



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA18/04116

Date and time of decision: 27 August 2018 11:34:00

M Oakman, 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 Sunni Muslim from Lebanon. He arrived in Australia on 13 June 2013 and lodged an application for a Temporary Protection visa (TPV) (XD-785) on 22 December 2016. On 4 January 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 30 January 2018 the IAA received a submission and further information from the applicant's representative.
4. To the extent the submission discusses evidence that was before the delegate (including repeating some information about the dispute between the applicant's family and another family in Lebanon), refers to case law and contains argument, I consider this does not constitute new information and I have had regard to it.
5. The further information consists of additional details about the dispute between the applicant's family and another family in Lebanon; additional details in relation to his separation from his wife and his ongoing issues in trying to seek access to his children, including a copy of a letter dated 4 December 2017 from his solicitor to his wife; and country information. None of these additional details or the country information was before the delegate and it is new information.
6. The applicant's representative provided no explanation as to why the new country information was not and could not have been provided to the delegate, or why it may be regarded as credible personal information that was not known and had it been known it may have affected the consideration of the applicants' claims. The new country information consists of material that either pre-dates the delegate's decision or for which the date cannot be ascertained from the details contained in the extracts and their source reference. The new country information does not appear to contain what may be regarded as personal information in the s.473DD sense. The applicant was represented when preparing his TPV application. At the TPV interview the delegate told the applicant the purpose of the interview was for him to provide further information in support of his protection visa; it was his responsibility to raise all his protection claims and to provide evidence in support of those claims; if his application was refused he may not have another opportunity to provide further information; and that any additional information received before a decision was made would be considered. The applicant was represented at the TPV interview. There was other country information before the delegate. The applicant has not satisfied me that this new country information was not and could not have been provided to the delegate, or that it is credible personal information that was not known, and had it been known it may have affected the consideration of the applicants' claims. As such, I am unable to consider that new country information.
7. On its face, the additional details about the family dispute in Lebanon and the additional details about his separation and its ongoing issues appear to be credible personal information. The additional information about the family dispute in Lebanon appears to pre-date the

delegate's decision. The additional information about his separation and its ongoing issues appears to contain a mix of information that pre-dates (such as the solicitor's letter of 4 December 2017) and possibly post-dates the delegate's decision (such as his wife 'recently' not providing a time to conduct mediation).

8. The submissions contain a section headed 'exceptional circumstances'. However, what follows under that heading does not appear to address matters arising under s.473DD, but sets out the additional information about his separation from his wife and their ongoing issues, including that the applicant has a genuine fear that if he is returned to Lebanon he will not have the opportunity to see his Australian citizen children again, and the children being kept from their father cannot be considered positive for the welfare, or in the best interests, of those children.
9. The applicant was represented when preparing his TPV application and statement. The applicant's (former) representative was present at his TPV interview. At his TPV interview the delegate told the applicant that the purpose of the interview was for him to provide further information in support of his protection visa; it was his responsibility to raise all his protection claims and to provide evidence in support of those claims; if his application was refused he may not have another opportunity to provide further information; and it was important he provide complete, accurate and personal protection claims as early as possible including during the interview. The applicant and the delegate discussed, among other things, the reasons he left Lebanon including because he was Sunni; his claim that one of his brothers shot a member of a Shia family, his brother was in prison after that person died and subsequently the Shia family wanted revenge on the applicant's family; that he was separated from his wife, his wife was expecting their second child at the time, and if he returned to Lebanon he would not be with his wife and children; and that the delegate was struggling to see how he met the definition of a refugee. At the end of the TPV interview his representative requested time to try to obtain evidence such as court records about the shooting by his brother. The delegate said any information received before a decision was made would be considered; and told the applicant that if he thought of something else he needed to tell his representative as there may be a time when it's too late, and he should go home, rest and if he thought of something he needed to tell his representative whether he thought it was important or not. The delegate received no further material from the applicant or his representative before she made her decision, some six months after the date of the TPV interview. I am not satisfied that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

10. The applicant's claims can be summarised as follows:
 - He fears he will be killed brought about by the constant instability and conflict in the country;
 - His fears heightened after he witnessed his friend being shot and killed when he was caught in the middle of conflict between Sunnis and Shias in neighbouring Tripoli on their bus commute to work; and
 - He seeks protection from persecution upon the basis he is a member of a family who are current targets for revenge.

Factual findings

Receiving country

11. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Lebanon from Akkar. I find that the applicant's receiving country is Lebanon. The applicant has consistently claimed, and I accept, he is Sunni.

Background

12. The applicant states that he was born in Akkar in [year]. His parents, [and siblings] live in Akkar. He married in Australia in December 2014, he has [children] and he is currently separated from his wife. He attended school in Lebanon up to Year 10. He worked in Lebanon for a number of years as a [occupation] in Beirut, but was also unemployed for a number of years in Lebanon.

Problems in Lebanon

13. The applicant claims that he had to leave Lebanon because of war zones, poverty, fear and hunger. He was scared for his life and scared that he would die in a similar way to his friend. He worked in Beirut from about 2005 or 2006 to about 2009 or 2010 as [an occupation]. He would work and stay in Beirut for a few days and then take a break of one or two days when he would return to his family home. Once when he was travelling on a bus along the main road to Beirut, either coming from or going to work, with his friend sitting beside him, his friend was shot and killed. At the time there was conflict between Sunnis and Shias in Tripoli and his friend was hit by a sniper's bullet, it was a random event, his friend was caught in the crossfire between the two groups fighting. He cannot recall the actual date because so many things happened to him, but he thinks it was in 2010. After his friend's death he was traumatised and stopped work.
14. The applicant claims that there are problems happening to Sunnis in Lebanon and everything and anything makes him fear to live in Lebanon. He is Sunni and the Shias have the most power in Lebanon. He mainly feared living in Beirut, and moving between his village and Beirut and after what happened to his friend he ended up living in the village, not doing anything and fearing he would end up like his friend, he became secluded in the village.
15. The applicant claims that his brother [Mr A] had a problem with someone from another family, which ended up with his brother shooting the other person. The applicant was present when [Mr A] shot the other person, and he tried to dissuade his brother, but he was not involved in the shooting. The other person was hospitalised from the shooting but later died, [Mr A] is in prison in Lebanon and there were threats exchanged between the two families. The other family was Shia and they want to seek revenge for the shooting; they want to kill someone; he is the eldest son and his brothers were really children at the time, so it was him, his father or his uncle they wanted to kill; they also saw the applicant talking to [Mr A] before his brother shot the victim and they thought he was encouraging [Mr A] to shoot. While the applicant was still in Lebanon the Shia family was madly seeking revenge, but after he left other people became involved to try and mediate and fix everything. His brother has been in prison for four years (at the time of the TPV interview) and he went to prison, most likely, in 2013.
16. The applicant provided a number of supporting documents during the visa application process including identity documents, and documents in relation to his marriage.

17. In assessing the applicant's evidence I have taken into account the difficulties of recall over time, the scope for misunderstanding in interpreted material, cross cultural communication issues, and the problems people who have lived through trauma may experience in presenting their story in a cohesive narrative. The applicant was a somewhat poor historian when it came to consistently recalling dates, but was otherwise generally consistent about his residential, education, family and work history, as well as his claim of witnessing the fatal shooting on the bus. I accept the applicant's residential, education, family and work history, except as discussed below, and that he was with his friend on the bus when they were caught in a cross fire around Tripoli and his friend died from random sniper fire, as set out in his TPV application and TPV interview.

18. There are a number of issues with the applicant's evidence about incident where he claims his brother shot and killed a member of a Shia family and the problems subsequently faced by the applicant and his family from that Shia family. The applicant failed to mention in his TPV application the shooting incident that resulted in his brother being held in prison and a Shia family wanting to kill the applicant, his father and his uncle. Although the applicant said, and I accept, he was stressed because of the separation from his wife and child at the time of the TPV interview in June 2017 he did not suggest that he was similarly stressed when he prepared his TPV application. I also note he indicated in that application in late 2016 that his marital status was married, even though indicating you are separated is an option in the application form, and there is no other evidence before me to suggest he was separated at the time he prepared his TPV application. His failure to mention that shooting incident prior to the TPV interview is a significant omission that reflects poorly on the credibility of the claim. There are also other discrepancies in his evidence about the incident. He claimed he was targeted as the eldest, together with his father and uncle, but said his brothers were still young, children, at the time. However, excluding his youngest brother who would have been around [age] in 2013, his other two brothers were around [age] and [age] years old in 2013. I do not consider it credible that when he initially discussed the incident and the threats from the other family he made no mention of his having any personal involvement in the shooting and said the other family wanted to shoot anyone in his family; but later in the TPV interview he claimed he was present when his brother shot the other person, he tried to talk his brother out of it, he was seen by members of the other family talking to his brother and the other family thought he had encouraged the shooting and he was the main reason for it. I do not consider it credible that, notwithstanding the applicant's claim that other people have been mediating the matter, no actual adverse action to follow up any supposed threats was taken against the applicant while he was still in Lebanon or against his father, his uncle or the other members of his family in Lebanon in the five years or so years since he left. I also do not consider it credible that the applicant, after being asked by the delegate to provide any supporting documentation he could about his brother's imprisonment, failed to provide documentation or any explanation as to why he was unable to obtain such documentation.

19. The issues discussed above go beyond minor discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, stress due to his separation, or a lack of cohesive narration due to trauma, and demonstrate not insignificant credibility problems in the applicant's evidence. Overall, I am satisfied he fabricated his evidence about his brother shooting a member of a Shia family in order to boost his claims for protection. I reject the applicant's claim that his brother [Mr A] shot someone; that [Mr A] is in prison; and that the victim's family was or is seeking revenge against the applicant and/or his father, uncle or any of his family members.

Asylum Seeker

20. The applicant claims to have left Lebanon in May 2013 to travel by plane to [Country 1] and then [Country 2]. From [Country 2] he travelled by boat to [Country 3]. He subsequently left [Country 3] to travel to Australia in a boat organised by a smuggler. He gave his passport to the smuggler. I find that, if he were to return to Lebanon, he may be considered a returned asylum seeker by the Lebanese authorities.

Refugee assessment

21. 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

22. 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.

Sunni and general security situation

23. The applicant referred to his general fears of being killed in the constant instability and conflict in Lebanon, particularly given his experience with the incident when his friend was [killed], in a cross fire from fighting between Sunni and Shia groups in Tripoli. He also said that there are problems for Sunnis in Lebanon and Shias have all the power.
24. Country information¹ indicates that there has been a history of sporadic conflict in Lebanon since the conclusion of the civil war in the late 1980's. There was increased spill-over violence following an influx of refugees from Syria in 2011, with deaths occurring particularly in Tripoli, Arsal and the southern suburbs of Beirut. Since late 2013 incidents of violence from longstanding sectarian tensions have decreased and security plans implemented in a number of areas, and developed by the Lebanese Armed Forces and dialogue between the Sunni

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED850AD6014; and US Department of State (USDOS), "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883.

dominated Future Movement and the Shia Hizballah, have contributed to many areas having a more stable security situation. There remain challenges to Lebanon's stability including from the conflict in Syria, and although ISIL controlled areas in Syria are diminishing, sporadic attacks still occur in areas that border Syria as well as ISIL maintaining a presence in Lebanon around Aarsal and the mountainous Baalbek region. Tensions between Israeli and Hizballah have remained high since 2006 and there are sporadic skirmishes, including frequent cross border artillery fire. The Department of Foreign Affairs and Trade (DFAT) assesses that, overall, the security situation in Lebanon remains largely stable but unpredictable, with the greatest areas of instability where ISIL and Jabhat Fatah al-Sham are located, particular the north-east border areas.² Tripoli, where the applicant's friend was killed, experienced regular rounds of sectarian violence from competing militias up to 2013 and 2014; in April 2014 the Lebanese authorities implemented a security plan in Tripoli that led to a notable reduction in incidents; and Tripoli has only experienced some isolated incidents of violence since that time.³

25. Country information⁴ indicates that for mainstream religious and social groups in Lebanon the legal and political system is generally free of discrimination and Lebanon is a diverse country with a history of religious pluralism and a high degree of religious tolerance. Discrimination and violence relates more to political affiliation than religious affiliation, there are limited examples of people being attacked for their religious views alone, but there is low level societal discrimination against particular religious groups in some areas. Most Sunnis live in West Beirut, North governorate and South governorate, with Akkar province in the North governorate hosting a substantial Sunni population, and DFAT does not identify any incidents of societal discrimination against Sunnis in Akkar, but states that security there is complicated by an extensive border with Syria. The US Department of State (USDOS) did not report any human rights abuses against Sunnis for 2016.⁵ Media reports refer to Hizballah occupying a Sunni village in Beka'a governorate as well as recruiting Sunnis from Beka'a governorate in 2015 and Hizballah attacking Sunni fighters in the north-east in 2016.⁶ More recently DFAT has assessed that Sunnis are unlikely to be targeted because of their religion alone and attacks against Sunnis are often political and related to the conflict in Syria. Overall Sunni communities close to the Syrian border face a low risk of being caught up in cross border attacks from Syria, but the risk increases if they are sheltering anti-Syrian regime fighters.⁷
26. The applicant stated he mainly feared living in Beirut and moving between his village and Beirut. However, although I accept that the applicant would have been exposed to an unstable security situation in Beirut and while travelling to and from Beirut for the period of his employment in approximately 2005 to 2010, he doesn't claim that he was subject to any targeted attacks or other incidents of harm. The death of his friend in Tripoli in about 2010 was caused by fighting between Sunni and Shia groups, but his friend being hit by a sniper's bullet while their bus was in a cross fire was a random rather than targeted attack. The applicant doesn't claim that he or his family experienced any security incidents and, on my findings, they have not been involved in any violence or received any threats, while living in Akkar either while the applicant was in Lebanon or since he left for Australia. Similarly, he has not claimed that he or his family in Lebanon have been involved with anti-Syrian regime fighters or exposed to any cross border attacks or incidents whether from ISIL, Syrian or other armed forces.

² DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014.

³ Ibid.

⁴ Ibid.

⁵ USDOS, "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883.

⁶ "Border village of Tfail divided over Hezbollah presence", Daily Star, The (Lebanon), 21 May 2015, CXBD6A0DE6862; "Hezbollah's recruiting of Sunnis in the Bekaa", Now, 18 September 2015, CXBD6A0DE13858; and "Hezbollah kills four Qaeda-linked militants in north Lebanon - security source", Reuters, 3 February 2016, CX6A26A6E741.

⁷ DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014.

Although he spoke generally of Sunnis having problems and the Shias having all the power in Lebanon, he does not claim he and his family were subject to any specific incidents of discrimination from Shias or others. Nor, even though the applicant experienced some periods of unemployment, was there any suggestion that his unemployment was due to discrimination or that he and his family were unable to subsist in Lebanon whether due to security concerns, as Sunnis, or otherwise.

27. The applicant comes from Akkar in the North governorate where his parents and siblings still live and I am satisfied that this is the area of Lebanon to which he would return. He is Sunni. I am satisfied from the country information discussed above that the security situation in Lebanon is generally stable but Sunnis that are close to the border with Syria, which applies to some parts of Akkar, are at low risk of being caught up in cross border attacks; and Sunnis are not at risk of harm from official or societal discrimination, particularly those in an area with a substantial Sunni population like Akkar. Given that country information about current country conditions, and the applicant's own profile and history, I consider the chance of the applicant suffering harm if he returned to Lebanon is remote.
28. I am not satisfied that there is a real chance of harm to the applicant due to the general security situation and/or as a Sunni, if he returned to Lebanon, now or in the foreseeable future.

Returned asylum seeker

29. I accept that if the applicant returned to Lebanon he may be considered a returning asylum seeker.
30. Lebanon has a long history of migration and return, including a sizable Lebanese diaspora with many maintaining close family and business links to Lebanon.⁸ DFAT states that overall it is not aware of any evidence suggesting an asylum seeker returning to Lebanon would be distinguishable from the broader community or susceptible to any form of discrimination or violence based on having sought asylum abroad; returning asylum seekers are unlikely to face any stigma in either Beirut or their home area; and it is not a crime for a Lebanese citizen to have sought protection elsewhere.⁹ The USDOS also confirms that Lebanese law provides for freedom of internal movement, foreign travel, emigration, and repatriation; and the government generally respected these rights for citizens.¹⁰
31. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker, now or in the reasonably foreseeable future.
32. I accept that the applicant has an Australian citizen wife and [Australian] citizen children. He is separated from his Australian citizen wife and consequently his Australian citizen children. I accept that if he returns to Lebanon he may remain separated from his Australian citizen wife and Australian citizen children and he may find these circumstances distressing. However I am not satisfied that one or more of the reasons set out in s.5J(1) of the Act is the essential and significant reason for this or that the applicant faces a real chance of persecution as a result of his family situation.
33. Considering the applicant's circumstances and profile as a whole, in the context of the country conditions in Lebanon I am not satisfied that the applicant faces a real chance of persecution

⁸ Ibid

⁹ Ibid

¹⁰ USDOS, "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883.

now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

34. 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

35. 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

36. 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.

37. I accept that if he returns to Lebanon the applicant may be separated from his Australian citizen wife and Australian citizen children. While such a separation would be distressing for the applicant and his family, I am not satisfied that any suffering caused to the applicant if he were separated from his Australian citizen wife and Australian citizen children would constitute any form of significant harm as defined, including cruel, inhuman or degrading treatment or punishment, which requires an element of intention in relation to the infliction of harm which is absent in the present circumstances. I am not satisfied that the Australian authorities, in removing the applicant from Australia in accordance with the requirements of the Act, would intend to cause pain or suffering or extreme humiliation by doing so. Having regard to the Federal Court's decision in *SZRSN v MIAC*¹¹, I do not consider that harm arising from the act of removal itself, such as separation from his Australian citizen wife and Australian citizen children, meets the definitions of 'significant harm' in s.36(2A).

38. I have found that there is not a real chance of harm to the applicant, now or in the reasonably foreseeable future, from the general security situation and/or as a Sunni. As 'real chance' and 'real risk' involve the same standard,¹² it follows that I am also satisfied that there is no real risk of significant harm if he is returned to Lebanon.

39. Having considered the applicant's circumstances individually and cumulatively, I am not satisfied that he faces a real risk of significant harm.

¹¹ *SZRSN v MIAC* [2013] FCA 751.

¹² *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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