



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA16/00395

Date and time of decision: 16 August 2016 14:45:56

Jessica McLeod, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an 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. [In]January 2016 he lodged a valid application for a Safe Haven Enterprise visa (the SHEV application). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] July 2016.
2. The delegate did not accept the applicant had been previously approached by Hezbollah to work for them or that had ever been directly targeted or threatened by them. The delegate found that the applicant, a Sunni Muslim from Tripoli would not face a real chance of persecution or real risk of significant harm upon return.

Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).

Applicant's claims for protection

4. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
 - He is a Sunni Muslim who originates from [Suburb 1], a suburb of Tripoli close to Jabal Mohsen (Mount Mohsen), an area well-known for extreme and frequent violence between Sunni, Shia and Alawi sects. It is subject to constant army surveillance and patrol. It is mainly controlled by pro-Hezbollah groups who maintain regular patrols but are themselves at war with opposing armed groups over total control of the area. He was constantly pressured and threatened to join the opposing groups (Hezbollah and anti-Hezbollah).
 - His [Relative A's] house in Mount Mohsen was destroyed by the allied forces of Hezbollah and the Arab Democratic Party in Mount Mohsen who are pro-Syrian. He was angry. He cursed and insulted the groups responsible and for this they threatened him.
 - He believed these threats also endangered his family so he decided to flee Lebanon. While applying for his passport, a passport official deliberately delayed the process, demanding that he become their informant. He wanted him to provide information about anti-Hezbollah forces in Baab El Tebenneh. Although he never intended to help them, he agreed because he felt trapped and feared being detained and harmed.
 - Only after he agreed, the passports official issued his passport under the authority of [Mr A], a Hezbollah supporter and [a passport official].
 - He never acted on the agreement. As soon as his passport was issued he immediately left Lebanon by boat from the Tripoli sea port. He avoided the airport because the airport is under Hezbollah control/ mostly Hezbollah supporters and he knew he would encounter problems again. The seaport official collected all of his and his family's details. He believes those details will now be available to both the government and Hezbollah who will use the information against him if he returns.

- When he was [age] years old he was taken and detained by Syrian forces for over nine hours while they interrogated and tortured him for information he did not have. He decided to leave Lebanon because he feared Hezbollah might do this to him too.
- He cannot seek help from anyone in Lebanon because all Lebanese authorities are corrupt and he was already threatened by government and security officials who work for Hezbollah. However, at the same time, he was threatened by Hezbollah supporter groups following the rocket on his [Relative A's] house and the armed groups who oppose the government would also regard him as their enemy because he is associated with the government and Hezbollah. Even though he does not support any group, everyone perceives him as a supporter of their respective opponent.
- He can be tracked down anywhere in Lebanon and every part of Lebanon is unsafe and affected by cut-throat politics and sectarian violence. The government, Hezbollah and Haraket Amal groups are all doing very little to keep civilians safe.

Factual Findings

Identity

5. I accept the applicant is a Sunni Muslim from Lebanon and that this is his receiving country. I accept he originates from [Suburb 1] suburb in Tripoli, North Lebanon. I accept he departed Lebanon lawfully, on his own genuine passport in March 2013.

Abduction by Syrian forces

6. While the applicant has provided inconsistent details about this incident (whether he was [age] years or [age] years old at the time and whether he was detained for around nine hours or for 10 days), I accept that the applicant was once detained for a period by Syrian forces at age [age] or less and for a maximum of 10 days. I accept he was harmed during this detention.

Fear of harm from [Mr B] (Hezbollah Intelligence)

7. The applicant claims his [Relative A's] house has been repeatedly deliberately targeted with rocket ammunition and eventually destroyed by the allied forces of Hezbollah and the Arab Democratic Party. He claims they started targeting the house to try to kill him because although he did not reside there, they knew he was staying there with his [Relative A]. He claims it was targeted several times after he arranged repairs. He stated while there had been trouble and fighting in the area for a long time, his [Relative A's] house had never been previously hit, and that they could not hit his house (30 metres away) because there is a building in front of his house.
8. At the SHEV interview the applicant stated he was being targeted by [Mr B], (a [senior official] with the military intelligence of Hezbollah) because he belonged to Tayyar Al-Mustaqbal with Saad Al Hariri (Hariri) who he liked and prayed for and supported due to Hariri's honesty. He stated that Hezbollah did not want him to be a politician and belong to this group. Country information indicates that Hariri's father, Rafic Hariri was a former Prime Minister assassinated in 2005. (Saad) Hariri then served as Prime Minister from 2009 to 2011 when his government collapsed following the resignation of several Hezbollah-allied Ministers. He was replaced by the Hezbollah backed Najib Miqati. I note that although he too resigned in 2013, Miqati was in power at the time of the rocket attacks on the applicant's [Relative A's] house.

9. The applicant stated that he had campaigned for Al Hariri during elections and gathered his family to vote for him. He said he would attend the office to see what the party wanted, and attended meetings and gathered people to commemorate the assassination of Hariri's father. He stated he was only a supporter, not a member and he did not receive any income from Al Hariri. At another point in the interview he stated Al Hariri does not have a political party.
10. The delegate asked the applicant why, given Hezbollah knew where he was, they would try to kill him by targeting his [Relative A's] house as opposed to just harming him personally. The applicant indicated [Mr B] had wanted him to act as an informant against Anti-Hezbollah opposition groups in the area and to use his influence, to change people's thinking. He stated that he was popular in the area and people would like groups because he liked them. Hezbollah knew this and wanted him to influence people to stop supporting Hariri. He claims [Mr B] offered him financial support in exchange for him joining them and when he refused they threatened to kill him. He states he applied for a passport to leave Lebanon because he did not want to work for Hezbollah. However the applicant made no mention of Hariri, [Mr B] or Hezbollah intelligence trying to recruit him for this task or that his life was threatened because of this, in his written statement. Rather, he stated that after the house was destroyed he started cursing and insulting the groups responsible and he received threats and fearing these threats would also endanger his family, decided to obtain a passport to leave Lebanon.
11. I am willing to accept the applicant and his family have a political opinion in favour of Hariri and I accept he may have attended commemorations event for Hariri's assassinated father. However the applicant's evidence about whether he was being targeted before or after the house was destroyed and the reasons for this were inconsistent. I also find the applicant's evidence about Hariri's party to be vague and that he did not demonstrate knowledge commensurate with someone who campaigned, attended the political office or participated in meetings with party members or other supporters. While the applicant has made reference to Hariri's Al-Mustaqbal or 'Future Movement', I am not satisfied he is in any way knowledgeable about the party or its activities. I do not accept the applicant undertook the claimed activities.
12. I accept that the [Relative A's] house was hit numerous times with rocket fire. Country information confirms that there was frequent sectarian warfare and armed clashes in the area at that time.¹ However, I do not accept it was hit, or that any fighting in the area was, as a result of [Mr B] or Hezbollah's attempt to harm him. The delegate put to him that it seemed like the house wasn't being targeted, but that it was a consequence of the fighting in the area. The applicant disagreed and stated that the house had not previously been hit and that it was only when they saw he was attempting to repair it that it would get hit again. However, the applicant also stated in the interview that whenever the fighting started the house would get hit again. The applicant lived close-by to his [Relative A's] house and he was also regularly attending the house and was visible during the house repairs. While he has stated they hid underground at times, information indicates that Hezbollah has an extensive and sophisticated security and intelligence apparatus and the capability to locate wanted individuals within Lebanon.² I am not satisfied he could not have been located at various other times as he remained in the local area. I find that if Hezbollah wanted to kill the applicant after he refused to work with them they would have done so by other means.

¹ "Sects and the City", Now Lebanon, 1 April 2013, CIS29437

² Council on Foreign Relations, "Hezbollah (a.k.a. Hizbollah, Hizbu'llah)", 3 January 2014, CX319770; Immigration and Refugee Board of Canada, "LBN105332.E - Lebanon: Recruitment practices of Hezbollah, including forced recruitment, such as Shi'ite youth; consequences for those that refuse to join; availability of state protection; regions controlled by Hezbollah, including ability to locate a person wanted by the group who returns to Lebanon; presence of Hezbollah spies or informers in areas outside the organization's control; whether Lebanese Shi'ite students returning from international study are considered spies upon returning to the country (2013- October 2015)," 29 October 2015, OGFDFC61A73

13. I find the [Relative A's] house was not targeted in relation to the applicant's support or activities for Hariri, or because Hezbollah wanted to prevent him becoming a politician or otherwise becoming more active in Hariri's party. I find the [Relative A's] house was hit as a result of the warfare occurring in the Mount Mohsen area at that time. I find the applicant's claims regarding being targeted by Hezbollah in relation to these matters to not be credible.

Fear of harm from [Mr A] (Hezbollah member working for [the security forces])

14. The applicant claims that when he applied for a passport, the passport official, a man named [Mr A] affiliated with a different Hezbollah group withheld issuing the passport until the applicant agreed to help him. During the SHEV interview the applicant stated the passport official tortured him. However he has not claimed to have been harmed in this interaction in his written application, nor his Entry interview. In considering the totality of the applicant's evidence in those forums and the SHEV interview I am satisfied the applicant was not physically harmed by the passport official and that his reference to being tortured was in relation to his temporary withholding of the passport.

15. The applicant claimed his local area was not under Hezbollah control and [Mr A], a Shia, wanted him to infiltrate a group of Sunni Sheiks and provide information about them to [Mr A] and to lure one of the Sheikh leaders, [named] out of the area so they could kidnap and kill him. He claims that [Mr A] periodically recruited new spies about whom the Sheiks would not be suspicious. He claims [Mr A] wanted him because he and his father are both well-known and well-liked in the area and are known to be against Hezbollah, and he believed the applicant would therefore be able to infiltrate the group. The applicant claims he had no intention of working for [Mr A] because he feared being killed by the Sheiks if they discovered he was working for Hezbollah.

16. The applicant claims it was taking too long for his passport to be issued and [Mr A's] employees advised him to work with [Mr A] to get the passport. He claims that he made up an untrue story to appease him with some intelligence. He told [Mr A] there was a meeting planned in his neighbourhood to discuss how [Mr A] was restricting the issuance of passports and the Sheikh leader planned to cut off his feathers because they were getting too long. The delegate asked the applicant why [Mr A] issued him the passport given he had not completed his task. He stated [Mr A] was pleased about the information he had provided regarding the meeting and had issued the passport.

17. I consider it implausible that [Mr A] would withhold the passport until the applicant agreed to infiltrate the Sheiks and to lure the Sheikh leader out of the territory and then issue the passport when the applicant told him the Sheiks were planning to harm him due to his practice of withholding of passports. I find it implausible that this would be useful information to [Mr A]. The applicant does not claim that he provided any additional details such as the meeting location or how the Sheiks were planning to harm him and I find that a member of Hezbollah who frequently withheld passports and who considered the Sheiks his enemy would not already be aware that there was some animosity towards him from that group.

18. The delegate asked the applicant why Hezbollah would want to target him upon return. The applicant responded that he is against them politically and they also know he has spoken about them – before he departed he told the Sheiks that Hezbollah wanted to get rid of them. The delegate put to the applicant he had previously made no mention of informing the Sheiks and the applicant stated he told his father to tell them. The delegate also put to the applicant that he had not shown Hezbollah he was against them and that they had even asked them to work for him and he responded that he is against them with everything and they know that. He provided

names of people who worked for Hezbollah and were then killed. He subsequently stated that it was either Hezbollah who killed them or someone else but the reason they were killed was because they worked for Hezbollah.

19. I consider it implausible that different factions of Hezbollah would want the applicant to work for them. I recognise the potential value for Hezbollah in gaining the allegiance of an influential person and I accept the applicant and his father may have been liked and respected in their local community. However on the evidence I am not satisfied that they were in any way influential. I do not accept Hezbollah stood to gain from working with the applicant and I find it implausible that Hezbollah would trust the applicant, a Sunni Muslim who they supposedly knew was against them, in any of the tasks he claims were set. Further, while I note that Hezbollah, has previously exerted general political and social influence to encourage people to join, information indicates that even around the time the applicant claimed they did not forcibly recruit members and information does not support that persons who refused to join Hezbollah were harmed.³ Furthermore, even Hezbollah was aware of the applicant's stance against them, DFAT assesses that non-Shia critics of Hezbollah would not be at risk unless they presented a direct threat to Hezbollah's political power such as rival political leaders or outspoken media critics⁴ –profiles I do not accept the applicant holds. I find the applicant's claims regarding the attempted recruitment by the different factions, the attempted harm through bombing and the withholding of the passport in exchange for the intelligence the applicant provided to be not credible.

Fear of harm from Hezbollah's opponents

20. In his written application the applicant stated he also feared being harmed on return by Hezbollah's opponents. The applicant explained at the SHEV interview that he was referring to the Sheiks because if they knew he was working with Hezbollah they would kill him. The delegate put to him that he had not worked with Hezbollah so therefore the Sheiks would not kill him and the applicant agreed. I find the applicant's claim that he fears being harmed by Hezbollah's opponents is not credible.

Risks to family

21. In his written application the applicant stated that if he returned to Lebanon the multiple threats against him would extend to his family. At the SHEV interview he stated he has not even been speaking to his family on the phone so as not to risk their lives. The delegate asked the applicant how his return would place his family members at risk and the applicant stated if he was present and there was a family member with him, they will kill someone and you never know what they will do.

22. However, I have not accepted that the applicant's [Relative A's] house was previously targeted on account of the applicant and while his parents and five siblings are still residing in Lebanon, he has not claimed that any member of his family has been targeted since his departure. I do not accept the applicant's profile is such that the applicant's circumstances have in any way elevated the risk to his family.

³ Immigration and Refugee Board of Canada, "LBN103846.E: Lebanon: Hezbollah, including areas of operation, political involvement, military activity, recruitment practices, mistreatment of citizens and state protection," 16 November 2011, LBN103846.E

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 3.48

Refugee assessment

23. 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

24. 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.

25. I have accepted that the applicant was once detained for a period by Syrian forces at [age] or younger. However, the applicant is now [age] years old, this incident happened at least [number] years ago, the Syrian occupation of Lebanon has now ended and the applicant does not claim to have had any problems with Syrian forces or their supporters apart from Hezbollah (which I have not accepted to be credible) since this incident. I do not accept the applicant faces a real chance of harm from Syrian forces in the reasonably foreseeable future upon return.

26. Overall, I found the applicant’s evidence regarding his issues with Hezbollah to be confused and contradictory. While I appreciate the complexity of the security situation in the applicant’s home area and that allegiances may blur and that Hezbollah is fraught with shifting internal alliances, I found the applicant’s claims regarding his refusal to work with [Mr B] or [Mr A] or their respective Hezbollah groups to be inconsistent and implausible. I did not accept these claims as credible, nor did I accept his claim regarding his fear of harm Hezbollah’s opponents. As I do not find these claims to be credible, I do not accept the applicant faces a real chance of harm in relation to these matters upon return.

27. While I have not accepted the applicant previously participated in any political activities in support of Saad Hariri, I have had regard to the fact that he holds a political opinion in favour of Hariri, and has previously attended events to commemorate Rafic Hariri’s assassination. On the evidence I am not satisfied that the applicant’s pro-Hariri opinion was publicly known, and I am not satisfied that the applicant would seek to engage in any public activities beyond commemorating Rafic Hariri upon return. The applicant does not claim that he has ever faced problems on account of attending such events and nor has he raised claims he fears being

targeted for this reason upon return. Additionally, DFAT notes that ordinary Future Movement (Hariri's party) supporters are at low risk of violence and that it is only senior leaders who post a direct threat to Hezbollah's political power who are likely to face a moderate risk.⁵ Therefore I find the applicant does not have a well-founded fear of persecution on account of having a political opinion in favour of Saad Hariri, or for attending commemorative events for the assassination of his father, Rafic Hariri.

28. Arising on the facts is a claim of harm arising from generalized political or sectarian violence. The applicant is a Sunni Muslim who originates from [Suburb 1], a suburb of Tripoli which I note from his application is in the Bab al-Tabbaneh area and is close to Jabal Mohsen (Mount Mohsen).
29. I accept the applicant's claims that this has been an area of frequent clashes and violence between Sunni, Shia and Alawi sects. Country information indicates that this division dates back to the early 1980s when the Syrian Army attacked Bab al-Tabbaneh during the Lebanon Civil War.⁶ Since then, consistent reporting indicates that hostilities in Syria have spilled over into Lebanon.⁷ In 2013 and 2014 there were regular armed clashes between Sunni Muslims in Bab al-Tabbaneh (rebel supporters angling to oust Syrian President Bashar al-Assad) and the Alawites (al-Assad loyalists aligned with Hezbollah) on the Jabal Mohsen hilltop.⁸ However in April 2014 Lebanese authorities implemented a security plan in Tripoli which is backed by the major political factions and which led to a notable reduction in Alawite-Sunni incidents and increased stability across Tripoli. DFAT describes Bab al-Tabbaneh as a recurring flashpoint where Sunnis are at moderate risk of harm from sectarian violence.⁹ I accept the applicant may face a real chance of harm from sectarian violence in his home neighbourhood.
30. However, s.5J(1)(c) of the Act requires that the real chance of persecution must relate to all areas of a receiving country and country information indicates however not all regions of Lebanon or even Tripoli face the same level of risk.¹⁰
31. DFAT notes that Tripoli is now broadly stable, and while it is vulnerable to outbreaks of renewed violence, people in areas of Tripoli outside of Bab Al-Tabbeneh face a low risk of violence as it is more easily avoided.¹¹ While this indicates that relocation within Tripoli may present a viable option, there are no limitations on civilian movement within Lebanon as a whole and DFAT advises that internal relocation offers a degree of anonymity and the opportunity for an individual to seek refuge from discrimination or violence.¹² There are options available in most cases for individuals from most ethnic and religious minorities to relocate to areas of relative safety.¹³ In particular, DFAT assesses that Sunnis, can easily relocate to Beirut which offers more opportunities for employment, access to services and a greater degree of state protection than other areas of Lebanon. DFAT advises there are majority Sunni suburbs within which a Sunni from another area of Lebanon could settle¹⁴ and that there would generally be no stigma accorded to a returning asylum seeker resettling in Beirut.¹⁵

⁵ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 3.46 – 3.47

⁶ Now Lebanon, "Sects and the City", 1 April 2013, CIS29437

⁷ Now Lebanon, "Sects and the City", 1 April 2013, CIS29437

⁸ Now Lebanon, "Sects and the City", 1 April 2013, CIS29437; DFAT – 3.15

⁹ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, paragraph 3.22, page 11, CISEC96CF14155 at 3.23 and 3.15

¹⁰ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

¹¹ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 3.15, 3.16, 3.21.

¹² DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 5.19 – 5.20

¹³ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 5.20

¹⁴ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 5.22 and 5.20

¹⁵ DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155 at 5.26

32. The applicant has raised concerns over Hezbollah's control of airports. However in considering the prospect of return to Beirut, DFAT assesses that Hezbollah's influence would create no problems for most returning individuals and that while Hezbollah does exercise substantial control over Beirut's international airport, a returning individual would only be targeted if they were a direct threat to Hezbollah's authority – a profile I have not accepted the applicant fits.
33. I note DFAT is not aware of any evidence that suggests returnee asylum seekers would be distinguishable from, the broader community or susceptible to any form of discrimination or violence. On the evidence the applicant would not face any additional risks as a returning asylum seeker resettling in Beirut or if it became known that he originates from his area in Tripoli.
34. I have not accepted the applicant would be perceived as a direct threat to Hezbollah for any reason. Nor have I accepted that the applicant would be seen (if at all) as anything other than an ordinary Hariri / Future Movement supporter. Given these factors and the information from DFAT indicating that Sunnis can resettle safely within Beirut and that returnee asylum seekers are not susceptible to discrimination and violence, I am not satisfied that these various factors would, individually or cumulatively, lead to a well-founded fear of persecution in Beirut in the reasonably foreseeable future upon return.

Refugee: conclusion

35. 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

36. 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

37. 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.

38. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
-

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

39. I have not accepted that the applicant faces a real chance of harm from Syrian forces in the reasonably foreseeable future upon return and I found that the applicant's claims in relation to being targeted by Hezbollah were not credible. Nor did I accept his claim regarding his fear of harm from Hezbollah's opponents. As I do not find these claims to be credible, I did not accept the applicant faces a real chance of harm in relation to these matters upon return and for the same reasons I also do not accept he faces a real risk of significant harm.

40. However, taking into account DFAT's advice that Sunnis face a moderate risk of violence in the applicant's home region within Bab al-Tabbaneh, I found that he may face a real chance of persecution through sectarian violence in his area upon return.

41. I have also found however, that the real chance of harm does not extend to all areas of Lebanon, namely to Beirut. For the same reasons that I found the applicant does not face a real chance of harm there in relation to these claims, and because 'real chance' equates to the same threshold as 'real risk', I find the applicant would not face a real risk of significant harm in Beirut.

42. In considering whether it would be reasonable for the applicant to relocate to Beirut where he would not face a real risk of significant harm I have taken into account the country information cited above and the applicant's personal circumstances.

43. The applicant is a single [age] year old Sunni Muslim male whose family members reside in Tripoli. Beirut has a mixed ethnic and religious community and while information does not suggest it is necessary to live amongst the same religious or ethnic community, I consider the applicant could resettle there and find support in a Sunni majority neighbourhood. I accept that the applicant may never have been to Beirut and may not know anyone else there, however he has demonstrated that he is resourceful and has successfully lived apart from his family and settled in unfamiliar places.

44. With regards to his employment prospects, while I note the pressure being placed on Beirut infrastructure from the influx of refugees in the region, DFAT advises that employment is available and accessible. The applicant is in his 30s, is able-bodied and of working age. He has experience as [an occupation 1] and in [Industry 1] work and Beirut offers more employment opportunities.¹⁶

45. It is regrettable that the applicant would be living apart from his family. However, he has previously demonstrated an ability to live apart from them and I am not satisfied that the challenge of living apart from them in his own country renders the prospect of relocating to Beirut unreasonable.

46. I am satisfied that in the circumstances it is reasonable for the applicant to relocate to Beirut, an area of the country where there is not a real risk that he will suffer significant harm. Given this, it

¹⁶ DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, p7 at 5.20

is not necessary for me to consider whether the real risk is one faced by the population of the country generally and is not faced by the person personally.

Complementary protection: conclusion

47. 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

...

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.