



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON
IAA reference: IAA17/02704

Date and time of decision: 21 August 2017 11:33:00
Michael Brereton, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim from the northern region of Lebanon. He departed Lebanon lawfully [in] May 2013 and travelled to [Country 1]. He departed [Country 1] by boat and arrived on Christmas Island [in] May 2013. He applied for a Safe Haven Enterprise Visa (SHEV) [in] September 2016. [in] October 2016, he withdrew that application and lodged the current application for a Temporary Protection Visa (TPV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] May 2017.
2. The applicant claims to fear harm from his family and neighbours because he wanted to open an alcohol shop; from a person who is extorting money; and because of the unsafe situation in Lebanon.
3. The delegate found that the applicant's key claims related to criminal matters and did not constitute persecution. The delegate considered the claim in relation to the general situation in Lebanon and found that the applicant did not have a well-founded fear of persecution because of the general situation in Lebanon or for being a returned asylum-seeker. The delegate considered the key claims under complementary protection and found that the applicant did not face a real risk of significant harm, and was satisfied that the applicant was not a person in respect of whom Australia has protection obligations.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. At the time of his application the applicant was represented by specialist migration lawyers. Following the decision he obtained representation by another specialist migration legal firm. These lawyers provided a submission to the Immigration Assessment Authority (IAA) on 23 June 2016. Part of this submission refers to information that is in the material.
6. The submission raises what appear to be new claims in relation to a fear of harm for being a Sunni Muslim, a risk of harm at the hands of the Islamic State, and a risk of harm for engaging in an activity primarily associated with the West. The submission also refers to and relies on media reporting and travel advisories in relation to these claims. None of this was raised with or provided to the delegate and it is new information. The applicant has not explained why these claims were not raised in his application or at the interview with the delegate [in] January 2017 (the interview), nor has he explained why the claims were not raised with the delegate in the four months between the interview and the decision. I take into account that the applicant was represented by a specialist migration legal firm and although that firm did not send a representative to the interview, it assisted the applicant to prepare and lodge his TPV application. I am satisfied that the applicant had sufficient opportunity to make these new claims during the application process and interview but he did not do so. I am satisfied that he had opportunity to raise them before the decision was made but he did not do so. I am not satisfied that there are exceptional circumstances to justify considering this new information, although I have further considered the travel advisories below.

7. The submission refers to the delegate's findings in relation to the availability of state protection and the general situation in Lebanon. It submits that the country information referred to by the delegate¹ is out of date and that current information (from the United States Department of State, Human Rights Watch and the International Crisis Group) does not support the delegate's findings. None of this information was before the delegate and it is new information. These new reports all pre-date the decision and the applicant has not explained why they were not or could not have been provided to the delegate before the decision was made. I have listened to the audio recording of the interview and note that the delegate put information from the Australian Department of Foreign Affairs (DFAT) report to the applicant for comment as well as asking specific questions in relation to the situation in Lebanon and the availability of state protection. I am satisfied that the issues of the general situation and state protection were squarely raised with the applicant, as was the information that the delegate was considering. There is nothing in the material that indicates that the applicant challenged the currency of the information, or that he made any further comments or communication in relation to these issues prior to the decision being made. I am not satisfied that there are exceptional circumstances to justify considering this information.

8. The applicant referred to travel advisories from the United Kingdom (UK) (dated 14 July 2017) and the Australian Department of Foreign Affairs and Trade (DFAT), (dated 25 May 2017) in the context of new claims. These documents were not before the delegate and are new information. The documents post-date the date of the decision and I am satisfied that they could not have been provided to the delegate. The documents refers to conditions in Lebanon and advise UK and Australian travellers to be particularly vigilant (UK) and to reconsider their need to travel to Lebanon overall (DFAT). DFAT also advises tourists not to travel to Tripoli or the northern region of Lebanon. However, I take into account that the focus of both these documents is as an advisory specifically aimed at tourists planning to travel to Lebanon rather than Lebanese citizens returning to their homes. In this regard they assess threats against tourists and are not a country advisory in the same sense as the DFAT country information reports which consider a range of issues including a citizen's ability to access state protection from their own local and state authorities, the availability of support and care for citizens and other issues that are not relevant or may not be available to non-citizen tourists. I am satisfied that the travel advisories are in a context removed from the applicant's personal circumstances and that the country information document in the material is a comprehensive and more relevant source of information on conditions for returning citizens. I am not satisfied that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - He is a Sunni Muslim who was born in the Northern Province of Lebanon. He is [years] of age, married with [number of] children. He owns his house and his wife and children remain there. His parents and siblings live in another part of the Northern Province but are in regular contact with his wife and children.
 - He served in the Lebanese [armed forces] [for number of years]. He was a [rank] in an administrative role and did not engage in any combat or similar actions. He retired in [year] to spend more time with his family and has [a pension] and superannuation.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF1415.

- At his initial entry interview in 2013 he said that he left Lebanon because it is not a safe place to live. He said that there is no work for him there, he has to support his children and he does not feel safe. He said that his principal reason for leaving was a lack of economic opportunity.
- In his TPV application in 2016 and at the interview he said that in 2013 he wanted to start a shop and sell alcohol in his neighbourhood. He said that his family and neighbours objected to this and threatened him. Someone damaged his car and left a note saying that if he sold alcohol they would kidnap his [child]. Someone also told him that he had to leave Lebanon because of the alcohol shop. That is why he came to Australia.
- In the interview he also said that a man ("K") had demanded money from him. K had produced a fraudulent contract that alleged the applicant owned him [amount of money]. After the applicant came to Australia, K began threatening his family. His wife went to the police and they went to K and ordered him to stop contacting the family or he would be sent to jail. The applicant first said that his wife had no more problems with K, but later in the interview he said that K continued to telephone and threaten the family.
- He said that neither he nor any member of his family has ever been harmed or involved in generalised violence, although he did know some people who were killed by snipers in the past.
- He said that he has never had any problems with any of the religious or other groups in Lebanon and has never had any problems following his religion. He said that his fears are from his neighbours and from K. He said that if he goes back to Lebanon, he will open an alcohol shop and his problems will continue.

Refugee assessment

10. 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

11. 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.
12. The applicant claims to be a Sunni Muslim from the northern region of Lebanon. He has provided documentary evidence of his identity and former residence. On the basis of his evidence I accept that the applicant is a Sunni Muslim from this part of Lebanon.
 13. According to the transcript of his entry initial entry interview, the applicant claimed that the principal reason he left Lebanon was a lack of economic opportunity. He also said that his family home is in a war zone and it is not safe for him or his family to leave the home. There is no audio recording of this interview in the material but I note from the transcript that the applicant was asked some specific questions about his claims. The case officer asked if there was any particular incident that made him leave Lebanon. The applicant repeated his claim that he left because there is no work and it is very risky for his children to go to school. The delegate asked, and the applicant confirmed, that these were the only reasons he left Lebanon. However, when the applicant made his SHEV application in 2016, he made further claims relating to a plan to open an alcohol shop that led to threats, as well as an extortion attempt against him. Although he did not raise these claims at his initial entry interview, his evidence at the SHEV interview was consistent and he provided spontaneous answers to questions.
 14. The applicant claims that he left the Lebanese [armed forces] in [year] to spend more time with his family. He said that he has a pension, superannuation and owns his home. He did not look for work at first but the pension is not enough so he decided to open a shop selling alcohol. He said that there were no alcohol shops in his area but there were Christians and others living there who would buy alcohol. He said that he doesn't have any problem with this and is not judgmental but his parents, siblings and neighbours objected. The delegate asked why his family objected, given they live in another area (about 30 minutes away by car) and he said that his family is old-fashioned. The delegate asked why he needed to sell alcohol and he said that there were lots of shops in his area but none selling alcohol. He is too old to do any physical work and it would suit him to sit in a shop, but his shop would not be financially viable if it did not sell alcohol.
 15. The applicant claims that as well as receiving objections from his family and his neighbours, he also received verbal threats and one day his car was damaged. A note was left on the windscreen saying that if he opened the shop, his [child] would be kidnapped. He also received threats that his children would be harmed, and someone told him that he had to leave Lebanon because of the shop.
 16. It is plausible, and I am prepared to accept that the applicant wanted to supplement his pension, that he is unable to undertake physical labour, and that the idea of an alcohol shop appeared as an attractive option for him. There is nothing in the information before me that suggests it is illegal to sell alcohol in Lebanon or that the government or other authorities take action or impose sanctions against those who sell alcohol. Nevertheless, I am prepared to accept that as the applicant is Muslim, his parents, siblings and his neighbours objected to him becoming involved in this business. Similarly, while he has said that he lives in a demographically mixed area where everyone coexists peacefully as "brothers", I am prepared to accept that his neighbours may have been upset at the idea of a shop selling alcohol in their immediate area. I accept that he has been verbally threatened to not open the shop, that his car was damaged and that there have also been anonymous threats made to him which included threats to harm his children and a threat that he should leave the area.

17. The applicant said that because of these threats, he did not open the shop and left Lebanon, but this is different to his claim at the initial entry interview that he left Lebanon because of a lack of economic opportunity. I consider it is implausible that if the applicant had a well-founded fear of harm from his neighbours, he did not mention this at the initial interview as being at least part of the reason for leaving Lebanon. I also take into account that the applicant did not report the threats to the police or seek any protection from the authorities. He has provided evidence that on a later occasion, his family reported an extortion attempt and obtained police assistance (this is considered further below) and I also note that he himself served with the Lebanese [armed forces] for many years in an [administrative] role. I am not satisfied that if the applicant was faced with real or substantial threats to himself and his children, he would not report those threats to the authorities. I also note that despite the fact that his wife and children remained in contact with his parents and siblings, he did not send his family to stay with his parents or siblings. I am not satisfied that he would not have taken steps to protect his family if he believed that the threats were real or substantial. Considering all of this, I am not satisfied that the threats were any more than empty threats, or that the applicant abandoned his plans to open or was otherwise unable to open the shop, and left Lebanon because of these threats. I am satisfied that he did not suffer any harm as a result of these threats. I am satisfied that he does not face a real chance of serious harm arising from these threats should he return to Lebanon.
18. Looking to the future, the applicant claims that if he returns to Lebanon he will open the alcohol shop and his problems will continue. In his submission to the IAA he said that given the current economic situation in Lebanon, there is a real chance that he will become destitute if he does not sell alcohol. I have found above that while he faced threats when he first decided to open the shop, these were not acted on and did not lead to any harm to the applicant. I have found that these threats were not the reason that he left Lebanon but I accept that if he returns to Lebanon and proceeds to open an alcohol shop, he may face further opposition and threats from his neighbours. On the evidence before me however, I am not satisfied that these threats will be different to the threats he has received in the past, or that they are more likely to be acted upon or lead to harm. Having regard to this, I am not satisfied that the applicant will face a real chance of any harm should he proceed with opening the alcohol shop.
19. I consider that the applicant's claim that he will become destitute if he does not open the alcohol shop is speculative and not well-founded. There are no claims, and there is no evidence before me that his wife and children have suffered any financial hardship in the four years since he left Lebanon, despite him not opening or operating an alcohol shop. I take into account that he has not claimed to be sending money home to his family from Australia and when the delegate asked him how the family was being supported, he said that he had his [pension]. He has not claimed that he had entered into any financial or contractual arrangements in relation to the proposed shop or that he faces any financial impacts, obligations or other commitments because the shop was not opened. He has not claimed to have investigated any other options to supplement his pension without selling alcohol, or that he is unable to undertake any other type of work other than physical labour. He has not claimed that the dispute with K (see below) is linked in any way to the proposed shop. Having regard to all of this, I am not satisfied that selling alcohol is the applicant's only viable option to supplement his pension as he has claimed. I am satisfied that the applicant does not face a real chance of serious harm if he decides not to open the alcohol shop.
20. At the interview the applicant claimed to fear harm from a man named "K". He said that K found out that the applicant had left the [armed forces] and began demanding money from him. He told the delegate that after he came to Australia, K began threatening his family and produced a contract that appeared to say the applicant owed K [amount] lire. The applicant's

wife took the contract to the police and it was found to be fraudulent. The police went to K and told him not to talk to or approach the applicant's family or else he (K) would go to prison. The applicant said that his wife had not suffered any problems after that; however, later in the interview he said that K has kept telephoning the applicant's wife, has threatened her and the family and has said that he hasn't forgotten the applicant and will kill him. When the delegate put this inconsistency to the applicant he said that K still talks to his wife on the telephone. The delegate said that the police had provided protection in the past and that if K did anything, there would be consequences for him. The applicant said that this would not help him or his [child] if they were dead. He said that if he goes back to Lebanon, he will kill K or K will kill him.

21. I am prepared to accept that a person named K tried to extort money from the applicant and that the applicant's wife sought and obtained police intervention. I do not consider it plausible however, that after having been told to stay away from the family or risk jail, K would continue to threaten the family. I also do not consider it plausible that if he was continuing to threaten the family, the applicant's wife would not return to the police. I do not accept that K has continued threatening the applicant's family or that he has made personal threats against the applicant. I do not accept that K has continued to contact the family or that he would do so if the applicant returns. I do not accept the claim that the applicant will kill K or that K will kill him. I am not satisfied that the applicant will face a real chance of harm from K should he return to Lebanon.
22. The applicant claims that he is at risk from the fighting and instability in Lebanon. He told the delegate that neither he nor any member of his family has suffered any harm or been involved in the fighting, but he knows of some people who were killed by snipers. He confirmed that although he was in the [armed forces], he has not been involved in any fighting or other military operations. He told the delegate that he lived (and his wife and children remain) in a demographically-mixed area but that everyone lived as "brothers and sisters" and there were no problems. The delegate also asked the applicant if he had suffered any personal conflict with any sects, groups, the police or the military. The applicant said that he had never had any such problems and that he has never suffered any harm or problems because of his religion.
23. DFAT has assessed that Sunni Muslims in most areas of Lebanon, including Beirut and most of Tripoli face a low risk of violence or harm unless they are actively involved in fighting. DFAT has acknowledged that security in the border regions such as Akkar is more complicated and there have been instances of violence including cross-border violence resulting from the conflict in Syria. However, DFAT assesses that, overall, Sunni communities in the border regions face a low risk of violence, including cross-border violence, unless the community is perceived to be anti-Syrian or to be harbouring opposition fighters. DFAT has also acknowledged that civilians may be caught up in sectarian and extremist violence but the incidence of such violence has decreased since 2013.²
24. The applicant's evidence is that neither he nor any member of his family have had or now have any involvement in fighting and that he has never suffered any harm as a result of sectarian or other generalised violence. While the applicant has claimed that sectarian and generalised violence is part of the reason he sought asylum in Australia, he also told the delegate that his main reasons for leaving Lebanon were because of the threats related to the alcohol shop and the incident with K. He said that neither he nor his immediate family had been involved in or harmed by sectarian or generalised violence in the past, although he knew some other people who had been killed. Furthermore, he has not claimed, and there is no evidence before me

² DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF1415, at pp 11-12.

that he has lived in any location that has the type of profile that would place its residents at any particular risk of harm.

25. I note that DFAT assesses that Sunni Muslims face a low risk of violence in the Northern Province. I take into account that this DFAT report is dated from 2015, but there is no information before me that indicates that the situation has deteriorated for Sunni Muslims since this report was issued. I have considered all of the applicant's evidence and while it is possible that he may be caught up in generalised violence in any area of Lebanon, I find that this is a remote possibility and in any event, would not be as a result of his being targeted because of his race, religion, nationality, membership of a particular social group or political opinion. I am also satisfied that as a Sunni in Lebanon, the applicant faces a low risk of being harmed in sectarian or extremist violence unless he is actively involved in the conflict. He has not claimed, and there is no evidence before me, that he has been involved in the past or that he intends to do so now. I find that the applicant will not face a real chance of serious harm due to his ethnicity, religion or from any sectarian or generalised violence, should he return to Lebanon.
26. The applicant departed Lebanon lawfully as the holder of a valid passport. DFAT reports that Lebanese citizens who have sought asylum elsewhere have not committed a crime under Lebanese law by doing so. Generally there is no stigma accorded to returning asylum-seekers and such people would not be distinguishable from the broader community or susceptible to any form of discrimination or violence.³ There is no information to indicate that the applicant would be arrested or charged for any reason on return to Lebanon. The delegate put this information to the applicant for comment at the end of the interview but as noted above, the applicant did not provide any response other than to restate his claims.
27. I have found above that the applicant does not face a real chance of harm because of: his previous plans to open the alcohol shop; any plans to open the shop should he return to Lebanon; the extortion threat from K; his ethnicity or religion, or from any sectarian or generalised violence. He has not claimed, and there is no evidence before me, that he has been involved in any activities outside Lebanon that could lead him to be of adverse interest to the authorities or to any terrorist or extremist organisations. I find that he does not have any profile that may bring him to the attention of the authorities or any terrorist or extremist organisations and I am satisfied that does not face a real chance of harm for being a returned asylum-seeker. Considering all of this, I find that the applicant does not face a real chance of serious harm for any of, or any combination of these reasons should he return to Lebanon.

Refugee: conclusion

28. 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

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

³ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF1415, at p 22.

Real risk of significant harm

30. 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.

31. I have found that the applicant does not face a real chance of serious harm arising from: his previous plans to open the alcohol shop; any plans to open the shop should he return to Lebanon; the extortion threat from K; his ethnicity or religion, or from any sectarian or generalised violence; or for being a returned asylum-seeker. As 'real chance' and 'real risk' have been found to equate to the same threshold,⁴ I am satisfied that the applicant does not face a real risk of significant harm for any, or any combination of these reasons.

32. There are no claims, and there is no other evidence before me that the applicant may face a real risk of significant harm for any other reason.

Complementary protection: conclusion

33. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

⁴ MIAC v SZQRB (2013) 210 FCR 505.

Applicable law

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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...