



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON
IAA reference: IAA19/06913

Date and time of decision: 23 August 2019 09:05:00
S MacKenzie, 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 citizen of Lebanon. He arrived in Australia [in] June 2013 as an unauthorised maritime arrival. On 13 September 2017 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 29 July 2019, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Lebanon.

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). No further information was received by the IAA.

Non-attendance of SHEV interview / Inability to contact applicant

4. On 24 June 2019, the Department of Home Affairs sent an invitation to the applicant to attend an interview in relation to his SHEV application. The invitation was sent to the applicant's postal address (as recorded on his SHEV application) and notified the applicant that the interview was scheduled for 17 July 2019. The applicant was advised that if he was unable to attend the SHEV interview that the Department should be contacted. He was also advised that if he did not attend the SHEV interview the application would be decided on information already provided. The applicant did not attend the scheduled SHEV interview and nor did he contact the Department.
5. According to the delegate's decision, the Department attempted to contact the applicant on mobile telephone numbers provided 'in association with his protection via application' both prior to and following the scheduled SHEV interview. Attempts to call were made on 16 July 2019 and 23 July 2019; however, the numbers were disconnected. There are two mobile telephone numbers recorded on the SHEV application, one for the applicant and one for his de facto partner. There is a third mobile telephone number recorded on the Department's correspondence to the applicant dated 20 September 2017 acknowledging the valid lodgement of his SHEV application. An email address is also recorded on the SHEV application form, but as noted by the delegate the applicant recorded that he did not wish to receive correspondence to that address. The email address appears to belong to his then de facto partner.
6. On 29 July 2019, the delegate decided the SHEV application without further contact with the applicant. The delegate also wrote to the applicant advising him that his decision had been referred to the IAA. He was advised to notify the IAA and the Department if his contact details had changed. He was also advised that he could provide information to the IAA.
7. On 2 August 2019, the IAA sent the applicant an 'Acknowledgement of Referral' letter (IAA acknowledgement letter) and a copy of the Practice Direction for Applicants, Representatives and Authorised Recipients (Practice Direction) by post to the last known address. The information sent advised the applicant that he could provide a written submission to the IAA and new information that may be considered in exceptional circumstances.

8. On 15 August 2019, the IAA attempted to contact the applicant on the mobile telephone number recorded on the SHEV application to confirm whether he had received the IAA acknowledgement letter and Practice Direction. However, the number was disconnected.
9. On 16 August 2019, the IAA received by return mail the correspondence sent to the applicant on 2 August 2019. It is marked return to sender and states that the applicant is no longer at the address. Later on 16 August 2019, the IAA attempted to contact the applicant on the mobile telephone number recorded on the Department's correspondence dated 20 September 2017. However, that number was also disconnected. Following this, the IAA contacted the Department to confirm the applicant's contact details. The Department confirmed that the contact details held by the IAA were the same as on its systems.

Consideration of s.473DC

10. Given the applicant failed to attend the scheduled SHEV interview to discuss his protection claims, I have considered whether to exercise my discretion under s.473DC to obtain new information from him.
11. On 19 July 2016, the Department wrote to the applicant inviting him to apply for a protection visa. The letter encouraged him to apply within 28 days and stated that he could apply within 60 days without requesting an extension. He was also advised that he must advise the Department about any changes to his contact details and address as soon as possible. The applicant did not lodge his application within the specified timeframe and nor did he appear to respond to that letter requesting an extension. On 9 June 2017, the Department again wrote to the applicant advising that if he intended to apply for a protection visa he must do so by 30 September 2017. A further letter was sent on 8 September 2017 advising that no application had been received. Five days later, on 13 September 2017, the applicant lodged his SHEV application. The postal address recorded on the application form was the same address recorded on the Department's systems. In its acknowledgment letter to the applicant dated 20 September 2017, the Department again advised him that he must notify about any changes to his contact details and address as soon as possible. On 25 October 2017, the Department wrote to the applicant asking him to provide evidence that his child is an Australian citizen as indicated on his SHEV application. No response appears to have been received by the Department.
12. It appears that the Department's attempts to contact the applicant in writing and by telephone in June and July 2019 failed because the address and contact numbers earlier provided were no longer valid. It is also apparent that the applicant has not notified the Department of these changes despite previous requests to do so both prior to and following application lodgement. Nor did he appear to respond to the Department's letter to him dated 25 October 2017, which was sent about one month following the lodgement of the application. It further appears that he has not contacted the Department to follow up on the status of his application in what has been now almost two years since it was lodged.
13. The applicant was assisted in preparing his SHEV application by [Lawyers]. He provided comprehensive written claims. He also provided oral evidence in two interviews with the Department in June and July 2013 (the entry interviews). In his written statements, he acknowledged there were discrepancies between the information provided between his SHEV application and entry interviews and he provided reasons for this.
14. I am satisfied that the applicant has been given an opportunity to engage in the SHEV application process, present his claims for protection, and respond to issues. Considering the

particular circumstances of this case, including the unsuccessful attempts to contact the applicant, I have decided not to exercise my discretion under s.473DC to obtain new information from him. I accept the applicant may not be aware of the delegate's decision and/or referral to the IAA. The IAA has attempted to contact the applicant by post and by telephone to no avail. In all the circumstances, I consider it reasonable to proceed to make a decision.

Applicant's claims for protection

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

- The applicant is a Lebanese male from [Village] in Akkar Governorate;
- In 2013, he came to the adverse attention of the [Surname] family when it was discovered that he was in a pre-marital sexual relationship with one of its members;
- The [Surname] family hired hitmen and a bounty was offered in order to ascertain the applicant's hidden location;
- The applicant's brother was murdered by the [Surname] family;
- The police refuse to investigate and may have been bribed by the [Surname] family;
- If returned to Lebanon, the applicant fears he and/or his family will be killed by the [Surname] family.

Refugee assessment

16. 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

17. 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.

Identity

18. Since his arrival in Australia, the applicant has consistently claimed to be a Lebanese citizen from [Village] in Akkar Governorate. He has also consistently identified as a person of Arab ethnicity and of the Sunni faith. On the evidence before me, I accept, as did the delegate, that the applicant's identity is as claimed. I find Lebanon to be the receiving country for the purpose of this decision.

Events in Lebanon

19. In support of his SHEV application, the applicant provided a 'personal statement' outlining the reasons why he left Lebanon in 2013. The statement is undated but appears to have been written in around mid-2014. The personal statement can be summarised as follows:

- a. In May 2013, the applicant had sex with his girlfriend of three years. She is a member of the [Surname] family;
- b. When his girlfriend returned to her home, her mother immediately noticed something was wrong and got her to admit to what had occurred. The mother then told the father;
- c. Following this, the applicant's girlfriend's father severely beat her. She was hospitalised with bruising and six broken bones;
- d. When the applicant's own father found out, he slapped him three times and sent him to hide at his Aunt's house in Tripoli;
- e. The applicant's girlfriend's father and relatives came to the applicant's house armed with machine guns and pistols. The applicant's father called the police and some village seniors, who both came immediately;
- f. The applicant's father attempted to resolve the issue by offering the girlfriend's father money and suggesting marriage for their children. The offer was refused and the girlfriend's father said that the applicant must be killed. In response, the applicant's father kicked the girlfriend's father out of his house;
- g. Later that night, persons shot at the applicant's house killing his brother M;
- h. The applicant's father contacted his son (the applicant) by telephone and told him to leave Lebanon as nobody could protect him. He also told him that the [Surname] family had put a price on his whereabouts;
- i. For the sake of his and his family's life he left Lebanon. He has been threatened with death by a big family and the Lebanese government and police are unable to protect him.

20. In support of his SHEV application, the applicant also provided a statutory declaration dated 5 September 2017 (2017 statement). In the statement, he stated that he continued to rely on his personal statement which provided a thorough explanation as to why he fled Lebanon and why it is unsafe for him to return. The 2017 statement included clarifications and further information not included in the personal statement, which can be summarised as follows:

- a. When his girlfriend's father and relatives came to the applicant's house armed with machine guns and pistols, the applicant was still at home hiding in the toilet;

- b. After his brother was killed, the applicant's father called the police. The police advised there was nothing they could do because the perpetrators had run away. The applicant's family advised the police that the [Surname] family were responsible, but the police left the house and his family have heard nothing more from them;
 - c. The [Surname] family are quite wealthy and have significant property in the local area and in Tripoli and Beirut. The applicant's family believe the [Surname] family may have paid the police to not investigate his brother's murder;
 - d. After he went to live with his Aunt, the applicant discovered that the [Surname] family had paid hitmen [money] to find him and return him to his village;
 - e. If returned to Lebanon, the applicant fears he will be killed by the [Surname] family. He fears that if he returned and the [Surname] family were aware but could not find him, this would be akin to teasing the family and they would kill members of his family until he handed himself over to be killed. His family are currently safe because he is in Australia and away from the issues at home. If he returned to Lebanon he would be forced to kill himself due to the problems it would cause his family.
21. In an interview with the Department on 21 June 2013 (entry interview part one), the applicant was asked about himself, his family, his life in Lebanon, and why he came to Australia. According to the transcript of that interview, the applicant stated that:
- a. He lived in his village in [Akkar], until [May] 2013;
 - b. He does not have a spouse, partner, or previous partner;
 - c. His brother M died of [a medical condition] in around 2005;
 - d. He left Lebanon due to a war between Syria and Lebanon.
22. In a further interview conducted on 4 July 2013 (entry interview part two), the applicant stated that:
- a. His last address in Lebanon was his village, where he had lived since birth, and that he had never lived anywhere else;
 - b. When leaving Lebanon, he departed from his home in Akkar by taxi to Beirut Airport, before flying to [Country].
23. Having considered the applicant's evidence in its entirety, I have concerns that his claims advanced in his SHEV application are a true reflection of events in Lebanon. In particular, I find his evidence in the entry interviews not particularly supportive of his written claims.
24. The applicant addressed what he described as 'discrepancies' in his evidence. In his personal statement, he indicated that he was scared to mention the truth in the entry interviews. He said that since he had been 'refused' he felt that he had to reveal everything. In his 2017 statement, he reiterated his fears during the entry interviews. He said he was scared, nervous and afraid. He was tired from a long journey. He was embarrassed about the true reason he left Lebanon. He is normally quite a shy person and does not like telling personal details about himself. He said that although it is true that he lived in a war zone, and a reason for him to leave Lebanon, the main reason was due to the events involving the [Surname] family.

25. I am not persuaded that the reasons provided for the differences in his evidence satisfactorily explain the discrepancies. For example, I do not accept that if his brother had been killed in 2013 that he would have stated in entry interview part one that he died (from [a medical condition]) in around 2005. Furthermore, if he had been living in Tripoli for a number of weeks prior to his departure from Lebanon I am not satisfied that his reasons, including his claimed fear, explain why he would have advised in the entry interviews that he had never lived anywhere other than his village in Akkar, and that he had lived in his village up until the day he departed the country. I also found his detailed account in entry interview part two about how he departed his village in a taxi to Beirut Airport not supportive of his claim that he departed Lebanon from Tripoli because he was in hiding there. Even accepting the applicant may have been embarrassed or did not feel comfortable talking about things that happened to him during the entry interviews, I am not satisfied this embarrassment would outweigh a desire to tell the truth about death threats from a powerful family, particularly in circumstances where he claims to have left Lebanon and travelled by boat to Australia to seek asylum because he feared he and his family were at risk of being killed. I also find that he did not allude, even in general terms, to having had been personally targeted not insignificant. I further find his failure to mention his girlfriend of three years in entry interview part one problematic. Even if he had been in a sexual relationship which he was too embarrassed to mention, it is difficult to see how this led him not disclosing the existence of a girlfriend of three years. I also note the entry interviews were held one and three weeks after his arrival in Australia.
26. According to the transcript, the applicant was asked in entry interview part one when the last time something happened to him that made him decide to leave Lebanon. In response, he said that there had been an incident about one and half months ago in Tripoli where there was fighting on the road and people were killed. He also stated that he travelled to Tripoli for work. He confirmed in entry interview part two that he only ever had one job in Lebanon, at a [workplace] where he worked up until he left the country. However, in the SHEV application, the applicant stated that the [workplace] was in Akkar. According to his 2017 statement, Tripoli is around a one hour drive from his home in Akkar.
27. In his personal statement, the applicant stated that he is 'ready to get evidence from Lebanon to support [his] statements'. As noted above, this statement appears to have been written in around mid-2014 and yet nothing has been provided from Lebanon to evidence any of the claimed events or the existence of the [Surname] family.
28. As also noted by the delegate, no harm appears to have come to the applicant's family in connection with the claimed events of May 2013. Given the lengths the [Surname] family purportedly went to in order to locate the applicant, his claim that the [Surname] family would kill members of his family to force him to hand himself over if he returned to Lebanon, but not if he remained living in Australia, is unconvincing. Further, even accepting the existence of the [Surname] family, there is no credible evidence before me to indicate they would be aware of the applicant's departure from the country and, given the bounty and hitmen claims, I find it difficult to accept that his family would have not attracted adverse attention from them.
29. Having considered the applicant's evidence in its entirety, I am not satisfied that he was recalling a genuine personal experience. For these reasons, I do not accept he was involved in a pre-marital relationship in Lebanon, that he came to the adverse attention of another family, or that his brother was shot dead in 2013. I am not satisfied that the applicant faces a real chance of any harm in relation to the claimed events of May 2013.

Return to Lebanon

30. I accept the applicant's broadly consistent evidence that he left Lebanon in 2013 in part due to the country's conflict with Syria. Country information before me indicates that [Village] is a major town in the south of Akkar. In entry interview part one, he said he was affected by seeing people wounded and killed. He didn't mention these events in his personal statement, but in his 2017 statement he stated that his family lived near the Syrian border and that there was almost constant fighting in that area. However, he did not indicate that he feared harm on return to Lebanon in connection with war or conflict. In both his personal statement and 2017 statement, the applicant stated that he feared returning to Lebanon primarily in connection with the claimed events involving the [Surname] family. Although not raised as claims for protection, the delegate also considered whether the applicant faced harm from religious persecution and sectarian or political violence. He also considered whether the applicant could subsist on return to Lebanon.
31. According to the Department of Foreign Affairs and Trade (DFAT), the population of Lebanon is 95% ethnically Arab. DFAT is not aware of any reports of systematic discrimination or violence perpetrated against any groups with Lebanese citizenship on the basis of race or nationality. There is no indication from DFAT that Arabs in Akkar face harm on the basis of their ethnicity. DFAT estimate Lebanon's Muslim population at 54–58%, with Sunnis representing about half. Areas in the north of the country, like Akkar, are majority Sunni. DFAT noted increased tensions between religious groups in Tripoli that escalated into communal violence during the early stages of the conflict, but that since 2015 an established security presence in that area reduced serious incidents and that violent clashes with religious overtones have been less common across the country in recent years. DFAT assess that members of recognised religious groups do not face any official discrimination on the basis of religion, although some minority or unrecognised religious groups in particular areas may face low-level societal discrimination. There is no indication from DFAT that Sunnis in Akkar face harm on the basis of their faith.
32. According to DFAT, Lebanon has a diverse political landscape with a wide range of political views and ideologies reflected in its parliament and at other levels of government and society. DFAT assess that the Lebanese authorities generally respect the constitutionally-guaranteed freedom of assembly. There has reportedly been mistreatment of some persons involved in organised protests in recent years. DFAT also assess that persons who take to social media to criticise senior political figures or parties or well-connected individuals, the security forces, or prominent allies of Lebanon, may face harassment and violence. DFAT information also indicates that those who are perceived to be genuine threat to Hezbollah would be of interest.
33. DFAT assess that unemployment is a major problem in Lebanon, particularly for the young. The influx of Syrian refugees has led to increased competition for low-skilled jobs, particularly in the informal sector and in areas of high refugee concentration including in the north of the country. This was consistent with previous reporting by the Government of Lebanon and the UN Resident and Humanitarian Coordinator for Lebanon in a joint October 2017 report.
34. A 2014 United Nations Office for the Coordination of Humanitarian Affairs report stated that the security situation in Akkar was characterised by intermittent shelling and gunfire, mostly at night, in areas close to the northern border and in Wadi Khaled. There is no indication that the applicant's village was affected by the conflict at this time. Although not specific to [Village] or Akkar, in 2019 DFAT reports that Lebanon faces a range of security challenges including in connection to the conflict in neighbouring Syria which commenced in March 2011 and to tensions between Hezbollah and Israel; threats of terrorist attack from internal and external actors; politically-motivated violence due to civil unrest; and occasional incidents of communal

violence. The government maintains security checkpoints, primarily in military and other restricted areas. DFAT state that violent incidents have occurred across Lebanon in connection with the Syrian conflict, noting specific incidents in Beirut and Tripoli between 2012 and 2016.

35. I accept that the applicant is a Sunni Arab from the north of Lebanon. He has not claimed that he fears harm in Lebanon on the basis of his religious or ethnic profile, and on the information before me I am not satisfied that faces a real chance of harm on this basis. I also do not accept that on return to Lebanon the applicant faces a real chance of harm from sectarian and/or political violence. In entry interview part one he stated that neither he nor members of his family had ever been associated or involved with any political group or organisation and I accept this to be the case. The applicant has not claimed that on return to Lebanon he would seek to be involved in any protest or other activity that country information indicates may attract adverse attention. On the information before me, I am not satisfied the applicant faces a real chance of harm on this basis. There is a lack of credible evidence before me to indicate ongoing generalised insecurity in [Village] or the broader region. While I accept that the conflict in Syria spilled over into Lebanon since it began in 2011 and affected the north of the country in particular, the information before me indicates a lack of ongoing generalised insecurity or violence in connection with the conflict like the applicant described witnessing prior to his departure or like reported in the country information. The applicant has not claimed that members of his family have been affected by the broader security situation in the six years since he left Lebanon. Nor has he claimed to fear harm on this basis. While I accept the applicant saw fighting and casualties of war prior to coming to Australia, I am not satisfied he faces a real chance of harm in Lebanon due to insecurity or generalised violence.
36. While country information indicates unemployment is a problem in the north of Lebanon, the applicant has not claimed that on return he faces significant economic hardship, or that he will be denied the capacity to earn a livelihood or access to basic services that threatens his capacity to subsist. His consistent evidence, which I accept, is that he was employed as a long term [role] in Lebanon prior to coming to Australia in 2013. There are some differences in the applicant's evidence as to whether this employment was in Akkar or Tripoli; however, I find not much turns on this. Although the applicant has substantial family living in Australia, I note his immediate family remain living in Akkar. While I accept he may face challenges in finding employment due to the economic conditions in Lebanon, I am not satisfied his capacity to subsist will be threatened or that he would otherwise face serious harm on this basis.
37. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

38. 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

39. 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

40. 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.

41. Although he has not claimed to fear harm on this basis, I have accepted that the applicant may face challenges in finding employment due to the economic conditions in Lebanon. However, having considered his own circumstances and evidence discussed, I am not satisfied that this amounts to significant harm as defined in the Act. I do not accept it would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I also do not accept that it would involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering or that would cause extreme humiliation. I have concluded that the applicant will be able to subsist in Lebanon.

42. I have otherwise concluded that the applicant does not face a real chance of any harm in connection with the claimed events that transpired in Lebanon prior to his departure in 2013. I have also concluded that the applicant does not face a real chance of harm for any other reason including due to sectarian and/or political violence, due to his ethnicity, due to his religion, or due to insecurity and generalised violence. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm in Lebanon.

43. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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