



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA21/09706

Date and time of decision: 28 September 2021 17:57:00

S McNeill, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) is a Lebanese national. He arrived in Australia by boat [in] June 2013 and on 14 September 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 18 August 2021 a delegate of the Minister for Immigration refused to grant the visa.

Information before the IAA

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

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born in [year] in a village called [Village 1], in Akkar, Lebanon. He is of Arab ethnicity and a Sunni Muslim.
 - He grew up in [Location 1] with his parents, [number] sisters and [number] brothers. His father used to work in a [workplace] with his brother but now works as a [Occupation 1].
 - He went to school until he was [age]. At [age] he started working in [businesses] until he was 17. In [year] when he turned 17, he became eligible to serve in the Lebanese army and his father registered his name with the army.
 - It is not compulsory to serve in the army in Lebanon. The reason his father registered him was because he could not continue his education and his father wanted him to have employment concerned for his future. However, he did not want to join the army.
 - His father lodged the application and he was called to the army. He completed and passed his fitness test and then waited to begin training.
 - He feared being killed in the army. In Lebanon, there is high levels of violence with 18 religious' sects in conflict with each other. The war in Syria has significant security ramifications; army personnel have been killed on the borders by Hezbollah, Daesh and other armed terrorist and political groups.
 - He personally knew many people who had been killed in the army. An elderly lady in their village had two nephews in the army killed near the Syrian border at the beginning of the war.
 - He looked for a way out and some people in his village told him about travelling to Australia by sea. His father did not approve, and they had a big fight. His father then decided to support him and sold some land and paid \$12,000 for his passport and travel.
 - While he was in [Country 1], his father who told him the army had contacted him asking about him because it was his time to enlist for training. His father told them he had travelled overseas for a couple of months and would return.

- If he is forced to return to Lebanon, he thinks the Lebanese army will punish him because he joined the arm and then fled the country. They will consider him a deserter and throw him in jail. He will be arrested at the airport because his name is on a watch list at entry ports.
- He thinks he will also be in trouble for destroying his passport as it is a symbol of the government. If they found out he had thrown it away, it would be considered an insult to the country and he may be imprisoned.

Refugee assessment

5. 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

6. 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.
7. There is no issue as to the nationality of the applicant, he has consistently claimed to be a national of Lebanon and has provided copies of Lebanese identity documents including an extract of his birth certificate, family record and personal ID card. I accept that the applicant is a national of Lebanon and that Lebanon is the receiving country for the purpose of this review.
8. On the consistent oral and documentary evidence before me I accept that the applicant was born in [Location 1], Akkar, in the north governate of Lebanon in [year]. His parents, [number] sisters and [number] brothers continue to reside in Lebanon. After finishing school, he worked in [businesses] in Beirut and in his uncle’s shop. He has relatives in Australia and since 2016 he has been working for his cousin who owns [a specified] business in [Victoria]. He married his wife, an Australian citizen in November 2018, their first child was born in [year] and his wife is pregnant with their second child due in [month] this year. The family plan to move to Adelaide where his wife’s family live.

9. The applicant essentially claimed to fear harm on account of his failure to turn up for his military training after his father registered him with the Lebanese army. He feared being killed because of the high levels of violence if he joined the army.
10. At his SHEV interview on 13 August 2021 the applicant stated there were two reasons he left Lebanon. First, he didn't want to join the army as his father proposed, and secondly, since he was a child, he could see Lebanon did not have a future. There were no jobs, no help from the government and his father had been working since he was 10 and he never had enough money. The applicant said he was worried about his future that he might not be able to get married. Lebanese people were strong and would do anything to survive but the Lebanese government had bad intentions towards its people.
11. The delegate noted Lebanon did not have compulsory military service which meant he was never forced and asked why he had not just withdrawn his application. The applicant stated that from his childhood he had learned to respect his father, his decision and choices and it would cause him discomfort to refuse him. He felt he had to obey but on the other hand he did not want to risk his life and die.
12. The delegate observed that his father had agreed he should leave Lebanon, that he had sold some land and paid for his trip which indicated his father would rather see him out of the country than do military or work for the army. The applicant said that was correct, his father had not known the option of traveling to Australia but when he did, he thought it might be a better idea than the army and sold some land to contribute to his trip. He confirmed his father and him both decided it was best for his economic and social future to leave Lebanon.
13. The applicant stated he might be arrested at the airport because he left and had not returned until now. His uncle who had recently returned had been detained for five hours when he returned and interrogated, but they left him after that. His uncle's case was different from his as he had never applied to join the army.
14. The delegate cited country information again noted military service was not compulsory. Furthermore, it also indicated Lebanese armed forces members could resign anytime they are in the army and in fact they could resign immediately after joining without any penalty. The applicant stated he didn't have any idea about that. He never heard that people could resign and withdraw their application or anything; he left when he was [age] and didn't know about that.
15. The delegate referred to the applicant's arrival interview and noted when asked the reasons why he left Lebanon, he had stated there was war in Lebanon and no safety and he had told his father he wanted to migrate to Australia. He had not raised any fears of harm from the army and he had not mentioned enlisting or enrolling in the army and asked him why. The applicant said he had told the same thing that he was forced to join the army and had not wanted to. He repeated it two or three times. The other thing was they provided an Iraqi interpreter, he did not understand that person and he may not have been able to convey everything to the officer.
16. The applicant participated in his arrival interview in two parts. In the review material is a copy of the transcript and the audio recordings and which I have listened to. The first part was undertaken on 28 June 2013 at Christmas Island and an interpreter in the Arabic language was provided. The applicant was told he was expected to give true and correct answers to questions asked and that he should understand that if information he gave at any future interview was different from what he told now, this could raise doubts about the reliability of

what he had said. Asked whether he understood what was had been said, the applicant said 'yes'. Asked whether he understood the interpreter, the applicant said 'yes'.

17. The applicant was asked why he left Lebanon. The applicant stated there is war in Lebanon. Wherever you go there is war and no safety. He told his father he wanted to migrate to Australia. He wanted safety and peace and a future. Asked whether anything specifically happened to him which caused him to leave Lebanon, the applicant said not him personally but all the villages in Akkar are not safe. Even in Tripoli there is war. Their village was close to the Syrian border and they could hear bombs and it was very dangerous.
18. Asked how the war and there being no safety impacted on him, the applicant said the first thing he wanted to come here to be safe, in peace and have a future for himself. Hopefully in the future he would be able to bring his family and parents here as the war was getting closer and closer. Asked whether there were any other reasons he left Lebanon, the applicant said 'no', the war, looting and no safety. There was no proper schooling because of the war. Asked what he thought would happen to him if he returned to Lebanon, the applicant said nothing would happen to him but there was no proper life there.
19. Asked whether he had ever received training in preparation for conflict, the applicant said 'no'. Asked whether he had been involved in any military service, the applicant said 'no'.
20. Part 2 of his arrival interview was conducted on 22 July 2013. The applicant was asked about his employment history and military service. The applicant did not state he had been enlisted into the army. On the information before me, I am not satisfied the applicant made any mention of his registration in the army or that the interpreter failed to convey this. I consider it not insignificant that the applicant made no reference to having military obligations.
21. Country information in the review material from what purports to be the official website of the Lebanese Army indicates Law number 665 issued on 4 February 2005 abolished military service in Lebanon two years after the publication of the law (i.e. in 2007). Clause 8 states 'Cessation of the prosecution of defaulters of the military service and all the pursuits of sentences regarding them shall be dropped immediately after the issuance.'¹ In 2010 the Immigration and Refugee Board of Canada observed Lebanese citizens who did not fulfill their military service prior to the abolition of compulsory military service in 2007 may face arrest. Many of the sentences issued by the military tribunal in Beirut for draft evasion of compulsory military service were for prison sentences of one to fifteen days or the payment of a fine of approximately 200 Lebanese pounds (134 US dollars).²
22. The Department of Foreign Affairs and Trade (DFAT) country information report for Lebanon confirms conscription was abolished in 2007. As a member of a voluntary organisation, an individual is formally entitled to resign from the Lebanese Armed Forces (LAF) at any stage with the approval of their commanding officer. DFAT understands that, while this generally occurs without significant obstacle, there have been cases in which it has proven more difficult. DFAT is unable to say whether resigning from the LAF would cause an individual to face official or

¹ 'Military Service. Law Number 665 Issued in 4 February 2005', Lebanese Army website, 01 January 2019, 20191121132430

² 'LBN103353.E: Lebanon: Whether a Lebanese citizen who did not fulfill his military service prior to the abolition of compulsory military service faces any consequences', Canadian IRB: Immigration and Refugee Board of Canada, Immigration and Refugee Board of Canada, 10 February 2010, 163

societal discrimination, including through experiencing difficulties in finding alternative employment.³

23. A September 2012 country information request to the DFAT post in Lebanon stated an officer or soldier can resign at any stage by being granted approval from their Commanding Officer. Commanding Officers "always provide approval" and added that a LAF member could resign from service immediately after joining. LAF members do not have to serve a specific length of time prior to being permitted to resign.⁴
24. On the country information before me and that the applicant had only undertaken and passed a fitness test and that he had not actually commenced his military service, that a member of the LAF is entitled to resign at any time from the LAF, that Commanding Officers always provides approval and that one is not required to serve for any specific length of time before resigning and that these events occurred after the abolition of compulsory military service in 2007, I am not satisfied the applicant faces a real chance of any harm on this basis from the LAF or other Lebanese authority on his return to Lebanon now or in the reasonably foreseeable future. I am not satisfied on return to Lebanon the applicant would be arrested at the airport and subsequently imprisoned for failing to commence his military service in 2013.
25. The delegate asked the applicant about his family whether he was assisting them financially. The applicant stated they lived well, everyone was 'ok', no one was sick, just the general situation was difficult, they didn't have power and it was really overwhelming. He sent money sometimes as he had his own expenses in Australia. At the end of the interview although he had initially stated no one was sick, he stated his mother was sick and he had to keep supporting them. The applicant did not provide any further information or evidence regarding his mother. Give this inconsistency and lack of information, I am not satisfied the applicant's mother is sick. I note the applicant's father had land to sell to pay for his journey to Australia.
26. During the interview the applicant expressed his concern about the general situation in Lebanon being very difficult, there were no jobs and the government did not help. I accept Lebanon's current economic outlook is not positive and that this is an unfortunate situation. Country information indicates that even before the massive explosion in the Port of Beirut in 2020, Lebanese were protesting ongoing government corruption and mismanagement. Lebanon is now facing one of the most serious financial crises in its history which has crippled the economy. Even before the COVID-19 crisis hit, the World Bank had estimated that up to 45% of Lebanese citizens would be below the poverty line by the end of 2020.⁵
27. The local currency has crashed, losing more than 80 percent of its value since October 2019, and in July 2020 Lebanon become the first country in the region to enter hyperinflation. The financial collapse is the biggest threat to Lebanon's stability since the 1975-90 civil war.⁶ Talks with the International Monetary Fund for a bailout have stalled over inaction on long-demanded reforms to tackle entrenched corruption and mismanagement and an internal row over the size of vast financial losses.⁷ Poverty rates are estimated at more than 55% for 2020

³ 'DFAT Country Information Report: Lebanon', Department of Foreign Affairs and Trade (DFAT), 19 March 2019, 20190319100208.

⁴ 'CIS Request LBN13897 The Lebanese Armed Forces', Australia: Department of Foreign Affairs and Trade (DFAT), CX296661.

⁵ 'A YEAR INTO MASS PROTESTS, LEBANON'S LEADERS MUST FINALLY TAKE ACTION AGAINST CORRUPTION', Transparency International, 26 October 2020, 20201029095322

⁶ 'After port blast, rudderless Lebanon drifts towards the rocks', Reuters, 27 August 2020, 20200828110658.

⁷ 'Lebanon inflation soars above 100% year-on-year in July', Reuters, 27 August 2020, 20200828105808

and 25% extremely poor. The economy contracted 20 per cent in 2020 and 10 per cent more is expected in 2021.⁸ Overall in 2020, food prices rose by more than 400 percent.⁹

28. Unemployment is rising significantly in Lebanon due to its crippling financial crisis, COVID-19, and the Beirut blast. Tens of thousands of people had already become unemployed in the economic crisis prior to the explosion. A further 70,000 people are estimated to have lost their jobs as a result of the explosion. Lebanon's middle class has shrunk from 57 percent of the population in 2019 to less than 40 percent this year and warned of an accelerating exodus of Lebanese citizens.¹⁰
29. DFAT noted in 2019 unemployment is a major problem for Lebanon, particularly for the young. In 2017 the labour minister estimated unemployment among those under 25 years of age is at 37 per cent. DFAT assess that the high levels of unemployment result from a number of internal and external factors. Employment opportunities in Lebanon's traditional external markets (the Gulf, Africa, and the West) have decreased in recent years, leading many Lebanese expatriates to return home to seek work in a crowded labour market. A mismatch exists between the needs of the Lebanese labour market and the output of universities: according to the labour minister, Lebanon has a saturation of graduates in professions such as engineering, medicine, and business and finance, but lacks specialised skilled workers in other areas.¹¹
30. The influx of Syrian refugees has led to increased competition for low-skilled jobs, particularly in the informal sector and in areas of high refugee concentration such as the north of the country and the Beka'a Valley. The World Bank reported in April 2017 that, as a result of the Syrian crisis, an additional 250,000 to 300,000 Lebanese citizens had become unemployed, most of them unskilled youth.¹²
31. The applicant has previous work experience working in [businesses] in Beirut. At his SHEV interview he also mentioned previously working part-time in his maternal uncle's shop. He has worked in Australia for his cousin in his [business] and has also been involved in buying, repairing, and accessorising and selling [goods] in his spare time and made money from this endeavour. I accept on his return to Lebanon it will be challenging finding suitable employment in the current economic climate. He will be able to reside with his family who he maintains contact with. I am not satisfied that any difficulties the applicant may face finding employment or accessing goods and services as a result of the economic crisis amount to persecution for any s. 5J reason under the Act as the situation is one faced by the population generally.
32. The applicant referred to the war and the villages in Akkar not being safe in his arrival interview. According to DFAT, Lebanon faces a range of security challenges. These include 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. The government maintains security checkpoints, primarily in military and other restricted areas.¹³
33. The Lebanese Armed Forces has 96, 000 active personnel and 20, 000 reserve personnel. It comprises of an army, air force, and navy, is responsible for territorial defence, maintaining

⁸ '2020 UN Lebanon Annual Results Report', United Nations Lebanon, 12 May 2021, 20210513171401

⁹ 'Lebanon's Economic Collapse in Numbers', Naharnet, 17 March 2021, 20210318161850.

¹⁰ 'UN Says over Half of Lebanon 'Trapped in Poverty' even Before Blast', Naharnet, 19 August 2020, 20200821161308

¹¹ 'DFAT Country Information Report: Lebanon', DFAT, 19 March 2019, 20190319100208.

¹² Ibid.

¹³ Ibid.

internal stability and security, and undertaking relief operations in coordination with public and humanitarian institutions.¹⁴

34. 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 (LAF) 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 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.¹⁵
35. DFAT notes the LAF 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. 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.¹⁶ 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.
36. The Internal Security Force (ISF) is Lebanon's police and security body, tasked with maintaining public order and counter-terrorism. It has approximately 40,000 personnel.¹⁷ The US State Department reported in 2019 that according to the ISF crime statistics, Lebanon experienced a decrease in crime rates across numerous categories between 2017 and 2018. Most notably, homicides fell by 26 per cent, and robberies fell by 33 per cent but low-level criminal activity (e.g. pickpockets, petty theft, street crimes) remained common. It also described the police as responsive.¹⁸ More recent reports indicate crimes including car theft, gender-based violence and extortion have increased because of the economic crisis, youth unemployment and the COVID pandemic. Murder, robbery, and general crime rose significantly in 2020 compared to 2019.¹⁹
37. I accept the Lebanon faces a range of security challenges, that tensions remain, and there are incidence of violence and crime. However, on the information before me, I am not satisfied that the Akkar region or other parts of Lebanon are experiencing levels of sectarian, generalised or other violence of a scale, gravity, or frequency, such that the applicant would face any more than a remote chance of being harmed.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸'Lebanon 2019 Crime & Safety Report', Overseas Security Advisory Council (OSAC), 25 April 2019, 20190531103358.

¹⁹ 'As Lebanon sinks into crisis, fear of crime grows', Reuters, 22 June 2020, 20200623103748; 'Hunger crimes' on the rise in crisis-hit Lebanon', Daily Star, The (Lebanon), 15 July 2020, 20200721151823; 'Lebanon: Rise in Extortion, Harassment Crimes', Asharq Al Awsat, 06 May 2020, 20200513085627; 'In Lebanon, women are being killed in their homes because of the lockdown', Middle East Monitor (MEMO), 25 May 2020, 20200702150330; 'Lebanon's collapse piles strain on army, security forces', Reuters, 09 March 2021, 20210312091522.

38. DFAT indicates journalists, civil society activists, critics of Hezbollah and homosexuals have raised security profiles.²⁰ The applicant does not have a risk profile of concern. While the applicant indicates his family are being challenged by the general situation, he did not claim or state that his family are being threatened by anyone, or that they were currently adversely impacted by the ongoing neighbouring Syrian conflict. The applicant will have the support and protection of his family members including his father and two brothers. I do not accept that the applicant faces a likelihood of harm that is greater than other Lebanese citizens. I am not satisfied the applicant faces a real chance of harm due to the general security situation in Lebanon or due to violence and crime.
39. Information before me indicates that according to Departmental records the applicant was included in the list of people in immigration detention on 31 January 2014 inadvertently released on the Department's website in February 2014 and that the applicant was advised of this by letter on 13 March 2014. Information included his name, date of birth, nationality, gender, and reasons for detention. While there is no evidence before me to indicate that the Lebanese authorities, or any other group, had access to this information, I am willing to accept the Lebanese authorities may have accessed this information and from it inferred that the applicant travelled to Australia with the intention of seeking asylum.
40. I accept the applicant has been in Australia for over eight years and claimed asylum. In his SHEV application, the applicant indicated he left Lebanon legally on his own passport from Beirut airport and I accept this to be the case. The applicant claimed he would be identified and arrested at the airport because his name is on a watch list because he is a deserter. He also thought he would be in trouble for destroying his passport from Lebanese authorities because it is a symbol of the government and if they found out he had thrown it away (in the water in [Country 1]) it would be considered an insult and he may be imprisoned.
41. I am not satisfied the applicant was of any adverse interest to the Lebanese authorities at the time he departed Lebanon and I am not satisfied his name is on a watch list in relation to his claims regarding his military service. Lebanon has a long history of emigration and return. The Lebanese diaspora is one of the largest worldwide: although reliable figures are not available, estimates of its numbers range between 8 million and 14 million people. Many expatriate Lebanese maintain close family or business relationships within Lebanon and return to the country frequently, entering and exiting without difficulty.²¹
42. Lebanese border control maintains a database of 'border alerts' or 'stop orders', against which it checks all travellers' names on arrival and departure. Border alerts are raised when there are pending court cases or warrants for those wanted for, or convicted of, offences in Lebanon. Lebanese citizens returning from overseas are highly likely to be arrested and detained on return should they have an existing stop order against them. DFAT is aware of cases where people facing criminal charges have been stopped before departure and barred from leaving the country.²²
43. DFAT understands 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. DFAT understands, however, 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

²⁰ DFAT Country Information Report: Lebanon', DFAT, 19 March 2019, 20190319100208

²¹ Ibid.

²² Ibid.

order against them or if they had committed a crime abroad of sufficient gravity for authorities to request an accompanied transfer.²³

44. I am not satisfied the applicant is on a watch list. He has not claimed to have been subject to a border alert or stop order, or to have committed any crimes outside Lebanon. It is not clear how the Lebanese authorities would know the applicant had destroyed his passport nor does the information indicate Lebanese national are imprisoned for such an offence or face any other sanction. 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. I am also not satisfied he faces a real chance of any harm on account of the fact he has claimed asylum in Australia.

45. I am not satisfied that he has a well-founded fear of persecution in Lebanon for any reason.

Refugee: conclusion

46. 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

47. 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

48. 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.

49. 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.

50. I have accepted that the applicant may face significant difficulties finding employment in Lebanon due to the current economic situation. The difficult economic conditions are faced by the Lebanese population in general. I am not satisfied that any difficulties the applicant may face accessing employment, goods, and services, would, in these circumstances, constitute arbitrary deprivation of life, the death penalty or torture. Further, the information before me does not indicate any requisite intention to inflict pain or suffering on the applicant that could

²³ Ibid.

reasonably be regarded as cruel or inhuman treatment or punishment, severe pain or suffering, whether physical or mental, or cause extreme humiliation, as required in the definitions of cruel or inhuman treatment or punishment or degrading treatment or punishment in the Act.

51. As set out above, in relation to the remainder of the applicant's claims, I am not satisfied that there is a real chance that the applicant will face any harm should he return to Lebanon now or in the reasonably foreseeable future. Real chance and real risk involve the same standard. On the same factual findings, I am similarly not satisfied that the applicant faces a real risk of suffering any harm on the same grounds, including significant harm, should he be returned to Lebanon.

Complementary protection: conclusion

52. 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.099

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.