



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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LEBANON

IAA reference: IAA17/01828

Date and time of decision: 30 June 2017 16:36:00

Jessica McLeod, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Lebanon. [In] November 2016 he lodged a valid application for a Safe Haven Enterprise visa (the SHEV application). He claims to fear harm from his militia leader [Relative 1] and his associates in Hezbollah and from Salafis who are targeting his family for their Hezbollah association.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] January 2017. The delegate accepted the applicant's claims in so far as they related to Tripoli. He found the applicant could reasonably relocate to Beirut or to another Sunni dominated area of Lebanon where he would not face a real chance of persecution or real risk of significant harm.

### Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 13 February 2017 the IAA received a submission and eight accompanying attachments from the applicant. To the extent that the submission contains arguments responding to the delegate's decision, reasserts claims and references country reports that were before the delegate, I am satisfied that this does not constitute new information.
5. The applicant has submitted new information to the effect that the integrity of his evidence at the SHEV interview was affected by the absence of his migration agent, against whom he has lodged a complaint. He claims his agent suggested the applicant should contact him when his interview was scheduled prior to which they would meet and the agent would explain the interview process and support the applicant at the interview. However the applicant claims his agent was non-contactable in the lead up to the interview and his request to have the interview rescheduled was not accommodated. He has provided a screenshot (Attachment 1) purportedly showing evidence of the complaint he lodged with the Office of the Migration Agents Registration Authority (MARA). However, while the screenshot shows that a complaint was successfully lodged, apart from a reference number, the information is generic - there is no evidence of the date the complaint was lodged, the contents or nature of the complaint nor anything that identifies the complainant. The applicant claims he attended the interview alone feeling very confused and extremely anxious. He claims he did not articulate his claims and stumbled through the interview without understanding the process, or what he was supposed to do or say and even agreed with incorrect information that was put to him. He claims he was shocked when he listened to the recording of his interview. While I am prepared to accept the reschedule request was not accommodated, I am not satisfied the applicant engaged in the process without understanding and apart from some clarification about his travel history (discussed below) he has not provided any specific examples of the incorrect information with which he claims he agreed. I am satisfied that the applicant understood and responded accordingly to questioning during the SHEV interview. I do not accept the absence of his migration agent in the lead-up or during the SHEV interview impacted the applicant's ability to participate in the interview process and present his claims. I do not accept there are exceptional circumstances to justify considering the new information that his evidence was affected by the absence of his migration agent, nor about the purported complaint.

6. Attachments 2 and 3 are departmental movement records the applicant claims he obtained through a Freedom of Information process. The records indicate the applicant has previously entered Australia on three occasions as a visa holder. His previous movements into and out of Australia occurred between [February] 2006 – [May] 2006; [January] 2007 - [April] 2007; and [January] 2008 - [September] 2010. The applicant submitted this information to dispute the delegate's assertion that he had previously been removed from Australia. I accept the applicant had not previously been on notice about a prospective finding of removal and could not have reasonably been expected to provide these records earlier. I accept that he has provided it to clarify his visa and migration history and that there are exceptional circumstances to justify considering this information.
7. Attachment 4 is a letter dated [in] August 2010 from a departmental case manager to the Principal Migration Officer (another departmental officer) in Beirut. The letter notes that the applicant had previously abided by his bridging visa conditions and cooperated with all parties to facilitate a successful departure from Australia and requests that the applicant's then Partner visa application be subject to expedited processing. The applicant has submitted this to evidence his consistent cooperation and compliance of previous visa conditions while in Australia. I am not satisfied this could not have been submitted prior to the delegate's decision and while it may be credible personal information I am not satisfied that had it been known it may have affected consideration of the applicant's case. I am not satisfied that s. 473DD(b) is met and I am not satisfied there are exceptional circumstances to justify its consideration.
8. Attachment 5 is a photograph with accompanying Arabic text, purportedly an article covering the death of the applicant's cousin 'TN'. Attachments 6 and 7 are photographs, purportedly of his cousin 'O' following his death. All this information was provided to the delegate in a post-interview submission and is already before me.
9. Attachment 8 is a statutory declaration [in] February 2017 from the applicant's [sibling] attesting to the murder of his cousin, 'O' in August 2015. It attests that Hezbollah killed O for refusing to join Hezbollah after he had already relocated within Lebanon to escape from them. The statutory declaration itself, and the information about O's relocation (also raised in the applicant's submission to the IAA) is new information. I am prepared to accept that if true, the new information would fall within s. 473DD(b)(ii). I note that while the issue of relocation was raised with the applicant at the SHEV interview, I accept the discussion was very brief and quickly moved on to other lines of enquiries. I am prepared to accept that the applicant was not sufficiently on notice of the seriousness of the conclusions that may be drawn on the basis of that discussion. In this particular circumstance, I am satisfied that exceptional circumstances exist to justify considering the information contained in the statutory declaration and the same information about O's relocation in the applicant's submission.
10. The applicant has also submitted country information which was not before the delegate and which constitutes new information.<sup>1</sup> No explanation has been provided as to why this information, which pre-dates the delegate's decision by a minimum of seven months could not have been provided prior to the delegate's decision and I am not satisfied it is credible personal information. I note the applicant more generally asserts in the submission that the delegate relied on out dated information which has been contradicted by more up-to-date and credible reference material. However the applicant has not specified the reports he claims are now contradicted and I do not accept the reports he has referenced are more up-to-date than

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<sup>1</sup> Melani Cammett , "Compassionate Communalism", Cornell University Press, 2014; Wold Bank, "World Bank: Lebanon Needs to Create 23,000 Jobs per Year", 11 April 2013; Al Monitor, "How the war on Syria left its mark on Lebanon's economy", 13 May 2016

those considered by the delegate. I am not satisfied that s.473DD(b) has been met and nor am I satisfied there are exceptional circumstances to justify considering this information.

### **Applicant's claims for protection**

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

- He is a Sunni Muslim of Arab ethnicity born in [Lebanon].
- His family is heavily involved with Hezbollah. A leader of his family, his [Relative 1] is a strong supporter of Hezbollah and runs a branch of Hezbollah in Tripoli. He is well known for recruiting fighters to join Hezbollah to fight in Syria. His [Relative 1] made a pledge to Hezbollah that all the men in their family ('the N family') will support, join and fight with Hezbollah.
- When he returned from Australia in 2010 his [Relative 1] started actively recruiting for Hezbollah. The applicant refused to join. His [Relative 1] and other Hezbollah members began to harass him and threatened to kill him for bringing shame on the family if he did not join.
- He kept refusing and they continued to harass and threaten him throughout 2011, and even more so after the war in Syria started.
- In early 2012 he was sitting with his cousin 'JN' out the front of a [shop] in Tripoli. JN was also being threatened and harassed for not joining Hezbollah. Suddenly JN was shot and he collapsed. The applicant ran away. JN died. The killers were never charged but it is widely accepted that JN was killed by Hezbollah for refusing to join with their [Relative 1]. His [Relative 1] told him later that JN was the first and that while he had been lucky this time, he was next on the list. He realised at this point that Hezbollah's threats were real.
- He also fears being targeted by the Salafi group (a large armed jihadi group who oppose Hezbollah and are well known in Tripoli) because of his name, due to his [Relative 1] and other family members' association with Hezbollah. The Salafi make regular threats to kill the N family, including the applicant. They target the whole family regardless of whether they are actually in Hezbollah.
- There have been many clashes between Hezbollah and the Salafis. In August 2012 Hezbollah and Salafi clashed in Bab Al Hadid in Tripoli. Many people were killed. It was widely reported in the news. These clashes demonstrate a continuing escalation of tensions between the family Hezbollah members and the Salafis.
- He lived in constant fear in Lebanon, targeted on both sides by Hezbollah because he refused to join and by the Salafis because of his family.
- He witnessed increasing violence and saw threats being realised into actual attacks. He lived reclusively in his parents' small apartment and rarely went outside out of fear of being killed.
- Since he left Lebanon, his cousins have been targeted and killed. In August 2015 his cousin 'O' was killed after being shot at close range in the face while sitting in a [shop]. The murder was widely reported but no one has been charged.
- In August 2015 he saw a video online. The video is dated [in] July 2015 and shows the Salafi leader stating that all the family including the men, women and children, will be

targeted and will go to hell. The leader was holding a rocket launcher and the men in the background were cheering and holding machine guns.

- In December 2015 his cousin 'TN' [was killed] and his body thrown out of a high rise building in Tripoli. This was intended as a public statement, the family believes, by the Salafis. Although TN's murder was reported in the news no one has been arrested.
- The authorities cannot protect him – Hezbollah and the Salafi groups roam around the streets of Lebanon and target their victims without any fear of retribution. The central government is too weak to dismantle these terrorist groups.
- He will be at risk anywhere in the country. As soon as he returns and makes contact with his family he will be tracked down and harmed.

## **Refugee assessment**

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12. 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**

13. 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.
14. I accept the applicant's claimed identity and nationality. I accept the applicant's parents resided in Australia for a [number of years] and that [a few siblings] are Australian citizens who were born and still reside here. I accept his parents now reside back in Lebanon along with his other siblings with the exception of one [sibling] residing in [Country 1]. I accept the applicant's clarifications that he travelled to Australia on [previous] occasions on [various visas]. I accept he returned to Lebanon in 2010.

### *Documentary, photographic and video evidence*

15. The applicant has submitted photographs, media articles and videos. The photographs purportedly show the body of his cousin O immediately following his shooting and in the morgue, and a group of people who appear to be crowding around a body reacting to his

cousin TN's death after he was pushed from a building. However the photographs are not time stamped and while some Arabic text accompanies the photographs, no translations have been provided. The applicant has also submitted a video threat purportedly depicting a Salafi leader threatening to kill all of the N family (the applicant's family). The man depicted in the video appears to be a heavily armed militant. He is speaking Arabic and there is no accompanying translation. While I have watched the video, I was unable to pick-up any specific references to the applicant's family name. Similarly, the other videos submitted by the applicant contain only Arabic dialogue or are scenes of fighting without identification of the fighters, or any clear dialogue. There is no accompanying commentary to explain the context, location, time or persons in these videos.

16. The applicant was advised by the department that documents in languages other than English should be accompanied by English translations and it was noted in the decision that the untranslated materials were not able to be considered. I am satisfied the applicant was sufficiently on notice of the need to provide translations. As there are no such translations in the referred material and no translations have been otherwise provided to the IAA, the content and veracity of this documentary, photographic and video evidence remains unknown and on this basis I have given it no weight.

*Risk of harm from Hezbollah*

17. In his Entry interview conducted in November 2014 the applicant stated he did not know what position his [Relative 1] held but he was paid by Hezbollah and has people fighting for him. In his written application and SHEV interview he described his [Relative 1] as a strong supporter of Hezbollah who runs a branch in Tripoli. In disputing the delegate's findings the applicant stated his [Relative 1]'s position and notoriety has grown throughout Lebanon. However, to date, no specific information has been provided about his [Relative 1]'s role or activities. I have some concerns about the vagueness of the information the applicant has provided about his [Relative 1]'s role in Hezbollah. However, the applicant has been consistent since his arrival that [one] side of the family are working with Hezbollah and that they want him to join and fight in Syria. Although Tripoli is not Hezbollah controlled, or an area of strong influence for Hezbollah, it is not implausible that his [Relative 1] holds some leadership position within the northern Lebanon branch of Hezbollah and that males in the applicant's family were being encouraged to join with them and fight with the Assad regime in Syria. Although the applicant's family is Sunni, country information supports that although a predominantly Shi'a organisation, Hezbollah does recruit Sunnis, Christians and Druze (ie. non-Shia's) into its Saraya Mouqawama (Resistance Brigades).<sup>2</sup> I am prepared to accept the applicant's [Relative 1] is a leader of the Tripoli branch and that the applicant was experiencing some pressure to join Hezbollah. However, I find the applicant has embellished on the extent of his family's involvement with Hezbollah and for the reasons below, I am not satisfied on the evidence, that the applicant's life was threatened or that his cousins have been killed due to their refusal to join Hezbollah.
18. The applicant claims his [Relative 1] and other Hezbollah members harassed him for bringing shame on the family by not joining Hezbollah. On the applicant's own evidence, his brother is a soldier in the Lebanese army, three of his cousins were killed for not joining Hezbollah and another cousin is in Australia, also to avoid joining Hezbollah. The applicant stated his father was previously in the Lebanese army and there is nothing before me to indicate he has joined or otherwise supports Hezbollah. Apart from [Relative 1] himself, there is no evidence before me of other family members being members of Hezbollah. To the contrary, it appears

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<sup>2</sup> Now, " Hezbollah's recruiting of Sunnis in the Bekaa", 18 September 2015, CXBD6A0DE13858

that several family members were against joining Hezbollah. I am not satisfied the applicant was being pressured by any other family members or that there was a sense of shame in the family for his refusal.

19. The applicant has consistently maintained that in 2012 his cousin JN was shot and killed in front of him, however there are significant discrepancies in his accounts of this event. A record of his Entry interview indicates the applicant stated his cousin was shot by a couple of boys at the end of the street while they were walking together in 2012. He stated his cousin dropped to the ground and he hid behind the wall, then he put his cousin into a car and he died within a couple of hours. However subsequently, the applicant has claimed that JN was shot and killed in front of him while they were sitting together and talking at a [shop]. While I accept the applicant's cousin was killed, I have concerns about the inconsistencies (which are not insignificant) in the applicant's accounts of this event. I have considered whether he was describing different events but taking into consideration all the other statements by the applicant regarding his cousins, I am satisfied that only one of his cousins was killed in 2012 and that he has provided differing accounts of JN's death.
20. The applicant claims he realised that Hezbollah's threats were real as his [Relative 1] later told him that JN was the first and that while he (the applicant) had been lucky this time, he was next on the list. I note in his Entry interview the applicant mentioned that he ran away to [Country 1] three times after his cousin was shot in 2012 and this is consistent with the travel history he provided in that interview – that he travelled to [Country 1] on three occasions in 2012 and 2013 on a tourist visa. He has also stated that during his last three years in Lebanon he stayed inside his parents' place and was unable to work for fear of being killed.
21. The applicant's trips to [Country 1] arise from the record of his Entry interview. Apart from his trips to Australia (including the last journey), the applicant has not declared in any other forum that he has travelled to any other countries. There is nothing before me to indicate that when the applicant went to [Country 1], he travelled overland through any other countries and as such I am satisfied his port of exit and entry for all his travel in 2012 and 2013 was the Beirut Rafic Hariri International Airport.
22. Country information indicates that Hezbollah exercises substantial control over Beirut International Airport and would be able to track anyone directly from entry into Lebanon.<sup>3</sup> I am satisfied that had the applicant been of concern to the Hezbollah organisation during this period they would have taken action against the applicant on one of these departures or re-entries. As for the time spent in Tripoli, on his own evidence, the applicant was still in contact with his Hezbollah leader [Relative 1] following JN's death and was living with his mother and [father]. There is no evidence before me to suggest that [Relative 1] was estranged from the family or did not know how to locate the applicant. Information indicates that Hezbollah has an extensive and sophisticated security and intelligence apparatus and the capability to locate wanted individuals within Lebanon.<sup>4</sup> I consider that if the applicant was at risk for refusing to

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<sup>3</sup> Immigration and Refugee Board of Canada, "LBN105332.E - Lebanon: Recruitment practices of Hezbollah, including forced recruitment, such as Shi'ite youth; consequences for those that refuse to join; availability of state protection; regions controlled by Hezbollah, including ability to locate a person wanted by the group who returns to Lebanon; presence of Hezbollah spies or informers in areas outside the organization's control; whether Lebanese Shi'ite students returning from international study are considered spies upon returning to the country (2013- October 2015)," 29 October 2015, OGFDFC61A73; DFAT, "DFAT Country Information Report Lebanon", 18 December 2015, CISEC96CF14155

<sup>4</sup> Immigration and Refugee Board of Canada, "LBN105332.E - Lebanon: Recruitment practices of Hezbollah, including forced recruitment, such as Shi'ite youth; consequences for those that refuse to join; availability of state protection; regions controlled by Hezbollah, including ability to locate a person wanted by the group who returns to Lebanon; presence of Hezbollah spies or informers in areas outside the organization's control; whether Lebanese Shi'ite students

join Hezbollah (or of otherwise being forcibly recruited), his [Relative 1] or his associates in Hezbollah would have carried such actions out in the period the applicant remained in his parents' home in Tripoli. I am not satisfied the applicant's life was under threat from his [Relative 1], the Hezbollah branch in Tripoli or other branches of the Hezbollah organisation in 2012 – 2013.

23. The applicant claims that in August 2015 (when he was already in Australia) his cousin O was killed in a [shop] after being shot [at] close range. The applicant has provided conflicting evidence about who believes the perpetrators were. In his written statement he said it is widely believed that Hezbollah killed O for refusing to join. However at the SHEV interview he stated it was the Salafis. On this point I have given consideration to the statutory declaration authored by the applicant's [sibling] which states consistent with his application, that O was killed by Hezbollah over his refusal to join. It also states that O had already tried to avoid these problems by moving away from Tripoli but that he was tracked down and killed. However I consider it relevant that the author is an Australian citizen (born in Australia when their parents resided here several years ago) and according to the applicant has never settled in Lebanon. The statutory declaration does not indicate the applicant's [sibling] was present in Lebanon at the time of the incident, or that [the sibling] has any specific knowledge of the circumstances of O's death beyond that claimed by the applicant. While I note the information has been submitted in support of the applicant's claims, the incident occurred around 18 months before the decision was made. The applicant claims the murder was widely reported on however as noted above, any information provided purportedly about this incident is in Arabic. I consider the discrepancy between the applicant's accounts as to whether O was killed by Hezbollah or the Salafis to be significant and while I note his [sibling]'s declaration supports the Hezbollah version, I am not satisfied [the sibling] was an eye witness or holds any specific knowledge. Having weighed the circumstances together, I give the statutory declaration no weight. I am not satisfied the applicant knows who the perpetrators were, and nor do I accept he knows the motive. On the evidence, I am not satisfied O's death is indicative of a risk of harm to the applicant.
24. I have considered that in addition to refusing to join Hezbollah and fight in Syria, the applicant has stated he considers Hezbollah to be a terrorist group and he stated the Syrian war is "*not our war*". The applicant has stated that by refusing to join Hezbollah he was showing that he disagreed with them. However country information does not support that Hezbollah target people on the basis that they disagree with them. Lebanon has long been divided in pro-anti Syrian opinion, there is considerable anti-Syrian sentiment which counter-balances pro-Syrian views. The ruling 'March 14 Coalition'<sup>5</sup> is anti-Syrian regime while the 'March 8 Coalition' comprised of the Shi'a Hezbollah and Amal groups, the Maronite Christian Free Patriotic Movement and other smaller parties including the SSNP and the Alawite community are pro-Syrian.<sup>6</sup> This information indicates that although divisive, public opinion on the issue is robustly contested. DFAT assesses that individuals in Lebanon are generally free to express their political opinions and while there is political and sectarian violence, it tends to be targeted at people who express strong political views and are politically active.<sup>7</sup>
25. Apart from not joining, there is no other evidence before me that he has expressed his view of Hezbollah being terrorists either publicly or within his family or to have otherwise spoken out against Hezbollah. While I note his comments on the Syrian war, the information before me

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returning from international study are considered spies upon returning to the country (2013- October 2015," 29 October 2015, OGFDFC61A73

<sup>5</sup> DFAT, "DFAT Country Information Report Lebanon", 18 December 2015, CISEC96CF14155

<sup>6</sup> DFAT, "DFAT Country Information Report Lebanon", 18 December 2015, CISEC96CF14155

<sup>7</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155



does not indicate the applicant has an anti-Syrian regime opinion or that he has been outspoken or has criticised the Syrian regime or Hezbollah's support for the regime. There is no evidence before me that the applicant has ever been politically active in any way –in Lebanon, nor in Australia, or in other countries he has spent time such as [Country 1]. Nor is there evidence to suggest that he would publicly express his views or be otherwise politically active upon return.

26. As noted above, I have concerns about the applicant's evidence regarding JN's death and I am not satisfied the applicant knows the circumstances of O's death. I am not satisfied that their deaths are indicative of a risk facing the applicant. I am satisfied that the applicant's [Relative 1] and Hezbollah had ample opportunity to locate and harm the applicant in the three years leading up to his departure to Australia. I am not satisfied that the applicant's life was threatened by his [Relative 1] or other Hezbollah members. I note the applicant's comments about Hezbollah becoming more aggressive in recruitment with the continuation of the Syrian war. However I am not satisfied that the applicant's expression of disagreement by refusal to join Hezbollah and his view that the Syrian war is not their war would be perceived as a threat to Hezbollah or that he would otherwise attract their adverse attention upon return. However taking all of the circumstances into consideration I am not satisfied the applicant faces a real chance of persecution in Tripoli or elsewhere in Lebanon from his [Relative 1] or any other Hezbollah members for his previous (or future) refusal to join Hezbollah, because he perceives them as terrorists or for his refusal to fight with them in Syria and his view that the Syrian war is not his war.

*Risk of harm from Salafi militants*

27. The applicant also claims he cannot live safely anywhere in Lebanon because he will face harm from (Sunni) Salafi militants who would target him due to his family's support for Hezbollah. He claims his surname is known everywhere as a Hezbollah family and that the Salafis accuse them of not being Muslims, on account of their Hezbollah support.
28. The delegate asked the applicant at the SHEV interview whether he had been personally threatened by Salafis and he responded that he had, through language, sending letters and shooting at him. However no specific information has been provided about these incidents in which the applicant claims he was the target of a shooting, nor about letters or other threats from Salafis specifically against him.
29. The applicant claims the conflict between the Salafis and his family is well known. He claims his cousin TN was murdered by Salafis in a public statement against the family and that the incident was reported in the news. The applicant has provided one such report but it is in Arabic. I have given no weight to this article and the accompanying photograph, nor to the video the applicant claims depicts a Salafi leader naming and threatening to kill all members of his family. I am not satisfied that the conflict between Salafis and his family is well known or that it even exists to the extent claimed.
30. The applicant claims that with the continuation of the war in Syria the notoriety, position and influence of his [Relative 1] as an active and senior Hezbollah leader has grown throughout Lebanon. However the applicant has not provided any specific information about his [Relative 1]'s position, nor any evidence to show how he has become more influential or recognisable. As noted above, several members of the applicants family appear to oppose Hezbollah and the evidence before indicates that the family membership of Hezbollah is limited to his [Relative 1]. No information has been provided to support that the N family name is known and recognisable throughout Lebanon as supportive of Hezbollah.

31. The applicant has made repeated statements that his family are heavily involved with Hezbollah, are well known in their associations with Hezbollah and in their conflict with Salafis and that his cousins' deaths (which I note occurred in public places) were the subject of independent news reporting. However as noted above, the untranslated documents and videos do not provide any ascertainable evidence and in any case, I have outlined above several other concerns with the applicant's evidence. Apart from [Relative 1], I am not satisfied that other members of the family are members or supporters of Hezbollah and I do not accept the applicant would be perceived as a Hezbollah supporter just on the basis of sharing the name. The applicant's parents and other siblings are still residing in Lebanon, many of them in Tripoli. It has now been almost two years since the applicant claims the video threat was issued and one and a half years since his cousin TN was killed. On the evidence the Salafis have not harmed any other member of the family, despite the claimed threat to kill the whole family.
32. Taking into consideration all the circumstances, I am not satisfied the applicant's profile and that of his family, is of a high level, or that his family as a whole is a target of the Salafi militia. I do not accept he faces a real chance of persecution upon return from Salafi militia groups on the basis of his family's profile or association with Hezbollah.

#### *Sectarian violence*

33. I accept that prior to 2014, Bab al-Tabbeneh and Jabal Mohsen areas of Tripoli were sites of frequent clashes and violence between anti-Syrian regime Sunni Muslim groups and pro-Syrian regime Alawite Shia groups resulting from traditional hostilities exacerbated by the Syrian war.<sup>8</sup> From 2014 the security situation improved. In April 2014 Lebanese authorities implemented a security plan in Tripoli backed by the major political factions and which led to a notable reduction in Alawite-Sunni incidents and increased stability across Tripoli.<sup>9</sup> However, recent attacks have occurred<sup>10</sup> including as recently as 2015.<sup>11</sup> DFAT contacts have also noted that though Tripoli is broadly stable it is vulnerable to outbreaks of renewed violence.<sup>12</sup>
34. In considering the applicant's circumstances, I note firstly, that Tripoli is overwhelmingly Sunni and therefore he is in the religious majority. DFAT describes the Bab al-Tabbeneh – Jabal Mohsen area as a recurring flashpoint where Sunnis are at moderate risk of harm from sectarian violence. DFAT states that although sectarian violence has spilled beyond Bab al-Tabbeneh and Jabal Mohsen on occasion, Sunnis in other areas of Tripoli face a low risk of violence as it is more easily avoided.<sup>13</sup> The applicant claims there was a clash between Salafis and Hezbollah in Bab-e-Hadid in August 2012 and I note this area is close by to the applicant's area of [Town 1]. However while I accept attacks have occurred in other parts of Tripoli I am satisfied that the fighting has mostly been contained to Bab al-Tabbeneh and Jabal Mohsen.
35. DFAT assesses that at times of increased sectarian tension, Sunnis who are actively involved in fighting face a high risk of violence,<sup>14</sup> however, there is no evidence before me to indicate the applicant has previously been involved, or that he would engage in fighting upon return.
36. I give weight to DFAT's assessment that not all areas of Tripoli carry the same level of risk, and in particular, that Sunnis living outside the Bab al-Tabbeneh neighbourhood (and who are not

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<sup>8</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>9</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>10</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 ; Al Monitor, "Radical groups lure Tripoli youths", 1 July 2015, CXBD6A0DE9201

<sup>11</sup> Al Monitor, "Radical groups lure Tripoli youths", 1 July 2015, CXBD6A0DE9201

<sup>12</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>13</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>14</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

actively involved in fighting) is low. While I note there have been some attacks outside these flashpoint neighbourhoods, I am satisfied that they have not been occurring with any frequency so as to alter the level of risk to the applicant. I am not satisfied that the applicant faces a real chance of harm arising from fighting between Sunni and Alawite militia in his and his parents' home neighbourhood of [Town 1] or anywhere else in Tripoli outside of Bab al-Tabbeneh and Jabal Mohsen.

#### *Risks to returnees*

37. I note the applicant would most likely be returned to Lebanon through Beirut airport. DFAT assesses that Hezbollah's influence would create no problems for most returning individuals and that while Hezbollah does exercise substantial control over Beirut's international airport, a returning individual would only be targeted if they were a direct threat to Hezbollah's authority.<sup>15</sup> I am not satisfied that Hezbollah or any other militia would consider the applicant a threat, or would otherwise have an adverse interest in him upon return. He has departed and re-entered Lebanon through Beirut airport (under the substantial control of Hezbollah) using his own genuine passport several times since 2010 and on the evidence, he did not experience any problems on those occasions. I am satisfied the applicant would not be considered a threat to Hezbollah, or that he would face a real chance of harm from Hezbollah upon return at the airport, nor upon his return to Tripoli.
38. I note DFAT is not aware of any evidence that suggests returnee asylum seekers would be distinguishable from the broader community or susceptible to any form of discrimination or violence.<sup>16</sup> I am not satisfied the applicant would not face any risks as a returning asylum seeker.
39. I accepted the applicant's [Relative 1] is a leader in the Tripoli branch of Hezbollah and that the applicant has experienced some pressure from him to join. However I have not accepted the applicant's life was threatened or that his cousins were killed for their refusal to join. I also have not accepted the applicant's family is known as a Hezbollah supporting family or that their whole family is being targeted by Salafi militias due to the family name or association with Hezbollah. Taking into account these circumstances I am not satisfied that the applicant, a Sunni Muslim resident of [Town 1] in Tripoli faces a real chance of harm upon return from sectarian violence in Tripoli, nor for his refusal to join Hezbollah and fight in Syria, for any imputed anti-Syrian regime opinion or for his views of Hezbollah, nor for his [Relative 1]'s position, or for any perceived association or support for Hezbollah. Even when taking into account that the applicant would be returning as a failed asylum seeker from Australia, and when his claims are weighed together and considered on a cumulative basis, I find that his fear of persecution is not well-founded.

#### **Refugee: conclusion**

40. 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**

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41. 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

<sup>15</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>16</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

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

42. 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.

43. As set out above, I am not satisfied the applicant faces a real chance of harm upon return in relation to his refusal to join Hezbollah, his perception that Hezbollah are terrorists or for any imputed anti-Syrian region opinion or his view that the Syrian war is not his war. Nor am I satisfied he would face a real chance of harm for his [Relative 1]'s position in Hezbollah or any imputed pro-Hezbollah family profile or his status as a failed asylum seeker from a Australia or a Sunni in the [Town 1] area of Tripoli. For the same reasons that I found the applicant would not face a real chance of harm upon return, I am also satisfied there is not a real risk he will suffer significant harm.

44. I am not satisfied that the applicant faces a real chance of harm arising from sectarian fighting in his and his parents' home neighbourhood of [Town 1] or anywhere else in Tripoli outside of Bab al-Tabbeneh and Jabal Mohsen. I have also had regard to the broader risk of harm arising from sectarian and insurgent violence in Lebanon. DFAT reports that since its earlier 2013 and 2014 reports, incidents of violence influenced by long-standing sectarian tensions have decreased. DFAT suggests this is ostensibly in response to successful interventions by the Lebanese authorities and cooperation between traditionally opposing actors (including Hezbollah). The LAF's implementation of security plans in various locations and a formal dialogue between the Hezbollah and the Sunni-dominated Future Movement have contributed to a more stabilised security situation.<sup>17</sup>

45. However, DFAT notes this stability is being constantly tested by the conflict in Syria through cross-border reprisals, the large influx of Syrian refugees, and the presence in Lebanon of extremist groups such as ISIS and Al-Nusra. DFAT assesses that Sunni communities close to the Syrian border face a low risk of being caught up in cross-border reprisal attacks by Syrian authorities, although the risk increases if a community is sheltering anti-Syrian regime fighters. However, Tripoli does not border with Syria and there is no evidence before me to indicate the applicant's neighbourhood would be targeted for harbouring opposition fighters. While the influx of refugees into Lebanon is relevant to the overall sectarian composition and has longer term social implications, neither DFAT, nor other sources before the delegate indicate that the refugee situation would result in harm to the applicant. DFAT assesses that while ISIS and Al-Nusra have an increasing capacity and influence over Lebanon the potential for them to launch attacks in Sunni-dominated areas (such as the applicant's) is 'unlikely'.<sup>18</sup> More recent

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<sup>17</sup> DFAT, "DFAT Country Information Report Lebanon", 18 December 2015, CISEC96CF14155

<sup>18</sup> DFAT, "DFAT Country Information Report Lebanon", 18 December 2015, CISEC96CF14155

information on Hezbollah's clashes with ISIS and Al-Nusra also support that most such clashes occur in the north eastern border region.<sup>19</sup> I am not satisfied that the applicant faces a real risk of harm arising from the refugee influx or any armed response from Syria, nor from ISIS, Al-Nusra or other insurgents in the reasonably foreseeable future.

46. I am aware that the applicant is married to an Australian citizen. He has not claimed that he would suffer harm upon return to Lebanon due to a potential forced separation from his wife (or from his siblings or other extended family members resident in Australia). There is nothing before me to indicate that the applicant's wife would not accompany him to Lebanon. I am not satisfied that their separation would be a necessary and foreseeable consequence of the applicant being returned from Australia. In any case, while I am sympathetic to the applicant's circumstances, I am not satisfied that the act of removal itself would be perpetrated against the applicant with any intention to subject the applicant to torture, cruel and inhuman treatment or punishment, or degrading treatment or punishment and nor would it attract the death penalty or arbitrarily deprive him of his life. I am satisfied therefore that the applicant would not suffer significant harm arising from the act of removal.
47. I have taken all the applicant's circumstances into account and have considered how his various profile factors and claims interact or compound affecting the risk upon return. However even when considered cumulatively, I do not accept he would face a real risk of significant harm.

#### **Complementary protection: conclusion**

48. 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**

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

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<sup>19</sup> The Daily Star (Lebanon), "Hezbollah destroys ISIS bunker in northeast Lebanon, kills militants inside", 4 April 2016, CX6A26A6E2761

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

...

***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.