



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PALESTINIAN TERRITORIES
IAA reference: IAA18/04222

Date and time of decision: 7 March 2018 12:35:00
Michael Brereton, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Arab Sunni from Gaza in the Palestinian Territories. He left Gaza legally in March 2013 and travelled [to] [Country 1] and then [to] [Country 2]. He departed [Country 2] by boat and arrived [in Australia] [in] April 2013. [In] October 2016, he lodged an application for a temporary protection visa (TPV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] January 2018.
2. The applicant claims to fear harm: because he may be forcibly recruited by Hamas; and because he may be detained, tortured or killed by Hamas because he refused to join in the past.
3. The delegate did not accept that the applicant was targeted for forcible recruitment by Hamas or that he would be forcibly recruited or harmed for any other reason if he was to return to Gaza. The delegate was not satisfied that the applicant is a person in respect of whom Australia has protection obligations.

Information before the IAA

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

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - At his entry interview [in] May 2013 he said that Hamas tried to recruit him but he refused to join. He said that if he is returned he will be put in prison.
 - In his TPV application the applicant stated: "you know Palestine is an occupied country and it is under attack in any time, also there is no chance for work. Palestine have complicated political situation. I was suffering in Gaza that why I decided I have to come to Australia. My life will be unsafe at all because the political situation still the same. All parts in my country are the same political situation. We have not any authorities in my country can protect me."
 - At the interview with the delegate [in] January 2018 (the interview) he said that he is a Muslim who was born in Gaza in the Palestinian Territories in [a particular year]. He lived at the same address in Gaza from the time he was born until he left to come to Australia. His [family] remain in Gaza.
 - He left Gaza because it is hard to live there. There is no safety or stability. There are crimes and killings in Gaza.
 - A person named K was killed after being deported from Australia to Gaza. The applicant does not know why K was killed.

- Between 2010 and 2013, the applicant was approached by Hamas on many occasions and asked to join. He refused to do so. As a result Hamas harassed him and threatened to destroy him and kill him.
- Hamas used to follow him and harass him on the road when he was going to work. Hamas told him that it would ruin his reputation with his employers.
- In 2012 he had a dispute with a Hamas person and because of this he was bashed by Hamas.
- He could not leave Gaza earlier because he did not have a passport. He hoped the situation would get better but when it 'tightened' he decided to leave.
- He fears being forcibly recruited by Hamas if he returns to Gaza. He also fears being detained, tortured and possibly killed by Hamas if he returns.

Refugee assessment

7. 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

8. 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.
9. The applicant claims to be an Arab and a Muslim from Gaza in the Palestinian Territories. He has provided copies of documents issued in Australia as evidence of his identity. He told the delegate that he could not get documents from Gaza as these have been lost. He also claims to have been issued with a passport by the Palestinian Authority (destroyed on the orders of the people smugglers) and to have lived in Gaza from his birth until he left to come to Australia.
10. The Australian Department of Foreign Affairs and Trade (DFAT) country information report dated 15 March 2017, sets out the historical development of the Palestinian Territories. The Territories, which are within Israel, currently comprise two separate areas; the West Bank, a

large territory to the east of Jerusalem, which includes the cities of Nablus, Ramallah and Hebron; and Gaza, which is a smaller territory on Israel's south-west coast, including Gaza City and Rafah. The West Bank is currently under the control of the Palestinian Authority while Gaza has come under the effective control of Hamas. DFAT reports that Palestinian residents of Gaza can obtain travel documents under the seal of the Palestinian Authority and these documents are accepted by 37 countries.¹ The Palestinian passport does not convey citizenship of a state (in the absence of a Palestinian state) but it does entitle the holder to leave and re-enter, in the applicant's case, Gaza without the need for additional travel and re-entry permits (unless Israeli authorities have specific security reasons).² I accept that the applicant was able to obtain a passport. There is nothing in the material which leads me to doubt the *bona fides* of his other identity documents.

11. I also note information in the DFAT report that restrictions on freedom of movement enforced by Israeli authorities make it almost impossible for Palestinians to move between the West Bank and the Gaza Strip. Israel maintains tight control of the Palestinian Population Registry and the residency status of all Palestinians; for example, there are separate permits that clearly denote if an individual is from Gaza or from the West Bank. It is not legally or physically possible to move between the West Bank and the Gaza Strip, except in exceptional circumstances.³
12. Having regard to the information in the material I accept that the applicant is an Arab Muslim from Gaza in the Palestinian Territories and that he is stateless. I am satisfied that the Palestinian Territories is his place of birth and former habitual residence and that pursuant to s.5 of the Act, this is the receiving country for the purpose of this review. I am also satisfied that if he was to return to the Palestinian Territories, he would return to Gaza.
13. The applicant claims that commencing in 2010 he was approached on many occasions by Hamas, who was trying to get him to join. DFAT reports that Hamas (Islamic Resistance Movement) is an Islamist organisation and political party founded in 1987 as an offshoot of the Egyptian Muslim Brotherhood. Hamas won an outright majority of seats in Palestinian Legislative Council elections in January 2006 but following failed attempts at a power-sharing government, Hamas violently took control of the Gaza Strip in 2007 and became the *de facto* authority in Gaza.⁴
14. According to DFAT, Hamas implements and enforces its interpretation of Islam and Islamic values in Gaza. Although public schools in Gaza follow the same curriculum as the West Bank, Hamas has been known to interfere if it deems that the curriculum violates Islam. DFAT has also reported that statistics on forced recruitment in Gaza are not available and it is difficult to build a complete picture of the prevalence and nature of this practice. Anecdotally, DFAT understands that it is not difficult for Hamas' armed wing to find supporters, given there are few options for employment in Gaza and many young men are willing to join the armed fight. There are also limited options for entertainment and leisure in Gaza. Hamas runs summer camps for schoolchildren and these camps reportedly involve some level of militant training, including weapons handling and lessons on Hamas doctrine but do not result in forced recruitment. About 100,000 children attend Hamas' summer camps; 50,000 attend the

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 33.

² Norwegian Refugee Council, "Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip", 1 January 2012, CIS961F9402699, at p 41; Maryellen Fullerton, "Comparative Perspectives on Statelessness and Persecution", *Kansas Law Review*, 1 May 2015, CISEC96CF15525, at p 869.

³ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 31.

⁴ *ibid.*

alternative camps run by Palestinian Islamic Jihad, but the majority, around 250,000, attend the more popular summer camps run by the United Nations.⁵

15. While I accept that as a young and able bodied male the applicant may have been approached and asked to join Hamas, there is nothing in his profile to indicate that he would be of ongoing or significant interest to Hamas for the next three and a half years. He has not claimed that he was invited or pressured to attend the Hamas school camps or that he has undertaken any training that would make him a person of interest for recruitment. I also note that the applicant has never been a member of any opposition group and has not claimed that (apart from declining to join Hamas) he was engaged in any type of activity that could constitute opposition to, or criticism of, Hamas.
16. The applicant claims that he has a document in Gaza which corroborates his claim of being assaulted by Hamas in 2012. He told the delegate that he would provide this document after the interview. The delegate gave the applicant seven days to provide this document and also said that he would consider any application for an extension of time if the applicant asked for one. The applicant did not provide any further information and there is nothing in the material to indicate that the applicant sought an extension of time or made any further contact with the Department in relation to this document.
17. The delegate asked the applicant why he remained in Gaza from 2010 until 2013 if he was experiencing harassment, threats and physical harm. The applicant said that he was unable to get a passport and leave. He also said that he was hoping that the situation would improve but when it did not he decided to leave. He did not explain any further why he was unable to get a passport until 2013. DFAT reports that Palestinian passports are issued by the Palestinian Authority. Although this is based in the West Bank, citizens in Gaza are able to obtain the passport from the West Bank and Hamas is not involved in any of the steps that lead to the issuing of the passport.⁶ I am not satisfied that the applicant was prevented from obtaining a passport or that its issue was delayed for any reason or reasons associated with Hamas or the applicant's claims. I do not accept that he remained in Gaza because he was unable to obtain a passport and I consider that his continuing presence in Gaza at this time casts doubt on the claim that he was facing threats from Hamas.
18. The applicant referred to the killing of a man (K) who returned to Gaza after being deported from Australia. He has not provided any further evidence in relation to this person and there is nothing in the material which identifies K, any reason for the killing or whether or how it is linked to Hamas.
19. In his TPV application he claimed that "there is no chance for work in Gaza" and although he did not press this claim at the interview, I have considered whether he faces harm arising from his employment prospects. DFAT reports that unemployment, especially youth unemployment, is high and rising and that in Gaza, overall unemployment is 41 per cent and the youth unemployment rate is 65 per cent. Further, according to the United States Department of State, employment in some government positions in Gaza, especially in the security services, is reserved for Hamas members.⁷
20. The applicant's evidence is that he completed [number of years] of High School and then obtained [a qualification] in 2007. He states in his entry interview that he began working in [Occupation 1] in 2009 and remained with that employer until he left Gaza in 2013. Although

⁵ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at pp 16, 21.

⁶ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 33.

⁷ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at pp 8, 19.

he claimed in his TPV application that he has never worked, he told the delegate at the interview that he worked as [Occupation 2] and some of his claims in relation to Hamas' harassment involved threats to damage his reputation with his employer. I am satisfied that the applicant was employed as [Occupation 2] in Gaza and I do not accept the statement in the TPV that he has never worked.

21. In relation to his [qualification], he has not claimed to have had any difficulty in obtaining this qualification and getting work in this field. He has not claimed to have any medical or psychological condition which may impact on his ability to work. I accept that he may have difficulty obtaining employment on return to Gaza but I am satisfied on the information cited above that he will not be denied or prevented from accessing work for any reason associated with his race, religion, nationality, membership of a particular social group or political opinion, other than the limited circumstance noted above. I am satisfied that he does not face a real chance of harm arising from his ability to access employment in Gaza.
22. During the interview the applicant also made two references to crime in Gaza. Towards the end of the interview he said that the crimes were committed by Hamas. He has not made any claim to fear crime or any other situation in Gaza apart from Hamas and I am satisfied that his references to crime in the interview were references to actions perpetrated by Hamas.
23. I have considered the applicant's profile and the information and evidence above and I am not satisfied that he has identified any reason or provided any evidence which would indicate why he would have been subject to ongoing attempts to forcibly recruit him, or that he will be the subject of any attempts to forcibly recruit him should he return to Gaza. While I accept that he may have been assaulted in 2012, he has not provided the document that he claims proves this was done by Hamas and in any event, his explanation to the delegate suggests that it is more likely that this occurred in the context of a private disagreement with an individual rather than as part of an ongoing course of harassment.
24. While the applicant has not raised an explicit claim that he fears harm as a returning asylum seeker, the delegate considered this as a claim and I have also considered it. Information in the material indicates that Palestinians, including returnees, who are suspected of collaborating with Israel face a high risk of official and societal discrimination and serious harm, including execution through judicial and extra-judicial means. I take into account that the applicant did not depart Gaza via Israel and has not claimed that he has had any dealings with Israel or that he has been involved in any activities in Gaza or in Australia which could lead him to being suspected of any such dealings. The DFAT report does not refer to any commentary, reports or accusations that returned asylum seekers have been imputed with any adverse profile on the basis of having sought asylum outside Gaza.⁸ I have found above that the applicant has no adverse profile with Hamas and I am satisfied that he will not be imputed with any adverse profile because he sought asylum outside Gaza.
25. Having regard to all of the evidence and information above, I find that the applicant is not of any current or ongoing interest to Hamas. I do not accept his claims that he will be forcibly recruited or subject to harm for any reason if he returns to Gaza. I am satisfied that he does not face a real chance of harm: at the hands of Hamas for any reason; in relation to employment in Gaza; or for being a returned asylum seeker. As I have found that he does not have any adverse profile with Hamas, I am also satisfied that he does not face a real chance of harm when his claims are considered cumulatively.

⁸ DFAT, "DFAT Thematic Report Palestinian Territories March 2017", 15 March 2017, CISED50AD558, at p 20.

Refugee: conclusion

26. 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

27. 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

28. 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.

29. I have found above that the applicant does not face a real chance of harm: from Hamas for any reason; in relation to employment in Gaza; or for being a returned asylum seeker. As 'real chance' and 'real risk' have been found to equate to the same threshold⁹ and for the same reasons given above, I am also satisfied that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to the Palestinian Territories, the applicant will face a real risk of significant harm in Gaza.

Complementary protection: conclusion

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

Decision

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

⁹ 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.