



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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LEBANON

IAA reference: IAA17/02027

Date and time of decision: 22 March 2017 16:35:00

Rosie Mathlin, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) is a Sunni Muslim single male in his late [age]. He is a citizen of Lebanon from Tripoli. He arrived in Australia by boat, undocumented, [in] December 2012.
2. [In] June 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV). In summary, he claimed that he feared being killed by various groups and individuals in his home area, because he had provided intelligence to the Lebanese Armed Forces (LAF) about the activities of militant groups in his area.
3. [In] February 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. She found the applicant's claims either implausible, or inconsistent with country information and was not satisfied that he faced harm of any kind in Lebanon.

### Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information was obtained or received.

### Applicant's claims for protection

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5. The applicant's claims are contained in the information referred to the IAA.
6. In a statutory declaration dated June 2016 which was provided in support of his SHEV application he claimed that he comes from the Bab el Tebbaneh area of Tripoli, an area that has been beset by sectarian violence between Sunnis and Alawites for many years. Personal details provided to the Department of Immigration and Border Protection (the Department) indicate that he was born in [location] and resided in [Suburb 1] for many years; in Bab al Tebbaneh from 2007 until 2012; and in [Suburb 2] during 2012.
7. He claims that from 2007 he provided information to the LAF about terrorist groups operating in Bab al Tebbaneh. He did not support any of the groups and so they hated him.
8. He claims that he was attacked and threatened with death by [name], also known as [Mr A], who is the [senior person] for Hezbollah in Tripoli and who owned property [near] the applicant. From his property the applicant was able to observe [Mr A] smuggling steel and weapons. He reported this to the LAF. [Mr A] had the applicant assaulted and organised an embargo on his businesses. He wanted to take over the applicant's property. Ultimately the applicant claims the Lebanese government took over the land without compensation.
9. He claims that [number] brothers named [name] are part of Hezbollah and many terrorist groups; they work for whoever pays. They threatened the applicant's life because they found out he was giving information to the LAF.
10. He claims that he was threatened by a cleric from the Jihad mosque, [name], because he did not join "them" and helped the LAF.

11. He claimed that he was stabbed in the [torso] by a terrorist group because he was informing the LAF that they were getting guns and ammunition.
12. He claims that personal information was published on line due to the data breach in early 2014 and that groups in Lebanon who wish to harm him may have accessed this information.
13. An earlier statement dated February 2016 and addressed to “[agency]” was taken into account by the delegate in relation to the applicant’s protection claims. It makes various allegations about involvement in terrorist and criminal activity by a number of individuals, including political figures in Tripoli and family members of the applicant. It is not apparent why much of this information is relevant to the applicant’s claims to protection. He makes a number of allegations against his [family member], who resides in Australia, claiming that she has links with the [name] family, who wish to kill the applicant because he has links with the LAF who killed [Mr B], and other “expiatory groups” in Bab al Tebbaneh. He appears to indicate that his [family member] herself has threatened him.
14. The applicant also refers to the deaths of his [number] [siblings]. He claims that [Sibling A], who was killed in late 2015, was shot after [Sibling A] met with [Mr B] during a visit to Bab al Tebbaneh, where [Sibling A] told [Mr B] everything that was happening there, and this did not sit well with the authorities who were supporting the terrorist groups there. He indicated that, like the applicant, [Sibling A] did not agree with sectarian fighting in the area and did not get involved with any of the parties.
15. He stated that his [sibling] [name] was killed in 1976, also because [sibling] was against sectarian fighting. His [sibling] [name], who worked with the LAF, was killed in 1984 by Syrian intelligence.
16. He stated that his [sibling] [name] is currently [undertaking activities] in Bab al Tebbaneh, and is receiving death threats.
17. The applicant referred to the destruction of his [sibling]’s house in an RPG attack, and injuries to [another sibling] and [family member] in two bombings of Sunni mosques in Tripoli in August 2013, which resulted in many casualties.
18. In a submission dated [in] July 2016 by his representatives, it was claimed that the applicant faced harm from the [name] militia which was seeking to extort money from him; and that he feared forced recruitment by Sunni militia groups.

## **Factual findings**

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### **Credibility**

19. The applicant has provided very little detail about his personal circumstances in which the threats and harm he claims to face arose, including exactly what happened to him, when and why. While he has made sweeping assertions about his situation and provided a large volume of information at the SHEV interview and in some of his written statements, the details provided relate to the broad situation in Tripoli and the political and historical background to the conflict, and not to the applicant’s specific circumstances. When pressed numerous times for details about his personal circumstances he did not respond directly, but continued to speak volubly about background information providing details which did not relate directly to

his personal circumstances, added little to his written claims and which do not provide significant illumination of his situation or the risk of harm he faces.

20. On their face, many of his key claims are not plausible. Some are contradictory and are not consistent with country information. Overall, I do not consider the applicant has provided a credible account of the reason for his departure from Lebanon and his claimed fear of returning.

### **Identity and nationality**

21. On the basis of the information provided by the applicant the delegate accepted that his identity and nationality is as claimed. Although he provided inconsistent information at different times about aspects of his personal details - for example, his criminal record, as discussed below (at [50]), about prior travel to [countries] between 2002-2005, and about his places of birth and residence in Lebanon - I accept on the basis of the identity documents he has provided that his identity is as claimed and that he is a national of Lebanon, which is the receiving country for the purposes of the Act.
22. While the applicant claims that he is from Bab al Tebbaneh in Tripoli, and one document provided to the Department indicates that his place of residence was [name] Street in Bab al Tebbaneh, his evidence is that for most of his life he resided in the neighbourhood of [Suburb 1]. Country information considered by the delegate indicates that [Suburb 1], borders Bab al Tebbaneh but the two areas are separated by a large [road], and is some distance away from the main area affected by the conflict, which centres on [name] Street.<sup>1</sup> In the SHEV application the applicant indicated that from April to November 2012 he lived in [Suburb 2], an area which is some distance away from Bab al Tebbaneh.

### **Background information**

23. Country information indicates that prior to 2014, Bab al Tebbaneh and Jabal Mohsen were the sites of frequent clashes and violence between Sunnis and Alawite Shias dating back to the Lebanese civil war, as stated by the applicant. Country information indicates that during Lebanon's 15-year civil war Alawites from Jabal Mohsen fought alongside the Syrian Army against Sunni fighters from Bab-al-Tabbaneh. Clashes flared again in 2008, and from 2011 Syria's civil war has further exacerbated the traditional hostility between the Alawite community of Jabal Mohsen, seen as allied with the Assad regime in Syria which is mainly Alawite, and the Sunni area of Bab al Tebbaneh, which is sympathetic to the Syrian rebels. On the broader Lebanese political front, Hezbollah, a predominantly Shia militia and political party which dominates the March 8 coalition, supports the Assad regime. Sunni groups, including the Future Movement, support the Syrian opposition.<sup>2</sup> The Future Movement is a predominantly Sunni political party led by Saad Hariri and established by his father Rafik who was assassinated, apparently by Syria and Hezbollah in 2005. It is the key member of the March 14 coalition, which is opposed to the March 8 bloc.
24. There were regular armed clashes between anti-Syrian regime Sunni Muslims in Bab al Tebbaneh and pro-Syrian regime Alawites of Jabal Mohsen in 2013 and 2014. The Lebanese Armed Forces (LAF) was then deployed to contain the conflict. However, intermittent clashes have continued.

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<sup>1</sup>[Information deleted]

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155DFAT; Freedom House, "Freedom in the World 2015 - Lebanon", NG5A1E6BC217

25. The political and security situation in Tripoli has changed significantly since the applicant left. The LAF, Hezbollah and militant groups have entered into negotiated ceasefires leading to a substantial easing in the degree of violence. It was reported in November 2015 that

*"A Lebanese military tribunal has handed down sentences to the leaders and members of several armed groups in the country's northern coastal city of Tripoli.*

*The arrests of armed groups' leaders and fighters in recent months is part of a broader security plan that the Lebanese military introduced in Tripoli in April 2014, hoping to prevent more fighting and ease sectarian tensions."*<sup>3</sup>

26. Against this background, I accept that the applicant has lived in a dangerous area beset by conflict and sectarian and political violence. However, I am not satisfied that the applicant himself has ever been targeted or harmed for the reasons he has claimed, or that he faces a real chance of harm on return.

### **Harm feared as LAF informer**

27. His claims in the SHEV application about his opposition to the militant groups operating within Bab al Tebbaneh appear to be inconsistent with information provided in the entry interview conducted about one month after his arrival in Australia. Although the applicant subsequently stated that no weight should be given to the information provided at the entry interview because he was not made aware that the information provided would be used for assessing his claims to protection, I note that he was told at the interview that the information he provided would be used to determine whether there was any reason why he should not be returned to Lebanon. In those circumstances I would expect that if the applicant really feared for his life in Lebanon he would wish to ensure that all relevant information would be provided to the Department to ensure that he would not be returned there. Moreover, it was made very clear to the applicant at the entry interview that if he provided different information at a later stage this could lead to his claims not being believed. Although he was asked to provide brief details at the entry interview, in my view he was given a fair opportunity to provide information. In my view the inconsistencies between the information provided at the entry interview and later cannot therefore be explained on the basis that he had insufficient time or was prevented from putting forward claims at the entry interview; rather the information provided at the entry interview about his reasons for leaving Lebanon and fearing return are completely different from his protection claims, and somewhat contradictory. At the entry interview the applicant stated that the only reason he left Lebanon was because he feared harm from the Syrian army and Hezbollah. He said that Hezbollah attacked Bab al Tebbaneh all the time. He said that he had shot at Hezbollah in a protest two months before he left. He said that he supported the Future Movement and resistance groups against the Syrian regime that were active in his area. He subsequently claimed that he did not support any groups, but only the LAF, and these resistance groups are the very groups that he now claims to have informed against to the LAF on the basis that his loyalty was only to the LAF. However, at the entry interview he stated that his only involvement with the LAF was when he did his compulsory military service. I consider that these significant discrepancies in the information put forward at different times about the reasons for his departure from Lebanon and fear of returning, significantly undermine his overall credibility.

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<sup>3</sup> CXBD6A0DE17668: "Lebanon military tribunal sentences armed group leaders", *Aljazeera*, 14 November 2015, <http://www.aljazeera.com/news/2015/11/lebanon-tripoli-military-tribunal-sentences-armed-group-leaders-151114145957957.html>

28. The applicant's account of having acted as an informer is not believable for a number of other reasons.
29. First, he was asked at the SHEV interview how he was able to infiltrate the terrorist groups within Bab al Tebbaneh and obtain information, given that he also claims to have come from a well-known and influential local family with a long history of support for the LAF. His only explanation was that he was working undercover and the groups did not know he was passing information to the LAF. This response does not answer the concern raised by the delegate, as it is evident that the groups would not know that the applicant was working for the LAF or they would not have dealt with him at all; but the issue is why they would trust him, given what his evidence suggests must have been known about his background. I do not consider that the applicant has explained this, and I find that his account of being able to infiltrate these groups so easily, given his history of support for the LAF, is very difficult to believe; moreover, I consider that if the applicant were seen to be associating with a number of different groups within Bab al Tebbaneh, without being affiliated with any of them and while refusing to involve himself in the sectarian conflict, this of itself would cause suspicion.
30. Second, the information the applicant said he provided to the LAF was general and non-specific, and much of the information is available on the public record.<sup>4</sup> In these circumstances, it is difficult to see how the information he claims to have provided would have been useful to the LAF, or why his life would have been endangered by providing such information.
31. Third, I do not consider that the applicant has satisfactorily explained how the extremist groups became aware that he had passed information to the LAF, claiming at the SHEV interview that this was because they became suspicious when he refused to join any of the groups and participate in the battles. While it would be understandable that this raised suspicion, it is difficult to see why this would lead to a conclusion, on the part of all the groups, that the applicant was working for the LAF. He also stated, apparently as an afterthought and without any supporting information, that he thought members of the LAF might have informed on him. He did not expand on this assertion in any convincing way, and the suggestion seems to be at odds with the wholehearted admiration for the LAF that he otherwise expressed.
32. Finally, I agree with the assessment of the delegate that, based on the country information, it appears implausible that had the applicant really been suspected of being an informant, his punishment would have been simply being assaulted a couple of times. It would appear that had any group or individual really intended to kill the applicant, they had ample opportunity to do so. In regard to the applicant's claim that he was stabbed in the [torso] in February 2012, I note that in his written statement of claims he said that this was because he was passing information about arms being supplied to unspecified "groups" within Bab al Tebbaneh. At the SHEV interview he stated that a particular individual who he named had stabbed him because the applicant asked the LAF to come and remove [certain items]. In view of this apparently major discrepancy about the reason for the stabbing, and because of the other problems with his evidence in regard to his claim to be an informant, I do not accept that the applicant was stabbed in the [torso] because of his role as an informant. As the delegate noted that the applicant has scarring to the area, I accept that he suffered wounds to his [torso] in circumstances which are unclear, and which I am not satisfied give rise to protection claims.
33. In the light of the above concerns, I do not accept that the applicant acted as an informant for the LAF against militant groups of any description operating in the Bab al Tebbaneh area and I am not satisfied that he is at any risk of harm of any kind as a consequence.

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<sup>4</sup> See, for example, <http://english.al-akhbar.com/node/19140>; <http://english.al-akhbar.com/node/19140>;

## Fear of harm from Hezbollah

34. As noted above, at the entry interview the applicant stated that he left Lebanon because he feared harm from Hezbollah and the Syrian forces; he indicated that his was because he was opposed to their presence and power in Lebanon. At the SHEV interview he also claimed to fear harm from Hezbollah but indicated that this was because he informed against the [name] brothers, and possibly other militia groups and leaders who supported Hezbollah.
35. As discussed above, I do not accept that the applicant acted as an informer at all, against any militia in Bab al Tebbaneh. I have other specific credibility issues in relation to his claim to fear harm from Hezbollah, or any group associated with it.
36. I do not accept the applicant's claims about observing his neighbour [Mr A], who the applicant claims was the leader of a local Sunni group that supported Hezbollah, smuggling steel and weapons. At the SHEV interview the delegate asked the applicant how he knew the steel was being smuggled and how he knew where it was coming from or going to, and he did not respond directly to the questions. It is difficult to see, from the information he has provided, how he could have been privy to the intelligence that he claims to have about this. Nor has he explained how [Mr A] became aware that the applicant was passing information about his operations to the LAF. His evidence was confusing and somewhat contradictory, as he indicated that [Mr A] was seeking revenge for the applicant informing on him, but the applicant also said that [Mr A] was seeking to force the applicant to give up his land by placing his business operations under an embargo. It is not apparent whether these two strands are related, and it is difficult to see how. In his statement of claims the applicant said that he wanted to give his land to the army, yet at the SHEV interview he said that since his departure his father has been forced to hand the land to the government with no compensation. Given the implausible and confusing evidence I do not accept that the applicant was at risk of harm from [Mr A] because he was aware of a smuggling operation. Whatever the situation with regard to the land, to which in any event the applicant's father seems to have held the title, I am not satisfied that the applicant has or would suffer serious harm amounting to persecution on the basis of his evidence that it is now in the hands of the Lebanese government.
37. I do not accept that the applicant is at risk of harm from the [name] brothers or their militia. He has provided insufficient credible information to support his bare assertion in this regard. As discussed above, I do not accept that he acted as an informant against them or any other group. Country information considered by the delegate indicates that [Mr B] was killed in June 2011 in a clash with authorities; his [sibling] [name] then took over the Bab al Tebbaneh based militia as "alleyway leader". [Name] was arrested during a LAF crackdown in 2014 when they went after Salafist militia in areas of Bab al Tebbaneh they had been unable to enter since 2005.<sup>5</sup> While the applicant appears to be aware of information about the [name] that is publicly available, I do not accept that had he really been accused of responsibility for [Mr B]'s death in 2011 and threatened with death by this powerful local armed group, he would be able to avoid any serious harm during the subsequent period up until November 2012 when he left Lebanon, during which he claims to have continued to go into Bab al Tebbaneh gathering intelligence and passing it to the LAF. Moreover, the recent crackdown on groups such as the [name] occurred well after the applicant's departure from Lebanon. While it was claimed in the submission [in] July 2016 that the applicant had consistently stated that he was targeted by the [name] militia which was seeking to extort money from him, the applicant has not provided any credible details of such a claim. In his written claims he said that the [name] had threatened him because he was an informant; he did not mention extortion. The only

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<sup>5</sup> [Information deleted]

reference to possible extortion was in relation to the claimed attempts by [Mr A] to take the applicant's land, which is dealt with above.

38. While the applicant appeared to suggest in his letter of February 2016 that he feared harm from his [family member] who had threatened him and who had links with the [name], it is not at all clear on what basis the applicant fears harm. Given that he has been residing in Australia for some four years without suffering any harm from his [family member] I do not accept that she poses a real risk to him. I do not accept that the applicant faces harm from the [name] as claimed. The credible evidence does not support any assertion that his [family member] is linked with those groups. The vague claims and assertions contained in the letter of February 2016 indicate that there is a dispute between members of the applicant's extended family in Australia, but I am not satisfied that this gives rise to a real chance that the applicant faces harm in Lebanon.
39. The applicant has not provided credible evidence of being at risk of harm from Hezbollah. The applicant did not subsequently repeat the claim made at the entry interview that he was involved in any way with the Future Movement, but even so, country information indicates that while Hezbollah has targeted high profile political figures that threatened its interests, such as former Prime Minister Hariri whose assassination it is alleged to have masterminded, ordinary Future Movement supporters are at low risk of violence by Hezbollah. The country information indicates, and I find that even if the applicant was a low level Future Movement associate, he would not be considered a risk to Hezbollah's interests and would not face a real chance of harm for that reason. As discussed above, I have not accepted that the applicant acted as an informant for the LAF or that he was at risk of harm for that or any other reason from militia operating in Tripoli, including any linked with Hezbollah. The applicant departed Lebanon legally using his own passport, via Beirut International Airport. It was put to him at the SHEV interview that Hezbollah controls Beirut International Airport, and he agreed, saying that the airport is under Hezbollah, and they are aware of whoever gets in or leaves. He was asked how he was able to depart without difficulty if Hezbollah had really wanted to kill him. He said that he was able to leave with God's help. I do not consider this a satisfactory explanation. I do not accept that if the applicant had been targeted by, and was at serious risk of harm from Hezbollah, or any militia groups associated with Hezbollah, he would have been able to leave without difficulty via [name] Airport.

#### **Deaths of family members/ generalised violence**

40. I do not accept that the circumstances of the applicant's brothers' deaths reflect a risk of harm to the applicant. While he stated that his [Sibling A]'s death followed and was related to a visit by [Mr B] to Bab al Tebbaneh, a report of that visit shows that it took place in December 2014.<sup>6</sup> The applicant stated in his SHEV application and at the SHEV interview in June 2016 that his [sibling]'s death had occurred about ten months earlier – which would be in around August 2015. This gap in time leads me to conclude that it is highly unlikely that the events were related. As to the deaths of his other [siblings], in 1976 and 1984, his vague evidence about the circumstances of their deaths, the length of time that has passed, and the country information indicating that sectarian and political violence has been a feature of life in the Bab al Tebbaneh area for many years, and has resulted in a high number of deaths in both targeted and indiscriminate attacks means that I am not satisfied that the deaths of his [siblings] are in any way related to the circumstances of the applicant, or indicate that he is at risk of harm in similar or related circumstances now or in the reasonably foreseeable future. The applicant claimed at the SHEV interview that his [sibling]'s house was hit in an RPG attack. It is not clear

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<sup>6</sup> "[Information deleted]"

when this was, but I note that he did have a [sibling] who died in 1960. There was also a suggestion that his mother was killed in the mosque bombing, but according to information in the SHEV application, she died in 2005. Again, the credible evidence does not support a conclusion that these events indicate that the applicant faces a real chance of harm.

41. I have considered the risk facing the applicant from generalised violence in the Bab al Tebbaneh area, noting that as a moderate Sunni Muslim who claims not to be aligned with any political or militia faction he would not be at risk of attacks targeted against him as an individual or a member of a group, but that he could be affected by mass casualty sectarian violence. I also note that while the applicant appears to have resided in Bab al Tebbaneh itself for some years, he spent most of his life in [Suburb 1], a neighbourhood which is outside of, but in close proximity to, the flashpoint neighbourhoods of Bab al-Tebbaneh and Jabal Mohsen, and that he most recently resided in [Suburb 2], which does not abut on these areas at all.
42. Country information indicates that from 2014 the security situation in Bab al-Tebbaneh and Jabal Mohsen improved. In April 2014 Lebanese authorities implemented a security plan in Tripoli backed by the major political factions including Hezbollah and the Future Movement, which led to a notable reduction in Alawite-Sunni incidents and increased stability across Tripoli.<sup>7</sup> However, the situation remains unstable, and while the army has restored order with the security plan, grievances continue to boil over.<sup>8</sup> DFAT assessed in December 2015 that Sunnis in Bab al-Tebbaneh are at moderate risk of harm from sectarian violence. DFAT states that although sectarian violence has spilled beyond Bab al-Tebbaneh and Jabal Mohsen on occasion, Sunnis in other areas of Tripoli face a low risk of violence as it is more easily avoided<sup>9</sup>; however, although Tripoli is broadly stable, it is vulnerable to outbreaks of renewed violence.<sup>10</sup> Information provided by the applicant's representative in the submission [in] July 2016 indicates that there were bombings in Tripoli in August 2014 and January 2015, but no more recent incidents are mentioned. While I accept that attacks have occurred in other parts of Tripoli, I am satisfied that the fighting has mostly been contained to Bab al-Tebbaneh and Jabal Mohsen. DFAT assesses that at times of increased sectarian tension, Sunnis who are actively involved in fighting face a high risk of violence,<sup>11</sup> however, on the applicant's own evidence, he actively avoided becoming involved in any fighting. I am satisfied that he would not engage in fighting upon return, and that he has no wish to do so.
43. Given the information about the improved security situation in Tripoli generally and in Bab al-Tebbaneh and Jabal Mohsen in particular, while accepting that the security situation between the Sunnis and Alawites in Bab al-Tebbaneh and Jabal Mohsen is constantly tested, I conclude that the applicant does not face a real chance of being seriously harmed in mass casualty or other sectarian violence directed at Sunni Muslims generally. I note that prior to his departure from Lebanon the applicant was not living in Bab al Tebbaneh, and there is no suggestion that this is the area to which he would return. I give weight to DFAT's assessment that not all areas of Tripoli carry the same level of risk, and in particular, that Sunnis living outside the Bab al-Tebbaneh neighbourhood (and who are not actively involved in fighting) is low. While I note there have been some attacks outside these flashpoint neighbourhoods, I am satisfied that they have not been occurring with such frequency as to increase the level of risk to the applicant. I am not satisfied that the applicant faces a real chance of harm arising from fighting

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<sup>7</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>8</sup> The Daily Star, "Bab al-Tabbeneh: No fighting ... but no future", 5 July 2016, CX6A26A6E7519

<sup>9</sup> Ibid

<sup>10</sup> DFAT, "DFAT Country Information Report - Lebanon", 18 December 2015, CISEC96CF14155

<sup>11</sup> Ibid

between Sunni and Alawite militia in his home neighbourhood of [Suburb 1], or anywhere else in Tripoli outside of Bab al-Tebbaneh and Jabal Mohsen.

#### **Forced recruitment by militia**

44. The applicant has provided no detailed or credible information to support the assertion put forward in the submission [in] July 2016 that he fears being recruited by Sunni militia groups, a claim which appears to contradict his other claims that such groups want to kill him because they aware that he is an informer. It is difficult to accept that if these groups were suspicious that the applicant was informing on them, they would also be seeking to recruit him. It is also not credible that if the applicant feared being forcibly recruited by the militias, he would be actively engaging with them, as he claims, in order to obtain information to pass to the LAF. Given the applicant's vague and contradictory evidence, I do not accept this claim, but in any event country information considered by the delegate does not support the contention that militia groups active in Bab al Tebbaneh are forcibly recruiting young Sunni men. Indeed, information considered by the delegate indicates that there is no shortage of willing recruits, and nothing to suggest that young Sunni men are being forcibly recruited.
45. I am not satisfied that the applicant is at risk of harm by being forcibly recruited into a militia.

#### **Data breach**

46. I accept that the applicant was affected by the "data breach" as a result of which, in February 2014, a routine report released on the department's website unintentionally enabled access, for a short period of time, to some personal information about people who were in immigration detention in Australia on 31 January 2014. No information relating to the content of the applicant's protection claims was released as a result of the data breach.
47. The applicant fears that his enemies may have accessed this information but it is not clear how he thinks this might increase the risk of harm he claims to fear. For the reasons set out above, I have not accepted that the applicant is at risk of harm from militia groups of any political or sectarian persuasion, including from Hezbollah, which controls the airport and which might be aware of the applicant's return. There is no credible or plausible reason to think that any of these groups would be concerned even if they knew the applicant had applied for asylum.
48. Country information considered by the delegate indicates that Lebanon has a long history of migration and return and that seeking asylum is not a crime. Given that I am satisfied the applicant was not at risk of harm from any group, including Hezbollah, prior to his departure, there is no evidence to suggest that any information available due to the data breach, or the fact that he may be known or suspected to have sought asylum overseas would result in a real chance of harm on his return.

#### **Other matters**

49. I note that there is information in the delegate's decision and in the referred material relating to character and security concerns about the applicant. The applicant has stated that he was convicted of criminal offences and imprisoned in Lebanon in about 1999; while he initially stated that he was arrested by Syrian forces on political charges, he subsequently stated that in fact they were criminal offences, including [crime], and he had been imprisoned in a different location from that originally stated. The applicant has provided penal certificates and other documentation from Lebanon indicating that he has no criminal record and is of good

character. In the light of his own admission, I find that the applicant does in fact have a criminal conviction in Lebanon and the documentary evidence stating otherwise is inaccurate. As to the other matters mentioned in the referred material, there is no evidence before me of any of the matters raised, and the basis for the concerns raised is not at all clear. As the IAA is not permitted, in any case, to make directions in relation to whether an applicant meets or does not meet criteria for the grant of a protection visa relating to criminal, character or security matters, any allegations made in relation to such matters are not relevant to my consideration of the application. The applicant has not claimed that he fears harm of any kind arising from these matters. I have therefore not had regard to any information on file which refers to criminal activity on the part of the applicant or any of his relatives – apart from the applicant’s own claims about his [family member] - including for the purpose of assessing the credibility of the applicant’s protection claims.

## **Refugee assessment**

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50. 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**

51. 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.

52. There is no issue as to the applicant’s identity and nationality. I accept that he is a national of Lebanon and that Lebanon is the receiving country.

53. For the reasons set out above, I do not accept that the applicant was threatened, targeted or harmed prior to his departure from Lebanon by any militia group operating in Tripoli, either Sunni or Shia; or by Hezbollah. I do not accept that he was an informant for the LAF who was targeted for that reason, nor do I accept that he was targeted by militia for any other reason. I am not satisfied that the applicant is at any risk of harm of any kind for these reasons on return.

54. I do not accept that the applicant faces a real chance of harm from Hezbollah as an organisation, even if it were accepted that he was associated with the Future Movement. The country information indicates that low level members or supporters of the Future Movement are not targeted by Hezbollah. I do not consider that the applicant is a high profile political figure who would be regarded as a threat to the interests of Hezbollah, and country information indicates that only people at this level may face serious harm from the organisation.
55. Based on the applicant's evidence about his own circumstances and the country information about their manner of operating, I am satisfied that he does not face a real chance of harm in the future from militia groups seeking to recruit him.
56. I am not satisfied that the applicant was placed at risk of harm as a result of the data breach. As I have not accepted that he is at risk of harm from any group in Lebanon that could possibly have accessed the information released in the data breach, there is no reason to suppose that his risk of harm has increased. Country information indicates that seeking asylum is not a crime or an issue for the Lebanese authorities.
57. The country information indicates that the sectarian and political conflict in Tripoli has abated considerably since 2014-5, partly because of a rapprochement and constructive dialogue between opposing sides and concrete intervention by the LAF and state security forces. While the applicant has in the past lived in, or close to, one of the flashpoint areas where Sunnis do face a moderate risk of harm, and although improved, the security situation between the Sunnis and Alawites in Bab al-Tabbeneh and Jabal Mohsen is constantly tested, I accept DFAT's assessment that not all areas of Tripoli carry the same level of risk, and in particular, that Sunnis living outside the Bab al-Tabbeneh neighbourhood (and who are not actively involved in fighting) is low. Given that prior to his departure the applicant lived in another area of Tripoli, and while I note there have been some attacks outside these flashpoint neighbourhoods, I am satisfied that they have not been occurring with such frequency as to create a real chance that the applicant would be harmed in violence directed against the Sunni community generally, or indiscriminate violence. I am not satisfied that the applicant faces a real chance of harm arising from fighting between Sunni and Alawite militia, or from other political or sectarian violence, anywhere in Tripoli outside of Bab al-Tabbeneh and Jabal Mohsen.
58. On the basis of the available information I conclude that the applicant does not have a well-founded fear of persecution, in that there is no real chance that he would face serious harm in his home area for any of the reasons claimed. I do not accept that he was an informant for the LAF or that he was threatened or targeted or harmed by any militia group operating in Tripoli for that reason, or because they sought to recruit him. I do not accept that he faces harm from Hezbollah or any group associated with it, either as an informant or because he supports the Future Movement. I do not accept that he was subject to extortion, or that he faces harm on that basis on return. I do not accept that he faces harm as a result of the data breach. In the context of his claims and evidence I have considered whether he faces a real chance of harm as a result of sectarian conflict in Lebanon or because of the presence of armed militias in Tripoli, or related to the deaths of other family members, and I have concluded that he does not. Nor is there a real chance that he would face persecution on the basis of any or all of these characteristics, considered cumulatively.

### **Refugee: conclusion**

59. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

## Complementary protection assessment

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60. 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

61. 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.

62. The applicant has not made specific claims to complementary protection separate from those put forward in relation to the refugees criteria.

63. As discussed above, I have found that the applicant does not have a well-founded fear of persecution for any of the reasons claimed. I have found that there is not a real chance that he would face harm for any of these reasons, including if they are considered cumulatively. 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<sup>12</sup>.

### Complementary protection: conclusion

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

## Decision

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

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<sup>12</sup> In *MIAC v SZQRB (2013) 210 FCR 505* the 19 the Full Federal Court held that the "real risk" test in the complementary protection provisions imposes the same standard as the "real chance" test applicable to the assessment of "well-founded fear" (The Court in that case was considering the language in the Refugees Convention.)

## Applicable law

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### ***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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...