



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05429

Date and time of decision: 2 November 2018 20:44:00

R Arends, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Ahwazi Arab of Shia Muslim faith from Iran. On 8 July 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on the basis that there was no real chance of serious harm or real risk of significant harm to the applicant should he return to Iran.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is an Ahwazi Arab from Ahwaz (Khuzestan province).
 - He is discriminated against because of his ethnicity. For example, if he wears traditional clothes the authorities harass him, and when he undertook compulsory military service he was wrongly suspected of misbehaving on twelve occasions in a three month period, and sent to a remote area, because he is Arabic.
 - During an Arab festival, Eid al-fitr, in [year], he was arrested for protesting (although he was not protesting), detained and beaten, and a file was created on him.
 - Arabs are not allowed to speak against the regime. He would never be allowed to express that Iran discriminates against Ahwazi Arabs for fear that he would be "erased, disappeared". Arabs are not allowed to speak Arabic in public.
 - He fears persecution if he returns to Iran because of his ethnicity, the file on him and because he left Iran using a fake passport.
 - If he returns to Iran, the authorities will know he spent time in Australia and he will be seen as a traitor, spy and supporter of the West. He will be questioned at the airport, imprisoned and tortured.
 - He might be put in jail, tortured and killed if he returns to Iran

Factual findings

6. On the basis of documents provided by the applicant I accept his identity and nationality as claimed.
7. The applicant claims that in Iran he is recognisable as an Arab because of his name and accent when he speaks Farsi. His full name [includes] a word unique to Arabic. I accept that the applicant's full name identifies him as Arabic. I am also prepared to accept that the name he

goes by, which is a shortened version, could identify him as Arabic. I have no information before me about the applicant's accent. However, I accept that his first language is Arabic, and that he spent the majority of his life in Ahwaz which is an Arabic region of Iran, so I consider it plausible that he speaks Farsi with an Arabic accent.

8. I find that the applicant's parents and one sister are deceased, [number] of his brothers live in Ahwaz and [number] in [Country 1], and his [number] living sisters live in Ahwaz. The applicant described his family as economically ok, and said that all [brothers] in Ahwaz are employed while his sisters are homemakers. I accept all of this.
9. The applicant claims that in the first three months of his military service, when he was in training, he was discriminated against for being Arab: he was wrongly suspected of things like taking drugs or making trouble on twelve occasions, and every time he was cleared. He claims that, once when he was resting at his post, an officer slapped him in the face and asked his name. When the applicant gave his name, the officer insinuated that he was an Arab, and an hour later the officer arranged for him to be transferred to a remote area, saying "I'm going to send you where only Arabs deserve to be sent". Country information indicates that in Iran, ethnic minorities are discriminated against in their daily lives¹, and I have found that the applicant could be identified as an Arab because of his name and accent. I find it plausible that the applicant was discriminated against for being an Arab when he undertook military service. The applicant has not pointed to any adverse consequences that flowed from the false accusations or being sent to a remote area. While I am satisfied that this treatment was motivated by the applicant's ethnicity, I am not satisfied that he suffered harm beyond it.
10. The applicant claims that in [year] he was arrested, detained and brutally assaulted for protesting when he had not in fact been protesting but had been walking in an area where a protest had recently taken place. He claims that this occurred during Eid al-fitr. Since 2005 there has been an annual protest for Arabic ethnic rights during this festival², and there are reports by credible human rights organisations indicating that large numbers of arrests are carried out each year against Ahwazi Arabs around the time of this annual protest³. I accept that the applicant was arrested, detained and beaten for his perceived involvement in a protest. I also accept that the police took his name, copied his ID documents, and created a file on him. I accept that he was released after [number] days and nights without food or water after signing an undertaking not to protest again. Based on the details provided by the applicant, I find that the applicant was not personally targeted, but that he was unfortunately in the wrong place at the wrong time. I find that no further action was taken with respect to this incident. The applicant does not claim to have been arrested, detained or assaulted since this incident, and I find that he has not experienced any adverse attention from law enforcement (except harassment for wearing traditional clothing – see below) at any other time.
11. The applicant claims that if he goes out wearing traditional clothes, he is asked questions and harassed because law enforcement see it as an expression of his Arab identity and political opinion. In the SHEV interview he said if you wear long clothes, people ask you why you are wearing Arabic clothes when this is not an Arab country. I accept that the applicant has been questioned and criticised for wearing traditional Arab clothing. However, I am not satisfied that he was imputed with a political opinion beyond his willingness to openly identify as Arabic.

¹ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

² US Department of State, "2017 Human Rights Report on Iran", 20 April 2018, OGD95BE927451.

³ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

12. The applicant claims that he is not allowed to speak Arabic in public. In the SHEV interview the applicant said his first language is Arabic, and that he spoke it home and on the street with friends, but he spoke Farsi at school and at government departments. He added that “we” talk Arabic in the community. The applicant did not claim to have received adverse treatment for speaking Arabic in the street or in the community. I do not accept that the applicant is not allowed to speak Arabic in public.
13. The applicant claims that Arabs are discriminated against with respect to employment and government services. Country information from DFAT indicates that there is a high level of societal discrimination against Arabs in Iran, and this can lead to unfair day-to-day treatment in areas such as education, employment, access to housing, access to health and other services, access to political office and high level government jobs, and the exercise of cultural, civil, and political rights. This can be in the form of nepotism reflecting social attitudes or State sanctioned discrimination.⁴ However, the applicant claims that he was employed as a [Occupation 1], and then [Occupation 2], in the [number] years before he left Iran, and that he owned his own home which he sold before he left Iran. The applicant has not pointed to any instances of discrimination against him personally with respect to education, employment or government services. I am not satisfied that the applicant suffered any such discrimination.
14. The applicant does not claim to have been involved in any political activities in Iran, and he is not aware of anyone in his family professing their cultural identity or being involved in any political activity. I find that neither the applicant nor any of his family members had a political profile when he left Iran.
15. The applicant claims to have used a fake passport to leave Iran. He claims that he obtained the passport by paying an agent [amount] and giving him a photograph of himself with his date of birth and his name - with his first name shortened - written on the back. In the SHEV interview, he said he did it this way, rather than applying to the Passport Office, because he did not want to wait the month or 45 days that it normally takes. He said the agent got him a passport in ten days. On the applicant’s own account, the passport was in his name, with his date of birth and his photograph. I find that the passport was genuine and the agent expedited the process of obtaining it by paying a bribe. After the SHEV interview, the applicant’s agent made a submission in which a different explanation was put forward: the applicant obtained a fake passport because he was scared that he would be stopped at the border if he tried to leave Iran using a genuine passport because of his “existing profile”. The police incident that occurred [number] years before the applicant sought to obtain a passport had been closed at the time, and the applicant had neither engaged in, nor been accused of engaging in, any political or criminal activity since then. I find that this second explanation was constructed to support the applicant’s claim that the passport was fake, which the applicant relies on to support his claim that he will be harmed for having left Iran illegally. I reject it.
16. The applicant stated in his SHEV application that [some of his relatives] were [killed] in [an] accident, and he went to the Iranian embassy in Australia to sign a [document]. I accept this.
17. The applicant was asked if he has been involved in any political activities in Australia, and he said no because he has a file in Iran and they might see him in video or pictures. He added that he was not active in the Ahwazi community in Australia. I find that the applicant has not been politically active in Australia.

⁴ Department of Foreign Affairs and Trade, “DFAT Country Information Report Iran”, April 2016, CIS38A8012677.

18. The applicant made some claims about discrimination against Ahwazi Arabs in general, including that the authorities will stop and search them, accuse them of things they did not do and make a file on them. However, he did not claim that these things had happened to him personally. Aside from the incident when he was detained for protesting and a file was created on him and his treatment in military service, I am not satisfied that the applicant has been stopped and searched, falsely accused of criminal activity or had files created on him.

Refugee assessment

19. 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

20. 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.

21. The applicant claims that Arabs are not allowed to speak against the regime, that if he said Ahwazi Arabs are discriminated against he would be “erased, disappeared”, and that he did not engage in political activism in Australia because it could be discovered in Iran and he already had a file on him. DFAT reports that Arabs who become known to Iranian authorities through attempts to enhance or assert cultural or political rights may face harassment on account of their activities if they are perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic. Largely depending on the profile or activities of the person (as well as the prevailing political environment and sometimes the personalities of individual security officials), this harassment could include monitoring, being summonsed for questioning, closure of offices or organisations, or arrest. Family members are sometimes threatened and, less often, imprisoned or forced into hiding.⁵ However, I am not satisfied on the evidence that the applicant has any interest in engaging in political activity in Iran or Australia, rather than that he refrained out of fear. I am fortified in this belief by the fact that the applicant has not indicated any attempt or desire to be politically active or pointed to what he might have done, or how he would have expressed himself, if not for fear of reprisal.

⁵ Department of Foreign Affairs and Trade, “DFAT Country Information Report Iran”, April 2016, CIS38A8012677.

22. The applicant has suffered serious harm on one occasion when he was wrongly thought to have been involved in [a protest] that the authorities typically respond to in a heavy handed manner. I find the chance of such a situation arising again to be remote. I have found that the applicant did not engage in any political activity in Iran, he did not have a political profile before he left Iran, the police incident when he was accused of protesting was closed before he left Iran and he has not engaged in any political activity since leaving Iran. I further find that the applicant does not have any intention or desire to publicly say that Arabs are discriminated against, assert his cultural or political rights, or engage in other political activity if he returns to Iran. I am not satisfied that wearing traditional clothing would result in the applicant being imputed with a political opinion beyond a willingness to openly identify as Arabic. I am not satisfied that there is any basis on which the Iranian authorities would impute the applicant with an anti-regime attitude. I am not satisfied that there is a real chance that the applicant would be harmed on the basis of his actual or implied political opinion.
23. The applicant claims that if he returns to Iran, he will be questioned intensively about where he has been since he left Iran. However, he has already voluntarily attended the Iranian embassy in Iran for the purpose of [signing a document], thus revealing himself to be in Australia. The applicant claims to fear that he will be seen as a traitor, spy and supporter of the West for having sought asylum in Australia. However, current DFAT country information indicates that Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Authorities will usually question a voluntary returnee on return only if they have already come to official attention.⁶ (The applicant no longer has his passport and Iran will not accept or issue travel documents to involuntary returnees who departed Iran when the applicant did, so I find that if the applicant returns to Iran it will be as a voluntary returnee⁷) I am not satisfied that there is anything about the applicant that would attract the attention of the Iranian authorities. While the applicant claims that he left Iran using a fake passport, I have found that it was a genuine passport. I have also found that the file relating to his detention was closed prior to him leaving Iran. I am not satisfied that there is a real chance that the applicant will be questioned, detained or harmed in any way upon his return to Iran for having sought asylum in Australia or for any other reason.
24. The applicant fears that he will suffer serious harassment and discrimination from the Iranian authorities and people because of his ethnicity. Country information indicates that while Arabs face discrimination in their daily lives, most Arab Iranians do not come to the attention of authorities and are subject to only low levels of adverse attention by the state, while the risk increases dramatically for Arabs who attempt publicly to assert cultural or political rights.⁸ A report of Arabs being targeted for expressing their ethnic identity through traditional clothing appears to be based on the treatment of one Ahwazi Arab who was arrested and beaten on five or six occasions for wearing the deshdashah.⁹ The applicant has only ever been subject to low level harassment for wearing traditional clothing, and I am not satisfied that there is any more than a remote possibility that he would be subject to adverse treatment beyond that for wearing traditional clothing. Despite the discrimination faced by Ahwazi Arabs, the applicant was employed, and owned a house, before he left Iran and all of his brothers are employed in

⁶ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", June 2018, CIS7B839411226.

⁷ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", June 2018, CIS7B839411226.

⁸ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

⁹ Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom), Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441, and see the reference at footnote 35 - Iran Human Rights Documentation Centre, "A Framework of Violence: Repression of the Arab Ethnic Minority in the Islamic Republic of Iran" at para 2.2.1.5, 18 March 2015.

Ahwaz, so I am not satisfied that the applicant would be unable to earn a living or secure suitable accommodation if he returns to Iran. The applicant has not claimed, and there is nothing before me to suggest, that he suffered adverse treatment with respect to education, health services or other services, and I am not satisfied that there is a real chance that he would if he returns to Iran. The applicant was discriminated against for being Arabic in the military, however he did not suffer harm beyond unfounded accusations and a posting to a remote area, and that treatment was isolated to that particular context. While the applicant may face day to day discrimination and/or harassment if he returns to Iran, I am not satisfied that it would amount to serious harm. I am not satisfied that there is a real chance that the applicant will suffer serious harm on the basis of his ethnicity if he returns to Iran.

25. Considering the applicant's claims as a whole, I find that there is not a real chance of the applicant being seriously harmed in Iran in the reasonably foreseeable future because of his ethnicity, actual or imputed political opinion, the way in which he left Iran, or for having claimed asylum in Australia, separately or cumulatively.

Refugee: conclusion

26. There is not a real chance of the applicant being seriously harmed in the reasonably foreseeable future if he returns to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

27. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

28. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
29. I have found that there is not a real chance that the applicant will be harmed on the basis of real or imputed political opinion, for having left Iran illegally or for having claimed asylum in Australia. Real chance and real risk involve the same standard. Therefore, I am not satisfied that there is a real risk of the applicant being harmed for these reasons.
30. I have found that the applicant may face day to day discrimination and/or harassment because of his ethnicity. However, I have found that there is no more than a remote possibility that he

would suffer treatment beyond low level harassment for wearing traditional clothing, there is a not a real chance that he would be unable to earn a living or secure suitable accommodation, and there is a not a real chance of his suffering serious adverse treatment with respect to education, health and other services. I am not satisfied that there is a real risk that the applicant will suffer harm that would amount to significant harm within the meaning of the Act because of his ethnicity if he returns to Iran.

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.