



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA17/03487

Date and time of decision: 25 January 2018 09:30:00

Rebecca Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Lebanon. [In] December 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). [In] August 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. There are a number of documents in another language in the referred materials which I have been unable to consider as they have not been translated.
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in [Town 1] in North Lebanon in [birth year] to a large family and is a citizen of Lebanon.
 - He left Lebanon in May 2013 in fear of his life due to problems associated with his family's support for the Syrian Socialist Nationalist Party (SSNP). The applicant's family is well known to support the SSNP and the Syrian Communist party. The Future Movement group, who had the vast majority of its supporters in the North of Lebanon, despised the fact that they openly supported the SSNP.
 - His family also supported Hezbollah and their neighbours knew this and they were imputed to support them because his [relative] was married to a Hezbollah official. After the commencement of the Syrian War in 2011 they began to experience more overt discrimination in [Town 1] due to their support for Hezbollah.
 - His family were [goods] suppliers and would transport their goods to Tripoli and their business would take place in Bab al Tabbaneh. They would occasionally be affected by the conflict taking place there and would be encouraged by the Tabbaneh groups to take up arms and fight against the Jabal. The Tabbaneh groups were mainly Salafists who had links to groups fighting in Syria, and they feared that their Hezbollah association would be discovered at some point. They had to be more careful during their travel to Bab al Tabbaneh when fighting in the area escalated in February and March 2013.
 - On one occasion, when they were delivering goods in Bab al Tabbaneh, several Salafists happened to be passing at the time and saw their family name on the boxes and called them traitor dogs due to their support for the SSNP and were told to get out of there and never to return. They continued to supply their goods to distributors in the area and on another occasion were pursued by these men.

- Political tension continued to increase due to the Syrian war and they felt unwelcome in [Town 1] as the Salafists would often hold meetings and rallies after which they would experience people throwing bottles or yelling outside their house due to their support for the SSNP and Hezbollah.
- In [2013], he was [in] Bab al Tabbaneh and was attacked by a group of armed Salafists who destroyed [his] vehicle and attacked the applicant and accused him of being a spy for the SSNP and supporting the killing of innocent civilians. He managed to escape and the next day he travelled to [another country].
- He is aware that members of groups have been speaking with his [siblings] and asking about his whereabouts occasionally.
- He believes he will be kidnapped and murdered or tortured if he returns to Lebanon. He was caught up in the conflict in Lebanon, which was an extremely volatile and violent battle with consequences ensuing even today. Since the presence of Daesh has increased, it has only become more and more difficult to lead a safe and normal life in Lebanon.
- The increasing armed conflicts between the area of Jabal Mohsen and Bab El Tabbaneh is affecting North Lebanon as a whole, especially the minorities in the North of Lebanon. Despite being of a Muslim Sunni background, he considers himself to be a part of the minority due to his imputed political opinion as a SSNP member. His imputed support for the Syrian regime puts him in great danger.

Factual findings

Identity

6. The applicant has provided a number of identity documents from Lebanon including a copy of his family civil register, his individual register document and his national identity card. These documents confirm that he was born in “[Town 1]” in [a district] in the province of North Lebanon on [birth date] and is a Sunni Muslim. Although I have concerns that the copy of his individual register document indicates he applied for it in 2016 when he was residing in Australia, I have given weight to the other documents he has provided and the fact that the information contained in those documents is consistent with his claimed identity. I accept the applicant was born and resided in [Town 1] in North Lebanon and is a Sunni Muslim and citizen of Lebanon. I am satisfied that Lebanon is the receiving country for the purpose of this assessment.

Support for the SSNP and Hezbollah

7. I do not accept that the applicant and his family supported the SSNP, the Syrian Communist party, Hezbollah, or the Syrian regime or that his family were well known or imputed to support these groups for the reasons he has claimed or any other reason. The transcript of the applicant’s entry interview held [in] August 2013 indicated that he denied that he or any members of his family were associated or involved with any political group or organisation when asked and made no reference to his current claims of being harmed or fear of harm as a result of his known or imputed support for these groups. Although no audible recording of the interview was included in the referred materials, I have given consideration to the transcript and the fact that the applicant has not denied not having raised these claims then. During the applicant’s protection visa interview held [in] June 2017, the delegate repeatedly questioned the applicant about the fact that he did not raise these claims in his entry interview and I found

the applicant's responses to be vague and inconsistent. His first response was that "it was a very short time and we left very quickly" then after the delegate asked him again why he did not refer to his claims in his entry interview he said that he was not a member of the SSNP but does support them and his family is known to support them without providing an explanation as to why he did not raise this during his entry interview. When the delegate asked the applicant the same question for the third time, he said it was because he thought his family were known to support the communist Syrians and the Syrian Communist party but the problem is his [relative] is married to a member of Hezbollah and that created problems for their family. After being asked for the fourth time by the delegate, the applicant said that he thought the question in the interview referred to being a formal member or someone who fought with them, but they only support their policies and he did not think he needed to explain anything else and reiterated that there is no safety in Lebanon because of division and fundamentalism and they are a minority supporting the SSNP in the north. When asked again by the delegate as to why he did not refer to this in his entry interview, he said that he did not want to look like he belonged to a political party and did not want to look like a member. He further claimed that the interviewer said that he will have another opportunity to have a longer appointment to be interviewed. I am not satisfied of the credibility of the explanations provided by the applicant. In a post-interview written submission to the delegate, his representative claimed that the applicant mistrusted authorities and was worried about putting his true claims forward, having mistrusted the authorities in his home country. I am not convinced of this submission as the applicant was given many opportunities to provide this explanation to the delegate and did not do so.

8. During the protection visa interview the applicant told the delegate that she can check information in support of his claim that his family is well known to have political affiliations and referred to the fact that they are known to support the Syrians. There is no credible evidence before me that his family are known to support the SSNP, the Syrian Communist party, the Syrian regime or Hezbollah and the applicant has not provided any corroborative evidence of this. The applicant claims that they were known or imputed to support Hezbollah because his [relative] was married to a Hezbollah official but has not provided any corroborative evidence of this. Although the applicant is a Sunni Muslim from the north of Lebanon, country information indicates the majority of the population in the north is Sunni and Sunni groups tend to oppose Syria's involvement in Lebanon.¹ When the delegate asked him why he supported the SSNP he merely claimed that his family are well-known supporters and did not give any specific reasons for their support. He then gave vague reasons for their support of Hezbollah such as because they fixed their roads and tried to provide electricity to their [business]. Furthermore, when he was asked by the delegate about his knowledge of the SSNP, he merely claimed in vague terms it was a party in Syria that had spread to Lebanon and its aim was to spread peace and safety to Syria and Lebanon. He had to be further pressed by the delegate to provide more information about his knowledge of the party and further responded that it advocates nonreligious involvement of religious figures and that they have trained a group called "The Lions of the valley" to protect Syria and Christians in Syria. He, however, failed to mention that one of its central tenets is the party's call for the creation of a 'Greater Syria' encompassing Cyprus, Jordan, Lebanon, Palestine, and Syria which I find to be a notable omission for someone who claims to have been a long-time supporter of the party.²

¹ Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

² DFAT, "DFAT Report 1249 – RRT Information Request: LBN38204", 28 February and 11 March 2011 referred to in Refugee Review Tribunal, "Country Advice Lebanon", 11 March 2011, RR2753

9. Although the applicant claims his family were known to be supporters of the SSNP and Hezbollah he has not provided any evidence of his remaining family members in Lebanon being harmed for this reason. When this was raised by the delegate during the protection visa interview the applicant claimed he was the one that had to do a lot of travelling and delivering and was the one to go to Bab al Tabbaneh which I find this inconsistent with his claim that his family also experienced discrimination in their own neighbourhood of [Town 1] and that the Salafists would throw bottles or yell outside their home. In his statement of claims he claimed that, despite the conflict in Tripoli, they continued to supply their goods to distributors there because they had no other livelihood, however, during the protection visa interview he claimed he worked [in an alternative occupation] in summer and worked as [another occupation] in winter. He also claimed that his father sold a [certain item] in order to fund his trip to Australia strongly suggesting his father had alternative work and income.
10. For the above reasons I do not accept that the applicant and his family were or known or imputed supporters or members of the SSNP, Hezbollah, the Syrian communist party or the Syrian regime for any reason.
11. I accept that the applicant's family had a [business] which supplied [goods] to a market in Tripoli and in doing so have given weight to the fact that he claimed he worked [in that business] and would work in Tripoli in his entry interview. However, given my findings above in regards to his credibility, I do not accept his claim that his business would take place in Bab al Tabbaneh and I am satisfied he has raised his claim to strengthen his claims for protection. I do not accept that on his trips to Tripoli he was threatened, insulted or harmed by any group or that he was encouraged to take up arms by the Tabbaneh groups and fight against "the Jabal". I do not consider it plausible that a [goods] supplier who did not live in the area and only delivered goods to the city would be encouraged to take up arms and get involved in the conflict in the area, as the applicant has claimed the conflict had nothing to do with them and they were just there to sell and deliver their [goods] and go back to their home area in [Town 1]. I also do not accept that his family experienced discrimination in their home area of [Town 1] or that Salafists threw bottles or yelled outside their home. I do not accept that the applicant was attacked in [2013] by a group of armed Salafists whilst delivering goods in Tripoli and that he fled Lebanon on the next day as a result of this incident. I do not accept that members of any group have been speaking with his [siblings] and asking for the applicant's whereabouts since he left Lebanon.

Refugee assessment

12. 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

13. 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.

14. As I have rejected the applicant's claims in relation to being a real or imputed member/supporter of the SSNP, the Syrian Communist party, Hezbollah or the Syrian regime in its entirety, I am not satisfied the applicant has a well-founded fear of persecution in Lebanon for these reasons.

15. The applicant claims that since the presence of Daesh has increased, it has only become more and more difficult to lead a safe and normal life in Lebanon. He claims that Lebanon continues to be one of the most unstable and volatile countries in the world and the sectarian and political divide are increasing with time. There is so much uncertainty and bloodshed everywhere, the assassinations and subsequent retaliations and unrest have never stopped and the last assassination of the chief intelligence officer Wesam Al Hassan has triggered a wave of unrest across Lebanon. He claims the situation in North Lebanon is far more volatile, the increasing armed conflicts in the area of Jabal Mohsen and Bab al Tabbaneh is affecting North Lebanon as a whole.

16. I have considered the country information that was before the delegate. In December 2015 the Australian Department of Foreign Affairs and Trade (DFAT) assessed that, Lebanon is broadly stable, but the security situation is fragile and could deteriorate with little notice. It noted that incidents of violence influenced by long-standing sectarian tensions have decreased, ostensibly in response to successful interventions by the Lebanese authorities and cooperation between traditionally opposing actors. Security plans implemented in a number of locations by the Lebanese Armed Forces (LAF) and a formal dialogue between the Shia Hezbollah and Sunni-dominated Future Movement has contributed to a more stable security situation. This stability is being constantly tested by the conflict in neighbouring Syria and extremist groups such as Daesh and al-Nusra. These groups have an increasing capacity and influence in Lebanon, and that civilians face a moderate risk of violence, depending on their location. Recent incidents of violence linked to Daesh or al-Nusra have targeted Alawite and Shi'a interests. The ability of Lebanese authorities to provide effective protection depends on the area concerned.³

17. In regards to the situation in Tripoli, DFAT stated in the above report that sectarian violence within Tripoli has historically been limited to the predominantly Alawite suburb of Jabal Mohsen and the Sunni suburb of Bab al-Tabbeneh, with the meeting point of the two – Syria Street – a recurring flashpoint. The conflict in Syria has exacerbated the traditional hostility between the Alawite and Sunni communities, and resulted in regular rounds of sectarian violence between competing militias, most recently in 2013 and 2014. In April 2014, Lebanese authorities implemented a security plan in Tripoli which led to a notable reduction in the

³ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

number of incidents between the Alawite and Sunni communities. DFAT contacts have noted that Tripoli is now broadly stable, though vulnerable to outbreaks of renewed violence.⁴

18. I am not satisfied on the evidence before me that the applicant has been harmed as a result of the ongoing political and sectarian tensions in Lebanon in general including due to the hostility between the Sunni and Alawite communities in Tripoli. There is also no country information before me to indicate that his area of [Town 1] has been negatively impacted by these factors, such that he would face a real chance of harm. I have also considered recent country information which indicates that, although vulnerable to outbreaks of violence, since 2014 there has been a notable reduction in the number of incidents between the Alawite and Sunni communities in Tripoli. I am not satisfied the applicant has a profile such that he would be targeted by any person or group for any reason or that he faces a real chance of harm from any group or person as a result of the political and sectarian tensions in Lebanon in the reasonable foreseeable future.

Refugee: conclusion

19. 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

20. 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

21. 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.

22. I have rejected the applicant's claims in relation to being a real or imputed member or supporter of the SSNP, the Syrian Communist party, Hezbollah or the Syrian regime. I am not satisfied the applicant faces a real risk of significant harm in Lebanon for these reasons.

23. For reasons already stated I am not satisfied the applicant faces a real chance of harm from any group or person as a result of the political and sectarian issues in Lebanon. As real chance

⁴ Ibid.

equals real risk⁵ I am also not satisfied the applicant faces a real risk of significant harm on return to Lebanon for these reasons.

Complementary protection: conclusion

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

Decision

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

⁵ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.