



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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LEBANON  
IAA reference: IAA20/08054

Date and time of decision: 16 April 2020 10:36:00  
M Brereton, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim from Lebanon. He departed Lebanon [in] May 2013 and arrived on Christmas Island [in] June 2013. On 15 August 2017, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 20 March 2020, a delegate of the Minister for Immigration (the delegate) refused to grant the SHEV.
2. The applicant claimed to fear harm from extremists who were trying to force him to go and fight in Syria. He also faces discrimination because of a physical disability.
3. The delegate accepted the applicant's claims as to identity, origin, health and his past history in Lebanon. The delegate accepted that the applicant had subjective fears of harm but found that these were not well-founded and that the applicant did not face a real chance or real risk of relevant harm in Lebanon.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. The applicant's SHEV application contains a written statement of claims that appears to be missing one or more pages. The delegate brought this to the attention of the applicant's migration agent on 12 June 2019. The agent provided a comprehensive written submission to the delegate on 20 September 2019 but this did not contain any further pages to the statement of claim. The agent attended and assisted the applicant at the interview with the delegate on 20 March 2020 (the interview), during which the applicant further explained his claims and added some new information. At the conclusion of the interview the applicant confirmed that he had put forward all of his claims and information, and the delegate said that any further information received before a decision was made would be considered. The applicant did not provide any further information to the delegate, nor has he sought to put any submissions or information to the IAA. I am satisfied that he has had a real and meaningful opportunity to put forward all of his claims and information and I have decided not to exercise my discretion to obtain further information from the applicant or otherwise.

### Applicant's claims for protection

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6. The applicant's claims can be summarised as follows:
  - He is a Sunni Muslim who was born and lived in [Village 1], Akkar, Lebanon.
  - He was born in [year]. When he was aged about [age], he was involved in a car accident in Lebanon and lost his [body part] as a result. He has suffered difficulties, discrimination and harassment because of the loss of his [body part].
  - When he was a minor he was approached by an unknown man who offered him money and friendship but also touched him inappropriately.
  - Members of extremist groups tried to get him to go and fight in Syria. He was told that it would help his social standing if he went but he refused. He was threatened with death.

- One day he was shopping in another village when someone held a knife to his neck and threatened to kill him if he refused to go to Syria. He believes that others in the village have been killed in this situation, because they refused to go and fight in Syria.
  - He tried going to Beirut but he was not safe there either.
7. Although not raised by the applicant, the delegate noted that the applicant was affected by the inadvertent disclosure of some of his personal information by the then Department of Immigration (the Department) in 2014 (the data-breach), and considered whether he faced harm arising from this.

## Refugee assessment

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8. 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

9. 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.
10. The applicant has made consistent claims in relation to his identity and origin. He has provided documentary evidence in support of these claims, in the form of a certified copy of a Lebanese birth certificate and a certified copy of a Personal Information Record, both with NAATI-accredited English translations. He claims, and I accept, that he was issued a *bona-fide* Lebanese passport but this document was destroyed during the voyage to Australia. I accept his claims in relation to identity and origin and I find that he is a Sunni Muslim from Akkar, Lebanon, and that Lebanon is the receiving country for the purposes of this review.
11. At the interview the applicant expanded on some of the claims he made at the entry interview on 10 October 2013 (the entry interview) and in his SHEV application. He also made some new claims. There is evidence before me of the applicant’s mental health (considered further below) which I have taken into account, and I also note that the more recent claims are not

inconsistent with his earlier claims. I do not consider that the timing of the various claims casts doubt on his credibility or that anything turns further on this.

12. The applicant's photograph in the review material corroborates that the applicant has lost his [body part]. He claims, and I accept, that this occurred when he was aged about [age], as the result of a car accident in Lebanon. The applicant claims that he has experienced discrimination, including in obtaining employment, and exclusion because of this disability. He also claims that while he was a minor, an older man (aged about 40) approached him and offered him money and friendship, but then touched him inappropriately. He believes that he was targeted because his disability made him vulnerable.
13. I accept that the applicant, while still a minor, was sexually assaulted by an older man. The applicant told the delegate that contact with the man ceased after the applicant threatened to tell his father and he has not claimed to fear harm from this man should he return to Lebanon. He has not claimed that he fears sexual violence from other persons in Lebanon now or in the reasonably foreseeable future. I am satisfied that this incident was an opportunistic act exploiting the applicant's young age and disability, but given he is no longer a minor, I am not satisfied that he faces a real chance of harm arising from this or any similar incidents should he return to Lebanon.
14. The applicant claims, and I accept that he has also faced some low-level discrimination because of his disability. He told the delegate that he was teased, ostracised and bullied at school, but he was nevertheless able to complete his studies up to Year [level]. He said that he applied for a job at a [business] but the manager said he would scare the customers because of his disability. A friend intervened and the manager said that the applicant could work [elsewhere] but this was for less pay and the applicant did not do so. After he completed his Year [level] studies he applied for a job with [a] company but the manager said that they used scaffolding, which would be dangerous for the applicant given his disability and that if the applicant was injured it would be his own fault. He said that after this he worked on his father's farm.
15. According to the Australian Department of Foreign Affairs and Trade (DFAT), Lebanon has signed but not ratified the Convention on the Rights of Persons with Disabilities. The *Law on the Rights of Disabled Persons (2000)* grants persons with disabilities the right to education, health and other basic rights, although persons with disabilities remain stigmatised in Lebanese society. The Lebanese authorities have not enforced commitments to ensure organisations offer employment opportunities to people with a disability, and most public and private infrastructure does not take into account accessibility needs. Children with disabilities were generally excluded from public schools due to discriminatory admission policies, lack of reasonable accommodations, a shortage of sufficiently trained staff, lack of inclusive curricula (including no individualised education programs), and discriminatory fees and expenses that further marginalised children with disabilities from poor families.<sup>1</sup> The United States Department of State (USDOS) also indicates that the Lebanese authorities do not effectively enforce disability rights. The law stipulates that persons with disabilities fill at least 3% of all government and private sector positions, provided such persons fulfil the qualifications for the position; however, there was no evidence indicating that the government enforced the law.<sup>2</sup>
16. The applicant, through his agent, provided submissions to the Minister on 20 September 2019. Parts of these submissions (and information referred to) refer to discrimination against

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Lebanon Country Information Report," 13 March 2019, 20190319100208.

<sup>2</sup> United States Department of State (USDOS), "Country Reports on Human Rights Practices for 2018 – Lebanon", 13 March 2019, 20190314104207.

disabled children in education and against disabled persons in employment. He submits that discrimination may amount to persecution if the consequences are of a substantially prejudicial nature, such as the restriction of the right to earn a livelihood or access to normally available education facilities.

17. The applicant's evidence is that he was not prevented from accessing education facilities and he was able to complete his studies up to Year [level]. The discrimination he did face was teasing, bullying, exclusion and ostracism from his classmates, and a lack of support from his teachers. In relation to employment, he was denied one job on the claimed basis that his disability may expose him to danger. He was also prevented from obtaining a public contact job that he wanted in a [business] but was offered a lower level [job]. I accept that these incidents may have been disappointing, frustrating and that he may have felt some humiliation, but none of the incidents that the applicant experienced in the past involved conduct that threatened his life or his capacity to earn a livelihood, access education or otherwise subsist. There is no evidence before me to indicate that the treatment of disabled persons in Lebanon has changed since the applicant left in 2013 and I accept that he may face similar incidents of discrimination in the future, but I am satisfied that these would involve similar conduct to that he experienced in the past. I am not satisfied that this level of conduct, or the frequency of such discrimination, would amount to conduct that could be considered serious harm as contemplated by ss.5J(4)(b) and (5) of the Act.
18. The applicant claims to fear harm from armed groups, including being subjected to forced recruitment into the Syrian conflict. He told the delegate that over a period of time in 2013 he was approached by a man who acted friendly and then introduced the applicant to another man. One day the other man told the applicant that he could offer him employment doing "operations", which would be financially rewarding and would also boost his self-esteem and community standing. The man said that if the applicant was killed, he would become a martyr. The applicant did not want to fight or kill people and did not join with the group. Sometime later he was shopping for his mother and someone came up behind him, held a knife to his throat and pushed him onto the car. The person said that the applicant had to obey the orders and if he did not do so, he would be found and killed wherever he went. The man told him to think about it and give his answer. The applicant was terrified but could not tell his family because he was fearful for them as well. He told his brother that he had to leave Lebanon because of the general discrimination and his brother was able to organise the applicant's travel. The applicant's claim is consistent with the claim he provided at the entry interview and is broadly consistent with the (incomplete) statement of claims attached to his SHEV application.
19. Information in the review material<sup>3</sup> corroborates that the period leading up to the applicant's departure from Lebanon in 2013 saw significant sectarian violence between Sunni and Shi'a extremist groups, and between Sunni groups and the security forces. In 2017, DFAT<sup>4</sup> reported an upsurge in violence on the Syrian border, in the context of conflict in that country. It reported that at that time, Sunni communities close to the Syrian border faced a low risk of

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<sup>3</sup> United Nations Office for the Co-ordination of Humanitarian Affairs, "Lebanon: Akkar Governorate Profile (as of 11 August 2014)", 11 August 2014, CISEFCB23F7561; United Nations Resident and Humanitarian Coordinator for Lebanon, "Lebanon Crisis Plan 2017-2020", 1 October 2017, CISED50AD7474; Carnegie Endowment for International Peace, "How the War in Syria Empowers Lebanese Jihadism", 29 January 2014, CX319767; Carnegie Endowment for International Peace, "Lebanon's Sunni Islamists-A Growing Force", 1 January 2008, CIS16310; The Saban Center for Middle East Policy at Brookings, "The New Sectarianism: The Arab Uprisings and the Rebirth of the Shi'a-Sunni Divide", Number 29, 1 April 2013, CIS27659; "Lebanon's Sunnis Gird for a Fight", New York Times, The, 14 March 2013, CXC28129413944; "Syrian conflict stokes Sunni anger in Lebanon, with army now seen as threat", Global Post, 4 November 2013, CX315246; "Lebanon moves to quell Syria spill over violence, sends army into Tripoli", McClatchy Newspapers, 1 April 2014, CX319557.

<sup>4</sup> DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014.

being caught up in cross-border reprisal attacks by Syrian authorities, increasing to a moderate risk if a community was involved with sheltering anti-Syrian regime fighters. The applicant has not claimed that he or his family has had any involvement, or has ever been imputed with any involvement, with anti-regime fighters and he told the delegate that there was no fighting going on in his home area.

20. In 2019, DFAT<sup>5</sup> reported that an unclear number of Lebanese supporters and opponents of the Syrian government have travelled to Syria to fight in the civil war. While groups such as Hezbollah or the Syrian Socialist Nationalist Party have recruited fighters, DFAT is not aware of any reports that they have done so forcibly. There is no other information in the review material that indicates that Lebanese militant groups currently engage in forced recruitment and the applicant has not provided any further information or submission to the IAA in relation to this claim.
21. Apart from being a young Sunni male with a disability, the applicant does not claim to have any political profile, skills or experience which would mark him out as someone of interest for recruitment or forced recruitment. Nevertheless, his belief that he was approached because he was seen as vulnerable to exploitation due to his disability is plausible. I accept that the applicant was approached in 2013 and that there may have been some pressure put on him. However, he told the delegate that, at least as far as he is aware, nobody has approached or harassed his family since he left Lebanon, nor has anyone expressed any interest in him or whether he may return. I have noted above that he has no other particular profile that would mark him out as a potential recruit and this, together with the lack of interest in him and his whereabouts in the nine years since he left indicates that he was only of a low-level of interest to the recruiters. I accept that the applicant is fearful that these approaches may resume, or that he may be harmed because of his refusal to join these groups, should he return to Lebanon but on the evidence before me, I am not satisfied that the applicant faces any more than a remote chance of being targeted by any such groups now or in the reasonably foreseeable future for any reason. I am not satisfied that the applicant faces a real chance of harm on the basis of targeting, recruitment or forced recruitment by, or refusal to join, militant or extremist groups.
22. The applicant has not claimed to fear harm from random or general violence and as noted above, he told the delegate that there is no fighting in his area. However, while he said his family were safe up until the arrival of Daesh (also known as Islamic State), he did not think it was safe now. He also referred to an economic crisis in Lebanon. He has not claimed that anything in particular has happened to his family or that it has been personally affected by an economic crisis or sectarian violence.
23. DFAT<sup>6</sup> reports that Lebanon faces a range of security challenges. These include external threats related both to the conflict in 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. The government maintains security checkpoints, primarily in military and other restricted areas. The conflict in Syria has increased tensions between communities in a number of areas, particularly Tripoli. The Lebanese authorities implemented a security plan in April 2015 that re-established a Lebanese Armed Forces presence in that area and DFAT understands that this has succeeded in significantly reducing the number of serious incidences of communal violence, although underlying tensions remain. Overall, DFAT assesses that violent clashes with religious overtones have

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<sup>5</sup> DFAT, "DFAT Lebanon Country Information Report," 13 March 2019, 20190319100208.

<sup>6</sup> DFAT, "DFAT Lebanon Country Information Report," 13 March 2019, 20190319100208.

been less common in Lebanon in recent years. Where violence has occurred between communal groups (such as between Alawites and Sunnis in Tripoli), it has generally been low-level and localised in nature. Lebanese religious leaders and state authorities are sensitive to the potential impact of communal violence on national security, including the possibility that external conflicts with sectarian dimensions (particularly the Syria conflict) could impact on the co-existence of religious communities in Lebanon. The *Criminal Code* contains a number of provisions prohibiting calls to strife and sedition on religious grounds, and DFAT assesses that Lebanese authorities are committed to preventing violence between religious communities.

24. DFAT also notes that the Lebanese Armed Forces have conducted military operations in recent years against Islamic State militants occupying areas along Lebanon's eastern border with Syria. Clashes have occurred between Lebanese security forces and Islamic State militants in the north-eastern Beka'a valley region (including the Hermel-Baalbek region and the towns of Arsal, 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. There is no information before me referring to an Islamic State presence or active operations in the Akkar region or the applicant's home town.
25. I accept that tensions remain in Lebanon and that there are incidents of violence in a number of areas. However, I am not satisfied on the information before me that Akkar is experiencing levels of sectarian, generalised or other violence such that the applicant would face any more than a remote chance of being harmed. There is no evidence before me that the applicant's family or any of his friends or neighbours in Akkar have suffered any harm because of the economic situation there. I am not satisfied that he faces a real chance of harm from violence or the general security or economic situation in Akkar.
26. I have considered the applicant's evidence in relation to his mental health and his statement to the delegate that if he was returned to Lebanon, he may self-harm. The review material contains a 2017 report from a clinical social worker (in the applicant's SHEV application), which states that the applicant had been attending therapy sessions and had been diagnosed with anxiety and depression. He had reported symptoms such as depressed mood, low motivation, constant worries, sleeping difficulties, flashbacks, intrusive distressful thoughts and memories. The clinician also opined that the applicant suffered from Post-Traumatic Stress Disorder. The triggers were said to be the car accident and disability, as well as traumatic experiences following the incident which he stated involved all kinds of discrimination and exclusion from the students in a school, the community and his friends. He said he had had suicidal thoughts and he believed it might be the only way he can get away from his community's discrimination and humiliation but his faith was and is always stronger than the negative thoughts. He told the clinician that he had left Lebanon to escape from his community's exclusion and discrimination. The clinician noted that despite therapy, the applicant had continued to present in a distressful state and reported inability to cope with his situation of constant stress and worries about his uncertain future.
27. There is also a medical report from the applicant's general practitioner, dated 20 June 2019, which states that the applicant suffers from "possible depression" and is being seen by a psychologist. There is also a report from a psychologist dated 16 August 2019, which notes that the applicant was referred for assessment and help with depression. The applicant attended weekly sessions between 2 July 2019 and the date of the report. The report refers to the applicant's history of discrimination and stigma arising from his disability (including the sexual assault) and his fear of returning to such discrimination. It does not refer the claimed recruitment attempts, or any threat to his life from those who tried to recruit him. The report

does not indicate that the applicant has been prescribed any medication, referred for other ongoing treatment, or assessed to be at risk of self-harm. The psychologist opines that:

*[The applicant] is terrified about the fact that he may need to leave Australia if his application is refused. He experiences symptoms such as; sleep disturbances with recurrent nightmares and flashback of discrimination and bullying that he suffered overseas, an inability to concentrate, a return of low self-esteem, irrational fears and fatigue. While I believe those are symptoms of traumatic experiences that he suffered as a child and as a teen, they are triggered by the fear that he might have to leave the safety of Australia and go back to the country where he suffered, and may again suffer the abuse and discrimination due to his look and disability. It is my opinion that [the applicant] was a victim of discrimination for an extended period of time that went unsupported and continued through his life. I believe that [the applicant] needs to feel protected and safeguarded, not exiled because of his look and disability. [The applicant] was able to work and feel protected in Australia, which was helping him overcome his condition. It is therefore my opinion to consider [the applicant's] application to stay in Australia.*

28. At the interview, the applicant said that he was not seeing the psychologist at the moment because he felt better, and confirmed that he is not taking any medication.
29. The applicant has not claimed that he was denied treatment for any reason in Lebanon following the car accident and in fact told the delegate that he underwent treatment for about 12 months. He told the delegate that after the accident he felt stressed and frustrated at times and considered self-harm. He did not, on his evidence, raise these or any other mental health concerns while he was in Lebanon, nor did he seek treatment for, or advice about, such issues.
30. DFAT<sup>7</sup> reports that mental health care has been an increasing public concern, particularly given Lebanon's long and traumatic civil war. A 2008 study found that 4.6% of the population had experienced a severe mental disorder (including depression and anxiety) in the year before the study; around 25% met the criteria for at least one of the classified mental disorders; and 10.5% had experienced more than one disorder at some point in their lives. Very few individuals who had experienced any type of mental disorder had ever received any professional treatment while those who did seek treatment tended to delay doing so for extended periods after the onset of the disorder. Many individuals had sought assistance from religious healers, spiritual advisors, or fortune-tellers rather than medical professionals and significant stigma continues to attach to those seeking assistance for mental health-related issues. A number of societal groups are particularly vulnerable in relation to mental health issues, including persons with disabilities and survivors of sexual violence.
31. Mental health services in Lebanon are predominantly provided by the private sector as well as mostly skewed to specialised outpatient and inpatient care. The provision of mental health services in outpatient care comprises mainly private clinics involving psychiatrists and psychologists. There are currently eight psychiatric wards in general hospitals that provide inpatient mental health services, and five active mental health hospitals. The latest mental health decree law focuses on the organisation of the care, treatment, and rehabilitation of patients with mental health conditions, as well as protecting the rights of these patients and their families. It regulates guardianship issues for people with mental conditions and facilitates access to in-hospital care for the most vulnerable groups. This law is currently under revision to address issues such as access to free community-based mental health care, standards and

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<sup>7</sup> DFAT, "DFAT Lebanon Country Information Report," 13 March 2019, 20190319100208.

regulations for involuntary admissions, and the working modalities of the mental health body, in addition to accreditation of mental health professionals.

32. There is no information in the review material to indicate that persons with mental health conditions are denied treatment or otherwise prevented from accessing treatment for any reason or reasons arising from race; religion; nationality; membership of particular social groups (including those with physical disabilities and survivors of sexual assault); or political opinion. The applicant has not claimed that he has previously been denied medical treatment for any reason. I am not satisfied on the evidence before me that the applicant will be denied or prevented from accessing any treatment he may need, for any persecutory reason.
33. The applicant has not claimed that his family discriminated or ostracised him in the past, or that he fears his family will do so if it becomes aware of his mental health issues. However, given the applicant's previous experiences with his physical disability, I accept that he may face similar levels of societal discrimination and stigma outside his family, if his mental health condition manifests itself in Lebanon. The information before me does not indicate that persons with mental health conditions face a greater chance of serious harm from such discrimination and stigma than those with physical disabilities. For the same reasons as I have given in relation to the harm he faced arising from his physical disability, I am not satisfied that any discrimination or stigma that the applicant may face arising from any mental health condition, including when combined with his physical disability, would include, or arise to, conduct that might be considered serious harm as contemplated by the Act.
34. The delegate noted that the applicant was affected by the data-breach in 2014, where certain personal information held by the Australian Department of Immigration was publicly accessible online for a brief period. There is no information before me to indicate that the Lebanese authorities or other persons in Lebanon were aware of, or able to access, this information, and even if they did the disclosed information did not include details of the applicant's claims for protection. DFAT<sup>8</sup> understands that it is not a crime for Lebanese citizens to seek asylum abroad. Information on conditions for failed asylum seekers who have returned to Lebanon is limited but DFAT understands that no significant stigma attaches to this group and has no evidence to suggest they are subject to any particular official or societal discrimination. On return, a failed asylum seeker would only come to the attention of authorities if they had an existing stop order against them or if they had committed a crime abroad of sufficient gravity for authorities to request an accompanied transfer.
35. The applicant obtained a passport and departed Lebanon legally. He has not claimed to have been subject to a stop order, or to have committed any crimes outside Lebanon. I am not satisfied that the applicant has any adverse personal profile with the Lebanese authorities for any reason. I am not satisfied that he faces a real chance of harm for any reason arising from the data-breach, even if that information was, or was to become, known to the Lebanese authorities or other groups in Lebanon.
36. I have considered the applicant's profile as a Sunni from Akkar who suffers from a physical disability and may suffer from mental health issues. Having regard to the country information I have referred to above, the data breach and all of the applicant's relevant personal circumstances, I am not satisfied that he has a well-founded fear of persecution in Lebanon for these or any combination of these reasons.

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<sup>8</sup> DFAT, "DFAT Lebanon Country Information Report," 13 March 2019, 20190319100208.

## Refugee: conclusion

37. 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

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38. 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

39. 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.
40. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
41. I accept that the applicant may face some societal discrimination and stigma from his physical disability and any mental health issues that may manifest should he return to Lebanon. I am satisfied that any such discrimination or stigma will be commensurate with the discrimination and stigma he faced in the past. I note the psychologist's opinion that the applicant experienced extended and unsupported discrimination in Lebanon and that he needs to feel protected and safeguarded.
42. The applicant will be returning to his family and he has not indicated that he suffered any ostracism or stigma from his family in the past, or that he fears this now or in the reasonably foreseeable future. I accept that he may have trouble finding employment, or employment that he wishes to undertake, but I note his evidence to the delegate that two of his brothers are employed in [Occupation 1], one of whom operates his own vehicle. The applicant has previously worked on his father's farm and although his father died in 2014, he has not claimed that the farm is no longer operating or in the family's possession, or that he will be unable to resume working on the farm, or with his brothers, should he need to do so. His physical disability did not prevent him from working on the farm in the past and the evidence before me, including the psychologist's report, does not indicate that the applicant's mental health will prevent him from working.
43. I take into account his comment that he may self-harm if he is forced to return to Lebanon. He told the delegate that he had suicidal thoughts in the past but had not done anything because it would be against his religion. He does not claim to have engaged in other forms of self-harm

in the past, although I accept that being returned to Lebanon may add to his distress. While I have sympathy for the applicant, the definition in s.36(2A) is framed in terms of harm suffered by a person because of the acts of other persons. Nor does it cover the harm that a person would suffer as the result of any illness in the receiving country, including any illness arising on return to the receiving country.<sup>9</sup>

44. There is no other information before me to indicate that persons suffering mental health conditions, physical disabilities, or a combination of both, face a real risk of harm of a level above that which the applicant has previously experienced. I am not satisfied that the type of harm the applicant may face would include death or torture. I accept that the applicant may face some societal discrimination, stigma and similar difficulties arising from his health conditions, but I am not satisfied that any discrimination or stigma he may face will include or amount to conduct would be intended to cause significant harm as contemplated by the Act.
45. Having regard to the psychologist's opinion, there is nothing to indicate what, if anything, the psychologist was told or took into account in relation to the applicant's family circumstances and family support in Lebanon. The applicant did not suffer harm at the hands of his family and when he raised his concerns about discrimination with his brother, the brother took steps to assist him. I am satisfied that the applicant will be able to access family support and assistance in Lebanon.
46. Having regard to all of the above, I am not satisfied that the applicant faces a real risk of significant harm arising from his health condition, including mental health, should he return to Lebanon.
47. I have found that the applicant does not face a real chance of harm for any other reason in Lebanon. As "real chance" and "real risk" equate to the same threshold,<sup>10</sup> and for the same reasons as given above, I am not satisfied that he faces a real risk of significant harm for these reasons.

#### **Complementary protection: conclusion**

48. 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**

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

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<sup>9</sup> *CSV15 v MIBP* [2018] FCA 699; *CHB16 v MIBP* [2019] FCA 1089; *EZC18 v MHA* [2019] FCA 2143.

<sup>10</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***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.