



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA19/07100

Date and time of decision: 10 October 2019 15:16:00

J McLeod, 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 applicant claims to be a Sunni Muslim [occupation 1] from , Lebanon who was threatened after refusing recruitment advances by militia groups. He arrived in Australia [in] May 2013 and applied for a Safe Haven Enterprise Visa (SHEV; Protection Visa or 'PV') on 12 July 2017. A delegate of the Minister for Immigration (the delegate) found the majority of the applicant's claims for protection were not credible, and that he would not otherwise face a real chance of persecution or a real risk of significant harm on return. He refused the grant of visa on 29 August 2019.

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) ('the review material').
3. This matter was referred to the IAA on 3 September 2019 and on 4 September 2019 the IAA wrote to the applicant advising him of this, and that he should quickly in dealings as the IAA aim to complete the review within six weeks. He was provided with a provided with the contact details for the Translating and Interpreting Service for obtaining language assistance and an Information Sheet in both English and Arabic about the IAA's review process. He was advised that any submission or new information should be given to the IAA within 21 days of referral. As the case was referred on 3 September 2019 this 21 day period ended on 24 September 2019.
4. On 30 September 2019 the IAA received correspondence on the applicant's behalf from [migration advisers] advising they were unable to assist the applicant but asked the IAA to adjourn making a decision while the applicant sought pro bono assistance to provide further material. They stated the applicant was unable to independently provide further material, including his response to the delegate's decision, as he is not proficient in English and does not have the financial capacity to engage a fee charging lawyer/agent. The IAA wrote to the applicant explaining it had considered the request, but referring to the same factors mentioned above, declined to grant an extension.
5. On 1 October 2019 the IAA received correspondence on the applicant's behalf from [Agency 1] advising that they intended to provide assistance to the applicant. However, they stated they would not have capacity to do so until 22 October 2019 and so asked the IAA to defer its decision until after that date; otherwise, as the applicant could not afford private representation, he would not have sufficient time to provide further information in support of his case. They also advised that due to their limited capacity they were unable to provide ongoing assistance in relation to this matter and directed the IAA to correspond directly with the applicant. The IAA wrote to the applicant again, explaining it had also considered this request, but for the same reasons already provided, and also noting the requests on his behalf had been made outside the 21 day period referred to in the IAA's letter of 4 September 2019, and that neither request had given any indication as to the nature or relevance of the submissions or further information he sought to provide, declined to grant an extension. The applicant was advised that a decision may be made at any time.
6. On 4 October 2019 [Agency 1] wrote to the IAA providing an authorisation form from the applicant requesting administrative release by return email, of specific items/documents and any other documents provided to, or considered by the department as part of the applicant's

visa application. The IAA obliged via same day emails. However, it is noted that [Agency 1] again reiterated that they were unable to assist the applicant on an ongoing basis and to direct all future correspondence directly to him.

7. It is clear the applicant has attempted to obtain representation for his review before the IAA. However this is a Fast Track review and the IAA has already responded to the applicant twice, explaining its reasons for not deferring the review. Notwithstanding that [Agency 1] expressed an intention to provide some assistance to the applicant and requested relevant material from the IAA in order to do so, there has been no further indication either directly from the applicant, from [Agency 1] (whose nominated date of 22 October is still 12 days away and who have twice noted they are not representing the applicant on an ongoing basis) or anyone, either addressing the IAA's responses, or providing any information about the applicant or his case. I am not satisfied that the circumstances warrant further delay. I have decided to proceed and conduct the review on the information currently before me.

Applicant's claims for protection

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

- He is a Sunni Muslim born in [his home village]¹ village, Akkar, Lebanon in [year].
- He worked as [an occupation 1] often [commuting] between Halba (approximately 30 – 40 minutes from the Syrian border) and Tripoli.
- Around December 2012 a [client] he was [assisting] gave him a lucrative job offer, he assumed, for more [of his same work]. However when the applicant provided his personal details, the man said it was for transporting weapons to the Syrian border. The applicant refused and the man threatened to kill him, saying he knew where he lived. The applicant could see the man's gun so he completed this journey but returned home straight away. He believes the man worked for Al Nusra, on behalf of Hezbollah. They are a crazy group of extremists who capture and force people to work for them in North Lebanon and Syria. He knows people who have been harmed, killed and forcibly recruited by them and made to engage in illegal activity. He did not disclose these reasons in his earlier interview for fear of being perceived as an extremist and being deported back.
- He stopped working for a while, for things to cool down. However, three days later he received a phone call with instructions for a weapons transfer job. He refused and the caller threatened the applicant and his family. He threatened that if the applicant didn't cooperate, they would all be executed. When the applicant refused again, the caller said he was "*sending the boys*". The applicant and his family immediately packed and went to Beirut.
- They rented an apartment in Beirut while he made arrangements to leave Lebanon. He could not stay in Beirut because the group that threatened him was well connected with militia around Lebanon. While in Beirut, he hid inside, not daring to leave the residence.
- He did not return to [his home village]. His neighbour called and said a group of armed, bearded men in jilbabs came in a Jeep looking for him at home.

¹ Alternative spelling: [given]

- His family returned home after he left, believing they would be safe in his absence. The extremists have not returned as they believe the family is not living there anymore but he is concerned they will return and kidnap his eldest son.
 - In 2016 his wife said the extremists were still kidnapping people in the region, mainly able bodied men, forcing them to work for them in dangerous jobs like trafficking arms. They also kidnap young men and force them to fight in Syria.
 - He fears that if returned to Lebanon, he will be easily located by them and other extremist groups, tortured and forced to engage in illegal activities and killed and/or captured by the police. He is well known and has been [an occupation 1] in the area for 15 years. He knows the area well and his specialised skills make him a valuable recruit to extremist groups.
 - He would have to return to [his previous occupation] because he has no other specialised skills or education and has to support his wife and [number] children. This would expose him to harm.
 - He is not very religious but does attend Friday prayers at the Mosque. This would also expose him to harm because he would be exposed to the public and identification from the extremists.
 - He would be forced to hide at home if returned.
 - Returning through the airport, he also risks being identified by Shi'a Muslim extremists associated with Hezbollah. They would transfer him to military camps in southern Lebanon and forcing him to fight in warzones.
9. The review material contains additional claims the applicant raised with a case manager in July 2013 and another document in Arabic with no accompanying translation. I take into account that when the applicant lodged his PV application in July 2017, he provided an accompanying Statement of Claims setting out his protection claims, prepared with the assistance of [Agency 1]. He also underwent a PV interview where he was invited to discuss his protection claims. He was advised that it was his responsibility to raise all of his claims and provide evidence in support of those claims. The delegate raised a number of concerns with the applicant during the PV interview including his earlier omission of certain claims and his timing in raising claims and the applicant was given opportunities to respond. He also confirmed at the end of the interview that the delegate had covered all of his claims in that interview. He was also advised that anything else he thought of and provided to the department following the interview would be considered and the evidence does not suggest that any further correspondence was received in the six weeks before a decision was made. Given these factors, and taking into account that the applicant has made no reference to this document or raised any concerns about it either with the delegate or in the 37 days since the case was referred to the IAA, I am not satisfied the circumstances warrant inviting the applicant to provide a translation. I give the untranslated document no weight.

Refugee assessment

10. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

11. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
12. The applicant has provided documentary evidence of his identity; I accept it is as claimed and that the alternative spellings from the applicant's name result from transliteration issues. I accept he is a Sunni Muslim [occupation 1] from [his home village] in Akkar and that Lebanon is his receiving country.
13. The applicant has provided a letter from his doctor dated [in] July 2019. The doctor states the applicant has [specified conditions], and that he has referred the applicant to a psychologist for psychotherapy treatment for his "*abnormal mental health*". The applicant has also provided an appointment card for a clinical psychologist for an appointment scheduled for [July] 2019. I accept the applicant has [one condition] and that he has recently suffered from [the other conditions]. I note too, the applicant's reference in his written application to having experienced a frightening and seemingly traumatic boat journey. I have taken these factors into account but I concur with the assessment of the delegate that the applicant was able to meaningfully engage with the questioning at the PV interview. I am not satisfied that his physical or mental health impacted his ability to give evidence or to otherwise participate in any part the PV process, nor that it explains or overcomes my concerns with the applicant's evidence as detailed below.
14. The applicant's central claim is that he will be forcibly recruited by Al Nusra extremists or their Hezbollah affiliates to fight in Syria and/or perform illegal activities such as weapons smuggling for them, or will be killed if he refuses. He claims this is why he left Lebanon, as he and his family were being threatened for his refusal. The applicant also claims to fear being intercepted by Hezbollah or Shi'a militias in the airport on his return, and forced to train in Southern Lebanon and then fight.
15. The applicant's claims have grown over time. In his Arrival and Induction Interview (Arrival Interview) on 20 June 2013 the applicant said he left Lebanon because it was very hard to live there. He said he worked as [an occupation 1] and now there were thousands of Syrian nationals in the country also doing it. His workload was low and life was expensive. It was also unsafe as his [workplaces] and work was affected by the fighting between Bab-al-Tabbaneh and Jabal Mohsen. When asked if there were any other reasons he had left he said "[T]hese are the reasons. And I have always wanted to come to Australia as I heard that Australia is a country of justice, respect, fair go and loyalty." When asked what he thought would happen to him if he returned, he said "If I was to return I would start from scratch. My life would be devastated, I

would go back 40 years. I have sold everything I had - my car, everything – in order to arrange for this travel.” He also said there were no armed groups, political groups or religious groups operating in his area.

16. Departmental records indicate that the applicant was subsequently screened out on 12 July 2013. On 17 July 2013 he raised additional claims with his case manager. He said the reason he endangered his life by coming to Australia by boat was that his life was threatened and exposed to death in his country. He said the main reason he came was that while working as [an occupation 1] in Northern Lebanon he was [serving a client], late at night. The [client] was talking on his mobile and looking behind him and the applicant mentioned to him that a car had been following them. The [client] said the car was with them, and that he was a Hezbollah member. The [client] offered the applicant a job, saying they would pay him well if he, and anyone else he brought along, joined their fight in Syria for three months. The applicant indicated he was agreeable but would decide by the next day, at which time he asked the Hezbollah member to exempt him from the work. The man agreed but threatened him, saying he would not know how or when he would die. The applicant sold his car and got rid of his mobile and was incapable of doing anything else; he could not leave the house and would count the seconds from when his children left for school to when they returned home. He then secured his family at his wife’s family’s house and left the country.
17. It was not therefore until after the applicant was initially screened out that he raised claims about any militia attempting to recruit him or specifically threatening him. And it was also not until later that he raised the other above listed claims about being asked to smuggle weapons to Syria, being threatened by the man during their first interaction in the [workplace], of [accompanying] him all the way to [a place] near the Syrian border, of the involvement of Al Nusra, or of he and his family relocating to Beirut, and hearing from his neighbour that armed bearded men came looking for him at home.
18. The delegate raised his concerns over the earlier omissions and changed evidence during the PV interview. He noted what the applicant had said in his Arrival Interview and that he had only mentioned being Al Nusra, Hezbollah and being threatened by a [client] after he was screened out. The delegate also noted that while in some statements to the department the applicant had indicated they wanted him to go and fight, in others he indicated they wanted him to smuggle weapons and it was only in this PV interview that he was first mentioning that they wanted him to do both. The delegate explained to the applicant that the discrepancies in his evidence which had arisen over time may lead him to find the claims are not genuine, or that they had been exaggerated or embellished. The applicant responded that he was scared when he arrived on Christmas Island that if he gave his full story he could be seen as a trouble maker (and in his written application he said he feared being perceived as an extremist himself) and returned to Lebanon. The delegate asked what had made him later decide to tell his story and the applicant referred to now having the freedom and safety to tell the truth.
19. I am not persuaded by the applicant’s responses. He has not provided any context to explain why he feared the details of attempted recruitment and threats for his refusal would lead him to be perceived as a trouble maker or an extremist, or why it would lead to his return. As the delegate noted in his decision, the applicant was prepared to disclose that he was affected by sectarian violence in Tripoli and I find it difficult to accept that he was too scared to disclose that he had been targeted by a militia group. I have concerns about this, and also, noting he has provided no explanation, about his shifting emphasis on the group’s wanting him to fight or smuggle weapons or do both.
20. The variance in the applicant’s evidence also extends to other aspects of his claims. For example:

- Whereas he claimed to his case manager that the [client] had identified himself as a Hezbollah member during their first interaction in the [workplace], in his written application he stated he was not told, but he believed, that the man was affiliated with Al Nusra, and in the PV interview he said the man self-identified as such.
- Whereas he claimed in his written application he [accompanied the client] as far as Halba, in the PV interview he said he [accompanied] him beyond Halba, to [a place] near the Syrian border.
- Whereas in his written application he indicated he it was three days after the [incident] that he received the threatening phone call, in his PV interview he indicated he had received this call the day following the trip (ie. the next day as opposed to three days later).
- Whereas in his written application he said that after receiving the threatening phone call he and his family packed and went immediately to Beirut, in the PV interview he said they went the following day.

21. I have concerns about these inconsistencies which I note were also fleshed out in the delegate's decision.

22. There is also a problem with other aspects of the applicant's proffered timeline. In his written application the applicant indicated the [incident] had occurred around December 2012 and indicated in that application and the PV interview that he and his family moved to Beirut either one day afterwards (written application) or three days afterwards (PV interview). However in the PV interview he said his family had stayed in Beirut only one to two months before returning to [his home village] after he left Lebanon, estimating their return to be near to his date of departure, around May 2013. Yet in his written application he had indicated they returned to [his home village] in approximately December 2013 (being around a year after the initial [incident] and associated threats). Even accounting for the fact that the applicant was estimating, there are several months unaccounted for in the applicant's evidence about how long his family lived away from [his home village] and when they returned.

23. Another problem with the family's move relates to the plausibility of their return to [his home village] when, according to the applicant, they too had been the subject of threats and he still fears his eldest son will be kidnapped by the group. The delegate asked the applicant why - given his claims that Al Nusra were threatening to kill him and his family and this is why they had fled from [his home village] to Beirut - he would return his family to [his home village] where they would be in danger, before he left Lebanon. He responded that they don't know anyone in Beirut but in [his home village] his brothers can look after them, although he was scared for them and stressed. I accept the applicant's family does not know anyone in Beirut but I nonetheless consider it implausible that the applicant would take the threats against himself so seriously that he fled the country but send his family back to their family home in [his home village] when he claims they too were threatened, and from where he fears his eldest son will be kidnapped and tortured. This is particularly difficult to accept given he claims his house had been visited by armed, jilbab clad men while they were residing in Beirut, and his claims raised in the PV interview that they also came to the village seeking him while he was on Christmas Island.

24. I have doubts too, about the plausibility of the incident with the armed, bearded men coming to the applicant's house in jilbabs. Given the neighbour's account that they were bearded, it is difficult to accept that the jilbabs served any disguise purpose, and I have doubts too about the plausibility of their making the effort to disguise themselves, and, of their taking such interest in the applicant at all. The delegate asked the applicant in the PV interview why - given he was not

politically active and did not stand for Al Nusra or Hezbollah's beliefs, and given he claimed there were many Syrians doing [his occupation] and little work to go around – they were so fixated on his working for them. The applicant's response was that he didn't know; that maybe it was a coincidence that he [encountered] the man who initially so generous towards him and tried to entice him to join. He also stated it was a very tough time, a dangerous time for anyone to survive, and that no one would come to Australia by boat for no reason. In his written application the applicant mentioned his specialised knowledge of the area making him a valuable potential recruit. I am not convinced by the applicant's responses, which I consider to be guesswork, or conjecture. Country information that was before the delegate does not support the applicant's claims that the Sunni Al Nusra Front and the Shi'a Hezbollah are aligned; rather it indicates these groups have fought in the recent past. Not does it support that any militia groups in Akkar were, when the applicant was there, or are now, engaging in forced recruitment. The applicant's claims are not supported by country information and I find it implausible that a Sunni Muslim in a predominantly Sunni majority area (as the applicant himself noted in his application), who has no history of political or militia engagement, would, even with his local [knowledge], be seen as such a valuable recruit and that they have pursued the applicant as claimed.

25. I note too that the applicant departed Lebanon on his own genuine passport and without issue, through Beirut airport, which according to DFAT, Hezbollah has substantial control over. The apparent lack of any attempt to intercept the applicant at the airport raises further doubts as to the applicant's claims that he was wanted by Hezbollah or Al Nusra.
26. Given the inconsistencies and implausibilities in the applicant's evidence, and my concerns as to the progressive nature in which his claims developed throughout his time in Australia, and noting country information does not support that Hezbollah or Al Nusra militias have been aligned or engaging in forced recruitment, and that the applicant was able to lawfully depart through Beirut airport without issue, I find the applicant's claims regarding the attempted recruitment – for weapons smuggling, fighting or any purpose – and the associated threats and visits following his claimed refusal are not credible. I do not accept the applicant has ever been the subject of interest of Al Nusra, Hezbollah, or any militia group.
27. As for the applicant's fear of being forced to attend a training camp in Southern Lebanon, when asked in the PV interview why he believed this would happen to him, he said Al Nusra are aligned with Hezbollah and he is worried. As noted above, I am not satisfied that Al Nusra is aligned with Hezbollah. While the country information considered by the delegate supports that Hezbollah has conducted large recruitment drives in Lebanon for recruits to fight alongside Bashar Al Assad's forces in Syria and that it has reached out to different sects to build up localised militias in the Bekaa Valley, as the Israel Times report considered by the delegate states, Hezbollah's recruits have been drawn from Lebanon's Shi'a community and it had no shortage of volunteers. As recently as March 2019 DFAT also said it is not aware of any reports that groups such as Hezbollah or the Syrian Socialist Nationalist Party (SSNP) have recruited anyone forcibly. The applicant has provided no persuasive evidence of Hezbollah or the Al Nusra Front forcibly recruiting and nor have I identified any within the review material. The country information that was before the delegate does not support that Hezbollah or the Al Nusra Front engage in forced recruiting practices or that persons who refuse requests to join them are harmed. Nor does it indicate that Hezbollah or the Al Nusra Front target and harm ordinary civilians. 2019 DFAT reporting indicates that Hezbollah do not generally threaten or interfere with people on an individual basis; unless that person is a security threat to them, or has done something to one of their members and their other perceived adversaries are political activists and journalists who report on 'red line' topics. I am satisfied the applicant would not be perceived as a threat to Hezbollah for any reason; nor would he otherwise be of interest. I am

satisfied that Hezbollah does not have any interest in the applicant and the evidence does not indicate that they would develop such interest upon his return. I am satisfied the same can be said too, for the Al Nusra Front.

28. The evidence does not suggest the applicant has belonged to any religious groups or been involved with any militant or political group (apart from his compulsory military service completed in [year]) and I am not satisfied he has had any involvement in the Syrian conflict nor in Tripoli or any other sectarian conflict. He does not claim that he ever previously spoke out against Hezbollah or the Syrian regime or anyone, and on his own evidence, he had never been politically active, or participated in any protests in Lebanon. Nor has he suggested he would do so in the future. I am not persuaded the applicant was or would be in demand for his specialist local knowledge and I am not otherwise satisfied that the applicant has now or would upon return have, a profile which is of interest to Hezbollah, Al Nusra (nor to any other militant/religious/political group) for any reason.
29. I am not satisfied the applicant faces a real chance of being forcibly recruited by Hezbollah or Al Nusra or being harmed by them in retaliation for any refusal to join, or for any reason. It follows too that I am not satisfied there is a real chance that the applicant will be captured by police after being forced to engage in any illegal activities.
30. I accept the applicant's statements from his Arrival Interview that as [an occupation 1] working in the area which includes Tripoli, his work has been somewhat affected by the sectarian conflict in Tripoli in the Bab Al Tabbeneh – Jabal Mohsen area, and for his own safety he has had to [avoid] the area if possible. DFAT's 2019 report notes that the conflict in Syria has increased tensions between communities in a number of areas. Historical tensions between Sunnis and Alawites in the adjoining Tripoli neighbourhoods of Jabal Mohsen (predominantly Alawite) and Bab-al-Tabbaneh (predominantly Sunni) escalated in the early stages of the Syria conflict, particularly around 'Syria Street' (the dividing line between the two communities), leading to regular rounds of communal violence that killed over 200 people. However, Lebanese authorities implemented a security plan in April 2015 that re-established a Lebanese Armed Forces presence in the area. DFAT understands that this has succeeded in significantly reducing the number of serious incidences of communal violence. Although underlying tensions remain, DFAT assesses that in recent years the Tripoli conflict has been generally been low-level and localised in nature.
31. The information in the review material does not support that the Jabal Mohsen - Bab al-Tabbaneh conflict is (or will be) playing out in such a way that ordinary civilians in the area face more than a remote risk of harm. Nor does the information indicate that the fighting between these groups has ever reached into the applicant's home area, in Akkar, outside of the Bab-al-Tabbaneh – Jabal Mohsen neighbourhood and outside Tripoli. I am not satisfied the applicant's [work] did necessitate his travel into the critical area but even if it did and does in the future, I consider that with the changed security situation the chance that the applicant would be harmed is remote. The applicant has not previously aligned with any militias (and I found his claims as to refusing to align with a militia such as Hezbollah or Al Nusra are not credible), or indicated that he would engage in fighting upon return, and I am not satisfied he has a profile which would cause him to be targeted or otherwise harmed by these Tripoli based groups or their supporters elsewhere. I am not satisfied that the applicant faces a real chance of harm arising from the fighting between the Tripoli based Sunni and Alawite militias, nor any other persons/militia groups who support them. I am not satisfied he faces a real chance of being targeted, or inadvertently caught up in the fighting, or harmed as a bystander, as a result of security issues in Tripoli.

32. As the delegate noted in his decision the applicant has not otherwise raised any claims to fear being targeted or otherwise harmed on the basis of his Sunni faith, or on the basis of religion and the applicant has not disputed this. As I have found the applicant's claims about being wanted to extremists are not credible, it follows that I do not accept there is a real chance he would be identified by the extremists while attending Mosque and captured or harmed by them.
33. It may be argued that the country information considered by the delegate gives rise to considerations about the broader security situation in Lebanon. I note the reporting before the delegate that in recent years there have been cross-border incidents and insurgent groups have infiltrated parts of Lebanon and conducted attacks in Beirut, Tripoli, Aarsal province and other areas.
34. In 2019 DFAT recognised a range of security challenges facing Lebanon, including: external threats related both to the conflict in neighbouring Syria 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. DFAT notes that clashes have occurred between Lebanese security forces and Islamic State militants in the north-eastern Bekaa valley region (including the Hermel-Baalbek region and the towns of Aarsal, el Qaa and Ras Baalbek). DFAT understands that security operations conducted against Islamic State have succeeded in reducing the threat the organisation poses, although 'lone wolf' attacks cannot be ruled out.
35. The applicant's family remain in his home area in [his home village] which, contrary to his claims, I find is not on the Syrian border and there is no *credible* information before me to suggest they have faced any harm from sectarian or other violence in the time the applicant has been away. I am also not satisfied on the country information, that militia and insurgent attacks/violence occurs with such frequency that it indicates a real chance of Islamic State, or other insurgent related harm to the applicant in the reasonably foreseeable future. I am not satisfied the applicant faces a real chance of any harm arising from sectarian conflict and insurgent activity in Lebanon, the Syrian war or from armed force responses to such threats, nor from instability in the region more generally.
36. I have accepted the applicant has [specified conditions]. However the applicant has not claimed that his physical or mental health issues are reasons he fears returning, or and I am not satisfied that it arises on the material. Nor am I satisfied on the evidence and country information before the delegate that the applicant would be denied or unable to obtain treatment in Lebanon, or that these factors would otherwise result in his facing a real chance of serious harm.
37. I note the applicant referred in his Arrival Interview to the difficulties he faced with expenses in Lebanon and that if he returned he would have to start from scratch. I am not satisfied on the evidence that the applicant's capacity to subsist was threatened previously and I find that the applicant's extensive [work] experience in Lebanon will be conducive to his employability upon return. There is nothing in the review material to indicate that persons of the applicant's profile face discrimination in obtaining employment or access to services and basic necessities. I note too that his wife, her family and his siblings still reside in Lebanon (including some in his home area) and the evidence does not indicate they have been unable to sustain a living. On the evidence, while I accept the applicant sold his car and other things to make the journey and he will face some challenges re-establishing himself upon return, I am not satisfied that the applicant will be prevented from or otherwise unable to find employment or otherwise support himself should he return to Lebanon and nor am I satisfied he would not have access to some family support to support his re-integration and making of connections. I am not satisfied the

applicant will face significant economic hardship, be denied the capacity to subsist or access to services or that he would otherwise face serious harm for financial related reasons.

38. Having regard to all of the information and evidence above, and having considered the applicant's claims individually and cumulatively, I am not satisfied he has a well-founded fear of persecution.

Refugee: conclusion

39. 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

40. 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

41. 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.

42. I have not accepted the applicant's claims regarding being sought by Hezbollah or Al Nusra Front for weapons smuggling, fighting in Syria or for other recruitment purposes, or being threatened by them for resisting, are credible. I have not accepted the applicant faces a real chance of harm in Lebanon on this basis. Based on the same reasoning outlined above and noting that 'real chance' equates to 'real risk', I am also not satisfied he faces a real risk of significant harm as defined by the Act.

43. The applicant has not claimed that he his physical or mental health issues are reasons he fears returning, or and I am not satisfied that it arises on the material. Nor am I satisfied in any event, on the evidence and country information before the delegate that the applicant would be denied or unable to obtain treatment in Lebanon, or that these factors would otherwise result in his facing a real risk of significant harm, as defined in s.36(2A) of the Act.

44. I am not satisfied on the evidence that the applicant will be prevented or denied opportunities to earn a living, for any reason. He would be returning to an area he has family and is familiar to him and he has extensive [work] experience. I do not accept the applicant will face a real risk of significant harm as defined in the Act for financial related reasons.

45. I have otherwise found the applicant would not face a real chance of harm for any other reason, on return. For the same reasons, I am not satisfied he faces a real risk of harm, including significant harm.

Complementary protection: conclusion

46. 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.