



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA

IAA reference: IAA22/10366

Date and time of decision: 17 November 2022 14:02:00

M Currie, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a member of the same family unit as his mother (IAA22/10365) and satisfies the criteria in s.36(2)(b)(i) of the Migration Act 1958.

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 person of Tamil ethnicity. He was born in Australia in [specified year]. He was included in a combined SHEV Application submitted in 2016 by his father (IAA22/10364) and his mother (IAA22/10365).
2. In 2017, a delegate of the Minister found that neither the applicant, nor either of his parents were owed protection in Australia. The cases of this applicant and her parents were referred to the IAA in 2017. Those cases were assessed by the IAA in 2018, and in relation to all three applicants', the IAA affirmed the delegate's decision.
3. In 2022, the IAA decisions in relation to the applicant and his parent were quashed by the Federal Circuit and Family Court of Australia (FCFCOA). The FCFCOA referred all three cases back to the IAA for reconsideration.
4. The applicant's father (IAA22/10364) and his mother (IAA22/10365) are the subject of separate decision records.
5. This is a *de novo* decision; my task is to consider the applicants claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate, or the IAA.

Information before the IAA

6. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
7. Some years have passed since 2017, when the s.65 Decision was made in this case. In 2018, when the IAA first considered this applicant's case, the then IAA review obtained new country information
8. Firstly, in relation to Sri Lanka's citizenship law, the IAA obtained a copy of Sri Lanka's citizenship law from an online database of Sri Lanka laws, and information about citizenship and registration of children from a website operated by the Sri Lankan Department of Immigration and Emigration. Issues about the applicant's citizenship and registration are alive in this review, and I am satisfied that there are exceptional circumstances to justify considering this information and so I have considered it.
9. Secondly, the IAA obtained a copy of a 2018 report published by the Department of Foreign Affairs and Trade (DFAT). This report related to the conditions in Sri Lanka for Tamils and returnees. I have reviewed the contents of this report and I am satisfied that this information is still of relevance to my consideration of his claims for protection. I am satisfied that there are exceptional circumstances to justify considering the 2018 DFAT report and I have considered it.

Applicant's claims for protection

10. The applicant was born in [year], he is underage, and has not put forward his own claims. However, in the years since that application, his parents have raised a claim on his behalf. This claim can be summarised as follows:

- He is a child of Tamil ethnicity. If returned to Sri Lanka he would be targeted due to the first applicant's links to the LTTE.

Factual findings

11. Within the combined SHEV Application, the applicant's parents provided a copy of his Australian Birth Certificate. This document identifies him as the son of his father (IAA22/10364) and mother (IAA22/10365), two Tamil Asylum seekers. I accept that he is their son.
12. Though born to parents who are both Sri Lankan citizens, both parents have asserted that their son's birth was not registered in Sri Lanka. The combined SHEV Application asserts that this applicant is stateless.
13. Country information before me indicates that children born to Sri Lankan parents outside of Sri Lanka are entitled to Sri Lankan citizenship¹. The combined protection visa application indicates that both the applicant's parents are Sri Lankan citizens. I accept that this is the case and I conclude that he is the child of two Sri Lankan citizens.
14. Parents of children in this circumstance must register their child's birth in Sri Lanka within one year. Both this applicant's parents have indicated that they did not register their child's birth in Sri Lanka. Nevertheless, A child can still be registered after one year, with the payment of a small fee. The application must be accompanied by several supporting documents². This applicant's parents are Sri Lankan citizens. Neither they, nor this applicant have indicated that this applicant would be unable register and obtain Sri Lanka citizenship in this way. I am satisfied that this applicant could be registered in Sri Lanka and obtain Sri Lankan citizenship in this way. While a small fine would be required, I am not satisfied that such a fine amounts to harm. In the circumstances I am satisfied that Sri Lanka is the applicant's receiving country.

Refugee assessment

15. 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

16. 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

¹ Sri Lankan Citizenship Act - https://www.immigration.gov.lk/web/index.php?option=com_content&id=149&Itemid=188

² Citizenship Registration of Children born outside Sri Lanka:

http://www.immigration.gov.lk/web/index.php?option=com_content&id=149&Itemid=188

- 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.

17. This applicant resides with his mother and has not lived with his father since 2020. I conclude that if returned to Sri Lanka, the applicant would continue to reside with his mother.

Tamil ethnicity & LTTE connections

18. It has been claimed on the applicant's behalf that his family links to the LTTE would lead to him facing harm in Sri Lanka.

19. In a separate decision, I have assessed whether the applicant's father (IAA22/10364) would face any harm in Sri Lanka due to his Tamil ethnicity or his personal links to the LTTE, or the links of his family. In that decision, I have found that the applicant's father would not face any interest from the Sri Lankan authorities, or any harm, due to his links to the LTTE now. In the circumstances, I am not satisfied that this applicant would face any harm in Sri Lanka, due to his father's links to the LTTE.

20. In another separate decision, I have assessed whether the applicant's mother (IAA22/10365) would face any harm in Sri Lanka due to her Tamil ethnicity or family links to the LTTE. In that decision, I have found that the applicant's mother would not face any interest from the Sri Lankan authorities, or any harm, due to her links to the LTTE now. In the circumstances, I am not satisfied that this applicant would face any harm in Sri Lanka, due to his mother's links to the LTTE.

21. Ethnicity does continue to be a source of tension in Sri Lanka and the Government of Sri Lanka had continued to be suspicious of the Tamil population since the end of the war in 2009³. This is unsurprising given the long running civil war in Sri Lanka was fought along ethnic lines with the minority Tamil community seeking to establish a separate state. According to a recent census in Sri Lanka, there are 3.1 million Tamils in the country, up from 2.7 million in 1981. Tamils are the second largest ethnic group in Sri Lanka constituting approximately 15% of the Sri Lankan population⁴. Most Sri Lankans tend to live within their own ethnic communities, although different ethnic groups live within close proximity in major urban areas. Tamils live throughout Sri Lanka, but the Tamil population is mostly concentrated in the Northern and Eastern Provinces. In the Northern Province, Tamils comprise around 93% percent of the

³ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED850AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

⁴ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED850AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

population⁵. Since the end of the war, various Government of Sri Lanka made commitments to ethnic reconciliation⁶.

22. The Sri Lankan Constitution provides that 'no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds'⁷. Tamils have a substantial level of political influence and their inclusion in political dialogue has increased since the change of government in 2015. Tamil political parties are numerous, with the largest coalition of parties operating under the umbrella of the Tamil National Alliance (TNA). Tamils faced less harassment during the 2015 presidential and parliamentary elections than in earlier elections conducted soon after the end of the war⁸. There has been a trend towards election of more hard-line candidates, but no return to the violence and intimidation of the past⁹. DFAT reports Tamils do not receive unwarranted attention from authorities because of their political involvement. DFAT assesses there are no barriers to Tamil political participation¹⁰. On the whole, I am not satisfied that this applicant, would face any harm in Sri Lanka due to his ethnicity.

Refugee: conclusion

23. 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

24. 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

⁵ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

⁶ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

⁷ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

⁸ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

⁹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

¹⁰ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 23 May 2018" CIS7B839411064; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143

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

25. 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.

26. 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.

27. I have found that this applicant would not face a real chance of harm arising from any of his claims for protection. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that he would not face a real risk of significant harm for these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

Complementary protection: conclusion

28. 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).]

Member of same family unit

29. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include dependent child.

30. In a related decision (IAA22/10365), I have found that this applicant's mother is a refugee; she is a person mentioned in s.36(2)(a).

31. This applicant was born in [year]. He resides in the household of his mother and has little to no contact with his father. He is wholly or substantially reliant on his mother to meet his basic needs for food clothing and shelter. The applicant is the dependent child of his mother.

32. In the circumstances, this applicant is the member of the same family unit as his mother and so he is a member of the same family unit as a person mentioned in s.36(2)(a).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a member of the same family unit as his mother (IAA22/10365) and satisfies the criteria in s.36(2)(b)(i) of the Migration Act 1958.

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.