



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

INDIA

IAA reference: IAA18/05829

Date and time of decision: 12 November 2018 09:31:00

M Anderton, 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 applicant is an Indian national from Punjab who arrived in Australia by boat in July 2013, after having departed India legally in 2011 and living in [Country 1] for almost two years.
2. On 26 October 2016 the applicant lodged an application for a Safe Haven Enterprise visa. In essence his claims are he fears harm from unknown college persons who bashed him up in December 2010 when he defended his female cousin from harassment.
3. On 12 October 2018 the delegate refused to grant the visa because she did not accept the applicant faced a real chance of serious harm or a real risk of significant harm.

### 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).
5. No further information has been received from the applicant.

### Applicant's claims for protection

---

6. The applicant's claims can be summarised as follows:
  - He is from Punjab and of the Sikh religion.
  - In December 2010 the applicant's cousin told the applicant a group of [several] young men in their early 20s from [college] were teasing her and making sexual advances.
  - A month later, the applicant approached these men outside the college and asked them to stop harassing his cousin. The men beat him with sticks and baseball bats until he was unconscious. Onlookers did not intervene.
  - The applicant's cousin called the applicant's father who took him to [Doctor A]. The applicant was bruised and swollen over his whole body. A copy of the doctor's report showing his injuries was provided.
  - The applicant's father complained to the college principal about the gang beating but the principal took the side of the students. The principal told the students of the complaint. The students threatened the applicant and told him they would kill him if he complained again. The applicant's parents did not go to the police as the parents of the boys were powerful and could have charged them with an offence.
  - Two or three months later the applicant met the same people in the market and they threatened him saying they would kill him if he reported them. After this the applicant's father arranged for the applicant to leave India.
  - The applicant left legally on his passport and flew to [Country 1] and was there for two years, when he arranged for a people smuggler to take him to Australia.
  - He will not be safe anywhere in India as the men will attempt to kill him. The attackers' parents are powerful people and they would not be charged and they will be able to

bribe the police and officials. The police will not protect the applicant against his aggressors.

- In submissions the agent noted that the men had continued to harass and torment the applicant's family in his absence. A medical certificate in relation to the applicant's mother dated [February] 2013 shows injuries she sustained by these men. The attack was not reported to police. [In] April 2013 the mother was admitted to a speciality hospital with heart problems exacerbated by the attack and on-going harassment and a copy of her hospital discharge was provided.
- It was submitted the applicant's [father] was attacked by the same men in April 2015 and a copy of a medical certificate was provided. That attack was reported and a copy of the letter to police in [City 1] was attached with the names of the attackers.
- At interview the applicant added that the boys continued to attack, harass, scare and threaten his parents. They were outside his parents' home six or seven months ago scaring them and also at the market.

### **Refugee assessment**

---

7. 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**

8. 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.
9. On the basis of his claims and identity documents I accept the applicant is an Indian national and the receiving country is India.
10. In summary the applicant feared harm from college boys whom the applicant asked to stop teasing his female cousin. In December 2010 the college boys beat the applicant until he was unconscious. While the father made a complaint to the principal, the principal sided with the boys. After the boys found out about the complaint they threatened the applicant. They also

threatened him a few months later in the town market. He could not complain to the police as the parents of the boys are powerful people, avoid charges and can have charges laid against the applicant. He claimed his family continued to be harassed and harmed and provided medical certificates in relation to himself, his father and his mother. The applicant went to [Country 1] in July 2011 to avoid harm.

11. Having listened to the applicant's interviews and evidence, for the reasons set out below, I find the applicant is not a credible witness. I consider, despite prompting and opportunities given by the delegate, the applicant provided a vague, piecemeal, and general account of his experiences which lacked detail. Further, I consider the applicant has added to his account in response to the delegate's concerns. Further, I consider the applicant's claims lacked credibility in key respects.
12. The applicant's description of the December 2010 attack was vague and lacked any details, other than he asked the boys to stop and they pushed him away and they started fighting. When asked for more details, the applicant added he asked why the boys were troubling his cousin and to stop and they said they will see what happens, and when they pushed him he fell down. The applicant did not provide information about his involvement or any retaliation, whether he tried run, how many times he was hit, by whom, or how the fight ensued, progressed or ended. While he claimed he was injured and his father took him to hospital, he provided little information about how his father came to his aid or his injuries. In his statement he claimed his cousin called his father, but at interview the applicant said his cousin was inside the college and not present at the fight.
13. His account of his injuries was also vague and inconsistent. While he claimed in his statement they did not stop the beating until he was unconscious, at interview he said his injuries were internal injuries with swollen [Body Part 1] and [Body Part 2]. Further, I consider it is odd that he knew they stopped the beating when he became unconscious, as if he were unconscious he would not have known when they stopped beating him. His account was inconsistent about the number of boys who were there ranging from [number] to [number].
14. Further, when asked at the protection interview about his injuries, the applicant said he had internal injuries, with swollen [Body Part 1] and [Body Part 2]. He did not mention he was unconscious (as claimed in his statement) or that he had injuries to [Body Part 3], [Body Part 4] or [Body Part 5] (as detailed in his medical certificate). It was not until the delegate prompted the applicant that he agreed he was unconscious. I consider the applicant's account of his injuries was vague, not free flowing or natural or consistent with his claims, such that I consider the applicant was not recounting lived experience.
15. The applicant's account about subsequent encounters with the same boys was particularly vague and inconsistent. He claimed the boys still looked for ways to hurt and fight him. In his statement he claimed they threatened to kill him if he complained again. In his statement he claimed two or three months later he met the same men in the market. However, at his interview he claimed it was one month later. While the applicant claimed the men used to see him at the market and tried to beat him, the applicant provided no description of what happened on any of these occasions or how often this occurred or what he meant by them trying to beat him.
16. I also consider that the applicant would approach [several] young men who carried baseball bats and sticks is lacking in credibility. It is odd also that the applicant would approach these boys, rather than the cousin first approaching the college about the boys if she was concerned about their advances. The applicant's account also is lacking in credibility that

there were many onlookers to the fight, but that the applicant's cousin was not there, but had gone inside the college. I find it difficult to believe that the applicant would have approached the boys when the cousin was not around. Further, even if the cousin had previously identified the boys to the applicant, it is not clear how the boys would understand or identify who the applicant's cousin was, if she were not around.

17. Further, it is not credible that the applicant's father lodged a complaint with the principal if they did not know the names of the boys. The applicant said they found out their names later. When asked how they found out their names, the applicant said because they attacked his parents and they were living in the town close by. However, the applicant could not explain beyond that how they found out their names. When the delegate put concerns that they could not have complained to the principal if they did not know the attackers names, the applicant added a new account. He said they knew them by a nickname. Having listened to the interview, I consider the applicant was making up his account as he went along and in response to the delegate's concerns, rather than recounting a lived experience.
18. Further, I do not accept that the applicant went to [Country 1] to avoid harm as the attack was six months before he went to [Country 1].
19. Further, it is not credible that the applicant was pursued and would continue to be pursued eight years later, particularly as he has been overseas since then.
20. Similarly, his account of the boys attack and harassment of his parents subsequently lacked any details. At interview, the applicant claimed his parents were beaten and attacked or harassed every two or three weeks, at the market or whenever they saw them, including six or seven months prior to the interview. The applicant provided the parent's medical certificates.
21. When asked about these attacks, he provided a hesitant, vague and piecemeal account. For instance, when asked about his mother's attack he said it was in 2013. The delegate had to prompt the applicant for more information. When asked for more details, he repeated it was in 2013 and she went out for a walk. On the way back the boys teased her and she was scared and nervous so she said something and they hit her. The applicant's account was not free flowing. The applicant said his mother became sick and stressed and she did not want to give him bad news. However, I find this difficult to believe given it formed part of the applicant's protection claims and given the claimed frequency of the harassment.
22. Similarly when asked about the attack on his father, the applicant said 'the same thing'. The applicant did not provide a description of any attack, or the circumstances of claimed attacks. For instance, he did not provide any details of where, when, the circumstances, nature of them or what happened. When asked for more details, the applicant said he could not explain it and that it happened every year, even now and they get abusive and say the applicant is not here but he will come back'. While I accept the applicant was not present at such claimed attacks and would not be able to provide a first hand account, I find it difficult to believe that he did not have more information about what happened to his parents beyond the very basic level provided, given it was materially relevant to his claims and the claimed frequency of the attacks and that the applicant was in contact with his parents two or three times a week.
23. Further, I note the applicant did not make any claims that his parents were beaten, attacked or harassed in his statutory declaration. While I accept he may elaborate his claims at

interview, I find it difficult to believe that he would not mention this at all in his statement, particularly given he claimed it happened as frequently as every two or three months.

24. Further, while the applicant claimed the father reported the attack to police in 2015, the police report did not mention the frequency of the attacks or prior threats or when they occurred. It is difficult to believe that if one made a police complaint, that they would not have included information about all of the events to that point. Further, if they made a complaint in 2015, it is odd that they would not have also made subsequent complaints given the claimed frequency.
25. I have considered the police report and medical certificates.
26. The police complaint dated [in] April 2015 stated due a misunderstanding [Mr B] and [Mr C] threatened and beat the applicant's father. It provides no details of when the assault took place, that there were frequent attacks or that it related to a prior attack on the applicant in 2010. It was not evident on the face of it that the complaint had been lodged with the police, as there was no police stamp or police report. The only stamps were of notary public of [September] 2018.
27. I note the complaint was dated in April 2015 and the applicant's statement was dated 21 October 2016. It is difficult to believe therefore that the applicant would not have mentioned a police complaint had been made in 2015. Further, the existence of the police complaint is at odds with the applicant's claim in his statement that they did not complain to the police because the boys were powerful people and could have them charged. Further, it is odd that the applicant had not provided the complaint with his application, given it was dated a year before he lodged his application.
28. I consider it was a typed note on blank paper which appeared to have been manufactured to enhance the applicant's claims provided at interview. I place no weight on the document.
29. The medical certificates from [a named clinic] are in respect of the applicant [in] December 2010, the applicant's mother [in] February 2013 and his father [in] November 2015. They are all by [Doctor A]. The certificates describe similar injuries in all of them. For instance, swollen [Body Part 4] in all of them; [specific symptoms], red [Body Part 5] or [Body Part 3] inflamed in two of the certificates. The certificates all stated they are to visit for five days and list eight or nine medications. The 2010 certificate notes it is issued [in] September 2016 on the basis of an old record.
30. While I note the claim is the same doctor wrote the certificates, I consider it is odd that the certificates appear so similar in terms of their symptoms and treatment and advice to visit for five days, given they relate to three different incidents and over a five year period. Further, I find it difficult to believe that if the applicant had been beaten with baseball bats until he was unconscious that his injuries and treatment were similar to his parents' injuries three and five years later. Further, I find it difficult to believe that he would not have required more treatment and possibly an admission given the claimed severity of his injuries.
31. Further, the 2010 certificate in respect of the applicant does not mention he was unconscious. Rather it states he was crying in pain. Further, it does not refer to any head injury, which is not consistent with the applicant's claims that he was beaten until he was unconscious. Further, while the applicant claimed he suffered internal injuries, the certificate does not refer to any internal injuries.

32. Further, the applicant's mother's [hospital] discharge summary did not mention the applicant's mother's previous injuries in her medical history, which is odd given the injuries were said to have been inflicted only two months before.
33. Given the prevalence of fraudulent documents as discussed in the DFAT report in the referred material and given my concerns about the certificates, I place no weight on the medical certificates.
34. I accept the [hospital] discharge summary is a genuine document as its appearance, medical terms, description and layout suggest it is genuine. However only 1 page was provided and it ended abruptly. I accept that his mother underwent [a procedure] in April 2013. The summary noted she had a history of [medical condition] for a year and was on regular medication. She had [specified symptom]. However, there is no reference to the applicant's mother's [medical condition] due to any injuries or altercation or stress.
35. Having considered the evidence, I do not accept the applicant was threatened or beaten by college boys or unknown men or [Mr B] and [Mr C]. I do not accept that his parents or cousin was harassed. I do not accept the applicant's parents were attacked and beaten. I do not accept that the boys or anyone is looking for him. The applicant's evidence was particularly vague, inconsistent, lacked details and not credible. In assessing his evidence, I have been mindful of nuances in interpretation and that the events occurred some time ago. However, this was the applicant's main claim. Further, he is an educated young man, having completed high school and [tertiary studies], and it was evident that he understood English well as he communicated in English frequently throughout the interview. Further, the applicant was given opportunities to provide information and explanation but his account was vague. He added key claims to his account at interview and that account was also particularly vague. As discussed above, I had significant concerns about the documentation provided. I consider the applicant has fabricated his claims in their entirety.
36. It follows that I do not accept that the applicant faces any harm upon return to India for those reasons or that anyone is looking for him.
37. At interview when the delegate discussed relocation in India the applicant said he did not have a passport and could not go anywhere. I note the applicant departed India legally with his passport. He claimed the employer and agent in [Country 1] kept the passport and did not return it. It was not a situation that he could continue to live in and could not return to India, so came to Australia. I note the delegate advised the applicant the department could organise a travel document for him to return to India. I note also that the applicant has identity documents, such as a birth certificate, election identity card and other ID documents. The applicant has not otherwise claimed a fear of harm on this basis the information before me does not indicate there is any basis of fear of harm on the basis of not having a travel document presently or that he could not obtain one.
38. Overall, I am not satisfied that the applicant faces a real chance of any harm, let alone serious harm, on his return to India for any of the refugee grounds in s.5H, including s5J.

**Refugee: conclusion**

39. 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

---

40. 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

41. 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.
42. As set out above I have found that the applicant does not face a real chance of harm for any reason. For the same reasons and applying the authority in *MIAC v SZQRB* [2013] FCAFC 33, I am not satisfied the applicant will face a real risk of harm if removed to India.
43. On the factual findings, I am similarly not satisfied that the applicant faces a real risk of suffering any harm, including significant harm (as defined), should he be returned to India.

### Complementary protection: conclusion

44. 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.