



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA18/04446

Date and time of decision: 27 August 2018 11:54:00

A Wilson, 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 a Sunni Arab from Iraq. He arrived in Australia [in] June 2013. On 10 August 2017 he lodged an application for a safe haven enterprise visa (SHEV).
2. On 22 February 2018 a delegate of the Minister for Immigration and Border Protection refused to grant the visa. The delegate accepted the applicant and his brother operated a [shop] selling religious materials. However the delegate did not accept the applicant was a Sunni Muslim or that his brother was killed by the Asaab Ahl Alhaq (AAH) Shia militia in 2013.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's representative provided a submission to the IAA on 19 March 2018 (the IAA submission). With the exception of the matter discussed below, the IAA submission restates many of the applicant's claims that were before the delegate, addresses the delegate's decision and issues arising and to that extent I regard it as argument rather than information and have considered it.
5. The IAA submission included a 29 October 2011 media article titled 'Hackers go after Facebook sites 600,000 times every day' that states that up to 600,000 of more than a billion Facebook logins every 24 hours are impostors attempting to access Facebook users' personal information, most commonly to sell counterfeit goods and benefit financially; and that Facebook was implementing new security measures to tackle these sorts of breaches.
6. The article contains general information, rather than personal information, and pre-dates the delegate's decision by more than six years. Neither the applicant nor his representative, who was present at the SHEV interview when the delegate suggested the information from the two Facebook accounts appeared to contradict several of the applicant's key claims and may form part of the reason for rejecting his claims for protection, has explained why the information was not sought or provided prior to the delegate in the three week period between the SHEV interview and the delegate making his decision. And it is not apparent to me what any reason might be. I am not satisfied that s.473DD(b) is met and I have not considered the new information.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - He is a Sunni Muslim who was born and lived his whole life in Nasiriya, Thi Qar governorate.
 - From around 2001 he and his brother owned a shop selling [certain products], including many Sunni religious [products].

- After the fall of Saddam Hussein's regime in 2003 Shias regularly verbally abused him and pelted him with rotten vegetables and rocks on his way to and from the Sunni mosque.
- In around March 2013, in a climate where Sunnis were being killed in Nasiriya, the Mahdi Army told him to stop selling Sunni [products] and to stop hosting Sunnis at his shop. He told his Sunni friends not to come to the shop and he sold Sunni [products] discreetly.
- In mid-April 2013, in the context of Sunnis being displaced from Nasiriya, the AAH told him to leave his home and shop immediately. He did not take the threat seriously but he and his brother either stopped going or visited the mosque less frequently.
- In early May 2013 his brother was executed outside their shop by members of the AAH.
- He immediately took his family to his friend's farm in a Sunni agricultural community and himself fled Iraq about two weeks later.
- Around three months after his brother's murder, in September 2013, his [family] moved to Baghdad where they still reside.
- He fears if he returns to either Nasiriya, where he and his family formerly lived, or to Baghdad, where his family currently live, he will be killed because of sectarian violence.

Refugee assessment

8. 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

9. 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.
10. The applicant provided the delegate with a copy and translation of an Iraqi citizenship certificate and a copy of an Iraqi identity card, without a translation, in support of his claimed

identity. Although he provided no original identity documents despite the Department of Home Affairs (the Department) stressing a number of times the importance of establishing his identity, for the purpose of this review I am willing to accept the applicant's name is as claimed and that he is a national of Iraq. There is no other evidence before me to suggest that the applicant has a right to enter and reside in any other country apart from Iraq and I find that Iraq is his receiving country for the purpose of this review.

11. On the basis of the applicant's documentary and oral evidence I accept: that he is of Arab ethnicity; that he was born in Thi Qar governorate; that he completed [his] schooling; and that he worked for several years as [an occupation]. I also accept that he separated from his ex-wife about a decade ago and that she and their [children] live with her [family] in Baghdad.
12. The applicant claims he completed compulsory military service for around a year until the fall of Saddam Hussein's regime in 2003 when the Iraqi Army was disbanded by the coalition forces. He claims he then left the army as everyone else did. As it consistent with conditions in the country at that time I accept the applicant participated in a period of compulsory military service under the previous Iraqi regime. I note the applicant has not claimed he will suffer harm as a result. I am not satisfied there is a real chance the applicant will suffer harm now or in the reasonably foreseeable future in connection with his conscription over a decade and a half ago.
13. The applicant claims under Saddam Hussein regime his Sunni family did not suffer any harm and were well respected by the Iraqi government. However everything changed for Sunnis after the fall of Saddam Hussein's regime. Shia militias and people started abusing and killing Sunnis because they believed they were supporters of Saddam Hussein's regime and because of religious differences. The applicant and his brother had opened a shop selling [certain products]. He worked in the shop between 9am and 3pm, while his brother worked between 3pm and 9pm. From 2003 to 2006 the situation was calmer in southern Iraq but then sectarian violence began and Sunnis started suffering persecution at the hands of Shia militias.
14. The applicant claims he and his brother were committed to the Sunni religion and used to go to the nearby Sunni mosque together. On a daily basis he was insulted by Shias who swore and threw rocks and rotten food at him, and who swore at Sunni religious figures. He was known in the area as a Sunni because all his family are Sunni and they lived there all their lives. Their shop was located in a crowded street in the centre of Nasiriya and many of his Sunni friends, including some who belonged to Alsadoon tribe, would visit the shop and then they would all go to Friday prayers. He claims during February or March 2013 Shia militias started killing Sunnis in Nasiriya and many of his Alsadoon friends were forced to leave their houses. He also claims the Mahdi Army came to the shop and ordered him to stop selling Sunni religious [products] and to stop hosting Sunnis in the shop. One militia man said he would leave him alone if he sold Shia religious [products]. After that he told his Sunni friends not to come to the shop and he sold the Sunni religious [products] discreetly. In mid-April 2013 militia members who introduced themselves as followers of the AAH visited the shop at around 3pm when both he and his brother were present. They said they should leave their home and shop immediately because they were forcing Sunnis out of Nasiriya. They said he was active in his prayers and had sold Sunni [products] for years and they would not allow him or his family to stay. They did not give a deadline so he did not take their threats seriously. However he and his brother agreed they would stop going to the mosque until the situation calmed down because they already conducted their business discreetly. In late April 2013 militia men came to the shop and killed his brother. They put him in front of the shop

door and shot him execution style. A neighbouring businesses owner rang him and told him what had happened and told him not to come to the shop because he heard the perpetrators saying they "will kill these Sunnis one by one." His neighbour also said he would call the police to attend the crime scene. The applicant immediately took his mother to his sister's house. Then they all lived with a friend of his until he departed Iraq in mid-May. Around three months later, in September 2013, his family relocated to Baghdad, where they now live with his brother-in-law's family. He fears he will be killed because of sectarian violence in the south of Iraq.

15. At the SHEV interview, after the applicant confirmed that he had a Facebook account and that some photographs the delegate showed him did depict him, the delegate showed him photographs of two men whose Facebook pages he had commented on from a Facebook account in his name. When asked to identify the men, the applicant stated [AF] was a friend who had been a Shia [worker] near his shop in Nasiriya and, after hesitating, that [AK] was a friend who was unrelated to him but he could not remember exactly who he was. The delegate suggested, consistent with Arabic naming conventions and the family composition set out in the SHEV application, [AK] shared the applicant's brother's first name and his father's name, had lived in Baghdad and Nasiriya as the applicant claimed other members of his family had; and posts indicated the applicant had been in contact with [AK] as late as 2017. And as consequence the delegate considered it was highly likely that [AK] was the applicant's brother, that he is alive and was not been killed in 2013. In response, the applicant stated he did not know the man pictured, he is not his brother, and there were a lot of people, five families, named [K] in his neighbourhood. When the delegate showed the applicant multiple screen shots of Shia content, including imagery of several well-known Shia spiritual leaders, an Imam idolised by Shias and the Shahid of Karbala, apparently posted by him in 2012-2013 to a second older Facebook account in his name, and suggested this material was highly suggestive of him being a Shia Muslim rather than a devout Sunni Muslim, the applicant stated someone set up the old Facebook account for him and he does not remember posting the photos. And that the posts are not about a particular faith, the Imam was killed for the sake of the religion. He said it's true the Imam is a Shia but sometimes Sunnis and Shias admired him; and that the posts did not mean anything. The applicant repeated he was displaced, his brother was killed, and his mother might die without him seeing her. He expressed surprise he could be refused because of a post and reiterated that he is Sunni. He stated he has nothing against Shias and he has Shia friends. When the delegate noted the applicant had paused when asked to identify [AK] but not [AF] who he immediately identified, the applicant stated [AK]'s name was not on his mind and he had developed depression so cannot remember the names and dates of birth of his children and only remembered his grandfather's name when the delegate read it to him. He is not seeing a psychologist but he has seen a doctor who prescribed him [medication] but he has not taken them. His representative submitted in the absence of the images showing the applicant personally participating in Shia festivities and in the absence of written evidence referring to him as a Shia, the Shia content on the Facebook page should not poison the applicant's credibility beyond redemption. His representative also submitted that he may be affected by his psychological state.
16. On the one hand the applicant has consistently claimed in the Arrival and Induction Interview conducted in July 2013, in the SHEV application dated August 2017, and in the SHEV interview conducted in February 2018, that he is a Sunni Muslim and that his brother was killed by a Shia militia. And some of his claims concerning his personal circumstances are consistent with country information about Sunnis in Iraq, including that the Baghdad suburb he reported his family has moved to is known for having a Sunni community, that there is some commonality

in the beliefs and practices of Sunnis and Shias; and that during the SHEV interview he was able to articulate some key Sunni beliefs and practices¹.

17. On the other hand prior to the fall of Saddam Hussein's regime, when the applicant was a young adult, there was more inter-faith marriage in Iraq and more mixed religious communities²; the applicant has a good standard of education; he claimed to have sold religious literature from his shop and to be knowledgeable about all religions; so it could be anticipated he would have some knowledge of Sunni beliefs and practice without necessarily being a Sunni himself. Also it does seem odd that someone who claims to be a devout member of the Sunni sect, to have personally suffered harassment and threats at the hands of Shia militias and to have suffered the murder of his brother by a Shia militia only a few months prior to some posts, would include material in praise of Shias on his Facebook account. The applicant has also claimed he attends a Sunni affiliated mosque in Sydney at least weekly but has not provided any evidence of this in the form of support from the Imam or other members of the congregation. And despite the Department emphasising the importance of him providing evidence in support of claims, the applicant has not provided any documentation, such as a death certificate for his brother or police report concerning his murder, in the five years he has been in Australia. His explanation that this was because his mother is illiterate and she and his sister are unfamiliar with the postal service seems weak given they live with his brother-in-law who might have been in a position to obtain such documents if they could not. Furthermore there is the Facebook evidence that is highly suggestive that his brother is alive and the applicant is in contact with him. Also the country information before me does not indicate Sunnis were being killed and displaced from Nasiriya in the first half of 2013 and neither the applicant nor his representative has provided any country information confirming this was the case. Nor has the applicant provided any evidence that his mother, sister and brother-in-law now live in Baghdad, although he claims to speak to them on the telephone on a regular basis. While none of these factors are necessarily determinative or compelling on their own, I consider when they are taken together they seriously undermine the credibility of the applicant's key claims. As a consequence I do not accept that he is a devout Sunni or a Sunni, that his brother was murdered by Shia militia, or that his family were displaced from Nasiriya in 2013. Rather I consider it highly likely that he is a Shia Muslim from Nasiriya and that his family remain living there. I also do not accept that the applicant is suffering from depression. Neither he nor his representative has provided any medical evidence that this is the case.
18. DFAT indicates as the majority community in Iraq with a dominant role in the Government, Shias face little to no official discrimination in government-controlled areas. In these areas, DFAT assesses that reported instances of societal discrimination are likely to be associated with patronage and nepotism. Southern Iraq, which includes Thi Qar governorate, has been and remains more secure than other parts of the country. Overall, DFAT assesses that official and societal discrimination against Shias is low, particularly in Shia areas, and Shias in the south face a lower risk of violence³. And in August 2016 the UK Home Office stated there is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates suffering serious harm en route to such governorates⁴. Alternatively southern

¹ UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OGG6E7028831, paragraph 4.2.4. DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 2.10. Immigration and Refugee Board Canada, "Differences between Shia and Sunni Muslims", 1 March 2014, CIS27463.

² DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 2.10.

³ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 3.31-3.34 and 5.17.

⁴ UK Home Office, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68, paragraph 2.2.18.

Iraq is serviced by Basra international airport⁵, the airport that the applicant departed from. Having regard to the information before me I am not satisfied there is a real chance the applicant will suffer harm now or in the reasonably foreseeable future because he is a Shia Muslim or in returning to Nasiriya.

19. Although the applicant made no claim in this regard, the delegate considered the threat posed to the applicant as an asylum seeker and returnee from a Western country. DFAT indicates there is considerable evidence that shows a number of Iraqis return to Iraq, sometimes only months after securing residency in Australia, to reunite with families, establish and manage businesses or take up or resume employment. The practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq.⁶ The information before me does not suggest that returnees to Iraq who have sought asylum in the West are attributed with an imputed political opinion by either the Iraqi government or Shia militia or anyone else for that matter. I am not satisfied there is a real chance that the applicant will suffer harm as an asylum seeker and returnee from a Western country now or in the reasonably foreseeable future.

Refugee: conclusion

20. 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

21. 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

22. 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.
23. I have concluded that the applicant does not face a real chance of harm in connection with his period of conscription under the previous regime; because he is a Shia Muslim; because of insecurity in Thi Qar governorate; in returning to Thi Qar governorate; or because he is an asylum seeker and returnee from a Western country.

⁵ "Basrah International Airport", Centre for Aviation, 03 August 2016, CIS38A80121429.

⁶ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 5.25.

24. As 'real risk' and 'real chance' involve the application of the same standard⁷, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

25. 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.

⁷ *MIAC v SZQRB* (2013) 210 FCR 505.

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.