



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA19/06835

Date and time of decision: 8 August 2019 12:48:00
J Jennings, 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 Iraq. He applied for a protection visa on 11 January 2017. A delegate of the Minister for Immigration refused to grant the visa on 12 July 2019.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. No further information has been received or obtained.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant is an Iraqi citizen born in Karbala, Iraq.
 - The applicant is of Arab ethnicity and a Shia.
 - At the age of around [specified] years the applicant was in the park in Karbala in 2011 when he saw a girl walking alone. He approached her and spoke to her and they exchanged telephone numbers and from this time they kept in regular contact.
 - The relationship continued throughout 2011/2012 and they talked by the telephone and met in person on occasions when she visited Karbala with her family or when he went to visit her in Najaf. The relationship was not known to their families.
 - Around the end of 2012 the girl's mother became aware of the relationship. Her mother was not supportive and informed the family and the tribe. This was considered to be a scandal to her family and tribe and she was beaten and assaulted by her father and brothers and under duress she disclosed the applicant's name to tribal members. The beating continued until she died in January 2013.
 - The girl's tribe contacted the applicant's tribe and met with them and demanded that the applicant's blood be shed for the shame he had brought on their tribe. As a result the applicant was disowned by his own tribe.
 - The applicant went into hiding and in June 2013 made arrangements to leave Iraq and travelled on to Australia.
 - The applicant fears that should he return to Iraq he will be killed by members of the girl's tribe or his own tribe and his fears extend to all of Iraq.

Factual findings

5. The applicant has consistently claimed to be an Iraqi citizen and has provided identity documents in support of his claimed identity. I accept the applicant's identity as stated and that Iraq is the receiving country for the purpose of this review.
6. I accept the applicant is Arab and Shia.

7. The applicant has consistently stated his relationship with a girl and the subsequent harm he fears because of the relationship as the reason for him leaving Iraq in 2013. Country information advises that Iraq is a conservative society and women in particular are required to behave within strict conservative social mores. Marriages are frequently arranged between families and the opportunity for young people to meet in social settings is limited.¹ In this context it is difficult to reconcile the applicant's account of him meeting a young woman in a park, approaching her and talking to her, obtaining her telephone number and from that point developing a close, intimate and sexual relationship with her.
8. I have given close consideration to the applicant's account of these events and I am concerned as to their plausibility within the context of the limitations on young people of the opposite gender meeting and mixing socially in Iraq. It is the applicant's claim that the girl was walking in a park on an occasion when she was visiting Karbala with her parents. I accept as possible that a young woman may have been walking unescorted in a park in Karbala as her parents rested in the same park, but I consider it implausible that she would have responded to the advances of an unknown young man or teenager who approached her unintroduced. Furthermore I also consider it implausible that a young woman in these circumstances would give her telephone number to an unknown young man or teenager. I am not persuaded that the applicant's account of their first meeting is plausible, however even if I were to accept that he met the girl in this manner and that they spoke and that she agreed to swap telephone numbers with him I am not satisfied that his account of the subsequent ongoing relationship is plausible.
9. The applicant claims the girl regularly visited Karbala with her family and on these occasions he would arrange to meet her; she managed to meet the applicant by telling her parents that she was going for a walk or meeting a friend or if they were visiting the shrine she may pretend she was going shopping. She and the applicant would then meet, sometimes in a public place but mostly secretly or in his car. The applicant also claims that he would travel to Najaf at times to meet with her and that she would leave home as though going to school but would spend the day with the applicant and they went to distant places when no one could see them and they would sit in the park or sit in the car. He also stated that on occasions he would pick her up and drop her at school. It is the applicant's claim that they met in this manner from the time of initially meeting at the park in Karbala around February/March 2011 until the last time he had contact with her around November 2012. This is a significant period of time to have been conducting a secret relationship of the type described, particularly in the conservative Iraqi society where family ties are close knit and the movement and social interactions of young women are closely monitored and controlled and I am not persuaded it is plausible.
10. I have some concerns about the applicant's description of the girl as being 19 years of age in 2011 when he met her yet still being a school student in her fourth year of high school in the light of country information that access to education for girls in Iraq is a challenge and that overall only half of children enrolled actually complete primary school and that school dropout for girls is particularly high.² However it is possible that at age 19 years she may still have been a high school student. A further concern is that the applicant could not name the school she attended, yet he claims to have driven her to her school on occasions. However again I accept as possible that not being familiar with Najaf the applicant may not recall or

¹ US Department of State, "Iraq - Country Reports on Human Rights Practices 2015", 2016, OGD95BE926170; USA Today, "Parents disapprove, but Internet romance a big hit" 21 March 2011, CXCB3E63420990

² US Department of State, "Iraq - Country Reports on Human Rights Practices 2015", 2016, OGD95BE926170; United Nations High Commission for Refugees (UNHCR), "International Protection Considerations with Regard to People Fleeing the Republic of Iraq", 3 May 2019, 20190506112913

know the name of the school. However I do not accept that a female high school student would be able to miss school on multiple occasions to meet socially with a boy and her absences not come to the attention of the school and her parents. I have considerable doubt regarding this claim and I am concerned this casts further doubt on the veracity of the applicant's claim to have met with the girl in the manner he described. Similarly I have considerable doubt about her ability to meet with the applicant regularly on visits to Karbala by telling her parents that she was going for a walk or meeting friends or shopping unescorted.

11. I am also not persuaded that the applicant would be subjected to killing as a matter of honour in such a matter. Country information reports on horrific mistreatment inflicted on women who have been deemed to have infringed their family's honour or social codes and various reports are that several hundreds of women and girls are killed in 'honour killings' each year.³ While the Special Rapporteur reported men and boys may also be victims of 'honour killings' it is overwhelming women who are so targeted. I note reports of blood feud retaliatory acts of vengeance between tribes for a variety of reasons, however the indications are that resolution by imposing capital punishment in such cases is not the norm. Incidents of males killed in 'honour killings' relate generally to homosexuals.⁴ While men are not immune to 'honour killings', overall the country information points to the women involved in relationships that are perceived to bring shame on the family or tribe being subject to honour crimes and I am not persuaded the applicant's account he was threatened with death in this manner is plausible.
12. Moreover, it is difficult to reconcile the conflicting claims that the girl's family are sufficiently conservative to kill her and demand the applicant's death over the matter of the relationship, rather than organise for them to marry, with his account that when she was in Karbala her parents were lenient or permissive enough to agree to her requests to going walking, shopping or meeting friends unescorted and that she was able to miss school on multiple occasions to meet him in Najaf. It is also difficult to accept that a family with the conservative values that supported killing a daughter in an honour crime allowed a girl to advance this far in education, particularly a family in the south where school enrolment is the lowest in the country.⁵
13. Although I have noted the consistency of the applicants claim in this regard, overall the implausibility in his account casts significant doubt on his claims and I am not satisfied that these are genuine. I do not consider his account of their first meeting in the park where she agreed to share her telephone number with an unknown stranger is plausible and similarly I consider his account of their clandestine meetings over an extended period in 2011 and 2012 to be implausible. I am not satisfied that the applicant entered into a relationship with a girl and that as a result he will be killed by her tribe or his tribe because of this relationship. I find that the applicant has fabricated his account in order to raise protection claims.

³ UK Home Office, "Iraq August 2011", 30 August 2011, 3319; Human Rights Watch, "At the Crossroads: Human Rights in Iraq Eight Years After the US-Led Invasion", February 2011, CIS20106; UNHCR, "International Protection Considerations with Regard to People Fleeing the Republic of Iraq", 3 May 2019, 20190506112913; US Department of State, "Iraq - Country Reports on Human Rights Practices 2015", 2016, OGD95BE926170

⁴ UNHCR, "International Protection Considerations with Regard to People Fleeing the Republic of Iraq", 3 May 2019, 20190506112913

⁵ *ibid*

Refugee assessment

14. 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

15. 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.
16. I have not accepted the applicant’s claim regarding his relationship with the girl in Iraq or that he would be killed or harmed by her tribe or his tribe should he return to Iraq.
17. I note the advice from UNHCR regarding the return of people to Iraq and the cautions about returning people to areas controlled by Islamic State (ISIL) or to parts of Iraq where there is a risk that they may not be able to access or reside in those areas.⁶
18. The applicant is from Karbala, he was born and lived all of his life there, and he attended school there and worked there. His parents and some other family members remain living in Karbala. I am satisfied that if the applicant was to return it would be to Karbala. The UNHCR has advised that as there is no airport in Karbala returnees from abroad would arrive by the airports in Baghdad or Najaf and access Karbala by overland travel.⁷
19. The applicant is an Arab and Shia. Iraq’s population is a mix of Shia and Sunni Muslims and Arabs, Kurds and a range of other ethnic groups. Shia communities live in most areas of Iraq and form the majority of the population in the south of the country, which includes Karbala.⁸

⁶ UNHCR, “International Protection Considerations with Regard to People Fleeing the Republic of Iraq”, 3 May 2019, 20190506112913

⁷ Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA), CISED50AD3921

⁸ UNHCR, “International Protection Considerations with Regard to People Fleeing the Republic of Iraq”, 3 May 2019, 20190506112913; DFAT, DFAT Country Information Report Iraq, 9 October 2018, CIS7B839419766

20. The fall of the Sunni dominated Ba'ath regime in 2003 saw a significant change and improvement in the situation for Shias in Iraq, although the country has endured a difficult security situation due to sectarian violence from 2003 and from 2014 in the fight against ISIL. Related fighting and violent attacks and bombings have largely occurred in the northern areas of Iraq and the Shia dominated south has been subject to less violence. However throughout 2016 and 2017 a number of violent attacks occurred in the southern regions, including Karbala. In general these attacks were attributed to ISIL.⁹ In December 2017 the Iraqi government declared victory in a final assault over ISIL, although experts expect ISIL will continue to wage a protracted small-scale insurgency in Iraq for many years.¹⁰ Despite the declared defeat of ISIL in 2017 the UN estimate that in 2018 up to 30,000 ISIL fighters remain active, although some of this number were in Syria, and will continue to target Iraqi civilians. DFAT reported an attack in a central market in Baghdad in January 2018, and media reports recount an attack on a military base and religious centre linked to the Muqtada al-Sadr movement in the southern governorate of Maysan in May 2018; however the indications are most attacks occurred in the Kurdistan region.¹¹
21. The review material includes analysis of attacks by number, type and location, and while this reports a downturn in attacks, given this reporting is a blog, the credentials of the blogger are not known and the statistics quoted are not sourced I give this information little weight.¹² DFAT reports "isolated incidents" of violence in Shia dominated areas of Iraq claimed by ISIL, and violence between opposing Shia militias. Overall the information before me reports ongoing ethnic tension, particularly in ethnically mixed areas, and ongoing small-scale insurgency by ISIL but that anti-Shia violence has reduced and, notwithstanding the attack on the military base in May 2018, that being in the south Karbala is less subject to violent attacks.¹³
22. I note the reports of intra-Shia violence but it is important to note that this is often linked to criminal activity and DFAT report sources inform that those who are actively involved in a militia group face a greater risk of intra-Shia violence than ordinary civilians.¹⁴ There is no indication that the applicant or his tribe has been or would be involved in Shia militia groups or criminal activity that would give rise to a real chance of harm to him in Iraq and I find the chance that he would be harmed in a sectarian attack or similar to be remote. I accept that the applicant would need to travel overland to access Karbala however I note that the UK

⁹ Voice of America, "Suicide Bomber Kills 6 in Southern Iraq", 14 November 2016, CX6A26A6E14450; Press TV, "Terror blasts in Iraq's Basra, Baghdad kill 35, injure 45", 20 May 2017, CXC9040669590; BBC News, "At least 60 die in twin attacks near Nasiriya, 15 September 2017, CXC90406614062; United Nations Assistance Mission for Iraq, "United Nations Iraq - UN Casualty Figures for Iraq for the Month of May 2017", 1 June 2017, CISED50AD5009; The Independent, "Karbala suicide bombing: 30 killed in Iraq terror attack", 9 June 2017, CXC90406610191; CNN, "Suicide attacks in Iraqi Shiite region target civilians", 9 June 2017, CXC90406610194

¹⁰ DFAT, DFAT Country Information Report Iraq, 9 October 2018, CIS7B839419766; European Asylum Support Office (EASO), "EASO Country of Origin Information Report - Iraq Security situation", 12 March 2019, 20190313085833; Danish Immigration Service and Landinfo, "Northern Iraq: Security situation and the situation for internally displaced persons (IDPs) in the disputed areas, incl. possibility to enter and access the Kurdistan Region of Iraq (KRI)", 5 November 2018, CIS7B8394110112

¹¹ DFAT, DFAT Country Information Report Iraq, 9 October 2018, CIS7B839419766; Anadolu News Agency, "Unknown attackers target Sadr-linked sites in S. Iraq", 15 May 2018, CXBB8A1DA27436; Rudaw, "Sadr's bases and religious centers attacked in Maysan after provincial win", 16 May 2018, CXBB8A1DA27458

¹² Wing, J, "Musings on Iraq", various dates

¹³ EASO, "EASO Country of Origin Information Report - Iraq Security situation", 12 March 2019, 20190313085833; Danish Immigration Service and Landinfo, "Northern Iraq: Security situation and the situation for internally displaced persons (IDPs) in the disputed areas, incl. possibility to enter and access the Kurdistan Region of Iraq (KRI)", 5 November 2018, CIS7B8394110112; United Nations Assistance Mission for Iraq, "United Nations Iraq - UN Casualty Figures for Iraq for the Month of May 2017", 1 June 2017, CISED50AD5009; DFAT, DFAT Country Information Report Iraq, 9 October 2018, CIS7B839419766

¹⁴ DFAT, DFAT Country Information Report Iraq, 9 October 2018, CIS7B839419766

Home Office has advised there is no real risk of harm to ordinary civilians travelling to the south from Baghdad.¹⁵

23. I note the delegate had regard to the potential separation of the applicant from his wife and child in Australia in the event that he is returned to Iraq. The applicant did not advance any claims in this regard, nor am I satisfied that any harm he may experience on this basis would amount to serious harm.
24. Considering the information before me I am not satisfied that there is a real chance the applicant would experience persecution in Iraq.

Refugee: conclusion

25. 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

26. 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

27. 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.
28. I have not accepted that any harm the applicant may experience in regard to the potential separation from his wife and child in Australia in the event of return to Iraq would amount to serious harm. Nor do I accept that this would amount to significant harm as defined.
29. I have found that there is not a real chance that the applicant faces harm in Iraq. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test,¹⁶ and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

¹⁵ UK Home Office, "Country Information and Guidance - Iraq Internal relocation (including documentation and feasibility of return)", 17 November 2015, OG8F59D8D50

¹⁶ *MIAC v SZQRB* (2013) 210 FCR 505

Complementary protection: conclusion

30. 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.