



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA22/10236

Date and time of decision: 5 April 2022 14:42:00

J Jennings, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Lebanon. He applied for a Temporary Protection visa (subclass 785) on 28 July 2016. He fears harm in Lebanon from his violent father. He is a Sunni Muslim and fears harm as the result of sectarian conflict. A delegate of the Minister refused to grant the visa on 16 May 2017.
2. On 8 August 2017 the IAA affirmed the decision not to grant the applicant a protection visa. [In] February 2022 the Federal Circuit and Family Court of Australia by consent quashed the decision of the IAA and directed the IAA to determine the matter according to law.

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).
4. I have also obtained the Department of Foreign Affairs and Trade (DFAT), "Country Report Lebanon", dated 19 March 2019. This report was published after the delegate's decision and the delegate relied on the then current 2015 DFAT report for Lebanon which the 2019 report has updated. It has been prepared specifically for the purpose of protection status determinations. I am satisfied that there are exceptional circumstances to justify considering this new information.
5. The IAA received a submission on the applicant's behalf on 9 June 2017. This comprised a submission from the applicant's representative, a statutory declaration from the applicant, medical reports, an extract from Smart Traveller and articles discussing sharia law and child abuse.
6. The applicant's statutory declaration is essentially a restatement of his protection claims and explanation of his fears of harm from sectarian violence and from his violent father. This commented that his father beat him in public and that this was well known to everyone. While the applicant did not make these explicit comments in his protection visa application or interview he did advance claims of constant beatings, his extended family being aware of his father's violence and being scared of him, and the authorities being aware of the situation but not acting. I am satisfied that this is simply an extension of the claims already put and offered to put the extant claims into some perspective and is not a new claim or an elaboration that amounts to a new claim or new information.
7. The submission from the representative largely restated the applicant's claims of fear of harm from his father and his fear as a Sunni and addressed the delegate's findings and decision and stated, "that sufficient consideration was not given to the applicant's circumstances by the case officer which has led to an incorrect decision in this case". In the context of the claims of violence from his father and his claimed inability to obtain state protection the submission discussed concerns as to the application of sharia law in Lebanon. The applicant did not use the term 'sharia law' but in his evidence he spoke of the impunity with which parents can act against their children and are protected by the authorities when doing so. Accordingly I am satisfied that the discussion in the IAA submission essentially relates to matters that were before the delegate and is not new information, but the accompanying material was not before the delegate and is new information. The submission

went on to contend the delegate “failed to give appropriate consideration to the emotional and mental state of the applicant and the toll that years of abuse from a parent can have on a person’s health and emotional state”.

8. The representative’s submission stated the applicant “sold his family home without his parents knowing and took all the money”. This comment is at odds with the applicant’s clarification at the protection visa interview that it was his mother who sold the family home. In the protection visa application the applicant had stated he had sold his home but his protection visa interview account modified this and at that interview he gave a more detailed account of the property being in his mother’s name and her selling the property. I conclude that this reference in the IAA submission is an erroneous reference and meant to reflect the sale of the property by the applicant’s mother without his father knowing; such would be consistent with the applicant’s account.

New information – sharia law

9. In addition to the comments in the representative’s submission regarding sharia law and the applicant’s fear of harm on the basis of sharia law new information has been provided or referenced. This information largely addressed the matter of state protection and the delegate’s finding under the complementary protection assessment that she considered the state would be both able and willing to provide state protection to the applicant if necessary.
10. The new information is not personal information. The new information pre-dates the decision and the submission does not explain why this information could not have been given to the Minister. I take into account that the delegate told the applicant at the protection visa interview she would consider if his claims met the ‘refugee criteria’ but I am not satisfied he was on notice that the complementary protection assessment of access to state protection would be a factor in deciding his protection visa application. To that extent I am willing to accept that the applicant could not have provided the new information to the Minister. While I have found the requirements of s.473(b)(ii) are met the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances to justify considering the new information.
11. A copy of an article dating from 2013 referring to the application of sharia law and honour killings was given with the submission. This article has direct relevance to the applicant’s claims in two parts: the reference to fathers not being subject to retaliation for killing a child and the report of the release of a man accused of an honour killing in Lebanon. The fourth item listed in the bibliography is an article titled “Policy, T. C. (2010). Shariah - The threat to America (An Exercise in competitive analysis)” and has been cited in the IAA submission in regard to the comment “under sharia law someone who kills his child incurs no penalty”. No copy of the document was provided. The link given in the bibliography tracks to a report dating from 2010 published by the Center for Security Policy. The report includes the comment “a Muslim parent faces no legal penalty under Islamic law for murdering his child or grandchild”.
12. I am satisfied that the information in both reports addresses the applicant’s claim that his father could kill him with impunity and that the police or other authorities would not protect him in Lebanon and on face value lends support to those claims. As such I am satisfied there are exceptional circumstances to justify considering the new information.
13. The other new information relates to the footnote in the submission. The submission commented that “both Shia and Sunni Muslim political movements have as a primary

objective the establishment of Islamic law as the sole basis of government” and this comment is footnoted with a link. No copy of the document the applicant is seeking to rely on was provided. The link itself tracks to a document from the Austrian Federal Ministry of the Interior and under the section for Lebanon cited a number of primary sources and provided some basic information of the demographics of the Lebanese population, information which is very similar to that already before the Minister in the form of DFAT reporting. It is not apparent to me that this information, or other information in the document, supports or even addresses the assertion regarding the primary objective of establishing Islamic law as the sole basis of government.

14. I have considered if this footnoted information has probative value in supporting the applicant’s claims. The information is very generalised in nature and to the extent that it informs on the situation in Lebanon the information is at a basic level and in the large only duplicates information that was essentially already before the Minister. Considering this I am not satisfied there are exceptional circumstances to justify considering the Austrian Federal Ministry of the Interior information.

New information - medical reports and the effects of child abuse

15. The submission from the representative advised the applicant “has suffered anxiety and depression as a result of his fear of returning to Lebanon. He has attended the Emergency unit on two separate occasions”. The submission included medical reports from [Health Service 1] and also referred to and attached a brief article discussing the effects of physical abuse on children. This information is new information.
16. The first [Health Service 1] report advised the applicant presented on 31 May 2017, 2 June 2017 and again on 3 June 2017 and was treated for migraine and headache and vertigo. The second [Health Service 1] report advised he attended on 7 June 2017 with nausea and vomiting and vertigo, onset following him eating after Ramadan fasting. In relation to these visits the submission contended “since the applicant received the decision from the case officer, he has not been able to cope with the thought of his pending return to Lebanon”, but I note the medical report advised he also presented in December 2016 with similar symptoms, before the delegate’s decision or the protection visa interview.
17. The [Health Service 1] reports post-date the delegate’s decision and could not have been provided to the Minister. While the reports are credible personal information, the submission has not advised how had this information been known it may have affected the consideration of the applicant’s claims. Nor is this apparent to me. The medical reports refer to migraine, vertigo, nausea and vomiting and make only passing reference to stress in the comment “patient admits to being under recent stress”. To some extent the reports support the claim of stress, but this is very limited and I am not satisfied that this is information that may have affected the consideration of his claims. The applicant put forward his claims of harm in Lebanon and that this led to him considering suicide. I am not satisfied that the information in these reports adds information that supports the claims of harm or the suicide claim. I am not satisfied that any exceptional circumstances exist that justify the IAA considering the new information.
18. In addition to the complaint that the delegate failed to consider the applicant’s emotional and mental state and the toll of years of abuse the submission seems to link the child abuse article to the comment “the applicant has difficulty trusting people or talking about his feeling and as such it was a big step for him to finally admit the issues he had faced with his father over the years and the problems he continues to have”. While the article was

downloaded on 9 June 2017 the date of this information has not been identified by the representative and I cannot be satisfied it pre-dates the delegate's decision. It is not personal information. The article is brief in content and recounts very basic sketches of the effects of child physical abuse. There is one reference to "difficulty trusting others" although the context of this comment is within the scope of "interpersonal relationships". I am not satisfied that this comment, or the other information in this article, is useful in providing probative support to the applicant's claims. On the same basis nor am I satisfied that any exceptional circumstances exist that justify the IAA considering the new information.

New information - Smart Traveller

19. The Smart Traveller advice post-dates the delegate's decision and on that basis could not have provided to the Minister. It is not personal information. The submission from the representative refers to the DFAT Smart Traveller advice to purport that "Lebanon is not safe" and I have considered the probative value of this information in supporting the applicant's claims to fear harm in Lebanon.
20. Smart Traveller advice is designed to caution Australians travelling as tourists to Lebanon and to alert such travellers to local issues that may impact on their travel and safety. The cautions relate to the general security situation in Lebanon and specific matters relating to the targeting of westerners, kidnappings and attendance at large gatherings or protests. Information regarding the general security situation is already before me in country information which also specifically addresses the situation for Lebanese citizens and the matter of sectarian tensions. I am not satisfied that the information in the Smart Traveller advisory notice is of significant probative value in supporting the applicant's claims. I am not satisfied that there are exceptional circumstances to justify considering this information.

Applicant's claims for protection

21. The applicant's claims can be summarised as follows:
 - The applicant is a Sunni Muslim citizen of Lebanon. He was born in the Akkar District in the north of Lebanon and grew up in Tripoli.
 - His father was violent; he abused alcohol and drugs and regularly physically assaulted the applicant. His father objected to the applicant socialising with non-Sunnis and as a result of the mistreatment the applicant became suicidal.
 - The applicant could not complain to the authorities as they will not intervene in such matters. He could not escape this violence as his father has ties across Lebanon and would be able to track him down.
 - To escape the violence the applicant decided to leave Lebanon and come to Australia. He departed Lebanon in 2013 and travelled to Australia via [a named country] and [Country 1].
 - He had a short-term tourist visa for [Country 1] and fears he will be arrested if he returned to Lebanon because he stayed away longer than the period of his tourist visa.
 - The family home was sold to fund his travel. This was arranged without his father's knowledge or consent and because of this his father has threatened to kill the applicant if he returns to Lebanon. Sharia law is in force throughout Lebanon and by law he would be punished for dishonouring, stealing from and abandoning his family.

- He fears that his father will kill him if he returns to Lebanon and that he cannot obtain protection from the authorities or relocate within Lebanon to avoid his father.
- Due to instability, insecurity and sectarian conflict Lebanon is not safe and people are constantly firing at random citizens. Near his area in Tripoli there were groups of Shia/Alawites and he feared for his safety; many people were killed including some of his friends.

Refugee assessment

22. 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

23. 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.
24. The applicant has consistently claimed to be a citizen of Lebanon and has provided identity documents in support of his claimed identity. I accept the applicant's identity and nationality as stated and that Lebanon is the receiving country for the purpose of this review.
25. I accept the applicant is a Sunni Muslim.
26. I accept that the applicant may be concerned for his safety in Lebanon and I note reporting of inter-religious tensions in Lebanon. Due to a lack of census information official statistics of the demography of the population of Lebanon are not available, but it is evident that the population is overwhelming Arab and that Islam is the dominant religion. Estimates of the Muslim population indicate a largely even split of Sunnis and Shias.¹ Historically the country has been troubled by intermittent tensions which have been highlighted on occasion by regional disturbances, particularly those relating to Israel/Palestine/Hezbollah and more

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Lebanon", 19 March 2019, 20190319100208

recently in Syria. The Taef Accord set in place structures to achieve “mutual coexistence” and to distribute power across competing demographic groups (being largely the Sunni/Shia/Christian groups).²

27. As described by DFAT, “Lebanon faces a range of security challenges”, including external threats; threats of terrorist attack from internal and external actors; politically-motivated violence due to civil unrest; and occasional incidents of communal violence. In the light of the Syria conflict historic tensions between Sunnis and Shia/Alawites in areas of Tripoli escalated leading to regular rounds of communal violence that killed over 200 people. In the context of this information I accept that the applicant had friends or knew of people killed or hurt in the conflict. In response to the violence the Lebanese authorities implemented a security plan in April 2015 that re-established a Lebanese military presence in the area and, although underlying tensions remain, DFAT understands that this has succeeded in “significantly reducing the number of serious incidences of communal violence”.³
28. While the applicant did state some extended family members left their homes on occasions to avoid violence in the area he stated they then returned to their homes. From his account neither he nor family members have experienced harm from sectarian/inter-religious or been victims of generalised violence. There is no indication the move of his immediate family from Tripoli to Beirut after his departure from Lebanon was motivated by any concern as to their safety in Tripoli.
29. The country information indicates that both Tripoli and Beirut have large Sunni populations and DFAT’s assessment is that Sunnis in both cities face a low risk of violence or harm and that the Lebanese authorities are committed to preventing inter-religious violence. The indications are that those who may come to harm are those involved in fighting or sectarian groups, but the applicant has not indicated he has been so involved, or would be, or desires to be should he return to Lebanon. The country information indicates that security conditions in Lebanon, including Tripoli and Beirut, have improved significantly since they left Lebanon and following the implementation of the 2015 security plan.⁴ I take into account that there is no indication his family have come to any harm living in Beirut where they moved following his departure.
30. Although the country is subject to some regional tensions I am satisfied from the country information that the security situation in Lebanon has stabilised since the April 2015 security measures taken in response to conflict arising largely as a result of the situation in Syria at the time. I am not satisfied that there is a real chance the applicant would come to harm as a Sunni residing in Tripoli or Beirut. I am not satisfied he would be harmed by Shias/Alawites, or others, for reason of his religion or for any other s.5(J) reason, or that he would need to hide his religion. Nor am I satisfied that the chance he may be harmed or killed in generalised violence or as a bystander in an attack is more than remote.
31. In the context of the sectarian groups in Lebanon the applicant claimed his father was violent to him because he mixed with non-Sunnis. I consider it plausible that his father objected to the applicant socialising with non-Sunnis and it is also plausible that he may have abused and even physically assaulted him for doing so, particularly as a teenager/young man.

² DFAT, "DFAT Country Information Report - Lebanon", 19 March 2019, 20190319100208; DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155; US Department of State, "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883

³ DFAT, "DFAT Country Information Report - Lebanon", 19 March 2019, 20190319100208

⁴ *ibid*

32. In her decision under Findings of Fact the delegate largely recounted the applicant's claims and the questions she put to him at the protection visa interview and his responses. The delegate made explicit findings that she accepted "he is who he claims to be", is a citizen of Lebanon and a resident of Akkar; is a Sunni Muslim. She otherwise commented "the applicant appeared to be forthright in his responses to my questions at interview and did not appear to embellish or exaggerate his claimed experiences in Lebanon. Whilst he did raise a claim regarding his father which was not mentioned in his initial interview, I am generally satisfied as to the credibility of the applicant." Despite this somewhat nebulous statement she outlined areas of concern, most notably the omission of the violence claims at the arrival entry interview "given he is now claiming that the main reason for leaving his country was due to the treatment from his father". The delegate also outlined matters such as his claim he did not approach the authorities about the abuse; the timeline regarding the sale of house, his departure and what she considered was an implication in the June 2016 protection visa application that his family were still living in the house at that time.
33. In reaching her judgement that she was "generally satisfied" as to the credibility of the applicant it is not apparent she did so based on his demeanour or presentation at interview. Rather, this is seemingly based on the content of his responses and not the manner in which he gave his evidence. I have noted these areas of concern and I also have significant concerns with aspects of his account of the circumstances that he claimed led to his decision to leave Lebanon, and with the claim that subsequent to his departure his father has threatened to kill him. My concerns are not based on demeanour, but rather on the plausibility of his account and are based on the information he himself has provided and that discussed with him at the protection visa interview. My assessment is based on the content of the information he has provided. I also note the (now quashed) previous IAA decision made adverse findings in part regarding credibility and I am satisfied that the applicant, and his representative, are on notice that the credibility of his claims may be an issue.
34. I share the delegate's concerns regarding the late advance of the violence claims and consider it significant that after arrival in Australia the applicant did not recount any history of parental violence or disapproval at the arrival entry interview conducted on 22 June 2013. At the protection visa interview the delegate gave the applicant an opportunity to explain this omission and he stated that he was reluctant to discuss this at that time because he considered this to be a personal matter, that he did not know what to say at that interview, and he also referred to the stress he was experiencing following his travel to Australia by sea.
35. Even if I were to accept on face value his explanation that he considered this to be a personal matter and therefore he did not mention it at that interview I remain concerned that at that interview, when asked to provide an emergency contact to the Department, he gave his father's details. I have difficulty reconciling his claim that his father beat him so relentlessly that he was suicidal with his willingness to give his father's details as his emergency contact, rather than the contact details of other family members. At that interview he advised his brother had assisted him to fund his travel to Australia and if the conflict with his father was as violent as he is now claiming, and that his father has threatened to kill him, I have difficulty accepting the applicant gave his father as the emergency contact rather than his brother, or alternatively his mother.
36. At the protection visa interview the delegate asked the applicant if he had considered moving from the family home in order to avoid the violence and he explained his father threatened to kill him if he did so and that all the family, including extended family, were frightened of his father. In considering his account I note the applicant undertook military service for a brief period. He was asked about his military service at the protection visa interview and he

stated he resigned because he did not wish to continue. But at the same interview when asked about escaping his father's violence by means such as living with other relatives he spoke of his father's threats if he did so. I have difficulty reconciling that he forwent the opportunity military service would have provided to be away from the family home and the claimed violence on the basis that he did not wish to continue his service. His claim is one of relentless violence from his father, violence that he was unable to escape by leaving the family home or staying with relatives, yet when the opportunity arose to possibly escape the violence by undergoing military service he did not take this opportunity. At the protection visa interview the applicant spoke of the risky sea journey to come to Australia to evade his father's violence and asserted that his desperation in doing so supported his claimed fear of harm in Lebanon. But I have difficulty reconciling his assertions in this regard with him not availing himself of the opportunity to escape from the claimant violence by undergoing military service. That he did not do so raises doubts about the veracity of the claims of his father's violence and that this was so extreme it led him to suicidal thoughts and to his decision to leave Lebanon.

37. I also have concerns about the applicant's account of the sale of the family home. As noted above, at the arrival entry interview the applicant stated his travel to Australia was funded by his brother who borrowed money from a bank. Yet he now claims his travel was funded by the sale of the family home by his mother which was conducted without his father's knowledge. The delegate had some concerns about the timeline of the transaction, his departure and the family's continued residence in the house. In part her concern related to the impression given in the June 2016 protection visa application that the family continued to be resident in the house at that time, but the applicant explained his comment in the application was meant to reflect the situation at the time he left Lebanon, not at the time of writing.
38. He claimed his mother gave him the money for his travel yet it is not apparent how she would have had access to these funds at the time of his departure as at that time the family had not yet given up possession of the house. At his arrival entry interview in June 2013 the residential address given for his parents was still the Tripoli address, indicating that at that time they had not yet vacated the family home. But the timeline he has given indicates it was sold some months earlier. He explained he obtained his passport about four months prior to his travel and that his mother gave him the money for this passport from the funds. Noting he departed around February 2013 this indicates that the family were still living in the Tripoli house some eight months after he claims it was sold to fund his travel. I am concerned that this runs counter to his claim his travel, including his passport, was funded by the sale of the house. I am concerned this also undermines his claim the move to Beirut by his family was a result of the Tripoli house being sold to fund his travel.
39. It is also difficult to accept that his mother would agree to sell the home in the manner described and without the permission of the applicant's father in the light of his comments of his father's violent nature and that he had been violent to her in the past. I have considerable difficulty accepting that she would have taken this substantial risk if the applicant's father was as violent as the applicant purports. The applicant claims that his father has threatened to kill him because of the sale of the family home, yet at the protection visa interview the applicant explained it was his mother who sold the home not him. Yet, and notwithstanding the claim that she did so to fund the applicant's travel, there is no indication that the applicant's father has blamed her for this or harmed her for this.

40. Overall, from his account I have significant doubts about the applicant's claims regarding his father's violence and its effect on him, the sale of the family home and the subsequent threats from his father that he would kill him.
41. While I am willing to accept that his father disapproved of his socialising with non-Sunnis and further to accept that he abused him and was violent to him in this abuse, and notwithstanding the assertion the applicant would not have undertaken the risk of the journey to Australia if he was not fearful for his safety, I am concerned from the implausibilities in his account that he has exaggerated the extent of his father's violence in an attempt to enhance his protection visa claims. In this regard I note the arrival entry interview at which he gave his father as his emergency contact and I am not satisfied he would have done so if he was as fearful of his father as he claims, particularly noting the claim that his father had threatened to kill him after his departure. I have also taken into account that the applicant resigned from military service after only a brief period and I consider this casts doubt on his claim of the extent of harm he experienced from his father while living in the family home. I have concerns about his account regarding the sale of the family home I find his account of the manner in which he claimed his mother sold it without the knowledge of his father to be implausible. I also consider it implausible the sale funds were used to fund his trip and these funds were expended some month before the family vacated the home to the new owners. I do not accept his account of this matter is genuine and it follows that I do not accept his father has threatened to kill him as a result of the sale of the house.
42. Considered together I find the implausibilities in his account seriously damage the credibility of his account and I am not satisfied that his account is genuine. I accept his father disapproved of his socialising with non-Sunnis and further to accept that he abused him and was violent to him in this abuse. But the applicant has failed to satisfy me his father has threatened to kill him because of the sale of the family home.
43. However, even if I am wrong I am not satisfied that the applicant's fear of harm from his father or the authorities under sharia law or otherwise is well-founded.
44. It is contended that sharia law is in force throughout Lebanon and by law the applicant would be punished for dishonouring, stealing from and abandoning his family. DFAT advises that the state of Lebanon is "secular" by nature and to the extent that religious courts or justice exist this is limited to issues of personal status, such as marriage, divorce, custody of children, or inheritance. Hezbollah, the prominent Shia political party, does maintain its own judicial and internal security structures, but their scope is limited to the Shia population living in areas under Hezbollah control.⁵ Civil matters are adjudicated by an independent judiciary.⁶ I am not satisfied he would be punished for dishonouring, stealing from and abandoning his family under sharia law, or other law, in Lebanon.
45. I do not discount that honour killings have occurred in Lebanon and I have taken into account the article given to the IAA which advised of the release of the alleged perpetrator of an honour killing. DFAT reports it is aware of "occasional reports of so-called 'honour killings', particularly in rural areas, although it is impossible to say with certainty how frequently these occur or whether they are more prevalent in any particular community".⁷ Reporting on the 2016 year the US Department of State noted "during the year husbands killed a number of

⁵ DFAT, "DFAT Country Information Report - Lebanon", 19 March 2019, 20190319100208

⁶ US Department of State, "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883

⁷ DFAT, "DFAT Country Information Report - Lebanon", 19 March 2019, 20190319100208

women in domestic violence cases”.⁸ The country information also demonstrates that there are levels of child abuse in Lebanon.⁹

46. But when considering if the applicant would be so harmed I consider it important to note in 2011 the Lebanese parliament annulled an article of the Criminal Code that mitigated the sentence for those who claimed they had committed a crime for ‘family honour’. In 2016 the state prosecutor appealed a five-year sentence handed down in a wife beating case arguing the criminal court misinterpreted and wrongly implemented the language of the penal code when it found reduced punishment applied.¹⁰ I note in the article provided to the IAA it was also reported that the parliament was addressing the matter of domestic violence by approving a draft law to provide greater protection. While this article may be prefaced with comments about the lack of retaliation in Islamic (sharia) law against fathers who killed their children, I am not persuaded that the information contained therein, and other information before me, supports a finding that such is the case in Lebanon.
47. The Center for Security Policy report addresses the “the legal-political-military doctrine known within Islam as shariah” and the report is explicit in stating it has been written in the context of America’s engagement “in existential conflict with foes that have succeeded brilliantly in concealing their true identity and very dangerous capabilities” and to contribute to “knowing the enemy”. The report acknowledged that “millions of Muslims around the world ... do not follow the directives of shariah”. To the extent that the report addressed Lebanon this is limited to references about the operation of the Shia Hezbollah group in Lebanon. This report stated the provisions of sharia law in general terms, but similar to my findings above regarding the article I am not satisfied it supports a finding that (leaving aside the areas of Hezbollah control) sharia law operates in Lebanon to allow a father to harm his children with impunity.
48. Overall the information before me demonstrates that some children may experience abuse and while honour killings or attacks may occur in Lebanon the victims are generally women. But the applicant is an adult man and I am not satisfied there is a real chance he would be the victim of an honour killing or attack. I am not satisfied the country information supports the contention “honour killings are widely accepted throughout Lebanon”, are “common” and that “hundreds ... take place every year”. Furthermore I am not satisfied the country information supports a finding that in Lebanon fathers can kill or harm their children with impunity or that sharia law applies to allow them to, or to protect them if they do. Rather the country information indicates that the perpetrators of such attacks are prosecuted by the civil authorities. I do not accept the authorities would fail or refuse to act in a case of violent attack of an adult man, even if the attacker was his father.
49. While I have accepted the past conflict with his father and I accept the applicant may have a subjective fear of ongoing harm I consider it important to take into account that should the applicant return to Lebanon now it would be as a man of some [age] years of age and that his father is now almost [age] years of age. The applicant is an adult; he does not have to live with his father in Beirut. I am not satisfied that there is a real chance the applicant would experience harm from his father.
50. I am not satisfied that there is a real chance the applicant would be arrested if he returned to Lebanon because he stayed away longer than the period of his [Country 1] visa. From his account he departed Lebanon legally using his genuinely issued passport. As DFAT notes,

⁸ US Department of State, "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883

⁹ *ibid*

¹⁰ *ibid*

Lebanon has a long history of emigration and return, with estimates of the Lebanese diaspora ranging between 8 million and 14 million people. While people facing criminal charges may come to the attention of the authorities on arrival at the airport (and there is no indication the applicant faces any such charges) the country information does not indicate Lebanese citizens coming to adverse attention for reasons such as an extended stay abroad, overstaying visas in other countries or for being asylum seekers.¹¹

51. I find that the applicant does not face a real chance of harm on any of the bases claimed should he return to Lebanon.

Refugee: conclusion

52. 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

53. 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

54. 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.
55. 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.
56. I have found there is not a real chance that the applicant faces harm on any of the bases claimed. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

¹¹ DFAT, "DFAT Country Information Report - Lebanon", 19 March 2019, 20190319100208; DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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