



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA19/06755

Date and time of decision: 12 July 2019 11:04:00

S Mansour, 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 a 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 Lebanon. On 15 June 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 11 June 2019 a delegate of the Minister for Immigration (delegate) refused to grant the applicant a SHEV. In summary, the delegate did not accept the applicant's claimed political affiliations and ultimately found that the applicant was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is of Arab ethnicity, a practising Sunni Muslim and was born and resided in [Village 1], Akkar, in the North of Lebanon all his life prior to his journey to Australia.
 - In around 2005, he joined the Syrian Social Nationalist Party (SSNP). However, he found them very extreme in their views and actions, which he disagreed with and after about a year, he no longer wished to remain a member.
 - In around 2008, the SSNP office in Halba, Akkar, came under attack by a rival political party, the Future Movement (FM). An SSNP member called the applicant and asked him to take up arms and assist the SSNP to fight against the FM. The applicant lied about his location and did not assist the SSNP, making the SSNP angry with him. The SSNP questioned him and detained him in a cell for 24 hours in Tripoli. He was also detained another time for not attending their protests.
 - He then relied on different ways to avoid the SSNP but still occasionally answered their calls and saw them until 2013. He participated in some protests with them. He feared directly leaving them because joining was the same as being contractually bound and breaching their codes or his oaths made to them would result in him being killed.
 - Since being in Australia, his mother informed him people have been asking about him.
 - In June 2016 his brother was shot and killed by unknown perpetrators.
 - He will be harmed in Lebanon due to his political opinion and his Sunni Muslim religion. He fears harm from Sunni Muslims, the SSNP, Shia Muslims and Hezbollah.
 - He will be unable to survive in Lebanon due to the conflict and no available work there.

Refugee assessment

6. 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

7. 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.
8. At the Protection Visa (PV) interview, the applicant, who was unrepresented, indicated he had been unable to go over his PV application with his former agent. However, he confirmed that he had supplied the information that went into that application to his former agent. Apart from some errors in his statement of claims included with his PV application (statement) which were clearly identified and corrected or information otherwise updated during the PV interview, it is not apparent that there were any further errors and I am not satisfied there are. I am also satisfied he was able to put forth his claims during the PV interview. Despite a brief break due to his claimed distress at one stage, he was able to continue providing his claims. He was also informed by the delegate that he was able to put forth further information until a decision was made. At the PV interview, he also referred to a recent operation he [had]. He said he was unsure of further treatment needs, was seeing a surgeon and taking prescribed painkillers but otherwise raised no concerns about the impact of this.
9. Despite obvious shortcomings in the quality of the copies of his scanned identity documents, given the information on them that is legible, his overall consistency, and his knowledge of Lebanon country conditions, I accept that the applicant is a national of Lebanon. Lebanon is the receiving country for the purpose of this review. I accept that he is of Arab ethnicity. The delegate referred to [Village 1] being located in Tripoli throughout his decision. However, the applicant has consistently indicated it is in Akkar and country information including from DFAT suggests that these are separate governorates, albeit closely situated near each other. I accept that the applicant was born and resided in [Village 1], Akkar, in the North of Lebanon all his life prior to his journey to Australia and that this is the area to which he would return.

10. On the basis of his frank evidence at the PV interview, I accept that the applicant is a moderate practising Sunni Muslim. His statement indicated that his Sunni Muslim religion had been imposed on him by his family and society and that he feared return to Lebanon based on his views on Sunni Islam. In his statement he also claimed he had a Christian girlfriend while in Lebanon, this caused issues with his family and his brother harmed him as he was against the relationship. He claimed that his family had also stopped financially supporting him due to this girlfriend, and that he was unable to move out of his family home due to his financial situation. However, asked by the delegate about these claims, the applicant indicated that he did not fear going back to Lebanon due to this past relationship and that information in his statement that Sunni Islam was imposed on him was incorrect. He indicated that the brother who had harmed him due to his past relationship had since been killed under unknown circumstances and clarified that his statement (which suggested this was a different brother) had intended to indicate this. He indicated that nobody else had a problem with the past relationship apart from his deceased brother. Given all this, I accept the applicant no longer claims that he fears harm in Lebanon for these reasons. At the PV interview, he said he had a [girlfriend from another country] while in Australia who was not a Muslim and that he had no issues with that. Overall, I am not satisfied that he faces a real chance of any harm in Lebanon on the basis of his relationships or due to his religion.
11. The applicant's claims have otherwise centred on his claimed past association with the SSNP. I have significant doubts that this was the reason why he left Lebanon. During the PV interview, the delegate put to the applicant that during his 2013 arrival interview, he made no mention of the SSNP. In response, the applicant claimed he had been fearful to disclose everything at the arrival interview, believing the information would be leaked including to the SSNP. He said he was also dizzy from the long boat journey to Australia and in a state of fear due to it. He referred to his young age and lack of maturity at the time. I have had regard to these factors in addition to the conduct and relative brevity of that interview. Having listened to the audio recording, I note the officer asked the applicant to 'get to the main point' and to 'really briefly' tell him why he left Lebanon. The applicant referred to there being no government and war in Lebanon. He said he worked in [Workplace 1], [patronage] was down and there was no respect. The officer then asked him many follow up questions. Asked to clarify the respect comment, the applicant said the authorities did not respect the people. Asked again about his main reason for leaving Lebanon, he referred to no work and war. Asked what the war had to do with his departure, he again referred to his [Workplace 1], low [patronage] and that [Workplace 1] almost closing due to a lack of customers. Asked if it was safe to live in Lebanon, he said no. Asked why, he referred to the Syrian war and its effect on Lebanon. Asked how it had that effect, he referred to generalised violence in Tripoli including shootings, road blockages and to pro and anti- Syrian government persons. Asked whether there were any other reasons why he left Lebanon, he said no. Asked what he thought would happen if he returned to Lebanon, he again referred to the war and very little work being available. Asked separately about whether he had any association or involvement with any political group or organisation, he said no. Regarding one of his brothers who was in Australia, asked whether he had come to Australia to live with this brother, he answered yes.
12. While I accept an arrival interview is not a substitute for a protection visa interview, for the following reasons I do place weight on his emphasis at that interview that he left Lebanon due to economic issues and generalised violence and war. The applicant was approximately [age] years old at the time of his arrival interview which was conducted about two weeks after his arrival in Australia. I do not consider his claimed dizziness or ongoing state of fear from the boat journey a convincing explanation for his failure to mention the SSNP. I accept the interview was conducted in an unfamiliar environment and that asylum seekers in such context, may feel reluctant to fully disclose information. However, the applicant came across

as calm and frank when discussing his reasons for departing Lebanon. The officer observed that he was 'friendly and cooperative' during that interview. He had multiple opportunities to indicate, even briefly and without necessarily disclosing any detail he feared may be leaked, any other reasons why he left Lebanon or could have separately briefly noted an SSNP membership when directly asked about political association/involvement, without disclosing any problems he had with them. Moreover, country information, including from the Department of Foreign Affairs and Trade (DFAT) and USA Today, supports the information the applicant gave at that interview in 2013. It indicates that the Lebanese economy took a massive hit due to the Syrian war, by 2013 GDP growth significantly reduced and there was increased competition for low-skilled jobs in areas of high refugee concentration including the north of Lebanon. The applicant's PV interview evidence further suggests to me his focus on economic factors. Asked at that interview why he feared return to Lebanon, after brief mention of the SSNP, he more thoroughly detailed his conditions in Australia including as a tax payer, that he was of benefit to the country and that he was thinking of purchasing a house and establishing himself in Australia. Separately, asked about his current work, he similarly demonstrated an interest in discussing his current job and future opportunities. He referred to unemployment as a cause of problems, and employment as preferable to engaging in criminal activity. For the combination of these reasons, I significantly doubt that the applicant left Lebanon due to any issues with the SSNP or fears return for this reason.

13. Country information from Foreign Policy in 2016 and a 2011 Refugee Review Tribunal (RRT) country advice indicates the SSNP was created in 1932 by Lebanese intellectual Antoun Saadeh to fight for the future of 'Greater Syria,' which encompasses Syria, Lebanon, and various other countries. The SSNP played an active role including on the battlefield, in support of President Bashar al-Assad's government. It has fiercely opposed the Lebanese Government. The SSNP has the means and capabilities to take violent measures if so desired, its' leaders are said to have considered violence a legitimate means of achieving political aims and it has been involved in numerous security incidents in Lebanon. The SSNP has recruited into its' military wing, children as young as 12 who began fighting at age 16. According to SSNP officials, their movement includes people of all sects, including Sunni Arabs. The applicant's evidence that the SSNP recruited young people as it was easier to gain their permanent allegiance at a young age, and that the SSNP promoted itself as embracing all sects is consistent to country information. In his written and oral evidence, he was also able to identify the founding father of the SSNP, refer to the violent tactics used by them, outline the 2008 attack on the SSNP's office in Halba by the FM and describe the SSNP logo to an extent, and his evidence on these aspects is broadly consistent with country information including from Foreign Policy, Jadaliyya, and Agence France Presse. I consider his knowledge of these aspects to indicate he has at least a basic familiarity with the SSNP. I accept that in 2008 the SSNP office in Halba came under attack by a rival political party the FM.
14. The applicant claimed that he joined the SSNP at about age [age] as many of his friends similarly were joining. He claimed he no longer wished to be a member of the SSNP after one year, due to realising that the policies it initially emphasised to new recruits of being all embracing and peaceful, were starkly in contrast to the later demands made that members engage in violent and illegal activities. However, I have doubts that the applicant had any material or substantive engagement with the SSNP or was ever a member. The evidence suggests the applicant has embellished his claims about his level of involvement with the SSNP, their level of interest in him, his interactions with them, and the claimed threats, violence or intimidation by the SSNP against him. I consider his claim that he was called to fight during the Halba incident lacks credibility. As noted, the 2008 attack on the SSNP's office in Halba by the FM is supported by country information. In 2010 Jaddilya indicated that the SSNP had a weak presence in the north of Lebanon, Halba was a small, majority Sunni town

that supported the FM and that the clashes lasted a day. It is plausible that being outnumbered and under attack, some SSNP members may have called on other members to assist in fighting. Country information including from the International Foundation for Electoral Systems and Foreign Policy also indicates the SSNP has both a military and political wing. However, I do not accept the applicant would have been called to fight. At the PV interview he indicated it was only in about 2010, after the 2008 Halba incident, that he attended weapons training with the SSNP. I do not consider it at all credible that he would be called to fight despite being untrained. When asked by the delegate, he was unable to provide the name of the military wing of the SSNP. This indicates he was not associated with the SSNP's military wing and I also consider it doubtful he would be unaware of this information if he were a SSNP member for many years, as claimed. Even if he had already received weapons training by then, he said that while he was being trained he pretended he did not know how to handle the weapons and that he was afraid to use them. In any scenario, I consider it highly doubtful that he would be selected and called to assist in an armed fight or would be viewed as at all useful.

15. I also consider the applicant's claim, raised for the first time at the PV interview, that he was twice detained by the SSNP, to lack credibility. He claimed he was detained after he failed to fight during the Halba incident and again for not attending a protest. He did not mention these claims in his statement. At the PV interview, the delegate referred to the applicant's claims in his statement and advised him that all the information he had provided in his application and at the PV interview would be assessed. In his statement, after mentioning the Halba incident, he referred to being called to the SSNP office in Tripoli the next day and being yelled at. He made no mention of being incarcerated for 24 hours. The statement was prepared with legal assistance and reasonably detailed and specific on the consequences of his failure to attend the Halba fight. I do not consider the note on the statement that it may include errors or omissions based on the limited time devoted to its' preparation (three hours) to explain such significant specific omissions of the applicant's claimed detention after the Halba incident or even his second claimed detention for not attending a protest, given also the significance of such claims.
16. Due to these credibility concerns, I do not accept the applicant was called by a SSNP member to join in the Halba fight or faced any consequences as a result of not showing up or was ever detained by the SSNP. Owing additionally to his vague testimony at the PV interview about what his weapons training with the SSNP involved, I do not accept that he received any such training.
17. Moreover, as the applicant's claim of distancing himself from the SSNP but not directly leaving them due to fear is largely premised on doing so after failing to show up to the Halba incident as outlined, a claim which I do not accept, I also significantly doubt that he was ever required to avoid the SSNP or was of any such interest to them or had any level of involvement with them such that he had to do so. At the PV interview, he was unable to provide any convincing reason for why he was valuable to the SSNP. Asked whether he had specialist skills, knowledge or connections of value to them, he referred to helping them carry weapons and shooting. However, as outlined, I do not accept he was ever trained by them. Furthermore, his claimed attendance of SSNP meetings weekly for three or four hours, ten to fifteen times a year, for a period of about three years, is entirely unsupported by his lack of deeper understanding of the SSNP. While the applicant was able to answer some basic questions about the SSNP and demonstrated a basic level of knowledge of the activities of the SSNP, his evidence otherwise lacked the greater depth or detail that may be expected by a former member of several years. At the PV interview, he struggled to provide meaningful answers and came across as vague in response to questions regarding his deeper knowledge

of the SSNP's goals and aims. I do not consider his responses to indicate a level of knowledge that would be commensurate with three years of attending SSNP meetings but instead at most a superficial and briefer level of exposure to or engagement with the SSNP. For instance, asked about whether the SSNP taught him about their goals and aims, he said it was all a lie, there were no goals. Asked again whether they taught him their aims, he said they did so for the first month but once they signed and joined the SSNP, the SSNP stopped caring for anything except carrying weapons and demonstration participation. His oral evidence on his participation at protests was similarly vague and lacking in depth.

18. The applicant also claimed that joining the SSNP meant he was bound to remain with them similar to a contract and that due to his oath to them, leaving was not an option. He claimed they had all his details from when he signed up, and they would threaten people at their meetings. Although in his statement he referred to hearing about the consequences for other people who had tried to leave the SSNP he did not give any specific detail or illustration of this or expand on this at the PV interview. The country information before me does not indicate that ordinary members cannot revoke membership with the SSNP or disengage with the SSNP's activities. DFAT in 2019 indicates that although an unclear number of Lebanese supporters of the Syrian government travelled to Syria to fight in the civil war and groups such as the SSNP had recruited fighters, DFAT was not aware of any reports that they had done so forcibly. DFAT assessed that recruits were motivated by either ideology or financial considerations. There is a lack of credible evidence as to why the applicant was of particular interest or use to the SSNP, or any other credible reason why he would feel threatened or compelled to continue any claimed engagement with them given he states around a year later he no longer wished to remain involved with them and that he found them extreme in their views and actions, which he disagreed with.
19. Overall, while I am prepared to accept that the applicant, together with his friends, may have had a minor engagement with the SSNP I am not satisfied that he became a SSNP member or had any substantive involvement with them. I do not accept he attended their meetings for three years or protests as claimed or was closely affiliated with them in any way. I am not satisfied he was of any particular importance or interest to the SSNP or that the SSNP took any interest in his activities or lack thereof with them. I am not satisfied he was personally threatened or harmed by the SSNP. I am also not satisfied he was ever required to use any tactics to avoid the SSNP or was or is bound to them for life in any way.
20. I am also not satisfied the applicant is of any current interest to the SSNP either. In his statement, he claimed his mother informed him people had been asking about him and his whereabouts since he came to Australia. He has not at all expanded on this and when asked at the PV interview whether SSNP members had contacted his family, he said no. He did not indicate that anybody else asked about him either. I do not accept that since being in Australia, people have asked about him in any adverse way. Asked at the PV interview whether anything happened to his family members due to his claimed issues with the SSNP, he also said no. Asked whether the SSNP had since forgotten about him, he referred to them not forgetting anything and that everything was recorded. Asked why he felt they were after him now, he said he did not know. It has been approximately 14 years since he said he joined the SSNP as a minor. I am not satisfied he was ever a member with them or had more than a minor engagement with them. It has been approximately six years since he departed Lebanon. Overall, I consider his claim of any ongoing interest to the SSNP to be lacking in credibility. I am not satisfied the applicant faces a real chance of any harm from or in connection with the SNPP.

21. The applicant has consistently claimed he managed to depart Lebanon legally with his genuine passport and I accept this and accept, on the basis also of DFAT information that he was able to do so likely because he was not of any interest to the Lebanese authorities for committing any crime or for any other reason. I am not satisfied he faces a real chance of any adverse interest by the Lebanese authorities for any reason.
22. The applicant also claimed to fear harm as a Sunni Muslim from Shia Muslims and Hezbollah. According to the Immigration and Refugee Board of Canada Research Directorate in November 2011, Hezbollah is a Shia Muslim political group with a militant wing, who conduct arrests, investigations and detentions in a number of zones under its control. The Lebanese Centre for Human Rights indicated that persons suspected of undermining the resistance to Israel would be of interest to Hezbollah. The Director of the Carnegie Middle East Centre in Beirut indicated that Hezbollah did not generally threaten or interfere with people on an individual basis unless the person were a security threat to them or had done something to one of their members. There is no country information before me to indicate that Hezbollah has any stronghold or area under its occupation where the applicant resides in the North of Lebanon. DFAT information in 2019 indicates Hezbollah exercises control particularly in South Lebanon, southern Beirut and parts of the Beka'a Valley. DFAT information overall indicates that those who are perceived to be genuine threats to Hezbollah would be of interest. The applicant has not raised any credible evidence that would suggest he would be perceived to be an adversary to Hezbollah and even accepting his past minor engagement with the SSNP, country information from the Political Handbook of the World indicates that the SSNP and Hezbollah have historically supported each other. Asked at the PV interview about whether any of his family members had been harmed by Hezbollah, he said no.
23. Moreover, according to Middle East Monitor and DFAT North Lebanon is majority Sunni. There is no country information before me that reports any recent and ongoing incidences of any clashes or tensions between Shias and Sunnis in Akkar, from where the applicant originates. In 2019 DFAT also indicated that violent clashes with religious overtones have been less common in Lebanon in recent years, that Lebanese authorities are committed to preventing violence between religious communities and that members of recognised religious groups do not face any official discrimination on the basis of religion. The applicant has not otherwise expanded on why he would face harm from Shia Muslims more broadly. He has also not raised any credible evidence of ever previously being of any interest to or at threat or risk by Shia Muslims or Hezbollah in Lebanon during his lifetime there.
24. Overall, I am not satisfied that he faces a real chance of any harm from Shia Muslims or Hezbollah in Lebanon.
25. The applicant has consistently claimed that in around 2016 his brother was shot and killed in his home in Lebanon by unknown perpetrators, which I accept. There is no credible evidence before me to indicate that the applicant faces a real chance of any harm by the same unknown perpetrators.
26. There is no credible evidence to indicate why or the circumstances under which his brother was killed in 2016 and whether or not this was a targeted incident towards his brother or due to broader insecurity. DFAT details that Lebanon faces a range of security challenges and violent incidents related to the Syrian conflict have occurred across Lebanon in recent years including in Beirut and Tripoli. Past country information including from The National in 2016 indicated a crackdown on terror cells by the Lebanese army including in Akkar and that Akkar was among the areas of Lebanon that had been a flashpoint for jihadi activity. However, there is a lack of credible evidence before me to indicate ongoing generalised insecurity in

Akkar more recently and The National indicated that improved cooperation between various Lebanese intelligence services and foreign intelligence had significantly curbed terror groups' ability to operate in Lebanon. Although DFAT in 2019 reported some increased tensions between Sunnis and Alawites in nearby Tripoli neighbourhoods, which escalated in the early stages of the Syria conflict, Lebanese authorities thereafter implemented an April 2015 security plan that re-established a Lebanese Armed Forces (LAF) presence in the area and DFAT understands this succeeded in significantly reducing the number of serious incidences of communal violence. The information indicates that the Lebanese authorities are committed to preventing violence of this nature, which has become less common in recent years. The applicant has not raised any credible evidence that he was affected by the broader security situation during his time in Lebanon. Nor has he raised any credible evidence that members of his family have been affected by the broader security situation for the approximately six years since he left Lebanon.

27. The applicant also claimed he will be unable to survive in Lebanon due to the conflict there and a lack of employment. DFAT in 2019 reported that members of recognised religious groups who are in the minority in a particular geographic area may face low-level societal discrimination, which may include being precluded from access to employment or housing but unlikely to include violence. The applicant's area is a Sunni majority area and the applicant is Sunni. Moreover, I note the applicant together with his brother has opened up a [business] in Australia and he claimed that they were in the process of opening up a second [business]. He appears to have acquired additional employment and business skills since his time in Australia. I accept as submitted that he and his brother in Australia together send financial support to their family members in Lebanon and to his blind father and his mother. There is no credible evidence before me to indicate his brother's financial support to his family members would cease on the applicant's return to Lebanon. He also has three brothers in the Lebanese army in Lebanon. His family owns their home in Lebanon and he indicated his relationship with his family members was good. His PV application indicates his consistent employment [in Workplace 1] in Lebanon from 2007 to May 2013. He has not indicated he was precluded from or suffered in accessing employment or in his employment conditions for any reason other than general poor economic conditions/conflict while in Lebanon. Nonetheless, DFAT in 2019 indicated unemployment as a major problem in Lebanon, particularly for young people and in 2017 the labour minister estimated the overall unemployment rate as 25 per cent. Competition for low-skilled jobs is particularly a problem in areas that include the north. Due to the Syrian crisis, an additional 250 000 to 300 000 Lebanese citizens, mostly unskilled youth, became unemployed and economic conditions across Lebanon have been worsening. I accept the applicant may face challenges in finding employment due to the economic conditions in Lebanon. However, given the evidence before me, I am not satisfied these challenges would threaten his capacity to subsist or otherwise constitute serious harm or involve systematic and discriminatory conduct. I am not satisfied the applicant otherwise faces a real chance of any serious harm in Lebanon due to broader insecurity or generalised violence.
28. I am not satisfied that the applicant has a well-founded fear of persecution in Lebanon.

Refugee: conclusion

29. 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

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

Real risk of significant harm

31. 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.
32. I accept the applicant may face challenges in finding employment due to the economic conditions in Lebanon. However, based on the factual findings and country information outlined above, I am not satisfied this reaches the threshold required to establish significant harm. I am not satisfied this would involve an act or omission that could reasonably be regarded as cruel or inhuman in nature, severe pain or suffering or extreme humiliation, as required by the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. It does not amount to the death penalty or arbitrary deprivation of life. I am not satisfied that there is a real risk the applicant will face significant harm on return to Lebanon for this reason.
33. In relation to the remainder of the applicant's claims, I have found there is not a real chance the applicant will face any harm in Lebanon. The same standard applies in assessing real chance and real risk. Based on the factual findings and country information outlined above, I find that the applicant will not face a real risk of significant harm in Lebanon.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.