similarity to the applicant's situation. The applicant provided a summary of attacks in Kandahar reported in various news outlets online in 2017 and 2018.⁶ I note the reports are almost exclusively about Taliban attacks on soldiers, police or international forces. There are a couple of reports on abductions of civilians, including the Garda report on the abduction of road construction workers and the DW report on the abductions of civilians in Kandahar with unknown motive, but reportedly because of accusations of cooperating with the authorities. I accept that civilians can be caught up in attacks directed at the military or police, however I find the chance of the applicant being inadvertently caught in an attack in [District 1] is too speculative and remote to amount to a real chance. I accept there have been reports of civilians being kidnapped, but I find they are targeted kidnappings based on Taliban suspicion that those persons are working for or otherwise associated with the authorities or foreign forces. The representative submitted to the Department that the Taliban are in control of Kandahar, but the applicant's home area in [District 1] is located in an area considered to be under Afghan Government control, according to [a report].⁷ I find the applicant is an ordinary Pashtun from [District 1] whom I do not accept has been targeted for any association with the authorities, and I am not satisfied he faces a real chance of harm due to the security situation in his home area.

19. The applicant's representative submitted in post-interview submissions that the applicant feared harm because of his ethnic group. The applicant's ethnicity is Pashtun, which is the largest ethnic group in Afghanistan, and the dominant ethnic group in Kandahar. This claim is not particularised, and it is not clear from his application or submissions whether the claim is that the Taliban want to harm him because he is Pashtun or that the Taliban want to force him to support them because he is Pashtun. For the reasons given above, I do not accept the applicant faces a real chance of harm from the Taliban for any reason, including his ethnicity.

20. The applicant has not claimed to fear harm as a returnee who may be perceived as westernised, but I accept this claim may arise on the facts of his case. I acknowledge he has spent nearly 6 years in Australia, but the majority of his life, more than [number] years, were

³ DFAT *Country Information Report Afghanistan*, 18 September 2017, CISED50AD5680 (DFAT report).

⁴ DFAT report

⁵ ABC News "Afghanistan election: Polling in Kandahar province delayed amid violent attacks", 20 October 2018, <https://www.abc.net.au/news/2018-10-20/afghanistan-election-polling-delayed-amid-violent-attacks/10398544>; The New York Times "An Afghan Police Chief Took On the Taliban and Won. Then His Luck Ran Out", 18 October 2018, <https://www.nytimes.com/2018/10/18/world/asia/kandahar-afghanistan-attack.html>.

⁶ Attachments 8 and 9 to his post-interview submissions.

⁷ [Source information deleted].

spent in Afghanistan. He has not provided any evidence or suggestion of major changes he has undergone in Australia, such as changing his culture or religion. There is nothing to indicate he could not return to his community and way of life in Afghanistan, with his wife, children and extended family. DFAT reports there is no information to suggest returnees from western countries attract negative attention from state authorities for seeking asylum. DFAT is aware of occasional reports alleging returnees from western countries have been kidnapped or otherwise targeted, but to avoid any risk most returnees keep a low profile and do not face a higher risk of violence than other Afghans with similar ethnic and religious profiles.⁸ There is nothing in the applicant's profile to suggest he would do other than keep a low profile on return, and I do not consider the need to keep a low profile would amount to a modification that falls within s.5J(3). I am not satisfied the applicant faces a real chance of harm for being a returnee from a western country.

Refugee: conclusion

21. 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

22. 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

23. 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.
24. For the reasons given above, I have found the applicant was not targeted by the Taliban and I do not accept he will be of adverse interest to them for any of the reasons claimed should he return to his home area in Afghanistan. I do not accept he faces a real chance of harm from the Taliban for any reason. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above, I find the applicant will not face a real risk of significant harm for reason of his work at his family's alleged [business] or his ethnicity or for returning from the west or for any reason.
25. I have considered the general security situation in [District 1] and the province of Kandahar. I accept there is ongoing violence in Kandahar, but note it is primarily military or police or

⁸ DFAT report

persons associated with them who are targeted. I find the risk of the applicant being caught up in such violence is too remote to amount to a real risk. Further, I find the risk of generalised violence in Afghanistan is a risk faced by the population generally and not faced by the applicant personally. Under s.36(2B)(c) there is taken not to be a real risk if that risk is faced by the population generally. I find he does not face a real risk of significant harm in his home area from the general violence in Kandahar province.

Complementary protection: conclusion

26. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.