



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

**Decision and Reasons**

**Referred application**

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LEBANON  
IAA reference: IAA18/06157

Date and time of decision: 24 January 2019 16:08:00  
C Wilson, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim from Akkar, Lebanon. He arrived in Australia on [date] November 2012 as an unauthorised maritime arrival. On 21 April 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 13 December 2018. The delegate did not accept the applicant's father had been targeted and killed by Syrian militia as claimed. The delegate found the applicant was an ordinary Sunny from Northern Lebanon and as such did not accept he faced a real chance of harm in Lebanon.

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

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - He is a Sunni Muslim Arab from Akkar, Northern Lebanon.
  - He is unmarried. His father died in 2011 and accordingly his mother and adult siblings are dependent on him as the eldest son.
  - He fears harm in Lebanon because of his religion and his ethnicity.
  - In 1990 Syrian militia came to the village and took control. From that time they would tell people to fight for them and hit or sometimes kill people who refused. They often invaded local shops and took what they wanted. This happened to the [shop] his father owned with [relative A]. [Few of his relatives] were detained and tortured by the militia for refusing to support them. The Syrian militia left the village after the Lebanese president was assassinated in 2005, and only returned in 2011.
  - In 1998 he saw the Syrian militia kill men and rape women in Tripoli. He was in his [relative B's] house in Tripoli and he saw his [relative B's] neighbour being killed.
  - From 2011 both the Syrian militia and Hezbollah became powerful in his area, and both wanted to kill Sunnis. His father was killed in 2011 by Syrian militia because he would not join them and they wanted to take the money and [items] he had in his car. People from his village saw his father's car being run off the road and shot at.
  - The applicant worked in Beirut from 2010-2012. He was often stopped at checkpoints and interrogated. The same happened to his brothers working in Tripoli. They were asked to join Hezbollah and fight in Syria. When they refused they would be hit.
  - The applicant was targeted more than his brothers because he had constantly asked the Syrian militia who had killed his father. They threatened him that if he kept asking they

would kill him. Seven or eight months after his father's death he decided Lebanon was not safe for him and he left for Australia.

- After he left Lebanon, Hezbollah contacted his family and said his name was at the airport and he would be killed on return. The militia and Hezbollah often call his family to threaten the applicant. He is considered a traitor because he wouldn't fight for the militia or Hezbollah.
- Akkar is controlled by Syrian intelligence, who along with the militia and Hezbollah are fighting Sunni Muslims. His family are not safe there. His brothers have been stopped and threatened on their way to work and sometimes they have been detained for a few hours.
- ISIS (aka ISIL) are also in Lebanon and this is another reason why it is dangerous to return.
- The Lebanese authorities cannot protect him because they are controlled by the Syrian militia and Hezbollah.

### **Refugee assessment**

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6. 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**

7. 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.
8. I rely on the identification documents provided by the applicant to the Department to find he is a citizen of Lebanon. I find Lebanon is his receiving country. The applicant claims to have grown up in a village in Akkar, North Lebanon, and to have relatives and to have studied in nearby Tripoli, also in North Lebanon. He also lived and worked in Beirut for the last two years before he left Lebanon, but noting that his mother and siblings remain in Akkar and Tripoli, I find that North Lebanon is his home area and the area to which he would return.

9. The applicant was interviewed by a Department officer in an 'entry interview' shortly after he arrived in Australia in 2012. He told the officer his father and others had been killed by Syrian militia in 2011 because of allegations that weapons were being smuggled from Akkar into Syria. He said the Syrians crossed the border to kill his father amongst others.
10. The applicant gave a different account of how and why his father was killed in his SHEV application. In his written statement he claimed his father was personally targeted by the Syrian militia because he had refused to join them and they wanted the money and clothing he had in his car. There was no mention of arms smuggling or others being killed in this account. There was no explanation of why his account had changed from the entry interview. I acknowledge the entry interview was held shortly after he arrived in Australia and the applicant was not represented at the interview. However, from listening to the recording it was evident the applicant was able to fully participate in the interview and answer all questions put to him. He was told to be brief in his response as to why he left Lebanon and I make no adverse inference on the brevity of his response. But he was also keen to let the interviewer know at an early stage, when talking about his family and why he was listing them as dependents, that his father had been killed and by whom. There was no mention then of his father being personally targeted for refusal to join the militia.
11. The applicant was invited to attend an interview with the Department in relation to the claims raised in his SHEV application. The applicant did not attend the interview, nor provide any reason for not attending or any further submissions or evidence. I note from the Department's file that the letter inviting the applicant to an interview was returned undelivered. I note also however that several attempts to contact the applicant were made by telephone and email, and the applicant did not respond to any of those attempts, nor did he provide a change of address. He has also not engaged with the Authority on review.
12. I acknowledge the applicant did raise the death of his father at the earliest opportunity, that is, at the entry interview. I accept his father died in 2011 and consider this may have been a push factor in his decision to travel to Australia. Noting the proximity of Akkar to the Syrian border I accept it is possible his father was caught up in violence or shot or shelled as an innocent bystander, but no death certificate or other evidence to show this has been provided. Given the differing accounts given by the applicant, and his failure to attend an interview or otherwise provide more detail or evidence, I do not accept his father was personally targeted. I do not accept the applicant or his brothers have been or will be targeted because of their father's death. I do not accept the applicant's claim he is at greater risk than his brothers because he repeatedly asked the Syrian militia what happened to his father. Even had this occurred, he suffered no harm at the time as a result, and I do not accept that 7 or 8 years later the Syrian militia would have any interest in the applicant because he asked them in the past what had happened to his father.
13. I have considered whether the applicant, as a Sunni Muslim, faces harm from the Syrian militia, Hezbollah or any other group. I note that Sunnis are estimated to make up about 27% of the population in Lebanon, in a country that DFAT describes as having a tradition of religious pluralism and a high degree of religious tolerance. His home area, in the North Governorate of Lebanon, has a majority Sunni population.<sup>1</sup> In the 2017 report DFAT assessed that Sunnis are unlikely to be targeted for their religion alone, but those living close to the border with Syria faced a low risk of being caught up in cross-border reprisal attacks. The risk was higher for Sunnis involved in sheltering anti-Syrian regime fighters.<sup>2</sup> DFAT advises that

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<sup>1</sup> DFAT *Country Information Report*, 23 October 2017, CISED50AD6014 (DFAT report).

<sup>2</sup> DFAT report

the security situation in Akkar Province is complicated by an extensive border with Syria, and that it has long been a base for smuggling across the border into Syria.<sup>3</sup> When reporting in December 2013 DFAT noted there had been limited instances of possible sectarian violence in Akkar Province, citing the following examples: the shooting of a Sunni Sheikh by the Lebanese Armed Forces at a checkpoint, allegedly for not stopping; and the death of 4 Syrians in a town in Akkar Province reportedly due to shelling from Syrian forces in February 2013. DFAT also noted there had been abductions reported in Akkar Province of anti-Syrian regime activists by Syrian troops.<sup>4</sup>

14. There is no claim by the applicant that he was involved in sheltering anti-Syrian regime fighters, or had involved himself in any way with anti-Syrian regime fighters, or had in any way protested or opposed the Syrian militia or Hezbollah. There is no claim by the applicant that since he left in 2012 any member of his family or local community has been caught in cross-border reprisal attacks. I find the applicant is an ordinary Sunni from Northern Lebanon and I do not accept there is anything in his profile to make him a target of militia groups operating in that area. Whilst the chance of being inadvertently caught up in violence near the Syrian border due to the conflict in Syria is not negligible, I consider it is too remote and speculative to amount to a real chance for the applicant as an ordinary Sunni.
15. In relation to the claims to fear Hezbollah, I do not accept the applicant was or would be of interest to them. Hezbollah is a political and military group representing the interests of Shias in Lebanon, that rose to prominence during the Lebanese civil war. Many Sunnis in Lebanon have been angered by Hezbollah's support for the Syrian government.<sup>5</sup> Hezbollah supports the Syrian government forces fighting in Syria, and has been accused of targeting high-profile Sunni political leaders, outspoken critics of Hezbollah, and Sunni opposition fighters.<sup>6</sup>
16. On the claims presented by the applicant, there is nothing to indicate he fits any of the profiles of those targeted by Hezbollah. That is, he is not a political leader, outspoken critic of opposition fighter. DFAT states that Hezbollah are unlikely to target any individual unless that person presented a direct threat to their authority.<sup>7</sup> There is nothing to indicate the applicant was ever a threat to Hezbollah or that on his return he might be perceived to be. The applicant claims his family told him Hezbollah have called about him and his name has been put on a watch list at the airport. I find his ability to depart Lebanon, without issue at the international airport, which is known to be closely controlled by Hezbollah<sup>8</sup>, is evidence he is not of interest to them. I consider his claim that Hezbollah have called his family and said he is on their watch list is a fabrication, as there is nothing in the applicant's past or profile that would appear to make him a target of Hezbollah. I also consider his claim that Hezbollah have asked him and his brothers to join them in fighting in Syria is a fabrication or exaggeration, as I consider it unlikely that Hezbollah, as a Shia group, would be recruiting amongst Sunni youths. I find the applicant does not face a real chance of harm from Hezbollah.
17. The applicant claimed to have witnessed violence perpetrated by Syrian militia in Tripoli in 1998, when he was [age] years old. I accept it is plausible he witnessed violent incidents in the past, however I do not accept he faces a real chance of harm for events he witnessed nearly 20 years ago.

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<sup>3</sup> DFAT Thematic Information Report *Sectarian Violence in Lebanon*, 18 December 2013, CIS26835 (DFAT Thematic report)

<sup>4</sup> DFAT Thematic report

<sup>5</sup> 'Lebanon hit hard by Syrian war, growing ISIL support', *USA Today*, 27 December 2014, CX1B9ECAB9911.

<sup>6</sup> DFAT Thematic report

<sup>7</sup> DFAT report

<sup>8</sup> DFAT report

18. The applicant also described incidents that happened pre-2005, including the Syrian militia stealing from his father's shop, detaining [relative A] for 5 days and [another relative] for 5 years, and some people in his village choosing to help the militia. There is no claim of past harm suffered by the applicant in connection with these incidents, and the applicant has not explained how they may be relevant to his fear of future harm. There is no suggestion the applicant had any involvement with his father's [shop], rather he worked as an[occupation], and no suggestion the family are continuing that business or would do so if the applicant returned. I do not accept the applicant faces a real chance of harm in the reasonably foreseeable future because of harassment his father may have faced in the past in relation to goods being stolen from his shop, or because relatives may have been detained in the past, or because people in his village helped the militia in the past.
19. The applicant claims his family are having difficulty getting to work as they are frequently stopped at checkpoints by the militia and Hezbollah, and are sometimes detained for a few hours. He has not provided any country information to support this claim, and the country information before me does not indicate this is a known practice in Akkar province or North Lebanon generally. In the absence of any evidence to support it, I find this claim is an exaggeration or fabrication.
20. The applicant claimed to fear harm due to his ethnicity, that is, Arab. He had not identified why he would be targeted as an Arab or by whom. I note 95% of the population of Lebanon is Arab<sup>9</sup> and for this reason I find the claim that he would be targeted as an Arab in Lebanon is farfetched. I find the applicant does not face a real chance of harm for reason of his ethnicity.
21. The applicant claimed he could not return to Lebanon due to the presence of the group Islamic State in Iraq and the Levant (ISIL). DFAT reported in 2017 that ISIL had a presence in Lebanon, with the intention of perpetrating violence and agitating pre-existing sectarian tensions within Lebanon. Sporadic attacks by ISIL have occurred in areas bordering Syria, however Lebanon has responded with military operations against them. DFAT reported that the Lebanese Armed Forces and Hezbollah had been successful in subduing any further attempts by ISIL to carry out attacks in Lebanon.<sup>10</sup> The applicant has not provided any detailed claims or country information to support his claim that he faces harm from ISIL. I find the chance of him being harmed by ISIL, noting they have committed only sporadic attacks in Lebanon and have been countered by Lebanese authorities, is too remote and speculative to amount to a real chance.

#### **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.

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<sup>9</sup> DFAT report

<sup>10</sup> DFAT report

## 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.
25. I have found the applicant does not face a real chance of harm from the Syrian Militia or Hezbollah or ISIL for reason of his religion, ethnicity, family, or any other reason. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the reasons given above, I also find the applicant does not face a real risk of harm should he return to his home area of North Lebanon from the Syrian Militia, Hezbollah or ISIL or any other groups.
26. I have considered the security situation in North Lebanon. DFAT advised in October 2017 that Lebanon is largely stable. Tripoli, and in particular the suburbs of Jabal Mohsen and Bab al-Tabbeneh, had been particular flashpoints for sectarian violence. However a security plan put in place in 2014 to quell the violence in Tripoli has been successful.<sup>11</sup> I find the possibility of an outbreak of general violence in Tripoli and North Lebanon generally is mere speculation and that the risk is too low to amount to a real risk. I find there is not a real risk of the applicant facing harm in general or sectarian violence in his home area.

## 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>11</sup> DFAT report

## 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.