



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA18/04873

Date and time of decision: 13 September 2018 11:46:00

C 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 Sunni Muslim from Akkar, Lebanon. He arrived in Australia [in] July 2013, and applied for a Safe Haven Enterprise Visa (SHEV) on 17 May 2017.
2. The delegate refused the application on 27 April 2018. The delegate did not accept the applicant had been approached to fight in any civil war or was known to be a critic of Hezbollah, Alawites or Shias. The delegate found he would not be of interest to any militia group or to Hezbollah on return to Lebanon.

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 two page submission and two articles that were not before the delegate. The submissions address the delegate's decision but also contain new information.
5. The first piece of new information is the submission that the applicant's 'family in Lebanon were questioned many times about where he is, and they have been under surveillance for a long time'. The representative has not explained why this information was not given to the Department before the decision was made, or if or why it was not previously known. I note the new information is inconsistent with what the applicant has claimed. The applicant did not refer to his family being questioned or surveilled in his written statement of claims in May 2017. At the SHEV interview in February 2018 he told the delegate people had been only once to his family home to question his parents since he left Lebanon. He said the groups would leave his family alone, since his father [has a disability], his mother is unwell, and his sister is too young. The representative has not provided any explanation for this inconsistency and there is no evidence to support the claim that the family have been questioned many times and have been under surveillance for a long time. I consider these claims are merely an embellishment or exaggeration in the submissions. I am not satisfied there are exceptional circumstances to justify considering this new information.
6. The second set of new information are claims that Hezbollah won the election in May 2018, that Hezbollah are trying to take control of Lebanon, and that Hezbollah now have great popularity and support in the applicant's village. In support of this claim a newspaper article is footnoted with a hyperlink, but the article has not been provided to the Authority. I have found the article on the internet but it does not provide support for the claims that Hezbollah won the election or are taking control or have great popularity in the village of [Town 1]. No evidence or further information has been provided to support the claims. I consider the claims in the submissions are an embellishment and I am not satisfied there are exceptional circumstances to justify considering this new information.
7. The two articles provided by the representative are about violent clashes around the time of elections in May 2018 in Lebanon. The first article concerns a clash in Beirut between opposing groups pre-election, with no reported casualties. The second article concerns a post-election clash in a town called [name deleted] near Beirut, where one person was killed.

I consider these articles are of little relevance to the applicant's claims or circumstances. The applicant's home area is not in or near Beirut, and he has consistently claimed he does not want to get involved in protests or fighting. I am not satisfied there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

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

- The applicant is from [Town 1], Akkar district, in northern Lebanon.
- The ongoing dispute between Jabal Mohsen and Bab Al-Tabbeneh reached his village, with supporters of the Alawites coming to his village and randomly shooting people.
- In 2012 religious leaders came to the village seeking young men to fight in the civil dispute. They also persuaded people to protest, and some of the protestors were killed.
- His village is [a certain distance] from the border with Syria. An aunt living in Syria moved to Lebanon to escape the war. One of her relatives, a man called [Mr A], followed the aunt to Lebanon. [Mr A] was a supporter of *Jabhat El Nosra* and he put pressure on the applicant to join the fighting in Syria.
- The applicant wanted no part in the protests or the fighting. He believed that if he stayed in his village his only choices would be to fight or be killed, so he decided he had to leave.
- Recently someone in his village had been pulled from a taxi and robbed and killed.
- His cousins [names deleted] who lived in [Town 2] were killed by people from Jabal Mohsen for no reason.
- A distant relative called [name deleted] was shot by a Shia soldier because he was Sunni.
- The applicant is a known outspoken critic in his village of Hezbollah and the Alawite and Shia people. [Sheikh B] warned the applicant to be quiet, and the applicant received threatening phone calls.
- If he returns he will be persecuted by people associated with Jabal Mohsen, Shias, [Sheikh B] and his supporters, and Hezbollah.
- His family are poor and his father [has a disability]. It will be hard to find employment because he has no qualifications and the Syrian refugees are working for less money. He would not have enough income to relocate and will be forced to live with his parents in [Town 1], which is unsafe for him.

Refugee assessment

9. 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

10. 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.
11. I accept the applicant is from [Town 1], Akkar Province in northern Lebanon, where his family continue to live. I find Lebanon in his receiving country, and [Town 1], Akkar Province is his home area and the area to which he would return.
12. The applicant claims to have left Lebanon because of the pressure and threats to fight in civil wars, or get involved in protests. He claims that whilst he was known to be a vocal critic of Hezbollah and Shia and Alawite groups, he had no interest in fighting or protesting.
13. The civil war the applicant claims he was being pressured to fight in was the sectarian violence in Tripoli between the Alawites in the suburb of Jabal Mohsen and the Sunnis in neighbouring Bab al-Tabbeneh. The point at which these suburbs meet has been a particular flashpoint for violence. The Department of Foreign Affairs and Trade (DFAT) reports there were regular clashes in these two suburbs in 2013-2014, with notable events including: a suicide bomb attack on a café in Jabal Mohsen in January 2015, in which 9 people were killed; and the bombing of a Sunni mosque in Bab al-Tabbeneh in August 2013 killing at least 42 people. However there have been no other significant security incidents of violence since a security plans for the area was implemented by the Lebanese Armed Forces in April 2014. DFAT advises the security situation is stable and the risk of Sunnis facing violence in Tripoli is low.¹
14. The applicant claims a Sheikh in his village was pressuring him to fight in Bab al-Tabbeneh. He told the delegate at the SHEV interview that people came to his house 3 or 4 times in 2012 asking him to join the fight. He always refused. He concedes he was never physically harmed as a result, but says he was under surveillance and also received some threatening phone calls.
15. I do not accept the applicant's claim that he was under surveillance in his village after refusing to fight. When the delegate asked him why the Sheikh or others would want him under surveillance he said they may have thought he was working for the other side, the Shias. I find this explanation unlikely, given he was from a Sunni family, living in the Sunni

¹ DFAT *Country Information Report Lebanon*, 23 October 2017 CISED50AD6014 (DFAT report)

majority north governorate of Lebanon², and given he says he was openly critical of Shias. I consider the claim to have been under surveillance has been fabricated.

16. I accept the applicant may have been approached, even more than once, about joining in the sectarian fighting in Tripoli, or getting involved in protest activity. He may have felt pressured by this, and he may have gotten some threatening calls. However, he experienced no harm for refusing to do so. His family have never been harmed or threatened because he refused to do so. The applicant says that only once since he left did people come to his house to ask where he was. The applicant left his village in June 2013. At that time he had suffered no harm for his refusals in 2012, and there was no claim he continued to be harassed into 2013. I do not accept the applicant would be harmed if he returned to Lebanon now for not wanting to fight in sectarian violence in 2012, when he suffered no harm back then. I rely on the advice from DFAT that the situation in the Jabal Mohsen and Bab el-Tabbeneh area is stable. I accept that when he left Lebanon the tension and violence in these areas was higher than it is now, and his fear of getting caught up in any violence is understandable. But I find the applicant will not be pressured to get involved in any conflict in the Jabal Mohsen and Bab el-Tabbeneh area when the situation is stable and there is nothing to indicate any ongoing recruitment of young men to fight there. I find he does not face a real chance of harm by getting involved in sectarian fighting or in refusing to get involved.
17. The applicant claimed that a distant relative called [Mr A] came from Syria and asked the applicant to join a group called Jabhat El Nosra. The applicant told the delegate this group fights in Syria against the Syrian government. The applicant also told the delegate he had heard [Mr A] has since been killed in fighting. The applicant had no contact with anybody else from the group, and there is no reason to believe anyone else from the Syrian group knew of the applicant. I find the applicant does not face a real chance of harm from this group because he refused to join in the past, and I find it farfetched that the group may approach him on his return to join them now when he is not known to them.
18. The applicant claims he was known in his village to be a vocal critic of Hezbollah, and Shia and Alawite groups. The applicant was a young man, still at school, when he left Lebanon. When asked at the SHEV interview to provide detail of how he was critical of these groups and how he was known for this, he said he'd talked to people about it at school. I note the applicant was not involved in any political group or protest activity. He has not claimed to have been politically active in Australia. I do not accept the applicant was a known vocal critic of Hezbollah or Shia or Alawite groups, beyond perhaps expressing political views amongst his friends at school or in his village. I find the claim that he was a known vocal critic to be an exaggeration or fabrication. I have considered the claim [Sheikh B] in his village warned him to stop criticising Hezbollah at school because Hezbollah could hurt him. He says [Sheikh B] was a Sunni but also a Hezbollah supporter. There's nothing to indicate [Sheikh B] threatened the applicant, and if this warning did occur, it may have been merely to help keep the applicant out of trouble.
19. Whilst I do not accept the applicant was a known vocal critic, I accept that as a Sunni the applicant may be imputed with a political opinion that is opposed to Hezbollah and Shia and Alawite groups. DFAT advises that Lebanese are generally free to express their political opinion, and that armed non-state actors have generally refrained from targeting people based on their political opinion alone. Violence tends to be targeted at people who express strong political views and are politically active.³ I do not accept the applicant has this type of

² DFAT report

³ DFAT report

profile, even if I accept he expressed political views to friends at school. I do not accept Alawite groups in Jabal Mohsen have any interest in the applicant, nor do Shia groups, merely because he is a Sunni or because he has spoken critically of them to his friends at school. Lebanon is a diverse country with a high degree of religious tolerance.⁴ I do not accept he faces a real chance of harm merely because he is Sunni. I do not accept that an imputed political profile because he is Sunni would give rise to a real chance of harm from any religious or militant groups in Lebanon.

20. The applicant named Hezbollah as a group he specifically fears harm from. Hezbollah was formed in 1982 following the Israeli invasion of Lebanon, the Lebanon-based radical Shia group takes its ideological inspiration from the Iranian revolution and the teachings of the late Ayatollah Khomeini. The US designated it as a Foreign Terrorist Organization in 1997. Hezbollah is based in the southern suburbs of Beirut, the Bekaa Valley, and southern Lebanon, and has played a significant role in the conflict in Syria.⁵
21. There is no evidence Hezbollah harmed or targeted the applicant in the past because he spoke out about them in his village or to school friends. The applicant had no difficulty departing Lebanon, even though Hezbollah are known to have substantial control of the international airport. DFAT states non-Shia critics of Hezbollah are not at risk, unless they are a direct threat to Hezbollah's authority. DFAT also states Hezbollah are unlikely to target any individual returning to Lebanon unless that person presented a direct threat.⁶ I do not accept there is anything to indicate the applicant is any sort of threat to Hezbollah. He is not active politically, he is not a member of any militant group, and I find his criticism of Hezbollah does not give him a profile that would make him a threat or of interest to them. I find the applicant does not have a real chance of harm from Hezbollah.
22. The applicant named persons from his village or extended family who have been killed in Lebanon. One of the persons named was killed in a robbery, another was allegedly killed by a Shia soldier during council elections. I am not persuaded either of these incidents impact on the applicant's chance of being harmed as a Sunni in his home area. The applicant also claimed that in 2014 two cousins from the nearby town of [Town 2] were killed at home by people from Jabal Mohsen. However at the SHEV interview he said it was people from Bab el-Tabbeneh. His evidence on this was inconsistent and vague. If his cousins were killed in relation to the Jabal Mohsen and Bab el-Tabbeneh conflict, then this occurred during a time when the conflict was more active. I do not accept the applicant will be targeted because his cousins were killed in 2014 or that he faces a real chance of harm in relation to the Jabal Mohsen and Bab el-Tabbeneh conflict when the situation is stable and he has no association with that conflict.
23. The DFAT report states there is a low risk for Sunnis living in Akkar Province being caught in cross-border reprisal attacks by Syrians, given its close proximity to the border. The risk increases for communities sheltering anti-Syrian regime fighters. I note the applicant's claim that a distant relative called [Mr A], who fought with an anti-regime group, came to his village in 2012. There were no reprisals in relation to [Mr A]'s presence. There is no claim or evidence the applicant's family or community has ever been targeted for this reason, or even inadvertently caught up in violence related to the Syrian conflict. I find the applicant does not face a real chance of harm because he is a Sunni in Akkar province near the border with Syria.

⁴ DFAT report

⁵ "Country Reports on Terrorism 2015 - Foreign Terrorist Organizations Hizballah", US Department of State, 02 June 2016. CX6A26A6E9828

⁶ DFAT report

24. The applicant claims he cannot return to Lebanon because his family is poor and with his level of education he can't easily find employment. I find the applicant could return to reside with his parents whilst looking for work, and I note he has relatives in his village who he says have helped him in the past. I do not accept any difficulties finding work on return would amount to serious harm. Nor is there anything to indicate a young Sunni man from northern Lebanon, a Sunni majority area, would be denied employment for any of the reasons in s.5J(1)(a).
25. The delegate told the applicant at the hearing they would consider whether he had a real chance of harm as a failed asylum seeker returning to Lebanon. DFAT states Lebanon has a diaspora of 16 million living worldwide, and with many returning to visit and retaining family and business ties in Lebanon. DFAT reports there is no evidence suggesting asylum seekers returning to Lebanon would be distinguishable from another other returnee, or susceptible to any form of discrimination or violence for this reason.⁷ The applicant has not claimed he faces harm as a failed asylum seeker. I find there is not a real chance the applicant would face harm for returning to Lebanon as a failed asylum seeker.

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 found the applicant does not face a real chance of harm from any religious or militant group or persons in Lebanon for any of the reasons claimed. 'Real chance' and 'real risk' have been found to equate to the same threshold. For the same reasons given above, I find the applicant will not face a real risk of significant harm from any of the people or groups he claims to fear harm from, or because he is returning as a failed asylum seeker.

⁷ DFAT report

30. The situation in Jabal Mohsen and Bab el-Tabbeneh area is currently stable and controlled by the Lebanese Armed Forces. It is mere speculation that violence may again escalate there. In any event the applicant's family do not live in Jabal Mohsen or Bab el-Tabbeneh. I find the risk of the applicant being inadvertently caught up in any generalised violence emanating from the Jabal Mohsen and Bab el-Tabbeneh area is too remote to amount to a real risk. I also find the risk of being caught up in any violence related to the Syrian conflict is too remote to amount to a real risk, given the lack of evidence his family or community are involved in sheltering any anti-Syrian regime fighters .
31. The applicant claimed at the SHEV interview that in addition to the fighting in the Jabal Mohsen and Bab el-Tabbeneh area, he left Lebanon for financial reasons. He says his father [has a disability] and doesn't work, and he and his brother were supporting them. The applicant was still a student when he left Lebanon, but he worked part-time [on] weekends. When asked how his parents support themselves now he said they have sold [their property], and relatives are also helping his family. That they had all this property to sell indicates they were a family of some means. He says he is worried about finding work because he is not educated beyond high school, and because Syrian refugees have moved into northern Lebanon and are willing to work for less. DFAT states the limited economic opportunities, in addition to the influx of Syrians, have been push factors for external migration.⁸ I acknowledge the applicant may have difficulty finding work, but I find he can live with his parents and seek help from relatives if needed whilst re-establishing himself in Lebanon. I also find any difficulty finding work or supporting himself does not amount to significant harm as it is defined in s.36(2A).

Complementary protection: conclusion

32. 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.

⁸ DFAT report

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.