



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SUDAN

IAA reference: IAA20/08277

Date and time of decision: 1 June 2020 19:37:00

S MacKenzie, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Sudan. He arrived in Australia [in] June 2013 as an unauthorised maritime arrival. On 7 March 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 22 April 2020, 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 18 May 2020, the IAA received a written submission from the applicant's representative (IAA submission). The IAA submission primarily summarises the applicant's evidence before the Minister. The IAA also received a 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. Included in the submissions to the IAA is a letter not before the delegate from the Chairperson of [an Organisation] dated [May] 2020. It is new information. The Chairperson states that their community has known the applicant for many years and they are aware of his background and his capture by the Sudanese government. The Chairperson also states that the applicant came to them when he first learned of his brother's disappearance and asked for help. The applicant states in his IAA statement that he provides the letter to 'support his raised claims'. He states he could not have provided the letter earlier because he was not aware that he could provide such a supporting statement until he received guidance from his representative. Although it is not apparent why the applicant has links with the Darfur community in Australia, noting he has not claimed to have originated from that part of Sudan, I am satisfied that, on face value, the new information from the Chairperson of the [Organisation] constitutes credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims. The letter is provided to corroborate certain claims advanced throughout the SHEV process and is material to the issues for consideration. I also take into account that the applicant was not legally represented at the time he raised the claim in respect of his brother's disappearance. In all the circumstances, I am satisfied exceptional circumstances exist to justify considering this information.
6. Attached to the applicant's representative's covering email to the IAA is a document named '[Social media] posts.pdf'. The representative states he has attached the '[Social media] Profile for the applicant displaying contempt to the Sudanese government'. The [Social media] activity and the claim that the applicant is political on [Social media] is new information.
7. In his IAA statement, the applicant states he did not provide the [Social media] activity prior to the protection visa interview because he did not have a lawyer and because he attended the interview with no supporting documents. There is no further mention of the [Social media] posts or its relevance to his application in the IAA statement.

8. If the [Social media] activity relates the applicant as indicated by his representative, it appears he uses the social media platform under a pseudonym as the posts are not from a person bearing the applicant's name. In fact, there are several posts from different accounts and the posts purportedly made by the applicant are not identified. I also note some of the account names and text is in a language other than English and no translation is provided.<sup>1</sup>
9. While the applicant stated in the protection visa interview that the Sudanese security forces have been looking for him since he left the country and because he posts on [Social media] they will know he came to Australia, he gave no indication at any time throughout the SHEV process that he was politically active on [Social media]. While I accept the applicant may use [Social media] and the [Social media] posts provided to the IAA may include images that could be of events or human rights abuses in Sudan, I am not satisfied it evidences the applicant is 'displaying contempt to the Sudanese government' on [Social media]. As noted, most of the text accompanying these images is not translated to English and therefore there is no context provided. Further, there is little engagement with this new information by the applicant and his representative and I am not satisfied the new claim that on [Social media] the applicant is 'displaying contempt to the Sudanese government' is credible. Neither the representative nor the applicant has pointed to any exceptional circumstances that may justify considering this new claim, and none are evident to me. I also consider that if the applicant had been involved politically on [Social media] that he would have mentioned it in the protection visa interview when both the subject of [Social media] and his political activities were discussed. I have considered later in this decision the applicant's use of [Social media] and its relevance to his protection claims, as raised in the protection visa interview. In the circumstances, I am not satisfied that exceptional circumstances exist to justify consideration of this information.
10. In the IAA submission, the applicant's representative refers to the applicant's evidence before the Minister that he escaped from a militia camp. He states 'when an opportunity to escape arose the applicant stated that he immediately ran-away from the camp with the help of one of his captors, [Mr A], who was on duty'. While the applicant appeared to provide somewhat conflicting evidence throughout the SHEV process as to the circumstances of his escape, the claim that he did so 'with the help of one of his captors' was not information provided earlier. In this regard, I consider this aspect of the IAA submission to be new information.
11. In his written claims before the delegate the applicant claimed his 'chance came to escape in the night during guard change over'. In his protection visa interview, the applicant referred to [Mr A] as being a guard at the camp who appeared sympathetic to the plight of those detained there. He also said the escape had been planned to take place when [Mr A] was working. However, the applicant specifically advised the interviewing officer in the protection visa interview that [Mr A] was unaware of their plans to escape and had no role in facilitating it. He said that at the time of the escape there were roving patrols that could not monitor all areas constantly and they picked a particular time and place to escape. He gave no indication that they were assisted by a captor. The claim that the applicant escaped the militia camp 'with the help of one of his captors' is not supported by the applicant's written evidence and is in complete contradiction to his oral evidence in the protection visa interview. As noted by the delegate in his decision, '[t]he applicant claimed that [Mr A] was not aware of their plans of escape, as he never discussed his plans to escape with [Mr A]'. I expect that if the applicant's escape was assisted by [Mr A] or one of his captors he would have mentioned it earlier, particularly in the protection visa interview

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<sup>1</sup> The IAA Practice Direction under section 473FB states that all documents that are not in English should be translated into English by a translator with a 'Translator' level accreditation from the NAATI. Both the documents and the translations should be provided.

where the escape was discussed in some detail. I am not satisfied the new information is credible or that exceptional circumstances exist to justify considering it.

### **Applicant's claims for protection**

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

- He is a Sudanese national from [Location] in South Kordofan;
- In February 2013, a militia took him by force to a military training camp in [City];
- He was mistreated in the camp when he demonstrated his reluctance to fight;
- After around 20 days he escaped but was pursued in different parts of Sudan by the militia or security forces;
- He left Sudan due to political and tribal conflict. He was targeted by different political and tribal groups that have political goals;
- He experienced many incidents of harassment from various groups. Many were African groups who terrorised males to get them to fight for them;
- In 2017, his brother was kidnapped by government forces and his current whereabouts is unknown;
- If returned to Sudan, he fears he will be forcibly recruited by a militia where he will be forced to fight, be harmed, or be killed;
- He also fears he will face harm/death because:
  - he escaped the militia
  - he will be perceived by African tribes in Sudan as 'pro government'
  - he was part of the "uprising" in Sudan
  - he applied for refugee status in Australia and spoke out against conscription in Sudan.

### **Refugee assessment**

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13. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

14. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct

- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

### *Identity*

15. Since his arrival in Australia, the applicant has consistently claimed that he was born in [Village 1], near Khartoum city, Khartoum State and raised by his mother in [Location] in South Kordofan. I accept the applicant's identity is as claimed and that his receiving country is Sudan. The applicant's evidence in the protection visa interview was that his brother lives in [Village 1] and that since he departed Sudan his mother and sister relocated from [Location] back to [Village 1] where they now live with the applicant's maternal aunt. He said there was nobody left in his village. I find that if returned to Sudan the applicant would reside in [Village 1]. Weighing all the information before me, I consider his links to [Location] are limited and no longer ongoing.

### *Events in Sudan*

16. The applicant's written claims and evidence about events in Sudan were initially set out in his SHEV application, dated 1 March 2017. It can be summarised as follows:

- A government controlled militia, or 'Janjaweed' group, took the applicant by force;
- He was forced to undertake military training for one month and was abused when he refused;
- These groups force people to fight against African tribes and Darfur militias and government;
- He escaped the group;
- After his escape the militia went looking for him.

17. In a written statement, dated 7 April 2017, the applicant provided additional information about events in Sudan (April 2017 statement). It can be summarised as follows:

- He left Sudan due to political and tribal conflict. He was targeted by different political and tribal groups that have political goals;
- There are many 'illegal' pro-government militias in Sudan. There are also anti-government militias. It is difficult to differentiate them;
- The applicant experienced many incidents of harassment from various groups. Many were African groups who terrorised males to get them to fight for them. On many occasions he paid the militias 'money or kind' because he was not willing to go with them;
- Later, in February 2013, the Janjaweed took the applicant by force. It is the most powerful illegal pro-government militia and is plagued with corruption;
- While he knew he had been taken by a militia to their camp in [City], he didn't know which group they belonged to;

- He was in the camp with others for about 20 days. They were all treated badly and punished if they did not do as they were told;
  - It was never clear who they were supporting or fighting. While they knew they were fighting groups opposed to the government, there was confusion when at times the leaders would talk about fighting those associated with the government;
  - It was clear the group was to fight African tribes and those in Darfur, but not clear who these people were or how to identify them. Their instructions were not as clearly set out as the applicant had experienced during his routine military service. He pretended to agree with the group's views of the opposition to build trust;
  - After witnessing the brutality and knowing he didn't want to be part of a militia and kill people, the applicant planned his escape with others. Their chance came in the night during guard changeover;
  - He left Sudan in April 2013.
18. There were aspects of the applicant's April 2017 statement that were problematic. Specifically, he indicated that he had been taken by the most powerful illegal pro-government militia, the Janjaweed. He said he pretended to agree with the group's views of the opposition to build trust. However, in another part of the statement he indicated he didn't know which group the militia belonged to and nor was it clear who they were supporting or fighting.
19. On 17 June 2017, the applicant was interviewed in respect of his claims for protection (SHEV interview). At the beginning of the interview, he explained that he prepared his SHEV application with the assistance of a migration agent who he found out recently had been suspended. Included in the review material is a letter the Department sent to the applicant on 3 June 2019 notifying him that his (former) migration agent's registration had been suspended. The letter includes instructions on how to appoint another agent if required.
20. I note the applicant initially advised the interviewing officer in the SHEV interview that he was not aware of the full contents of his application. He said that he provided his migration agent a copy of the audio from his interview with the then Department of Immigration and Citizenship on 13 June 2013 (arrival interview) to assist in preparing the application. He also stated that his agent did not provide him a copy of the application after she lodged it. However, after further discussion, the applicant confirmed that his April 2017 statement was read back to him, that it was his signature at the end of the statement, that everything he told the agent had been included in the application, that there were no mistakes, and that there was nothing he wanted to change. He also said he was sure that everything included in his written application was true and correct.
21. There is no claim or evidence before me to indicate that the applicant's former migration agent's suspension related to her dealings with the applicant or that his SHEV application had been adversely impacted by the conduct that led to her suspension. Based on his evidence at the beginning of the SHEV interview about the accuracy of his written claims, I am satisfied this aspect of his evidence represents information provided by him.
22. As noted above, the applicant stated that the information he provided in the arrival interview was used to assist in preparing his application. He also advised the interviewing officer in the SHEV interview that he had listened to the audio recording of that interview more than once. The interviewing officer asked him if he was happy with the content of the recording and in response he said he had been at sea for eight days and was "all over the place" due to the trauma

he'd faced. He also said he was asked to be brief when telling his story therefore did not have the chance to explain everything. The interviewing officer asked if there was anything significant missing from his evidence in the arrival interview and in response he said the most significant issue was his reference to the date he departed Sudan. He later confirmed that he departed Sudan [in] May 2013.

23. I have also listened to the audio recording of the arrival interview and note the applicant provided the following information, broadly consistent with his written claims, about events in Sudan:
  - In February 2013 he was taken by the government to a camp in [City], South Kordofan;
  - The camp is used to train people to fight the people and movements of Darfur;
  - He was in the camp for 20 days;
  - After he fled from the camp they came looking for him;
  - He left Sudan in April 2013.
24. Having also listened to the audio recording of the SHEV interview, I note there were aspects of the applicant's oral evidence difficult to reconcile with his earlier evidence about events in Sudan.
25. Firstly, his written evidence that he was targeted by different political and tribal groups, that he experienced many incidents of harassment from various groups, and that on many occasions he paid the militias 'money or kind' because he was not willing to go with them differed from his evidence in the SHEV interview that he always knew when such groups were coming so would run away. He said he never faced an attempt by any group (aside from the events of February 2013) to forcibly recruit him. He also said that he had never been personally caught up in tribal violence. The applicant also advised in the SHEV interview that his problems in Sudan began in February 2013, which I note was consistent with his evidence in the arrival interview that indicated he never had problems before that time.
26. Secondly, the applicant confirmed in the SHEV interview that his (illegal) forced recruitment / conscription in 2013 was different from Sudan's (legal) compulsory military service. His evidence was that he was exempted from (legal) compulsory military service on medical grounds in 2007, [because] he had contracted [Disease]. He also advised the interviewing officer that once exempted you are never be asked to undergo the service again. He confirmed on several occasions that due to his exemption he never underwent compulsory military service. However, on his SHEV application form, he recorded that he underwent 45 days of 'standard military training' in 2009. I also note in his April 2017 statement he referred to having completed his 'routine military service'.
27. Thirdly, the applicant claimed the SHEV interview that about two weeks earlier the current leader of the government militia had released a statement or order saying that anyone who left Sudan will be pursued by the government. He said the leader is under the impression that those who have left Sudan are behind the "uprising". He added that he participated in two anti-government demonstrations in 2011 and 2013 and claimed that due to his participation in these demonstrations he would be deemed part of the "uprising" and harmed. However, I note his evidence in the arrival interview was that he had never been involved in any protests against the government. Nor was there any indication in his written claims in his SHEV application that he had been involved in a demonstration or that he feared harm on this basis.

28. Fourthly, the applicant's evidence in the SHEV interview was when he was forcibly taken he was approached persons in two military vehicles. He said they introduced themselves as from the government and told he was being taken under an order given by the government. However, this appeared to differ from his evidence in his April 2017 statement that he did not know who the group belonged to and that he wasn't sure if they were fighting government or anti-government targets. I also note the applicant's evidence in the SHEV interview (discussed below) that he was pursued by Sudan's National Intelligence and Security Services (NISS) after he escaped from the camp, thereby indicating he was aware of who had taken him. I also note the applicant indicated in his written SHEV application that after one month of training he would have been sent to fight 'random people'. However, in the SHEV interview, he said there was no fixed duration for training and that the militias only sent people to fight once they were one hundred per cent sure they were "with them". He said for some people it was one year and for others it was two years.
29. Fifthly, the applicant's evidence in the SHEV interview was that he and others planned and escaped the camp during the shift of [Mr A], who was a guard at the camp. [Mr A] was responsible for training and they had viewed him as being sympathetic due to an earlier incident where they were getting beaten and he had gestured towards them to be quiet so the assault would end. Due to this gesture they considered [Mr A] must have had a humane side. Although the applicant and the other escapees had not discussed with [Mr A] their plan to escape, they had identified a particular shift when he would be working to make their bid for freedom. The applicant said the front guard house was manned 24 hours, but that towards the back of the camp there were roving patrols that could not monitor all areas constantly and they picked a particular time and place to escape. However, this appeared to differ from his written claim that their chance to escape came during a guard change over at night.
30. Sixthly, the applicant claimed in the SHEV interview that after he escaped from the camp he returned to his home in [Location] in South Kordofan. His mother told him that some military personnel had come looking for him and searched the house. He said that in March 2013 he went to his brother's house in [Village 1] (Khartoum) but his brother said he could not stay so took him immediately to stay at his brother's friend's house, where he remained for about three weeks. He said that during this period the NISS came to his brother's house looking for him. They told his brother that they wanted to interrogate him. However, in the arrival interview, the applicant said when he fled the camp he went to his brother's house in [Village 1]. He said that his brother told him to stay at home while he made arrangements for him to leave the country. He said he stayed in the house and didn't get out. I note he gave no indication that security forces came to the house while he was there. I also note in his written SHEV application he indicated it was the Janjaweed militia who pursued him after his escape, not the NISS.
31. Seventhly, the applicant claimed in the SHEV interview that he was able to depart Sudan without difficulty using a passport in his name because he had engaged a smuggler who took him through the airport. However, in the arrival interview, he was specifically asked if he had engaged a smuggler to enable his departure from Sudan and he twice confirmed that he did not, and indicated the only smuggler he dealt with was one that approached him at the airport in [Country 1] and asked him if he would like to go to Australia.
32. Eighthly, the applicant's claim in the SHEV interview that his other brother had been forcibly taken by government forces in 2017 was not mentioned in his written claims. He said his mother had heard he had been taken to [Country 2] to fight the Arab Alliance, but was not sure of his fate. He said some people have told his family that his brother is dead. He also said his family have made enquiries with the government who have denied knowledge of his whereabouts. The applicant said he didn't know when in 2017 that his brother was abducted so it is not clear



whether this is information that could have been reasonably expected to have been included in his written SHEV application or April 2017 statement. I note in his IAA statement he indicates that he only learned of his brother's disappearance after he lodged his application. However, even accepting this related to events in 2017 after the applicant completed his statement I have concerns that it was raised for the first time about one hour into the SHEV interview. In particular, I note at the start of the SHEV interview he was invited provide any new information relevant to his claims. In response, he talked about the change of government in Sudan and said that the leader of the militia had announced that anyone who had left Sudan would be pursued by the government as they were considered part of the uprising. He also raised the above-mentioned claims about his participation in demonstrations in 2011 and 2013. The interviewing officer confirmed that the information he had provided was new and asked if there was any other new information. In response, he said he had nothing further but that if anything came to mind he would mention it later. In circumstances where one of the applicant's primary claims was that he feared forced recruitment by a militia, I consider his failure to mention at the beginning of the interview about the purported events involving his brother in 2017 not insignificant.

33. On 20 June 2019, following the SHEV interview, the applicant provided a written submission addressing some of the concerns raised by the interviewing officer (post-SHEV interview submission). He sought to explain his claim in his April 2017 statement that the Janjaweed leaders 'would talk about fighting those associated with government', which the interviewing officer had raised a concern given he had claimed to have been taken by the government. He said he was trying to explain that there is corruption on both sides and that the Janjaweed, who he said is a government group also known as the 'Rapid Response', had tried to scare them and make them confused so that they could be brainwashed. He said he did not say that the 'government group' made him fight the 'government group' because that does not make sense. In respect of his departure from Sudan, the applicant reiterated that, with the assistance of his brother, he engaged a person to help him leave the country. He also indicated that the person paid money to another person but he really couldn't give any details of what was arranged.
34. In his IAA statement, the applicant states that all he knows is that he was taken by a group that wanted to cleanse African tribes and whether they were the Janjaweed or another government supported militia they worked for the government. He states that he had previously referred to the group as government because he saw how powerful they were and because they had told him they were acting on an order issued by the government. He indicates he did not seek to mislead the Department about the group that took him. He believes all groups in Sudan conspired to recruit as many people as possible to fight with the government against Darfuri people. He also refers to the delegate's finding that information he provided in the SHEV interview about his capture was 'brief', and submits that such trauma is not easily disclosed. He also draws attention to the fact he attended the SHEV interview alone without 'mental support'.
35. In respect of his forced recruitment by the militia, the applicant states in his IAA statement that prior to the SHEV interview he had not reviewed his application or written claims, and because of this there could have been information he had forgotten.
36. Under the heading 'Political activities', the applicant states in the IAA statement that when he first entered Australia he 'could not open up about [his] opinions of the Sudanese government' in the 'entry interview' due to fear. He also states he did not have full understanding of Australia's privacy and information sharing with other countries. He was concerned Australia may communicate what he had said to the Sudanese authorities. The only 'political activities' the applicant has claimed to be involved in is the 2011 and 2013 demonstrations and on this basis I infer he is referring to his response of "no" in the arrival interview when asked if he had

ever been involved in any protests against the government. I note at the beginning of the arrival interview the applicant advised that he understood that the information he provided was protected and would not be made available to the authorities in Sudan.

37. In respect of his brother's purported kidnapping in 2017, the applicant notes in his IAA statement that the delegate rejected the claim because it was raised for the first time in the SHEV interview and because the details were brief. He explains that he was not aware he could inform the Department about information involving his family prior to the interview and that he had no lawyer to advise him to do so. He states that when he heard the news of his brother he told the Sudanese community and left it until the SHEV interview to discuss it.
38. As noted above, the applicant provided to the IAA a letter from [an Organisation] dated [May] 2020. The letter is provided in part to address the delegate's concern that the applicant had not mentioned his brother's 2017 disappearance prior to the SHEV interview. However, while the Chairperson indicates the applicant advised him or persons within their community when he learned of his brother's disappearance, he does not indicate when this was. The Chairperson also states their community has known the applicant for 'years', but nor does he indicate when the applicant informed them of his capture by the 'Sudanese government'.
39. While I accept that some elements of the applicant's claims have remained consistent, when considered cumulatively, the above evidence leads me to conclude that he was not recalling a genuine personal experience in relation events in Sudan. In particular, there were apparent inconsistencies in his evidence as to whether he had been targeted and harassed by different political and tribal groups, his involvement in compulsory military service, whether he had been involved in anti-government demonstrations or protests, where he lived following his purported escape from the militia camp, which group pursued him after he escaped, and whether he used a smuggler or agent to assist him to depart Sudan.
40. I also found the applicant's evidence as to which group forcibly recruited him unconvincing. I find it difficult to accept he did not know the groups goals in circumstances where he also claimed that he pretended to agree with their views to build trust prior to his purported escape. I note the interviewing officer also raised concerns about this aspect of his evidence in the SHEV interview and I consider his response to these concerns in the post-SHEV interview submission and his IAA statement unpersuasive, particularly when considering his evidence as a whole.
41. I also consider the applicant's evidence in the arrival interview that indicated he had not been involved in anti-government demonstrations or protests not supportive of his claim first raised in the SHEV interview he had in 2011 and 2013, and that as a result he will be considered on return to be part of an "uprising". The applicant indicates in his IAA statement that he did not declare his involvement in these demonstrations during the arrival interview due to fear. He was unsure as to whether his information would be protected and feared the information would get back to the Sudanese authorities. However, I find these explanations unpersuasive. As noted above, he was advised at the beginning of the interview that the information he provided would be protected. Even accepting the applicant did not believe this to be the case, I consider his evidence in the arrival interview that he was forcibly taken by the "government", that he fled, and that the government was looking for him not supportive of this explanation.
42. In respect of his brother's disappearance in 2017, I note the applicant's explanation in his IAA statement that he was not aware he could inform the Department prior to the SHEV interview and he had no lawyer to provide advice. I also note he states that when he heard the news of his brother he told the Sudanese community. While I accept the letter from the Chairperson of [an Organisation] corroborates the applicant has advised members of the Sudanese community

of his claims I am not satisfied he did so prior to the delegate's decision. Even if he did, given the evidence discussed, I would still have concerns as to the veracity of those claims. As noted above, in circumstances where one of the applicant's primary claims was that he feared forced recruitment by a militia, I consider his failure to mention at the beginning of the interview the purported events involving his brother in 2017 not insignificant.

43. The applicant variously claimed he was being pursued by a militia and the NISS after he escaped from the camp. As noted above, he also provided inconsistent evidence as to whether he departed Sudan with the assistance of a smuggler and agent. Given my concerns outlined above, I prefer the applicant's evidence in the arrival interview that he departed Sudan without the assistance of a smuggler or agent. According to DFAT, the NISS has a significant presence at Khartoum International Airport (the place where the applicant departed) and reviews the documentation of all individuals exiting Sudan. DFAT states that if an individual was of interest to the government they would likely be questioned by the NISS in detail, including potentially being taken to NISS Headquarters for further questioning.
44. In weighing the applicant's evidence I have also taken into account his explanation in the SHEV interview that he felt a bit "all over the place" during the arrival interview and that he was asked to be brief with his evidence. However, as noted above, he said he had listened to the arrival interview more than once and indicated the only real issue with his evidence at that time related to the date he provided about when he departed Sudan. I have also taken into account the various explanations the applicant put forward in his IAA statement as to why there were difficulties with his evidence, which I am not persuaded by.
45. In light of the evidence discussed, I am not satisfied the applicant was targeted by different political and tribal groups in Sudan, that he experienced incidents of harassment from various groups, that he participated in anti-government demonstrations in 2011 or 2013, or that the Janjaweed (or any other group) took him by force. It follows that I reject his associated claims about his escape from the military camp and that he was pursued by the authorities in [Location] and [Village 1] prior to (or following) his departure from Sudan. I am not satisfied the applicant faces a real chance of harm in Sudan for these reasons. I find the applicant was able to depart Sudan legally and I am not satisfied he did so with the assistance of a smuggler or agent. Nor am I satisfied the applicant's brother disappeared in 2017.
46. According to an October 2016 Immigration and Refugee Board of Canada report, when the applicant was in Sudan the country had both compulsory and voluntary military service and the age of conscription for men was 18 to 33 years with a one to two year service obligation.<sup>2</sup> Other sources indicate that those who have not completed their national service cannot obtain an exit visa to enable them to lawfully depart Sudan.<sup>3</sup> While the delegate accepted that the applicant was exempted from his compulsory military service on medical grounds, I have come to a different conclusion. It appears the delegate did not have regard to the applicant's written evidence in his application that he underwent 45 days of 'standard military training' in 2009 and his April 2017 statement that he completed his 'routine military service'. When I consider this written evidence along with his unconvincing evidence in the SHEV interview that he was exempted from military service due to illness at the age of 17, when there was no apparent legal requirement for him to undertake service at that time, I am not satisfied he was recalling a truthful account in respect of his service. I also give weight to my earlier finding that the applicant

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<sup>2</sup> Immigration and Refugee Board Canada, "Sudan Information on military service including [deferment] for the purpose of attending university information on punishment for refusing or evading military service including upon return to Sudan after an extended absence such as since 2002", 4 October 2016, 20200108122259

<sup>3</sup> Global Security, "Sudan – Military Personnel", 6 January 2014, CX1B9ECAB12910; UK Home Office, "Report of a fact-finding mission to Khartoum, Sudan", 31 October 2018, 20191022140341

was able to depart Sudan legally. I find the applicant completed his compulsory military service and I am not satisfied that, on return to Sudan, there is a real chance he will be required to undergo further military service now, or in the foreseeable future.

47. In his written SHEV application the applicant claimed that if returned to Sudan he would be perceived by African tribes in Sudan as 'pro government'. He also indicated in the SHEV interview that because of his Arab background everyone assumes he supports the government. However, even accepting he may be perceived as 'pro-government', I am not satisfied it follows that he would face harm on this basis. Related to this claim, the applicant also claimed that he fears he will be forcibly recruited by a militia and forced to fight. He fears being harmed or killed. However, there is little indication that forced recruitment is an issue affecting the Sudanese population in Khartoum. Information from the UK Home Office in 2018 reports that forced recruitment by militias does exist in Darfur,<sup>4</sup> though there is no indication that the practice exists in the capital. While the pro-government Rapid Support Forces (RSF) reportedly recruits among Arab tribes<sup>5</sup> there is no indication this is by force. Other reporting before me does not indicate that forced recruitment by militias is an issue affecting persons with a profile like the applicant.<sup>6</sup> The applicant has not indicated that he faced difficulty in the past on the basis of his ethnicity or perceived 'pro government' opinion and, on the information before me, I am not satisfied he faces a real chance of harm on this basis now, or in the foreseeable future.
48. In the SHEV interview, the applicant said he was both "against" the government and anti-government groups in Sudan because they are all corrupt. Reporting before me indicates corruption in Sudan is problematic.<sup>7</sup> While I accept the applicant is against corruption on all sides, on the evidence before me, I am not satisfied that corruption will manifest in a way that would lead the applicant to facing a real chance of harm now, or in the foreseeable future. Nor has the applicant claimed that he fears harm on this basis.
49. The applicant also raised concerns in the SHEV interview about the change of government in Sudan. In particular, he was concerned that the group he had escaped from were now in power and would seek to harm him. He also indicated that freedom of expression was limited under the new government.
50. Country information before me indicates that in April 2019 Sudan's long-term President Omar al-Bashir was ousted in a military coup.<sup>8</sup> The information from VOA reports that al-Bashir's removal followed months of protests with demonstrators accusing the government of economic mismanagement that sparked skyrocketing food prices, and fuel and foreign currency shortages. Protest leaders have called for the new ruling military council to be dissolved and replaced by a civilian one. MRG reported in June 2019 that steps towards a civilian-led transitional government had been tentative. MRG also indicated that demonstrations had continued with the military council attempting to take control and confronting the demonstrations with deadly force. MRG further reported that fighting was ongoing in Darfur's Jebel Marra region, where civilians have

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<sup>4</sup> UK Home Office, "Report of a fact-finding mission to Khartoum, Sudan", 31 October 2018, 20191022140341

<sup>5</sup> UK Home Office, "Country Policy and Information Note – Sudan: Non-Arab Darfuri", v.3.0, 28 September 2018, OG9EF767949

<sup>6</sup> Minority Rights Group International (MRG), "Peoples under Threat 2019", Minority Rights Group International (MRG)" 4 June 2019, 20190604161005; DFAT, "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

<sup>7</sup> UK Home Office, "Report of a fact-finding mission to Khartoum, Sudan", 31 October 2018, 20191022140341; ; DFAT, "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

<sup>8</sup> Minority Rights Group International (MRG), "Peoples under Threat 2019", Minority Rights Group International (MRG)" 4 June 2019, 20190604161005; Voice of America (VOA), "UN Chief Appoints Adviser to Help AU Mediation in Sudan", 21 May 2019, 20190521140940; Voice of America (VOA), "S. Sudan Frets Over Whether Sudan Coup Could Derail Fragile Peace Deal", 11 April 2019, 20190423162458

been attacked by paramilitary RSP and the Sudanese army, which also continued to battle rebels in South Kordofan and Blue Nile states.

51. I accept the country information before me that indicates there has been a shift in power in Sudan and that demonstrators had been met with deadly force following the April 2019 coup. However, there is no credible evidence before me to indicate that the change of leadership in Sudan will lead the applicant to facing a real chance of harm. I note the applicant's main concern with the change of government was that its leadership were the same people he had purportedly escaped from. However, I have rejected this aspect of the applicant's evidence. The applicant has not claimed that he would participate in anti-government protests or demonstrations on return to Sudan and on the information before me I am not satisfied that he would. Nor am I satisfied that the applicant has views that he would seek to publicise that would lead him to face harm under the ruling government. I am not satisfied the applicant faces a real chance of harm arising from the outing of al-Bashir, the change of leadership, or in respect of the general security situation in Sudan.
52. In the SHEV interview the applicant said the Sudanese government are very concerned about those who leave Sudan and apply for refugee status abroad. He said that if anyone claims they have been subjected to conscription it will undermine the government's commitment to the United Nations about forced conscription. He said his main fear if returned to Sudan is from the militias in power because he came to Australia and spoke out against conscription. He also noted in the SHEV interview that the Sudanese government would be aware he is in Australia because he has indicated as such on [Social media]. The delegate considered whether the applicant would face harm for reason of 'returning as a failed asylum seeker/returnee from the west'.
53. I accept that if he returned to Sudan the applicant would do so as a failed asylum seeker returned from Australia, irrespective of whether he has indicated on [Social media] that he travelled and resided here. I also accept he will likely return to Sudan on a temporary travel document given his Sudanese passport fell overboard on the boat on his way to Australia. I find that he would very likely be identified by the Sudanese authorities as someone who departed Sudan lawfully.
54. 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. I have not accepted that the applicant departed Sudan with the assistance of a smuggler or agent and 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. I find the applicant departed Sudan lawfully and flew to [Country 1] using his passport also containing [a Country 1] 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 find the applicant does not hold an anti-government profile.
55. Other sources indicate that returnees 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.<sup>9</sup> I am not satisfied the applicant holds such a profile.

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<sup>9</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of

56. Reporting from the UK Home Office in both 2017 and 2018 specific to the issue of returning asylum seekers indicated that persons returning to Sudan having had their asylum claims rejected were not at risk of harm for that reason alone. The reports also indicated 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.<sup>10</sup>

57. I have not accepted the applicant was the subject of forced conscription in Sudan and nor am I satisfied that he would announce on return that he had told the Australian authorities that he was. Nor am I satisfied that the Sudanese authorities would be aware of his protection claims in Australia or that he would be imputed as anti-regime or anti-government on the basis that he came to Australia and sought protection. 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 the applicant faces a real chance of harm on this basis. Nor am I satisfied he faces a real of chance harm due to his method of departure, his long term residence in Australia, or due to him returning using a temporary travel document, or any combination of these factors. 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.

### **Refugee: conclusion**

58. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

### **Complementary protection assessment**

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59. 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**

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

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

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

<sup>10</sup> UK Home Office, "Country Policy and Information Note – Sudan: Rejected asylum seekers", 1 August 2017, OG6E7028845; UK Home Office, "Country Policy and Information Note Sudan: Return of unsuccessful asylum seekers Version 4.0 July 2018", 2 August 2018, OG9EF767932

61. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
62. I have found that the applicant does not face a real chance of any harm in Sudan for the reasons claimed. Based on the same information, and for the reasons set out above, I find he does not have a real risk of suffering significant harm in Sudan.
63. 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**

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

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

...

#### **5H Meaning of refugee**

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

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

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



...

### 5J Meaning of well-founded fear of persecution

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

### 5L Membership of a particular social group other than family

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

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

### 5LA Effective protection measures

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

...

### 36 Protection visas – criteria provided for by this Act

...

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

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

...

#### *Protection obligations*

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

#### *Determining nationality*

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