



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

LEBANON

IAA reference: IAA19/06964

Date and time of decision: 12 September 2019 10:57:00

M Currie, 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 Lebanese citizen and an adherent of the Sunni faith. He arrived in Australia in June 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in September 2017. In August 2019, a delegate of the Minister for Immigration and Border Protection found that Australia did not owe protection obligations to the Applicant having found that the applicant's claims had shifted substantially over the duration of time he had been in Australia, and that he invented his claims for protection. On 9 August 2019, the applicant's matter was referred to the Immigration Assessment Authority (IAA). My task is to consider the applicant's claims for protection afresh. As this is a *de novo* decision, I am not bound by any earlier findings by the delegate.

### Information before the IAA

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

### Applicant's claims for protection

---

3. As noted earlier, the applicant's claims have evolved over the duration of his time in Australia. The applicant first arrived in Australia [in] June 2013, and was interviewed in July, around three weeks after his arrival (the Entry Interview). In September 2013, while still in immigration detention, the applicant submitted a one-page hand written statement to the Department (the September 2013 Written Statement). This statement added new elements to his claims. In September 2017, the applicant submitted his SHEV application; the application contained a written Statement of Claims which outlined in detail his claims for protection. The SHEV application also contained a number of new elements to his claims. Finally, the applicant attended a Protection Visa Interview with the Department in July 2019 where further claims were advanced. On each of these occasions, the applicant has advanced differing accounts of what happened to him in Lebanon.
4. There are some common points in every iteration of the applicant's claims. The applicant's common claims can be summarised as follows:
  - He is a Lebanese citizen who adheres to the Sunni faith. He was born in [Location], in the Akkar Province of Lebanon. He lived in the town of [Town], with his large family which included his parents, and [number] siblings (including stepsiblings). The applicant attended school, and later worked as a [occupation] in the [industry].
5. The applicant's claims from his July 2013 Entry Interview can be summarised as follows:
  - Due to his semi-rural upbringing, his large family and the influx of refugees from the Syrian Civil War, there was a lack of economic opportunities in Lebanon.
  - Due to ongoing troubles in Lebanon, the country was insecure and there was widespread conflict. There were many roadblocks and the applicant did not feel safe.
  - While the applicant did not cite any specific problems or events which happened to him; he did indicate specifically that nobody had threatened or shot at him. He said his

family paid for his travel to Australia. He departed Lebanon on a Genuine Lebanese Passport which was taken from him by smugglers in [Country 1].

- He came to Australia because this was a stable country, there were no problems in this country and there was equality.
6. The applicant's claims from his the September 2013 Written Statement can be summarised as follows:
- He departed his due to ethnic discrimination, killings and wars. He had sought refuge in Australia as this country is famous of justice, transparency and equity.
  - In Lebanon, members of a local Salafi party offered an amount of USD 5,000 to be a member of their party. He refused and thought that the Salafi's would have persecuted him if he ever encountered them again. He believed they were dangerous and so he sold his house and car and departed the country. He said he could provide a sales bond to prove his claim. He said he feared for his survival in Lebanon
7. The applicant's claims from his September 2017 SHEV application can be summarised as follows:
- In 2011, the applicant borrowed \$5,000 USD from a friend (F1) in order to invest the money in his [business]. F1 gave him the money, but said that he had to pay it back within several months.
  - The applicant's investment scheme did not perform as he expected, and he was unable to pay back the money to F1 within the agreed timeframe. F1 needed the money to support his wife and children and pressured the applicant to return it as soon as possible.
  - The applicant looked to secure the funds from an unidentified relative (R1) so he could pay back F1. He visited R1 at a coffee shop in order to borrow money. When the applicant arrived, R1 introduced the applicant to three other men who were also present. R1 lent the applicant \$5,000 USD which he used to pay back F1.
  - After R1 had lent him the money, he began to contact the applicant frequently and invited him to spend time with his friends (the three men from the coffee shop). R1 and his friends encouraged the applicant to be more religious, exhorted him to dress differently and to grow a beard and to stop interacting with women. The applicant realised that the men followed the 'Salafi' school of Islam. There were intolerant of other systems of belief and the followers of other faiths. The Salafi's were part of the Islamic State group and they want everybody in Lebanon to follow their brand of Islam.
  - After the applicant recognised that the men were Salafi, and he did not agree with their beliefs, he tried to distance himself from them. The men started to pressure him to pay back the money he had borrowed. Due to the influx of Syrian refugees in Lebanon, the applicant's business was not prospering and he was unable to return the money. The men told him that he had to pay back the money, or join the Salafi movement. He refused. The Salafi's began to threaten him and his family. They said they would kill his family if he did not return the money.
  - The applicant fled [Town] for Beirut. While in Beirut, the Salafi's continued to harass him on the phone. The applicant would return to [Town] on weekends and the Salafi's would harass him there.
  - After some time, the applicant as able to sell his house to an extended family member. He used the money to pay back the \$5,000 USD he owed. Several days after he paid

back the money, the Salafi's returned to tell him that the money he paid was not enough, now he had to pay interest. The applicant pointed out to the men that Interest was prohibited by their form of Islam, but they were still angry that he had failed to join the Salafi movement. They continued to threaten and harass him. On one occasion they met him on a local street and beat him.

- Smugglers did not take his Passport from him in [Country 1]. The [Country 1] police did. The smuggler came and secured his release from the [Country 1] Police.
  - He fears he would be forcibly recruited by Salafi's into Islamic State, or another Salafi group. He fears that Salafi's would kill him if he refused to join. He believes that the Government in Lebanon would not assist him and that nowhere in Lebanon would be safe.
8. The applicant's claims from his July 2019 Protection Visa Interview can be summarised as follows:
- The applicant was struggling financially. He met a group of older men who knew about his problems. They were more financially secure than he was, and regularly invited him out with them. They would pay his share of any costs. The men were Salafi's; he described the men as terrorists.
  - One day the men offered him \$5,000 USD if he was prepared to work for them. Initially he did not pay much attention to the work they were proposing since he was so entranced with the prospect of the money. However, the men wanted him to work as a spy/informer. They provided him with a list of names and addresses for government officials they were interested in. He was supposed to provide information to the Salafi's about these persons. He suspected that the Salafi's intended to use the information to attack the Government officials.
  - The applicant provided the Salafi's with false information about the Government officials and spent the money they provided him. When the men found out that the information he was providing was false, they demanded he repay the money within one month. He could not as he had spent it.
  - The applicant travelled to Beirut in order to earn some money but after five months, he had not made enough to repay them. When he would return home to visit his family during this period, the men would shout at him and beat him. On one visit to his family home, these men attacked him and broke his ribs. On another occasion, they broke his nose. They continued to threaten him and his family.
  - On one occasion the applicant was sitting on the balcony of his family home when he saw the men on the street. The men fired shots at the roof of the apartment building where the applicant had a small flat.
  - The applicant decided to leave Lebanon, fearing that he would not be safe. He sold his flat to the local Mayor for \$10,000 USD. Originally, he planned to go to [Country 2] and work there, but a colleague advised him not to travel to another Arab country, and suggested he travel to the West instead. The applicant agreed, and made his way to Australia.

### **Factual findings**

---

9. As part of his SHEV application, the applicant submitted copies of his Lebanese National Identity Card and his Lebanese Birth Certificate and translations of both documents. He has

also provided a copy of a Population Register Family from Lebanon. The information contained in these documents is consistent with the verbal identity information the applicant has provided throughout his time in Australia. The applicant has established his identity to my satisfaction. I accept that he is a Lebanese citizen who was born in [year]. For the purposes of this decision, I find that Lebanon is his receiving country.

#### **\$5,000 Debt, Salafi's, Spy/informer**

10. Country information before me does indicate that there are Salafist Groups that are active in Lebanon. The presence of these groups has expanded in the country since the withdrawal of Syrian forces in 2015. The Syrian civil war is said to have reinvigorated Salafism in Lebanon and there is genuine concern from the Lebanese authorities regarding the rise and influence of the Salafi movement in the country<sup>1</sup>.
11. The applicant's central claim is that he owes money to a group of Salafi men who he fears would harm him if he returned to Lebanon. However, as shown in my summary of his various claims, the applicant's claims about these men, the debt, his motivations, and the consequences of his actions in Lebanon have not been consistent. As was noted by the delegate, there are numerous discrepancies in the various accounts the applicant has provided between his arrival in June 2013 and his Protection Visa Interview in July 2019. These discrepancies relate to every aspect of his claim including the reason for his debt; who the debt was owed too; what happened to him; what he was required to do; who he sold his house too; how much he was paid and other issues. These discrepancies are, in most cases, inconsistent and contradictory. The applicant's claims have substantially shifted during the time he has been in Australia. His claims have steadily advanced from July 2013, where he came to Australia, principally for economic reasons, to July 2019 where he says that a terrorist group paid him to spy on certain government officials in Lebanon so that the group could attack them.
12. During his July 2019 Protection Visa Interview the delegate questioned the applicant closely about the reasons for his shifting claims. The applicant provided several reasons why his claims had shifted:
  - Early in his Protection Visa Interview he said that he provided his September 2013 Written Statement because another asylum seeker in the detention centre advised him that he should be honest about what happened to him in Lebanon and so the September 2013 was a more complete account of his claims
  - He said that a Data Breach by the Department, where information about his and other asylum seekers claims was published online lead to his holding back his claims. The data breach occurred in 2014.
  - He said that the 2017 SHEV application contained a complete summary of his claims. Later he said it did not.
  - Finally, he said that the claims he advanced in 2019 were a full account of his claims.
13. Like his shifting claims themselves, the applicant has provided inconsistent reasons for his shifting claims. To my mind these reasons are not logically coherent since:

---

<sup>1</sup> Benedetta, B, The Institute for National Security Studies, "Lebanon and the Rise of the Islamic State", 25 January 2016, CIS38A80121191 & Kirkby, A, Journal of Defense Studies and Resource Management, "The Lebanese Sunnis: A Community in Disarray", 01 January 2013, CIS26670

- He said that while he was in immigration detention he was advised by another asylum seeker that he should prove a full account of his claims, and so he submitted the 2013 Written Statement to the Department. This reasoning implies that the account provided at that time would contain the full truth about what happened to him. But later he said that this was not a full account and his claims have substantially shifted since September 2013.
  - He said he concealed some of his claims in 2013 because of the data breach, but this occurred in 2014 well after he was interviewed (July 2013) and after he submitted his September 2013 Written Statement. It could not have been factor in his decision to conceal his full claims.
  - He said that the 2017 Statement of Claims which accompanied his SHEV application was a full account of his claims. However, later in the same interview, he advanced more claims that were new; most notably that he was a paid spy/informer for a terrorist group who he had intentionally deceived.
14. Like the delegate, I found the applicant's account at interview to be problematic. I have listened to a recording of his interview and I found him to be vague and evasive. He was unable to provide convincing details for any of his claims. His various accounts lacked consistency and he repeatedly contradicted his earlier statements. I thought that his answers were obfuscatory throughout the interview.
15. On the whole, I was not satisfied that this applicant has been entirely forthcoming at any time since his arrival in Australia. There are many discrepancies in his claims and in the reasons he has advanced. To my mind, these discrepancies are not minor, or of the sort which can be readily explained by the imperfections of human observation or memory, or are otherwise explicable. I have considered and weighed the applicant's claims carefully and I do not think his various accounts can be reconciled. I simply do not accept his claims about the \$5,000 USD debt; the Salafi men and spying are truthful. I do not accept that he had such a debt. I do not accept the applicant owed money to, or interacted with any Salafi men. I do not accept that any Salafi men threatened him or his family, or beat him, or shot at his roof. I do not accept that the applicant even knew any Salafi men. I do not accept that the applicant was ever employed as a spy/informer by anybody. I do not accept that he had a profile of interest to any Salafi or terrorist group in Lebanon. He has not claimed, nor do I accept that he had a profile of interest to the Lebanese authorities. I conclude that the applicant fabricated his entire account of these events. I find that the applicant came to Australia largely for economic reasons.
16. I also conclude that the applicant has demonstrated a clear willingness to fabricate claims over an extended period where he believes that this would be advantageous. On the evidence before me, most of what the applicant has told Australian authorities since his arrival, and all of his principal protection claims, have been false; part of a campaign by him to improve his chances of obtaining a protection visa. He has, in my view, been deceptive, manipulative and unscrupulous.

### **Refugee assessment**

---

17. 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**

18. 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.
19. The applicant lived in the town of [Town] in the Akkar Province of Lebanon. His large family still resides in [Town]. I conclude that if returned to Lebanon, the applicant would reside [Town] with his family.
20. Having found that the applicant's principal claims for protection have been fabricated by him, I am only left to deal with his residual claims. That Lebanon is not secure, that he lacks employment opportunities, and that he is affected by the 2014 data breach.

### *Security & Employment*

21. When the applicant first came to Australia, he cited poor security and employment opportunities in Lebanon as part of the reasons for his departure. Though he later substituted other claims in lieu of these, I have found that his other claims are fabricated and concluded that the applicant came to Australia principally for economic reasons. He has not resiled from his earliest claims.
22. According to DFAT credible estimates of Lebanon's current population range from 5.9 million to 6.2 million (these estimates include large numbers of Syrian and Palestinian refugees who reside in Lebanon). The number of Lebanese citizens is estimated to be around 4.5 million. The majority of the population lives on or near the Mediterranean coast, particularly in or around the capital Beirut, which has an estimated population of 2.4 million. Other major cities include Tripoli, Sidon, and Tyre. Lebanon's population is heavily urbanised. Arabic is the official language, although English, French, and Armenian are also commonly used<sup>2</sup>.
23. Lebanon has a free-market economy and a strong laissez-faire commercial tradition though arbitrary licensing decisions, complex customs procedures, high tariffs and fees, archaic legislation, and inadequate intellectual property rights protection are said to be problems in

---

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Lebanon", 19 March 2019, 20190319100208

the country. The economy is service-oriented: key sectors include banking, real estate, and tourism<sup>3</sup>.

24. Lebanon is said to be one of the countries most affected by the Syrian Civil war due to its proximity (adjacent to Syria); the large influx of Syrian refugees and the sectarian nature of the conflict which sees Shia Muslims mostly supportive of the Syrian Government and Sunni's opposing it<sup>4</sup>. Turmoil in Lebanon over recent years is said to have led to a stronger sense of unified Sunni identity<sup>5</sup>.
25. Lebanon faces a number of security challenges including external threats related to the Civil war in Syria and tensions between Hezbollah and Israel; terrorism; and other incidents politically motivated and sectarian violence due to civil unrest. The government maintains security checkpoints in key areas<sup>6</sup>. Several violence incidents related to the civil war in Syria have occurred in Lebanon over recent years and security forces have clashed with militants in the Beka'a Valley (South East of [Town]).
26. Reports before me published in the *Fair Observer* indicate that Akkar Province, where I have found the applicant would return is an primarily agricultural region with around 80% of the population employed in some type of farming related occupation. Poverty is a problem in Akkar, with a highly level of unemployment. The economy of the Akkar is heavily dependent upon Tripoli as its major market town. Infrastructure in the Province is poor<sup>7</sup>. The majority of the Akkar's population is Sunni Muslim like the applicant.
27. According to DFAT, unemployment is a major problem in Lebanon, especially amongst younger Lebanese. A number of problems contribute to high unemployment including declining work opportunities abroad, many returning international workers, labour market inefficiencies and the influx of Syrian refugees. These factors are said to be a push factor for departures from Lebanon<sup>8</sup>.
28. In weighing the evidence before me, I give preference to the material by DFAT which has been prepared specifically to for the purpose of assessing Asylum decisions from Lebanon. The evidence before me indicates that there are some security issues and economic problems in Lebanon like those claims made by the applicant; but in general, Lebanon is secure and stable. On the whole, I am not persuaded by the applicant's claims. Though he say security is a problem, he has not put forward any specific security incident in which he had any involvement except those I have not accepted above. He has not indicated that any of his large family ([number] siblings) or his parents, or anybody else has faced any security problems in Lebanon. I am not satisfied that security issues or instability would lead the applicant o face a real chance of harm in Lebanon. I have already found that the applicant was not of interest to the Lebanese authorities or to any Salafi group at the time of his departure. I do not accept he would be of interest to them now.
29. The applicant says that he was [occupation] who works in the [industry]. He said he formally managed his own [business] in Akkar. In his SHEV application, he indicates that since 2015 the applicant has been employed in a number of [roles] in Australia. While unemployment is

---

<sup>3</sup> DFAT, "DFAT Country Information Report: Lebanon", 19 March 2019, 20190319100208

<sup>4</sup> Benedetta, B, The Institute for National Security Studies, "Lebanon and the Rise of the Islamic State", 25 January 2016, CIS38A80121191

<sup>5</sup> Kirkby, A, Journal of Defense Studies and Resource Management, "The Lebanese Sunnis: A Community in Disarray", 01 January 2013, CIS26670

<sup>6</sup> DFAT, "DFAT Country Information Report: Lebanon", 19 March 2019, 20190319100208

<sup>7</sup> Fair Observer Fair Observer <<http://www.fairobserver.com/content/about-us-0>> Accessed 13 November 2013

<sup>8</sup> DFAT, "DFAT Country Information Report: Lebanon", 19 March 2019, 20190319100208



high, this applicant's travel to Australia and successful attempt to start a new life he leads me to conclude that he has the skills and resilience to prosper in difficult situations. I conclude that the applicant would be able to obtain work in Akkar.

#### *Data breach*

30. The applicant claims that in 2014 he was subjected to the Departmental data breach. He fears that personal information about him and information about his claims for protection has been released online and that he would face harm as a consequence.
31. The Department has advised all affected parties, including the applicant, that the information released during the 2014 data breach was not easily accessible, was only available for a short time and included the applicant's name, date of birth, gender, nationality and some details about their period of immigration detention in Australia. Affected applicants have also been advised that no information about any specific protection claims made by them was available during the breach. The data released during the breach is information that would be immediately apparent to Lebanese authorities should the applicant be returned to Lebanon (that is, information about his identity and that that he had sought asylum in Australia) and does not contain any information from which the scope of the applicant's claims could be inferred. In these circumstances I am not satisfied that the applicant would face a real chance of any harm arising from the 2014 data breach or from his attempt to claim asylum in Australia if returned to Lebanon. In the circumstances, I am also not persuaded that the Departments Data Breach would contribute to his political profile in Lebanon.

#### **Refugee: conclusion**

32. 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**

---

33. 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**

34. 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.

35. I have not accepted any of the applicant's principal claims for protection. I have found that his residual claims, that Lebanon is not secure; that he would be unable to obtain employment, and that he would be affected by the data breach would not lead to any harm. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that the applicant would not face a real risk of significant harm arising from any of these issues either.

**Complementary protection: conclusion**

36. 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.