

**1613733 (Refugee) [2020] AATA 2220 (29 May 2020)**

## DECISION RECORD

**DIVISION:** Migration & Refugee Division  
**CASE NUMBER:** 1613733  
**COUNTRY OF REFERENCE:** Indonesia  
**MEMBER:** Nathan Goetz  
**DATE:** 29 May 2020  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a protection visa.

Statement made on 29 May 2020 at 5:23pm

## CATCHWORDS

*REFUGEE – protection visa – Indonesia – political opinion – attended demonstrations against government corruption – arrested and detained for one day – credibility concerns – fabricated claim – COVID-19 pandemic – reasonable health system – decision under review affirmed*

## LEGISLATION

*Migration Act 1958, ss 5H, 36, 65  
Migration Regulations 1994, Schedule 2*

## CASES

*MZAFZ v MIBP [2016] FCA 1081*

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant is a citizen of Indonesia with no right to enter and reside in a third country. [In] June 2015 the applicant arrived in Australia on a visitor visa that had been granted on 19 May 2015.
3. On 26 June 2015 the applicant applied for a protection visa. The delegate refused to grant the protection visa on 1 August 2016.
4. On 29 August 2016 the applicant applied to the Tribunal for a review of the refusal decision.
5. On 12 May 2020 the Tribunal invited the applicant to attend a Tribunal hearing on 29 May 2020. The hearing was to occur as a telephone hearing. The applicant responded to this invitation on 16 May 2020 and provided his phone number so the Tribunal could call him and conduct the hearing.
6. On 29 May 2020 the applicant appeared at the Tribunal hearing. The Tribunal hearing was conducted with the assistance of an interpreter in the English and Indonesian languages.

### CRITERIA FOR A PROTECTION VISA

7. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, he or she is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
8. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee.
9. A person is a refugee if, in the case of a person who has a nationality, they are outside the country of their nationality and, owing to a well-founded fear of persecution, are unable or unwilling to avail themselves of the protection of that country: s.5H(1)(a). In the case of a person without a nationality, they are a refugee if they are outside the country of their former habitual residence and, owing to a well-founded fear of persecution, are unable or unwilling to return to that country: s.5H(1)(b).
10. Under s.5J(1), a person has a well-founded fear of persecution if they fear being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, there is a real chance they would be persecuted for one or more of those reasons, and the real chance of persecution relates to all areas of the relevant country. Additional requirements relating to a 'well-founded fear of persecution' and circumstances in which a person will be taken not to have such a fear are set out in ss.5J(2)-(6) and ss.5K-LA, which are extracted in the attachment to this decision.

11. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of the visa if he or she is a non-citizen in Australia 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 being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion'). The meaning of 'significant harm', and the circumstances in which a person will be taken not to face a real risk of significant harm, are set out in ss.36(2A) and (2B), which are extracted in the attachment to this decision.

### **Mandatory considerations**

12. In accordance with Ministerial Direction No.84, made under s.499 of the Act, the Tribunal has taken account of the 'Refugee Law Guidelines' and 'Complementary Protection Guidelines' prepared by the Department of Home Affairs, and country information assessments prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **Non-disclosure notification – s.438(1)(a) of the Act**

13. The Department provided the Tribunal with the applicant's visitor visa file: [number]. In that file, a notification was placed over Folios 16-17 and 69-70. The notification asserted that the disclosure of the information in those Folios would be contrary to the public interest because they contained information relating to an internal working document and business affairs.
14. The Tribunal has considered whether the notification is valid and has ultimately concluded that it is not. The citing of 'internal working documents and business affairs' is insufficient to make out a public interest immunity claim either in common law or under statute. The notification does not identify the harm that would be caused by the disclosure of the information: *MZAFZ v MIBP* [2016] FCA 1081.
15. The information in the Folios purportedly covered by the certificate did not contain information that would be a reason, or part of the reason, for affirming the refusal decision under review. Accordingly, the Tribunal treated the information purportedly covered by the certificate as it treats all information. If the information was relevant and went to a fact in issue, it would raise it with the applicant for comment. There was nothing in Folios 16-17 or 69-70 which concerned the Tribunal.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

16. The issue in this case is whether the applicant is a refugee or a person who meets the complementary protection criteria. The Tribunal also needs to consider whether the applicant is a member of the same family unit as a person who is a refugee or meets complementary protection.
17. The applicant is [an age]-year-old male citizen from Denpasar, Bali, Indonesia.
18. The applicant's claims are contained in the protection visa application form
19. In response to why the applicant left Indonesia, he wrote that he did so in order to avoid a risk of being arrested by the Indonesian Government and Police. He was at risk of being arrested because he attended demonstrations against government corruption. He wrote that he was arrested in January 2013 and detained for one day. In June 2014 he was arrested and detained for one day. In May 2015 he was arrested and detained for one day. These arrests occurred because he demonstrated against corruption in Bali.

20. In response to what he thought may happen to him if he returned to Indonesia, he wrote that he thought that the Indonesian Government and Police would arrest him if he stayed in Indonesia because he attended demonstrations.
21. In response to whether he had experienced harm in Indonesia, he answered in the affirmative. He repeated the response that he provided to the question about why he left Indonesia.
22. In response to the question about whether he sought help within Indonesia after the harm, he answered in the negative. He did not know who could help him because it was the Indonesian Government and Police who wanted to arrest him.
23. In response to the question about whether he moved or tried to move to another part of the country to seek safety, he answered in the negative. He did not know where was safe for him in Indonesia because it was the Indonesian Government and Police who wanted to arrest him.
24. In response to the question about whether he thought he would be harmed or mistreated if he returned to Indonesia, he answered in the affirmative. He repeated the response that he provided to the question about why he left Indonesia.
25. In response to the question about whether he thought that the authorities in Indonesia could and would protect him, he answered in the negative. The Indonesian authorities would not protect him if he returned because the Indonesian Government and Police wanted to arrest him because he attended demonstrations against government corruption.
26. In response to the question about whether the applicant thought that he would be able to relocate within Indonesia, he answered in the negative. The response was the same as the response to the question about whether the authorities could and would protect him.
27. At the Tribunal hearing, the applicant provided the following evidence.
28. In his oral evidence at Tribunal hearing, he said that he also had a brother: [Brother A] who was born in either [year] or [year]. In his protection visa application form, the applicant was asked to detail his family members in Indonesia. He wrote the details of his mother and father but did not declare any siblings.
29. In his oral evidence at the Tribunal hearing, he said that he went to [Country 1] for approximately a month in 2010. In his protection visa application form, the applicant was asked whether he had travelled to any country other than Australia (including in transit) in the last 30 years. He wrote that he had not.
30. In his protection visa application form, the applicant declared that he had no personal contacts in Australia at the time of completing the forms. In his oral evidence to the Tribunal, the applicant said that he did have such contacts. He had met [M] in Bali and she was the person who invited him to visit her in Australia. He travelled shortly after his arrival in [Australian City 1] to [Australian State 1] to see her. The applicant's visitor visa application form declares this known contact.
31. The Tribunal asked the applicant why he had not declared his sibling in Indonesia, his prior travel to [Country 1], or his personal contact in Australia in his protection visa application form. The applicant said that as he did not read and write English well, he had a friend help him complete the protection visa application form.
32. In his protection visa application form, the applicant did not declare that he received assistance completing the protection visa application form. In his oral evidence at the Tribunal hearing, the applicant identified that after he arrived in Australia, he had met an Indonesian man named [Mr

C] while the applicant was walking around and that this was the person who assisted him to complete the forms. [Mr C] was not a migration agent but a fellow visitor from Indonesia.

33. The applicant told the Tribunal that [Mr C] asked him the questions in the forms and [Mr C] filled the forms out based on what the applicant responded. Given that the forms asked specific questions about family, travel and contacts in Australia, it was curious to the Tribunal that the applicant's oral evidence would not be consistent with the protection visa application form answers. The applicant told the Tribunal hearing that he did not recall being asked by [Mr C] whether he had siblings, nor whether he had travelled to any other country besides Australia. Given that the applicant had used an Indonesian man who he referred to as a friend, the Tribunal also queried why [Mr C's] details would not have been included as a person he was in contact with in Australia. The applicant responded that [Mr C] wrote down all the answers that [Mr C] thought the applicant had said.
34. The applicant told the Tribunal more about [Mr C]. The applicant had indicated to [Mr C] that he wanted to stay longer than his three-month visitor visa allowed, but he did not want to break the law. The Tribunal understands this to mean by overstaying. [Mr C] told him that the applicant did not need to return to Indonesia and that the applicant could apply for a bridging visa. The Tribunal asked the applicant whether he had come to Australia for employment. The applicant said that he came for a visit but [Mr C] had said that the applicant could work on a bridging visa. The applicant told the Tribunal hearing that he had been in Australia for five years which was enough time and he was thinking about returning home.
35. When asked whether had any concerns returning to Indonesia, he said he did not, apart from the COVID-19 pandemic. He was worried that it was particularly strong in Bali at the moment, but once it dissipated, he was happy to return to Indonesia. Five years in Australia was enough. He told the Tribunal that he had no fear returning to Indonesia and noted that when he went to the Indonesian [consulate] to renew his passport in 2014, he advised them that he planned to return to Indonesia in 2020. The applicant was currently on a farm in [State 2] but was happy to go to the [City 2] Home Affairs office to ask for a bridging visa on departure grounds and was also interested in attending the Indonesian consulate there to discuss arranging a flight back to Indonesia.
36. The applicant initially told the Tribunal that he had no trouble in Indonesia, but later went on to say that he had been detained once following a demonstration five years ago. He gave this evidence in response to the Tribunal's observation that as the applicant had signed his protection visa application as true and given his oral evidence to the Tribunal hearing, which was considerably different, he may not be a truthful witness. The applicant said that [Mr C] had told him he could stay in Australia by using the applicant's participation and detention. [Mr C] then said to the applicant he could get a bridging visa with work rights and work in Australia. The applicant said that [Mr C] may well not have been truthful in the forms. [Mr C] had asked him some questions but not others. The Tribunal understands this evidence to be that [Mr C] had embellished the applicant's profile in Indonesia for the purpose of the protection visa application.

## FINDINGS AND REASONS

37. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
38. The Tribunal is not satisfied that the applicant has engaged in any demonstration against the Indonesian Government, the issue of corruption, or indeed on any issue that could be perceived as anti-authority political opinion. The applicant initially told the Tribunal that he had experienced no trouble in Indonesia, and only said in his oral evidence that he was detained once after a demonstration when the Tribunal put to him that it had concerns about his credibility. The Tribunal does not accept that if the applicant had demonstrated and been detained once, he

would consider that he had not experienced trouble in Indonesia. The Tribunal is satisfied that the applicant's declaration of a single demonstration and detention was designed to suggest that he was in fact not as dishonest as the Tribunal thought, but merely someone taken advantage of by another person who exacerbated the claims.

39. There are simply too many inconsistencies between the written protection visa application and the applicant's oral evidence to attribute the inconsistencies solely to [Mr C]. Why would [Mr C] detail the applicant's parents, but not detail the applicant's brother? Why would [Mr C] specifically state that the applicant had not travelled anywhere other than Australia in the last 30 years? Why would the protection visa application form not declare the assistance that [Mr C] provided? Why would the protection visa form not declare a known contact in Australia being the person who invited the applicant to visit her in Australia? The questions about these matters are basic and not controversial. Why would [Mr C] decide to put that the applicant had demonstrated on three occasions and been detained each time, instead of what the applicant told the Tribunal, or indeed, why would [Mr C] fabricate two additional demonstrations and detentions, as opposed to more?
40. The Tribunal is satisfied that the applicant has used another person to complete his protection visa application form, but that the details of that person were not included in the form because the author did not wish to get into trouble for assisting in the making of a protection visa application form that was false. The Tribunal is satisfied that the applicant knew that the person who assisted him was going to fabricate protection claims in order for the applicant to achieve a favourable migration outcome, and left out details about his siblings and the person whom he was to visit in Australia because he did not want any adverse consequences to flow to those people. The Tribunal is satisfied that the travel to countries other than Australia was omitted from the protection visa application form because the applicant thought that showing travel to and from [Country 1] would indicate that the applicant had no fear returning to Indonesia. The Tribunal is satisfied that the applicant knew what the person who authored his protection visa application form was doing and that the claims were a fabrication.
41. The Tribunal gives the applicant some credit for admitting that he had no fear of returning to Indonesia, but is satisfied that he tried to shift the blame for the protection visa entirely to its author by inventing the one demonstration and detention as to suggest that the author of his protection visa application had exaggerated a legitimate claim. The Tribunal does not accept this is the case. The applicant told the Tribunal this because he did not want to be thought of as dishonest.
42. The Tribunal is not satisfied that the applicant has participated in any demonstrations in Indonesia and is not satisfied that the applicant was detained as a result of the demonstration, or for any other reason. The Tribunal is not satisfied that the applicant is a target for arrest by the Indonesian authorities or anyone else. The Tribunal is not satisfied that the applicant has a well-founded fear of harm in Indonesia because of his claimed political activism or previous detention. These claims have been fabricated to achieve a migration outcome.
43. The Tribunal then turns its mind to the applicant's claim that he does not want to return to Indonesia at the moment because of the COVID-19 pandemic. There is nothing to suggest that the COVID-19 pandemic has any connection to serious harm in Indonesia on account of the applicant's race, religion, nationality, membership of a particular social group or political opinion. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution on this basis.
44. The Tribunal has considered whether the COVID-19 pandemic could amount to significant harm. However, as noted to the applicant, and conceded by him, Indonesia does have a reasonable health system.

45. The 25 January 2019 DFAT Country Information Report on Indonesia notes the following:

*Article 28H of the Constitution guarantees citizens the right to obtain medical care, while Article 34 obliges the state to provide medical and public health facilities. In spite of implementation problems of the National Health Insurance Scheme aimed at providing universal health coverage by 2019, health care coverage for the poor expanded rapidly and analysts expect it to reach universality on target.*

46. 'Significant harm' has an exhaustive definition in the Act. The COVID-19 pandemic could not be considered arbitrary deprivation of life or the death penalty, torture, cruel, inhuman treatment or punishment, or degrading treatment or punishment. While the Tribunal accepts that the COVID-19 pandemic has resulted in deaths, the Tribunal has no information to suggest that the Indonesian Government, or any health care services, are deliberately withholding treatment to individuals, groups or the population generally as to bring the pandemic, or lack of treatment for the pandemic, within the definition of 'significant harm'. Indeed, the applicant did not argue that this was the case. Instead, he put that he did not wish to return to Indonesia at this time because of the pandemic but wished to do so once the situation there stabilised. The Tribunal accepts that there is a chance that the applicant could get sick with the COVID-19 virus, and that it is possible that he may die as a result, depending on his underlying health conditions. That is a risk that anyone in Indonesia, and indeed Australia, faces. However, that is insufficient to constitute 'significant harm' under the Act. The Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal from Australia to Indonesia, there is a real risk he will suffer significant harm.

#### **Refugee**

47. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(a).

#### **Complementary protection**

48. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal considered the alternative criterion in s.36(2)(aa). For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

#### **Member of the same family unit**

49. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

#### **DECISION**

50. The Tribunal affirms the decision not to grant the applicant a protection visa.

Nathan Goetz  
Member

**ATTACHMENT - Extract from Migration Act 1958**

**5 (1) Interpretation**

...

**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.

...

**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.

...

**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.

...

**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 is:
  - (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.

...