



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA18/05086

Date and time of decision: 31 October 2018 11:17:00
S Ryan, 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 national of Pakistan and arrived in Australia [in] December 2013. On 6 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 31 May 2018 and referred the matter to the IAA on 5 June 2018.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). The applicant's representative has responded with three emails, received by the IAA on 26 and 27 June 2018. The first email requested the IAA consider granting an extension of the timeframe to respond to 3 July 2018. The second email contained a personal statement made by the applicant responding to the delegate's decision. The third email contained a submission from the representative. The submissions to the IAA are made up of argument responding to the delegate's decision, are not new information, and I have had regard to those matters.
3. The submissions refer to the delegate's acknowledgment in the decision record that there had been some difficulty during the SHEV interview with the interpretation in Urdu and that the questions and responses required regular clarification. The submission states that the standard of interpreting had prevented him from being afforded an adequate and reasonable chance to provide his evidence and requested the IAA 'call for a hearing' to remedy this. The applicant's representative submits that the Department failed to provide a competent interpreter to assist the applicant and that the interpretation was of sufficiently low quality as to effectively nullify the appellant's ability to give evidence and present arguments or to address the delegate's questions. The representative indicated that they intended to review the audio record of the SHEV interview and would provide a further submission, and requested the IAA defer its decision until 'such time'.
4. The submissions argue that there were significant errors made by the interpreter in the SHEV interview, but do not identify any specific instances of misinterpretation. The submissions rely on the delegate's comment regarding the issues with the interpreter in the SHEV decision record. The applicant attended the SHEV interview in person and the interview was conducted with the assistance of an Urdu speaking interpreter via telephone. I accept that an interview in these circumstances can impact on the interpreter's ability to manage their role in the flow of questions and responses. In this case, the audio recording does not suggest that telephone interpreter could not be clearly heard by the applicant or the delegate. I agree with the delegate's observation that, at times, the interpreter had difficulty in accurately interpreting the delegate's questions and the applicant's response and I attribute this to a number of factors. There were occasions where the interpreter didn't clearly hear the question, or struggled to understand the context for the question. In each instance the interpreter was proactive in raising this issue and sought clarification from the delegate or the applicant as appropriate. In one instance the interpreter misheard the English word 'murder' for 'marriage' and this was immediately corrected. Whilst the parties' regular attempts to manage these factors may have disrupted the flow of the interview at times and increased the time taken to conduct the interview, their actions are indicative that the three parties were alert to the

potential for confusion or misunderstanding and worked cooperatively to overcome these issues as they arose.

5. The applicant speaks English to a reasonable standard and there were many occasions in the SHEV interview where he responded directly to the delegate's question in English without waiting for the interpreter. Each time, after such an exchange between the two parties in English, it was apparent that the interpreter was unsure when to resume his interpreting role, and required prompting. I note that each time this occurred either the delegate or the applicant prompted the interpreter to resume his role. On one such occasion the delegate restated the question and asked the interpreter to interpret the question into Urdu as he was unsure that the applicant had understood the question when responding directly in English. The applicant occasionally spoke over the interpreter in English, or interrupted the interpreter in Urdu to add additional information, and on these occasions the delegate asked the interpreter to repeat the response.
6. There were a small number of occasions where either the applicant or delegate spoke at length without waiting for the interpreter, and it is not clear on those occasions whether the interpreter was able to relate the entire contents of their dialogue. However, on the whole, I am satisfied that all three participants regularly took effective and timely action throughout the interview to ensure that questions and responses were repeated or clarified where there was apparent confusion or doubt. At the commencement of the interview the applicant confirmed he understood the interpreter and the delegate invited him to let him know if he had trouble understanding the interpreter. The applicant has claimed in his submission to the IAA that he had raised the issue of the standard of interpretation with the delegate during the SHEV interview; however having reviewed the audio recording no such event is apparent to me.
7. I also note that the applicant's representative's submission arguing legal error on the basis of defective interpreting was made without having reviewed the audio record of the SHEV interview and without detailing any specific instance of interpreter error, or identifying which aspects of the applicant's claims he was prevented from presenting adequately. The applicant's representative requested on 27 June 2018 that the IAA indefinitely defer its decision whilst they review the audio record of the SHEV interview and provide a further submission. Nearly four months have elapsed since that request was made and no further submissions have been received. I consider that the applicant and his representative have had a reasonable amount of time to review the audio recording of the SHEV interview and could have raised more specific concerns with the interpreting, or errors in the delegate's findings of fact, had they had been identified.
8. I am satisfied the standard of interpreting at SHEV interview was competent and reasonable. I am not satisfied that the interpreter's occasional difficulties in accurately interpreting the delegate's questions and the applicant's responses have materially affected the applicant's ability to raise his claims and respond to the delegate's questions and concerns. I am satisfied that the applicant was given notice of the key determinative issues in this case, and that he has had a real and meaningful opportunity to respond. I have decided not to exercise my discretion to obtain further information from the applicant.

Applicant's claims for protection

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

- In March or May 2013 he was visiting his uncle's shop and witnessed him being attacked and strangled by a man, '[Mr A]', who had been attempting to steal money from his shop. He attempted to prevent the murder of his uncle but was unable to do so.
- The applicant and his cousins assisted police in apprehending [Mr A], who was arrested and held in detention on murder charges. The applicant was a key witness in the resultant court proceedings and was repeatedly threatened and attacked by supporters of [Mr A]. This situation has led to a blood feud between his family and the family of [Mr A] who are wealthy, politically connected, and involved in organised crime.
- The police are unwilling or unable to protect the applicant from [Mr A] and his family due to their connections.
- [Mr A's] family have arranged to have police and medical reports amended to remove reference to the attack by [Mr A] and show that the applicant's uncle died of natural causes.
- Since fleeing Pakistan the applicant has learnt that his cousin, also a witness in the attack, was killed by associates of [Mr A].
- If he returned to Pakistan he fears he will be murdered by [Mr A] family as he is now the last remaining witness who can testify against him.
- He cannot relocate from his home region as he does not have family or friends in other parts of Pakistan and [Mr A's] family will use their connections to locate him and kill him.

Factual findings

10. The applicant has provided copies of identity documents, namely his Pakistani passport, Pakistani Identity Card, Pakistani police certificate of good character. The applicant has presented consistent evidence in relation to his identity throughout the entry interviews and protection application process, and has provided a range of credible biographical information. I accept that the applicant was born in Multan in Punjab Province in Pakistan, and is a national of Pakistan and accordingly I have assessed him against Pakistan as the receiving country.
11. The applicant is a Sunni Muslim of Punjabi ethnicity who speaks Punjabi and can speak, read and write in Urdu and English. The applicant grew up in Multan and has [several] siblings, [some] of whom currently live in [Country 1]. Apart from a four year period in [Country 1] (2004 to 2008) the applicant lived in Multan until his departure for Australia in 2013.
12. The applicant has provided scant, inconsistent, and implausible information with regard to his circumstances in Pakistan, and events leading up to his departure in 2013.

Employment in Pakistan

13. The applicant provided inconsistent information with regard to his employment history in Pakistan, particularly in relation to his period of employment as [Occupation 1] in a [workplace]. He claimed in the Entry Interview to have worked for a [workplace] [from] 1999 to 2004, and again from 2008 until June 2013, at which time he was preparing to leave for Australia. In the SHEV application he indicated he was employed at the [workplace] only between 2008 and 2013. In the SHEV interview he contradicted this, saying that he was employed there between from 1999-2004 but, after returning from [Country 1], he did not work for the [workplace], but was [an Occupation 2] between 2008 and 2013. During the Entry Interview the applicant provided a highly specific account of his employment as [Occupation 1]

with the [workplace] in the period immediately leading to his departure from Pakistan in August 2013. He did not provide the delegate any reason why he contradicted this version of events in the SHEV interview. I put greater weight on the detailed evidence given in the Entry Interview, and his written evidence in the SHEV application and find that the applicant worked at the hospital in the period between 2008 and June 2013, at which point he departed Pakistan.

Uncle's murder, court proceedings, and persecution

14. The applicant has not provided any independent evidence in support of the claimed events that are central to his claims for protection; that he was a witness in the alleged murder of his uncle and was a witness in the resultant court proceedings against the perpetrator, [Mr A]. He claimed in the SHEV interview and in the March 2017 statutory declaration to have been in possession of a First Information Report (FIR) issued by the Multan Police at the time of his uncle's alleged murder and that this was provided with his SHEV application, yet no such document was provided. The FIR is not mentioned in the list of supporting documents included with his SHEV. The applicant discussed the FIR in the SHEV interview, and was put on notice in during that interview and later in the delegate's decision that the Department had not received any FIR. In their submissions to the IAA responding to the delegate's decision the applicant made no mention of this document, nor raised any concerns in relation to the delegate's lack of consideration of the FIR.
15. The applicant claims to have been required to attend court as a key witness on five occasions, and that his family have followed and updated him on court proceedings against [Mr A] in relation to his uncle's murder. He also claims that he was attacked three times by [Mr A's] supporters and that he reported these incidents to police. The applicant has obtained a range of Pakistani identity documents since his arrival in Australia and provided these with the SHEV application. He has repeatedly claimed to be in possession of documentary evidence that corroborates his account of the murder of his uncle, and claimed to be a person who was required to attend court as an eyewitness essential to the prosecution of [Mr A]. Despite his claim to be in regular contact with family members who have assisted him with obtaining other document in Pakistan, he has not provided any documentary evidence relating to the circumstances of the death of his uncle, or the court matters relating to the prosecution of [Mr A], or police reports in relation to the attacks on him and his family by [Mr A's] supporters.
16. The applicant's written statement of claims is brief, provides few details, and does not specify any dates. During the SHEV interview the applicant's account of events relating to his uncle's murder, the prosecution of the alleged perpetrator, and his own harassment and persecution by [Mr A] supporters were also scant of detail. I find it telling that, when asked by the delegate, the applicant was unable to specify even the month for the incident in which he claimed he witnessed his uncle's murder; particularly given he also claimed to be in possession of an FIR that described this event in detail. The applicant was unable to describe in any detail the five court hearings in which he claimed to have been appearing as the sole eyewitness. When asked whether there had been any outcome to the prosecution of [Mr A] the applicant stated that neither he nor his family were aware of the current state of court proceedings, that he had not contacted the courts or police in Pakistan, and was not aware whether or not he had been called to attend court hearings as a witness.
17. The applicant stated he had heard from friends that [Mr A's] family had arranged to corruptly amend the FIR to show he had not attacked the victim, and had also arranged for a post mortem report to falsely state the applicant's uncle was not killed; rather he died of natural causes. It is somewhat incongruous that the applicant claimed to have access to detailed

knowledge of the efforts made by the family of [Mr A] to manipulate and corrupt evidence to avoid criminal prosecution, yet neither he nor his family were aware of the outcome of the prosecution of [Mr A], or in contact with the police or the courts to request such information.

18. I also find it telling that in his written statement of claims prepared with the assistance of a legal professional, and in the SHEV interview that exceeded two hours, the applicant was unable to provide a coherent account of the death of his uncle, the prosecution of the perpetrator and his involvement in court proceedings, or describe the current state of the prosecution. This is not congruent with a person who is recalling his own personal experience as a key witness to the murder of a family member, who has participated in five court hearings as a key witness, and who has personally suffered harassment, abuse and persecution as a result.
19. The applicant's evidence in relation to the wealth, political power and criminality of [Mr A], his family and their associates was also far-fetched, inconsistent and unsubstantiated by any other evidence. The applicant claimed that [Mr A] was a member of an organised crime gang that attempted to intimidate him to prevent him from giving evidence and then made multiple attempts to kill him. He claimed [Mr A's] family were wealthy and politically connected, to the extent that they were capable of manipulating the medical and criminal justice systems to enable the release of [Mr A], and to the extent that the applicant could not safely relocate to any other city in Pakistan. He claimed that associates of [Mr A] made three unsuccessful attempts to kill him, by chasing him on motorbikes and shooting at him. He stated in the SHEV application that the attempts on his life occurred in both Multan and in Lahore, but contradicted this in the SHEV interview where he stated that he had fled Multan to stay in a hotel in Lahore for three weeks and had not been attacked in that time.
20. The applicant described [Mr A] in the SHEV application as a neighbour, and I note that, apart from a three week period in Lahore, the applicant remained in his home in [his] village from the time of the murder (March or May 2013) until his departure from Pakistan in August 2013. Given [Mr A's] close proximity to the applicant in his village it is implausible that a wealthy, powerful and well-connected criminal network; one that is apparently capable of locating and killing the applicant in any city in Pakistan, and who were intent on killing the applicant throughout this period; were unable to locate him or carry out attacks on him in his own home.
21. I have considered the applicant's claim that errors in interpreting during the SHEV interview explain the inadequacies and discrepancies in his evidence, however I am not satisfied that they do. The applicant did not identify any specific interpreting errors that have materially altered the meaning of his evidence or affected his ability to articulate his claims, and none are apparent to me.
22. Given the scant and implausible evidence provided by the applicant about the murder and the prosecution of [Mr A], and in the absence of any independent, corroboratory evidence, I am not satisfied that the applicant's uncle was murdered, or that he has participated as a witness in the prosecution of the perpetrator, or that he or his family members were harassed and attacked by associates of the perpetrator as a result. I find that the applicant has fabricated evidence with regard to these events for the purpose of strengthening his protection claims.

Refugee assessment

23. 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

24. 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.

25. I have found that the applicant’s uncle was not murdered, that the applicant did not participate as a witness in the prosecution of the purported perpetrator, and that neither he nor his family members were harassed or attacked by associates of this person. I am not satisfied that the applicant has a well-founded fear of persecution for these reasons.

26. The applicant did not claim that feared harm on account of having spent time in a Western country, however these issues were considered by the delegate. I accept that, if returned, the applicant may be recognised as a person who has spent time in a Western country. The evidence before me does not indicate that having spent time, or having sought asylum, in a Western country like Australia will place a person such as the applicant at risk of harm. The Department of Foreign Affairs and Trade has observed that Western influence is pervasive in many parts of Pakistan, particularly in large urban centres. Many Pakistanis have relatives in Western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country. I am not satisfied he faces a real chance of harm on the basis of being a returnee from Australia and I am not satisfied that the applicant has a well-founded fear of persecution on this basis.

Refugee: conclusion

27. 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

28. 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

29. 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.

30. I have concluded that the applicant does not face a real chance of harm on the basis of the purported murder of his uncle, or as a returnee from Australia. As 'real risk' and 'real chance' involve the application of the same standard, 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

31. 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.

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.