



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

VIETNAM

IAA reference: IAA18/05741

VIETNAM

IAA reference: IAA18/05742

Date and time of decision: 17 October 2018 14:59:00

I Sheck, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants are citizens of Vietnam. The applicant left Vietnam [in] June 2013 and arrived in Australia [in] July 2013. On 24 March 2017 he lodged an application for protection visa (PV). The applicant's daughter was born in Australia [in date] and her details have been added to his application.
2. On 17 September 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visas. The delegate accepted that the applicant is of Catholic faith and a descendant of [a former official] of the Republic of [Vietnam]. The delegate also accepted that the applicant departed Vietnam illegally and had participated in pro-democracy rallies and activities in Australia. The delegate found that the applicant did not face a real chance of persecution or a real risk of significant harm for these or any other reasons.
3. The applicant made the primary claim for a PV; the applicant's daughter relies on the claims presented by the applicant and is also relying on the family unit criteria.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material). On 8 October 2018 the IAA received a submission and further documents from the applicant.
5. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. Section 473DC of the Act defines new information as documents or information. The applicant's submission explains why he was not politically active in Vietnam and expands on his currently held political views. I am satisfied that this comprises credible personal information which may affect assessment of his claims. The applicant also explains that he was not able to fully explain his case, in particular political views, to the delegate due to the effect on his psychology of the discovery at the commencement of the PV interview that he and the scheduled interpreter were acquainted. This resulted in a delay to the proceedings while a telephone interpreter (TIS) was organised. I accept that this unusual event affected the applicant's state of mind and concentration. I am satisfied that this comprises exceptional circumstances that justify consideration of the new information and have had regard to the submission.
6. The applicant has also provided several pages of photographs and I infer that he is present in each of these photographs. There is no information as to the date of any of the images and the event or events that are taking place. The applicant has not satisfied me that either limb of s.473DD(b) is met in relation to the photographs and I have not had regard to them.

Applicants' claims for protection

7. After his arrival [in immigration detention] the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 19 July 2013. The applicant provided details of his claims at questions 89 to 95 of his PV

application. On 21 August 2018 the applicant attended an interview (“the PV interview”) with the delegate. Supporting documents were provided to the delegate at the PV interview.

8. The applicant claims:

- There is no freedom of religion in Vietnam. As Catholics they are not treated equally. If a person wants to join the Communist Party (CPV) they must give up their religion;
- He is a descendant of [a former official]. Because of this their family is discriminated against by the CPV and their education and employment opportunities are restricted. If a person applies for a government job then a background check is undertaken going back three generations;
- Because he departed Vietnam illegally and sought asylum in Australia he will be charged with treason and gaoled if he returns. Other asylum seekers who were on the same boat as him have been gaoled after being returned to Vietnam;
- Since coming to Australia he has learned the history of Vietnam that was not taught in Vietnam. He has become aware of the suffering of the Vietnamese people and has attended various protest rallies and demonstrations relating to various issues.

Factual findings

9. I accept that the applicant’s background is as follows: he was from Vung Tau/Ba Ria province in southern Vietnam and resided in [a] village, Chau Duc district in that province since birth. He is of Catholic faith and Kinh ethnicity. He completed 12 years of schooling, followed by [tertiary] education in the area of [a course]. Following completion of his studies he commenced work at a [factory] undertaking [certain work]. He ceased this work immediately before leaving Vietnam. His parents and [siblings] reside in Vung Tau/Ba Ria. He departed Vietnam illegally, by boat from Vung Tau/Ba Ria. One sister came with him to Australia. He married in September 2016. His wife holds a [temporary] visa. The applicant’s daughter was born in [year].
10. The applicant has consistently claimed to be Catholic and I accept that he is. At the PV interview the applicant confirmed that he had attended church each week in Vietnam (as he still does in Australia) and was asked whether anything had ever happened to him because of this. He replied that it had not. The applicant has consistently stated that there is no freedom of religion in Vietnam however he has not indicated that he has been prevented in any way from practising his Catholic faith and I find he has not. The applicant contends that a Catholic must give up their religion if they wish to join the CPV. Given that the CPV maintains a strong atheistic stance against religion,¹ this is likely to be the case. The applicant has not however claimed that he has at any point attempted to join the CPV and I consequently find he has not.
11. The applicant has also consistently stated that he is descended from – although not directly – [a former official] and I accept this. He has claimed that he and his family were discriminated against by the CPV / the Vietnamese government because of this relationship and that they were restricted in education and employment. I note that the applicant attended primary, secondary and tertiary education and was in full time employment from the cessation of his studies until the time that he departed Vietnam. The applicant asserts that he would be prevented from obtaining government employment due to this family relationship but has at

¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Vietnam Country Information Report”, 21 June 2017, CISED50AD4597; 3.8

no point claimed that he made such an application or had any employment applications refused. I do not accept the claim.

12. The applicant claims that he will be gaoled on return to Vietnam because of his illegal departure. I accept that he did depart Vietnam illegally. At his arrival interview the applicant explained that he knew about 30 of the people on his boat, who were from his neighbourhood, and that he made contributions of [amount] million Dong (VND) towards the cost of food and fuel but was not in any way involved in organising the journey. I accept that this is the case. The applicant stated in his PV application that because of his departure he had been charged with treason but he has not repeated this claim and there is no evidence to support it. I do not accept that any charges have been laid against him. The applicant further claimed that while in immigration detention [his sibling] was interviewed by members of the Vietnamese A18 group and as a result his parents were called in to their local police station in February 2014 to confirm that two members of the family (the applicant and his sister) had sought asylum overseas. I accept that the applicant's parents were questioned as claimed.
13. The applicant was not in any way politically active in Vietnam but since living in Australia has become an active member of the Vietnamese community and attended various protests including those relating to prisoners of conscience, the lack of human rights in Vietnam and the Formosa toxic spill in April 2016. He further stated that he attends a mass to commemorate the death of his ancestor [each] year. In answer to the delegate's question, the applicant stated that his political views were that everyone should have freedom and human rights. In his submission to the IAA the applicant explains that "everyone must realise that the communists are dictators and wicked people. Living under communism people are not entitled to express their opinions, not to disclose their views". The applicant has also claimed in his submission to the IAA that he shares articles adverse to the CPV online however gives no further detail other than a link to his wife's Facebook page and I do not accept this claim.
14. I accept that the applicant has attended a number of community events, protests or rallies as claimed. I am also satisfied that he has not been a speaker at any rallies, nor was he in any way involved in their organisation. I am not satisfied from the evidence before me that any of these events were monitored by the Vietnamese government, that they were reported in Vietnam or that participants would be imputed with a particular political opinion on return to Vietnam. The applicant is not a member of any political parties. The applicant has stated that he did not take part in any activities against the State prior to departing Vietnam at age [age] and I accept that he did not. I am not satisfied that the applicant would have any interest in participating in activities against the state on return to Vietnam.

Refugee assessment

15. 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

16. 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.

17. I have found that the applicant is a Vietnamese national; accordingly, Vietnam is his receiving country. I accept that the applicant is of Catholic faith. The applicant has claimed that there is no freedom of religion in Vietnam. The country information does not support the applicant's contention. Some 7% of the Vietnamese population who declare their religion or belief are Catholic.² The Catholic Church is a registered church in Vietnam, and is one of 14 distinct religions that hold full government recognition and registration.³ The situation for Catholics has continued to improve in recent years.⁴ DFAT assesses that religious observance and practice only becomes an issue when it is perceived to challenge the authority or interests of the Communist Party of Vietnam (CPV) and its policies.⁵ The applicant has not claimed that he was at any time prevented from praying or attending church and I do not find that there is any real chance that he would be prevented from practising his religion in the future. The applicant did not make any suggestion that he has modified his religious practice in the past to avoid harm or concealed his views, or would need to do so in the future. He does not face a real chance of harm on the basis that he is of Catholic faith.

18. The applicant contends that he will be imputed with the political opinion of being against the Vietnamese government due to his participation in Vietnamese community activities in Australia. I have not accepted that the applicant has posted online material adverse to the Vietnamese government. I have accepted that he has attended mass rallies or protest events as a participant only. I am not satisfied on the evidence before me that the applicant will participate or have any interest in participating in any conduct in which he would be perceived to be a political activist on return to Vietnam. I am not satisfied that the applicant faces a real chance of any harm on the basis that he would be considered to be a political activist.

19. The applicant has also claimed that he will be arrested and imprisoned, should he return to Vietnam, due to having departed illegally and having sought asylum in Australia. I accept that if the applicant returns to Vietnam the authorities will know or will assume that he has applied for asylum in Australia, due to the manner of his return. Country information indicates that in December 2016, a new Memorandum of Understanding (MOU) was signed between the Australian Department of Immigration and Border Protection and Vietnam's Ministry of Public Security, which provides a formal framework for the return of Vietnamese nationals 'with no legal right to enter or remain in Australia, including those intercepted at sea'.⁶ If the applicant

² DFAT, "DFAT Vietnam Country Information Report", 21 June 2017, CISED50AD4597; 2.7

³ Ibid; 3.9

⁴ Ibid; 3.9

⁵ Ibid; 3.10

⁶ DFAT, "DFAT Vietnam Country Information Report", 21 June 2017, CISED50AD4597; 5.15

is returned to Vietnam involuntarily, the Vietnamese authorities will inevitably be made aware of his personal details and will assume that he is a failed asylum-seeker.

20. The Constitution of Vietnam provides for freedom of movement, however there are penalties for Vietnamese nationals who depart the country unlawfully, including without travel documents or with false passports. Fines for departing without a travel document range between VND 2 Million and VND 10 Million (AUD \$120 to \$600)⁷, however DFAT understands that people who have paid money to organisers of people smuggling operations are not subject to such fines.⁸ I accept the applicant departed Vietnam without a passport in violation of Vietnamese law. 'Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration' is an offence under Article 91 of the *Penal Code 1999*, however, DFAT is unaware of any cases where this provision has been used against failed asylum seekers.⁹ The review material includes extracts from a number of (unsourced) media articles provided by the applicant relating to the arrest and/or imprisonment of returnees to Vietnam, however DFAT notes that Vietnamese law makes it illegal to organise a trip to flee Vietnam and this was the case in relation to several individuals who were on board vessels returned to Vietnam in 2016.¹⁰ In relation to people who have paid money to people smugglers, as I have found the applicant has, they are viewed by the Government as victims of criminal activity rather than as criminals facing the penalties allowed in the law for departing Vietnam illegally.¹¹
21. Returns to Vietnam are usually done on the understanding that the returnee will not face charges as a result of their having made asylum applications.¹² The referred information does not indicate that differential treatment is being applied by the Vietnamese Government to failed asylum seekers known to be Catholics compared to non-Catholics. I do not accept that there is a real chance that the applicant will suffer serious harm on return to Vietnam. I conclude that possible imposition of a fine and a brief period of detention does not constitute serious harm in this case. I am not satisfied on the basis of the country information that the applicant faces a real chance of persecution on the basis that he departed Vietnam illegally, that he has spent time in Australia or that he unsuccessfully sought asylum in Australia. The review material is silent on whether the applicant's infant daughter would also be detained, however there is nothing to indicate that she would be separated from her parents or otherwise harmed and I conclude that she would not.
22. I am not satisfied that the factors as discussed above cumulatively raise the applicant's or his daughter's profiles to a level such that either of them would face a real chance of serious harm on return to Vietnam. As noted above the applicant's daughter has not made any other claims independent of those raised by the applicant and for the reasons given in relation to the applicant, I am not satisfied that she faces a real chance of serious harm on return to Vietnam.

Refugee: conclusion

23. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

⁷ Ibid; 5.16

⁸ Ibid; 5.21

⁹ Ibid; 5.15

¹⁰ Ibid; 5.17

¹¹ Ibid; 5.17

¹² Ibid; 5.15

Complementary protection assessment

24. Under s.36(2)(aa) of the Act, 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

25. 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.
26. I have concluded above that the applicants do not face a real chance of harm on the basis of the applicant's religion, his protest activities in Australia or as asylum seekers returning from Australia. As 'real risk' and 'real chance' involve the application of the same standard,¹³ I am also not satisfied that the applicants would face a real risk of significant harm for the purposes of s.36(2)(aa) for these reasons, including when considered cumulatively.
27. As noted above, based on the information from DFAT, I accept there is real chance, and therefore real risk, that the applicant may be briefly detained and interviewed on arrival for his unlawful departure from Vietnam in 2013. However, on the basis of that information, I am not satisfied being briefly detained and interviewed, or possibly fined, constitutes significant harm as defined. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, it does not amount to pain or suffering, severe pain or suffering or extreme humiliation. I have concluded that the applicant's infant daughter will not be separated from her parents or otherwise harmed. I have also found there is nothing in the applicant's profile which would lead him to face any extended detention or other harm that would amount to significant harm during this process. I am not satisfied the applicants face a real risk of significant harm on return to Vietnam on the basis of the applicant's illegal departure.

Complementary protection: conclusion

28. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

¹³ *MIAC v SZQRB* (2013) 210 FCR 505

Member of same family unit

29. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a child of the family head.
30. As **neither** of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.