



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SUDAN

IAA reference: IAA19/06759

Date and time of decision: 17 July 2019 11:34:00

S MacKenzie, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Sudan. He arrived in Australia [in] September 2012 as an unauthorised maritime arrival. On 2 June 2017 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 14 June 2019, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Sudan.

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) (the review material).
4. On 10 July 2019, the IAA received a written submission from the applicant's representative (IAA submission). The submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material. I have had regard to these aspects of the IAA submission. On 9 July 2019, the IAA also received a written statement from the applicant explaining why he disagrees with the delegate's decision (IAA statement). The statement in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material. I have had regard to these aspects of the IAA statement.
5. In the IAA submission, the applicant's representative referred to several sources of country information¹ not before the delegate that pre-dates her decision. He also indicates that, due to recent events reported, the applicant is now at risk of harm in Khartoum due to generalised violence. It is new information.
6. The representative provides the UK Home Office report primarily as evidence of the treatment faced by persons from non-Arab Darfuri tribes in Sudan. The report pre-dates the delegate's decision and the representative does not provide reasons as to why this information was not and could not have been provided to the delegate or why it may be considered credible personal information. In the circumstances, I am not satisfied that this information could not have been provided before the delegate made her decision or that, as general country information, it is credible personal information. However, I have decided to obtain the UK Home Office report as new information. In reviewing her decision, I note the delegate relied on country information published in 2016 to assess whether the applicant faced harm in Sudan on the basis of his ethnicity and tribal identity. I also note the report provides more recent reporting about the treatment of citizens who have returned to Sudan after having sought asylum abroad (a claim also considered by the delegate). The delegate relied primarily on reports published in 2016 to assess whether the applicant faced harm in Sudan on that basis. To ensure I have had regard to the most up-to-date information and also noting that the applicant now seeks to rely on the report, I am satisfied there are exceptional circumstances to justify my considering that new information under s.473DD. Further, I note

¹ UK Home Office, "Country Policy and Information Note – Sudan: Non-Arab Darfuri", v.3.0, 28 September 2018, OG9EF767949; The Guardian, "Sudan paramilitaries threw dead protesters into Nile, doctors say", 6 June 2019; ABC News, "More than a dozen people killed, hundreds wounded as Sudan troops besiege protest camp, doctors say", 3 June 2019; The Guardian, "Sudan paramilitaries raped and assaulted protesters and medics", 5 June 2019

that the new information is not specifically about the applicant and is just about a class of persons of which the applicant is a member, for the purpose of s.473DE(3)(a).

7. The news articles from ABC News and The Guardian are provided as evidence of the current political and security situation in Sudan. The articles pre-date the delegate's decision and the representative does not provide reasons as to why this information was not and could not have been provided to the delegate or why it may be considered credible personal information. In the circumstances, I am not satisfied that this information could not have been provided before the delegate made her decision or that, as general country information, it is credible personal information. As well as the current political/security situation in Sudan, the information also reports on the ousting of President Omar al-Bashir in April 2019. The applicant's claims before the delegate included that he feared harm from the former President and the Sudanese authorities/security services. However, the delegate did not refer to any country information about the recent political developments in Sudan or the removal of al-Bashir. In light of this, I have decided to obtain the articles as new information. Given the circumstances of this particular case, I am satisfied that a change in the political situation in Sudan amounts to an exceptional circumstance and on that basis I have considered these articles and the new claim that the applicant fears harm due to generalised violence based on recent events.
8. The applicant's representative also provides the IAA a letter, dated 26 June 2019, from the [Senior Official] of the [Named Organisation], NSW. It is new information. The [Senior Official] confirms that the applicant originates from the Darfuri Tama tribe and that he came to Australia to seek protection. In his IAA statement, the applicant states the letter is provided to evidence his Darfuri roots. As explained later in this statement of reasons, I accept that the applicant originates from West Darfur and is member of the Tama tribe. The [Senior Official] further states that if the applicant returns to Sudan he 'would face death penalty especially [because] he has no passport'. While I have considered the applicant's claim before the delegate that he would face death if returned to Sudan, the claim that he would face the death penalty for reason of not holding a passport was not before the delegate. It is also new information. I note there is no mention of this new claim by the applicant or his representative in the accompanying IAA submission or IAA statement, and no explanation is provided by the representative or the applicant as to why this information was not given to the delegate or why it may be considered credible personal information. I expect if it were true that the applicant feared death on this basis that he or his representative would have mentioned it in the otherwise detailed claims advanced throughout the SHEV application process. I further note in a post-SHEV interview submission, the applicant indicated that he had 'put forward all of [his] protection claims'. In all the circumstances, I am not satisfied there are exceptional circumstances to justify my considering the letter.
9. The applicant's representative also provides the IAA a photograph of the applicant standing in front of [a] Mosque in [Country 1]. In his IAA statement, the applicant states that the photograph was taken when he lived in [Country 1] (between 2010 and 2012) and 'may have been published in the means of the social communications and that the Sudanese government [is aware]'. Both the photograph and the claim that the Sudanese government is or may be aware of it was not before the delegate and is new information. No explanation is provided as to why this information was not given to the delegate or why it may be considered credible personal information. The applicant has not indicated that the photograph was not in his possession prior to the delegate's decision and nor is there any indication as to when the photograph may have been 'published' or how the Sudanese government may have become aware of its existence. I also note that it is difficult to make out the facial features of the person in the photograph and it appears the photograph is in

the applicant's email rather than accessible in the public domain. In the circumstances, I am not satisfied that the photograph could not have been provided before the delegate made her decision. Nor am I satisfied that the new claim that the photograph has been published and/or that the Sudanese government may become aware of its existence and/or the applicant may be identified as a person who travelled to [Country 1] on the basis of this photograph represents credible personal information. In all the circumstances, I am not satisfied there are exceptional circumstances to justify my considering this new information.

10. In his IAA statement, the applicant advanced the following claims and evidence not before the delegate. It is new information. The new information can be summarised as follows:
 - a. He was born on [date];
 - b. He has [siblings] who all live in West Darfur;
 - c. His brother (Y.O.Y) escaped to [Country 2] in 2015;
 - d. His brother (M.O.Y) sustained [an] injury during clashes between civilians and the military [in] June 2019. He remains in hospital;
 - e. He is a freedom fighter who struggles for the rights of the people of Darfur.
11. In respect of the information that the applicant was born on [date], I note it differs from his other evidence before the delegate, including his SHEV application and birth certificate, that his date of birth is [a different date]. Having regard to all of the evidence, including the IAA submission which also states the applicant was born in [a different year], I consider that the IAA statement contains a typographical error in respect of the date of birth. Even if I am wrong about that, I do not consider that much turns on whether the applicant was born in [a different year] or [the other year]. In all the circumstances, I am not satisfied there are exceptional circumstances to justify my considering this new information.
12. The applicant states that 'all of [his] [siblings]' live in West Darfur. However, this differs from his other evidence before the delegate including his SHEV application and interview with the delegate on 15 April 2019 (SHEV interview) that he only has [a lesser number of siblings] and that one brother (Y.O.Y) lives in [Country 2]. I note that later in the IAA statement the applicant indicates that his brother remains in [Country 2] as a permanent resident. Having had regard to all of the evidence, I am not satisfied that the new information about the number of his brothers and their whereabouts is credible. As explained later in this statement of reasons, I accept the applicant's otherwise consistent evidence that he has [the lesser number of siblings] and that one lives in [Country 2]. I also accept that his family, including [a number of siblings], remain living in West Darfur. In all the circumstances, I am not satisfied there are exceptional circumstances to justify my considering this new information.
13. The applicant also claims that his brother went to [Country 2] in 2015. However, this differs from his evidence in his SHEV application (signed and dated 31 May 2017) that the same brother resided in Sudan. Further, at the beginning of the SHEV interview, he was asked whether he had any new information he needed to provide. In response, he stated that his brother was now in [Country 2] and indicated that he had travelled there about one year earlier. Having had regard to all of the evidence, I am not satisfied that the new information about when the brother first went to [Country 2] is credible. Even if I am wrong about that, I do not consider that much turns on whether the brother first travelled to [Country 2] in 2015 or at a later date. As explained later in this statement of reasons, I accept the applicant's

brother is in [Country 2]. In all the circumstances, I am not satisfied there are exceptional circumstances to justify my considering this new information.

14. The applicant's claim that another brother (M.O.Y) was hospitalised after sustaining [an] injury 'during the clashes that took place between the Sudanese people and this military junta' on 3 June 2019 relates to events that pre-date the delegate's decision. No explanation is provided as to why this information was not given to the delegate or why it may be considered credible personal information. The applicant has provided little meaningful detail in respect of this new information, including the nature of his brother's involvement in the clashes or any explanation about how these events relate to his claims for protection. He indicates that his brother was injured following an incident where more than 198 persons were killed and more than 70 women raped. Although it is not clear from the IAA statement, the new information about the applicant's brother appears to relate to the events of 3 June 2019 in Khartoum that are reported in the articles from ABC News and The Guardian that have been cited in the IAA submission. According to these articles, Sudan is in a transitional period of military rule since al-Bashir was removed from office in April 2019. On 3 June 2019, paramilitaries from the Rapid Support Forces reportedly attacked pro-democracy protesters in central Khartoum where between 35 and 100 were killed. In the aftermath, there were also reports of persons being sexually assaulted and robbed of their mobile phones and cash. Doctors and medical workers were threatened if they assisted the wounded. Hundreds of activists were detained and many more were reportedly missing.² The applicant has not indicated that he only learned of these events after the delegate made her decision. I also note the applicant's representative accessed these articles on the 6 June 2019 and yet makes no mention in the IAA submission of the applicant's brother's involvement in this incident. In all the circumstances, I am not satisfied that this information could not have been provided before the delegate made her decision. I also consider the applicant's evidence in the SHEV interview that his brother resided at [a location] in West Darfur (also reiterated in the IAA statement) not supportive of the claim that he was involved in or near a pro-democracy protest in central Khartoum in June 2019. The applicant has not pointed to any exceptional circumstances that may justify considering this information, and none are evident to me. In all the circumstances, I am not satisfied that the new claims in respect of the applicant's brother are credible or that exceptional circumstances exist to justify considering them.
15. The applicant states that he is 'a young Darfuri freedom fighter' who 'struggle[s] for the rights of the people of Darfur'. No explanation is provided as to why this information was not given to the delegate or why it may be considered credible personal information. The applicant has provided little meaningful detail in respect of this new claim, which I also note appears inconsistent with his evidence in the SHEV interview that he has had no prior involvement in political activities in Sudan or Australia, nor any involvement with opposition groups. I also note the applicant's earlier evidence in an interview soon after he arrived in Australia on [in] November 2012 (entry interview) that he had never been involved with any political groups, political organisations, or activities against the government. I expect if it were true that the applicant was involved in activities promoting the rights of the people of Darfur that he or his representative would have mentioned it in the otherwise detailed claims advanced throughout the SHEV application process. As noted above, in his post-SHEV interview submission he indicated that he had put forward all of his protection claims. In all the circumstances, I am not satisfied there are exceptional circumstances to justify my considering this new information.

² The Guardian, "Sudan paramilitaries threw dead protesters into Nile, doctors say", 6 June 2019; ABC News, "More than a dozen people killed, hundreds wounded as Sudan troops besiege protest camp, doctors say", 3 June 2019; The Guardian, "Sudan paramilitaries raped and assaulted protesters and medics", 5 June 2019

Applicant's claims for protection

16. The applicant's claims can be summarised as follows:

- The applicant is a Sudanese national from the Tama tribe;
- In around 2004, his family's property in West Darfur was destroyed by government backed Janjaweed tribes;
- As an African Darfuri he faced discrimination in Sudan;
- Between [year] and [year], he attended university in Khartoum. As a person from Darfur, he was treated like a second class citizen;
- Between August 2010 and May 2012, he lived in [Country 1];
- If returned to Sudan, the applicant fears he will be harmed or killed due to:
 - his profile as an African Darfuri or African Darfuri who resided in [Country 1]
 - his imputed involvement with rebel groups in Sudan arising from his membership of the Tama tribe
 - his imputed political opinion arising from his tribal links and due to the fact that he fled Sudan
 - generalised violence.

Refugee assessment

17. 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

18. 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.

19. As part of his SHEV application, the applicant provided an undated written statement (translated on 11 February 2017) where he provided a history of his life in Sudan and a number of protection claims (SHEV statement). Also included is his representative's submission, dated 1 June 2017, which reiterates a number of his written claims and refers to additional claims not previously advanced (SHEV submission). I have had regard to these documents. I have also listened to the audio recordings of the SHEV interview and entry interview. Following the SHEV interview, the applicant provided a written statement, dated 26 April 2019, where he addressed a number of concerns raised by the delegate and reiterated his claims for protection (post-SHEV interview submission). I have also had regard to this submission.

Identity and home area

20. Since his arrival in Australia, the applicant has consistently claimed that he originates from West Darfur. He has also consistently claimed to have originated from the 'Tama' or 'Tamawa' tribe. I note the tribe name is recorded as 'Tamawa' on the SHEV application, the SHEV statement and SHEV submission. However, there is no credible evidence before me as to the existence of a Sudanese tribe named 'Tamawa'. I prefer the applicant's evidence in the SHEV interview and post-SHEV interview submission, and reiterated in his IAA statement, that he comes from the Tama tribe. Like the delegate, I accept that he is a member of the non-Arab Tama tribe and that he originates from West Darfur. I find that the applicant is a Sudanese national born in [year] and that his receiving country is Sudan.
21. I accept the applicant's consistent evidence that while he was born in West Darfur he more recently lived in Khartoum where he completed his university education between 2006 and 2010. I also accept at the completion of his studies he travelled to [Country 1]. I further accept that after he returned from [Country 1] in 2012 he again lived in Khartoum for a number of months prior to coming to Australia in 2012. His evidence in his SHEV statement and at the SHEV interview was that when he returned from [Country 1] in 2012 he did not return to Darfur.
22. I have considered the applicant's previous links to West Darfur and am mindful that he has not resided there since 2006. His evidence in the SHEV interview was that his immediate family remained living in West Darfur and that one of the reasons he did not want to return to Sudan was because he would be by himself over there, thereby inferring he would not seek to return to West Darfur. I also note in the IAA submission that the applicant's representative expresses the applicant's fear in terms of the harm he may face if returned to Khartoum. For these reasons, I consider it highly unlikely that the applicant would seek to return to West Darfur if returned to Sudan. When I consider his previous ties to Khartoum, including his decision to live there following his return from [Country 1], I am satisfied that if returned to Sudan this is the area to which the applicant would return.

Events in Sudan

23. In his SHEV statement, the applicant stated that in 2004 his family moved to a [refugee] camp following the destruction of their property by government backed Janjaweed tribes. He was unable to study between 2003 and 2006 due to the conflict. Between 2006 and 2010, the applicant completed studies in economics and political science at university in Khartoum. At university, African Darfuris faced 'strict surveillance and interrogation'. Their groups were banned from holding meetings, practising political activities, or expressing general opinions. Between August 2010 and May 2012, the applicant illegally travelled to [Country 1] to seek asylum. Prior to being deported, he returned to Khartoum. The applicant feared that the

Sudanese authorities would discover that he had spent several years in [Country 1], so he left the country and travelled to Australia. If returned to Sudan he would face death due to his profile as an African Darfuri who resided in [Country 1].

24. In the SHEV submission, the applicant's representative referred to country information including about the actions of now former President al-Bashir and raised several further claims not mentioned or reflected in the SHEV statement or SHEV application. Firstly, that [a number] of the applicant's sisters were killed in 2003 following the attack by Janjaweed militias. Secondly, the applicant had previously suffered 'physical and psychological harm', including 'harm from his genocidal encounters with the Sudanese regime's security apparatus and pro-regime Arab militias'. Thirdly, the applicant feared returning to Sudan due to his profile as a member of the [Tama] tribe, which is considered to be opposed to the regime. All members of the [Tama] tribe are suspected of involvement with the Justice and Equality Movement (JEM), and the Sudan Liberation Movement (SLM) and its fighters in the Sudan People's Liberation Army (SPLA). The representative further claimed that the applicant is considered a fugitive in Sudan and, that on return, he will be arrested and face serious harm. He will be imputed to be politically hostile to the regime due to his tribal links and due to the fact that he fled Sudan.
25. In the SHEV interview, the applicant advised the delegate of some additional claims or other events that had transpired not previously raised. He said that he left Sudan due to the war, ethnic cleansing, mass killings, and attacks by the Janjaweed and other government militias. He also said that when walking on the street he can be singled out and racially discriminated against because of his skin colour and/or accent. When asked if anything had happened to him personally in Sudan, he advised the delegate that he witnessed a lot of tragedy. He also said that at university he was belittled, verbally abused, faced racial discrimination, and was accused of having links to JEM and SLM because of his African/Darfuri origins. Consistent with his earlier evidence in the entry interview that he had not been involved in any political groups or political organisations, he made no mention of being involved in any groups at the university like the ones mentioned in his SHEV statement that were banned for African Darfuris. He said that he feared he would be targeted on return because he is Darfuri. He said that he had no prior involvement in political activities in Sudan or Australia, nor any involvement with opposition groups. He said that Darfuris can be targeted by militia on the street, subject to arrest, and can go missing. He also said that he feared that his return from [Country 1] will be investigated. He also advised that since lodging his SHEV application his brother travelled to [Country 2] and sought protection there.
26. In his post-SHEV interview submission, the applicant addressed a concern raised by the delegate in the SHEV interview about his evidence in the entry interview that he came to Australia for work and education opportunities. He stated that he had listened to the audio of the entry interview and said that while the reason he chose Australia (as opposed to a European or Asian country) was for such opportunities, the reason why he left Sudan was due to 'the fears and persecutions' in Sudan. He stated that since he was young he had been independent and never relied on anyone for financial support.
27. Country information indicates there were three successive armed conflicts in Darfur between 1987 and 2004, mainly between the Government and associated militias (often referred to as the Janjaweed) and rebel groups.³ I accept the applicant's broadly consistent evidence that his family's property was destroyed in around 2004, and that following these events his

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

family sought refuge in a [camp] where they remain today. However, I do not accept the claim in the SHEV submission that [a number] of the applicant's sisters were killed in 2003 following the attack by Janjaweed militias. I prefer the applicant's evidence in the entry interview, SHEV application and SHEV interview that his sisters are alive and living in West Darfur.

28. I also have concerns with the claim in the SHEV submission that the applicant suffered 'physical and psychological harm', including 'harm from his genocidal encounters with the Sudanese regime's security apparatus and pro-regime Arab militias'. The applicant's evidence in the entry interview, his SHEV statement and the SHEV interview was that he had never experienced any physical harm in Sudan. I accept the applicant's evidence in the SHEV interview that he witnessed burning of villages by the Janjaweed. I also accept this would have been distressing for him. I do not accept the applicant suffered physical harm in Sudan.
29. The applicant's claim that he faced difficulties at university due to his African/Darfuri origin is supported by country information that indicates that Darfuris in Khartoum can face racial and societal discrimination, particularly within the student community.⁴ I accept the applicant's claims as outlined in the SHEV interview about his treatment at university. I also accept the applicant's consistent evidence, including in the entry interview, that he had no prior involvement in political activities in Sudan.
30. I accept the applicant's consistent evidence that after he completed his university studies in 2010 he travelled illegally to [Country 1] and found work as [named occupation]. I also accept his consistent evidence, including in the entry interview, that he was unable to apply for protection in [Country 1] and that when he returned to Sudan via a third country to Khartoum airport he was not identified as having been in [Country 1]. I accept that he returned to Sudan using the assistance of a humanitarian organisation that ensured there was no immigration stamp evidencing his travel from and residence in [Country 1]. However, there were inconsistencies in the applicant's evidence as to when he returned to Sudan. In his SHEV application he claimed that he returned to Khartoum in May 2012. In the SHEV interview, he claimed that he was 'in hiding' for a two month period prior to departing Sudan for Australia. He claimed that he went into hiding in case a friend or family member reported him to the authorities for having travelled to [Country 1]. However, this differed from his evidence in the entry interview that he lived in Sudan for six months following his return from [Country 1] and subsequent departure to Australia. Later in the entry interview, he said that he started making his arrangements to come to Australia when he returned from [Country 1] in January 2012. In the context of his overall claims, I find not much turns on this discrepancy. Whether the applicant returned in January 2012 or later, I am not satisfied that he lived in hiding until his departure for Australia in July 2012. I note the applicant's evidence in the entry interview and SHEV application is that he lived at the same address in Khartoum either side of his travel to [Country 1].

Brother in [Country 2]

⁴ DFAT, "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704; UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

31. I accept that the applicant's brother travelled to [Country 2] and sought asylum there. I also accept he has been given some form of residency in [Country 2]. Although no translation is provided, the applicant has submitted what appears to be a [Country 2] residence permit in his brother's name, valid until [January] 2021. The applicant has not raised any specific claims in connection with his brother's profile or status, and I am not satisfied he faces a real chance of any harm on return to Sudan on this basis. I have had regard to his submission in the IAA statement that he should be accepted in Australia based on the same moral and legal criteria that his brother was assessed by. I note that no information is provided in respect of the reasons why the applicant's brother left Sudan and sought protection in [Country 2].

Return to Sudan

32. In his SHEV statement, the applicant indicated that he feared harm on return to Sudan as an African Darfuri if his travel to [Country 1] became known to the Sudanese authorities. In the SHEV interview, he also indicated that he feared arrest or disappearance on return because he is Darfuri. He also stated that he did not want to return to Sudan because he would be alone. In the post-SHEV interview submission, he stated that there is no law and order and he can be killed easily. He also indicated that he further feared harm due to his membership of the Tama tribe who he said are known for their strong opposition to the Sudanese government. This was consistent with his representative's submission that all members of the applicant's tribe are suspected of involvement or an association with JEM, SLM and SPLA. The representative also claimed that the applicant will be imputed to be politically hostile to the regime due to his tribal links and due to the fact that he fled Sudan. He also said that the applicant is considered a fugitive in Sudan who faced arrest and serious harm.
33. Country information before me indicates that conflict in Sudan has been exacerbated by the intricacies of hundreds of different ethnic and sub-ethnic groups which are often simplistically categorised as Arabs and non-Arabs (or Africans). The applicant identifies as a person of African origin. In 2016, DFAT reported historical ethnically-motivated inter-tribal discrimination and violence in Sudan due to disputes over land, access to resources, migration and tribal rivalries. DFAT also reported that such discrimination and violence was acute in areas affected by conflict, and that non-Arab ethnic groups including the Fur, Zaghawa and Massalit located in Darfur faced a high risk of discrimination and violence on the basis of their ethnicity and their actual or perceived support for or association with rebel groups. DFAT also referred to instances of individuals from Darfur being targeted in Khartoum, including due their actual or perceived support for or association with rebel groups. In respect of Darfuris in Khartoum, DFAT assessed they faced a moderate risk of discrimination and violence on the basis of their ethnicity and their actual or perceived support for or association with rebel groups, and that Darfuris who actively criticise the Government, such as through participating in protests, faced a higher risk. There was no mention by DFAT of targeting of the Tama tribe.
34. A joint 2016 report by the UK Home Office and Danish Immigration Service about the situation for Darfuris in Khartoum assessed that persons from Darfur, and in particular those of African descent, may experience societal discrimination and racism in Khartoum. The report indicated that societal discrimination manifested in a way that limited persons from Darfur access to certain employment sectors, particularly the public sector. Sources also indicated that some faced harassment with the use of derogatory phrases such as 'slave', especially those from the Riverine Arab tribes, and that factors that affected the level of discrimination an individual may experience was linked to how politically involved a person was and how long they had lived in the city. The report also assessed that persons from Darfur with a political profile are at risk of being targeted by the National Intelligence and

Security Service (NISS) and its affiliated militias in Khartoum. Those targeted in particular are student activists and persons with an affiliation to rebel groups. However, sources also indicated that the NISS also target lawyers and journalists, civil society leaders, and human rights activists. Some sources observed that those from Darfuri tribes other than Fur, Masalit and Zaghawa would not generally be perceived as opposed to the regime or commonly associated with rebel groups and hence not be subject to monitoring. Another source indicated that persons some Darfuri tribes, including the Tama, were imputed to support rebel groups.

35. I have considered new information about non-Arab persons/tribes from Darfur. In its 2018 report, the UK Home Office assessed that non-Arab Darfuris are not necessarily clearly distinguishable from Arab Darfuris, or other Sudanese, by their appearance or skin colour. While language may indicate if a person is from Darfur, some non-Arab groups, like the applicant, speak Arabic. It also assessed that non-Arab Darfuris situated in Darfur may be targeted by the Sudanese authorities or militia groups due to suspicion of having a connection rebel groups, and that members of the non-Arab Darfuri tribes Fur, Zaghawa and Massalit have been targeted on the basis of ethnicity. In relation to Khartoum, the UK Home Office indicated that the government monitors non-Arab Darfuris because of their suspected links with rebel groups, with particular focus on the Fur, Zaghawa and Massalit. Those monitored can also include non-Arab Darfuris critical of the government and/or who have a political profile, including students and political activists. Overall, the UK Home Office assessed that evidence does not indicate that all Darfuris face treatment in Sudan that amounts to serious harm. Nor does the evidence support that, in Khartoum, all non-Arab Darfuris face a real risk of persecution based on their ethnicity alone. While a person's ethnicity may be a factor, Darfuris who have or are perceived to be associated with an armed rebel group, or criticise or challenge the government, including student activists, civil society and political activists, may face adverse interest from the Sudanese authorities. According to one source, the non-Arab Tama have mostly sided with the government.
36. I accept that on return to Sudan the applicant may be identified as a non-Arab Darfuri and a member of the Tama tribe. As noted above, I have also accepted that as a student he faced difficulties at university due to his African/Darfuri origin. Having regard to the country information cited above, I am satisfied that, as a non-Arab Darfuri (of African descent), the applicant may be at risk of encountering a degree of discrimination and harassment in Khartoum; however, I am not satisfied that this would constitute serious harm.
37. I have considered the articles from ABC News and The Guardian about the current political and security situation in Sudan, including recent developments involving changes following the ousting of President al-Bashir. As noted above, that information indicates that Sudan is in a transitional period of military rule since al-Bashir was removed from office in April 2019. In June 2019, paramilitaries from the Rapid Support Forces reportedly attacked pro-democracy protesters in central Khartoum where between 35 and 100 were killed. In the aftermath, there were also reports of persons being sexually assaulted and robbed of their mobile phones and cash. Doctors and medical workers were threatened if they assisted the wounded. Hundreds of activists were detained and many more were reportedly missing.⁵
38. As noted by the representative in the IAA submission, the UK Upper Tribunal found that each case involving non-Arab Darfuris needs to be considered on its facts, taking into account a

⁵ The Guardian, "Sudan paramilitaries threw dead protesters into Nile, doctors say", 6 June 2019; ABC News, "More than a dozen people killed, hundreds wounded as Sudan troops besiege protest camp, doctors say", 3 June 2019; The Guardian, "Sudan paramilitaries raped and assaulted protesters and medics", 5 June 2019

person's individual circumstances, profile and activities. While I accept that the applicant resided in [Country 1] between 2010 and 2012, I find the chance that he would now or in the foreseeable future be identified by the Sudanese authorities as having travelled there remote. I also find his claim in the SHEV interview that the authorities may investigate his previous links to [Country 1], or that a friend or family member may report this previous travel, speculative. Having had regard to the applicant's background in Khartoum, his personal circumstances, his lack of political/activist/anti-government profile, and the country information, I am not satisfied that, in Khartoum, he faces a real chance of serious harm due to his ethnicity, his appearance, his accent/dialect, his tribal identity, his place of origin, as a member of the Tama tribe, as a Darfuri or non-Arabic Darfuri, the events he witnessed in West Darfur, his previous travel to and residence in [Country 1], due to his departure from Sudan, or a combination of these factors. I am not otherwise satisfied that he faces a real chance of harm from any action of former President al-Bashir or of being imputed with a profile opposed or politically hostile to the regime due to his ethnicity, his tribal links, due to the fact that he fled Sudan, or for any other reason. As also noted in the IAA submission, there is no information to suggest that non-Arab Darfuris like the applicant are being targeted by the Sudanese authorities. The applicant's claim in the post-SHEV interview submission that the Tama tribe 'are known for their strong opposition to the Sudanese government' appeared inconsistent with his evidence in the SHEV interview that the tribe was "very peaceful" and "not causing any problems". On the information before me, I am not satisfied that persons with a profile like the applicant face a real chance of harm based on their imputed involvement with JEM, SLM and/or SPLA. When considering his background and current circumstances, I am also not satisfied the applicant faces a real chance of being considered a fugitive in Sudan.

39. I accept that on return to Khartoum the applicant would continue to be separated from his immediate family who, aside from his brother in [Country 2], continue to reside in West Darfur. However, I note his evidence in the entry interview and SHEV interview that he has relatives and friends residing in Khartoum so I have doubts that on return he would be alone there. In the entry interview, he stated that prior to coming to Australia he lived with a [uncle]. Even if it could be said that the applicant no longer has relatives or friends in Khartoum, having regard to his background, personal circumstances and the country information, I am not satisfied that being in Khartoum alone as a single adult male would of itself contribute to a person like him having a risk profile that would lead to a real chance of serious harm, or that he has an elevated risk of harm on the basis of this ethnicity or related profile. I note the applicant's evidence in his post-SHEV interview submission is that from a young age he has been independent and never relied on anyone for financial support.
40. Based on the reports from ABC News and The Guardian, the applicant's representative states that there is a significant risk of generalised violence to the civilian population in Greater Khartoum. However, the reports indicate that those killed or harmed were targeted due to their involvement in protest activity or in connection with the protest, not as a result of generalised violence. In terms of the general security situation in Sudan, the country information in the review material indicates it is reasonably safe and secure in areas outside conflict areas such as Khartoum,⁶ which has a diverse population of over five million people.⁷

⁶ UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82; DFAT, "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

⁷ DFAT, "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704; UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK

In his post-SHEV interview submission, the applicant stated that there is no law and order and he can be killed easily. While I accept that the country is in a transitional period of military rule, evidence before me does not support that the security forces are losing control of Khartoum. While I also accept that civilians may have been victims of attacks on protesters during the events of June 2019, taking into account the general security situation, and the size and diversity of the city, I find the chance that the applicant would be harmed as a bystander, or inadvertently caught up in an incident similar to the events of 3 June 2019, or otherwise harmed through generalised violence is no more than remote. Moreover, I am also satisfied that any harm the applicant may possibly face in relation to generalised violence would not be for the essential and significant reason or reasons of his race, religion, nationality, membership of a particular social group or political opinion, but rather a consequence of any ongoing insurgency or insecurity present in the country overall. Accordingly, s.5J(1)(a) and 5J(4)(a) of the Act would also not be satisfied.

41. Although not specifically raised as a claim for protection, the delegate considered whether the applicant faced harm on return to Sudan due to his profile as a 'failed asylum seeker', a 'failed returned asylum seeker who left Sudan lawfully', and/or 'returnee from Australia'. I accept that if he returned to Sudan he would do so as a failed asylum seeker returned from Australia. I also accept the applicant will likely return to Sudan on a temporary travel document given his Sudanese passport was confiscated by a smuggler during his journey to Australia. I further accept that he would very likely be identified by the Sudanese authorities as someone who departed Sudan lawfully.
42. In 2016, DFAT reported that those who departed Sudan lawfully, like the applicant, were required to obtain an 'exit visa'. DFAT assessed that those who returned to Sudan without departing on an exit visa would come to the attention of the authorities. However, as noted by the delegate, the applicant's evidence in the SHEV interview was that he obtained the necessary legal documentation to permit his lawful departure from Sudan. Even accepting that the applicant indicated that he paid a bribe to secure that documentation, I am not satisfied that, on return, his mode of departure would be deemed irregular by the Sudanese authorities or that he would come to their attention on that basis. The applicant's evidence in the SHEV interview was that he departed Sudan lawfully and flew to Indonesia using his passport also containing an Indonesian visa. DFAT also stated that it was not aware of any evidence that suggests an asylum seeker returning to Sudan would be distinguishable to the broader community or susceptible to any form of discrimination or violence, unless they presented a threat to the government. I have found that the applicant does not hold an anti-regime or anti-government profile.
43. Other sources indicate that returnees, including those who originate from Darfur, would not generally experience difficulties on return to Khartoum International Airport, including for reasons of claiming asylum overseas, due to long term residence abroad in western countries, or due to the use of emergency travel documents. Information also indicates that a person's ethnicity did not generally affect their treatment on arrival at the airport. However, persons with existing political profiles or affiliation with rebel groups may be detained and questioned.⁸

Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

⁸ UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

44. Consistent with earlier reporting, the UK Home Office assessed in 2017 that persons returning to Sudan having had their asylum claims rejected were not at risk of harm for that reason alone. It assessed that persons who are deemed to have a political profile and / or are linked to activities that are perceived to be critical of the government may come to the adverse attention of the authorities.⁹ In 2018, the UK Home Office reported that a number of Darfuris have returned to Khartoum in recent years, and that while most returnees who enter Sudan are likely to be questioned, they are not likely to experience further complications, unless they are a person of interest to the authorities because of their profile or activities in opposition to the government. Further, the UK Home Office assessed that the evidence does not establish that non-Arab Darfuri returnees are ill-treated on return on grounds of their ethnicity alone.¹⁰
45. When I consider the applicant's profile and the country information before me about the treatment of those who are failed asylum seekers, those who departed Sudan lawfully, and/or those who have returned from western countries like Australia, I am not satisfied he faces a real chance of harm on this basis. Nor am I satisfied he faces a real of chance harm due to his lawful departure, his long term residence in Australia, or due to him returning using a temporary travel document, or a combination of these factors. I note the applicant's evidence that he previously returned to Sudan in 2012 via the airport in Khartoum after a significant period abroad and did not claim to have faced any difficulty re-entering the country at that time. While I accept the applicant may be questioned on return to Khartoum International Airport, I am not satisfied that this would amount to serious harm.
46. Having regard to all the applicant's personal circumstances, in the context of the country information about the current situation in Khartoum, I am not satisfied he faces a real chance of serious harm from the Sudanese authorities or government militia, or from any other person or group.
47. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

48. 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

49. 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

50. Under s.36(2A), a person will suffer 'significant harm' if:

⁹ UK Home Office, "Country Policy and Information Note – Sudan: Rejected asylum seekers", 1 August 2017, OG6E7028845

¹⁰ UK Home Office, "Country Policy and Information Note – Sudan: Non-Arab Darfuri", v.3.0, 28 September 2018, OG9EF767949

- 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.

51. I have accepted that the applicant may face some level of discrimination and harassment on the basis of his ethnicity. I have also accepted he may be subjected to questioning at the airport on return to Sudan. However, having considered his own circumstances and evidence discussed, I am not satisfied that any such discrimination, harassment or questioning he may face amounts to significant harm as defined in the Act. I do not accept it would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I also do not accept that any discrimination or questioning faced would involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering or that would cause extreme humiliation.
52. I have otherwise concluded that the applicant does not face a real chance of harm in Khartoum from the Sudanese authorities or government militia, or from any other person or group including former President al-Bashir. I have also concluded that he does not face a real chance of harm from generalised violence, the general security situation in Khartoum, or of being imputed with a profile opposed or politically hostile to the regime or imputed of involvement with rebel groups arising from his background, his tribal identity, his ethnic profile, his departure from Sudan, or for any other reason. I have further concluded that the applicant does not face a real chance of harm for any other reason including due to his ethnicity, his appearance, his accent/dialect, his place of origin, as a member of the Tama tribe, as a Darfuri or non-Arabic Darfuri, the events he witnessed in West Darfur, his previous travel to and residence in [Country 1], as a single adult male, as a fugitive, due to his brother's profile or status, due to his legal departure from Sudan, due to him being a returning failed asylum seeker who has resided in Australia/a western country, or due to the possibility that he may return to Sudan using a temporary travel document. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm in Sudan.
53. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

Complementary protection: conclusion

54. 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.