



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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LEBANON

IAA reference: IAA18/04151

Date and time of decision: 2 August 2018 17:21:00

J McLeod, 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 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

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### Visa application

1. The applicant claims to be a Lebanese Sunni Muslim from Akkar, in northern Lebanon who fears being targeted as he was in the past, for his family's Hezbollah affiliations. He arrived in Australia on [date] July 2013 with his older brother ('M') but lodged his own separate application for a Safe Haven Enterprise visa (SHEV) 6 December 2016. After interviewing the applicant on 9 June 2017, on 10 January 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) determined that the applicant's profile was not such that he would suffer serious or significant harm upon return and she refused to grant the SHEV.

### 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)(the review material). No further information has been obtained or received.

### Applicant's claims for protection

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3. The applicant's claims can be summarised as follows:
  - He was born in [an] area of North Lebanon. He lived in Akkar but frequently assisted in his father's [business] in the Hezbollah stronghold [in] south Beirut and travelled between there and Akkar. In return for maintaining a Hezbollah donation box and displaying other pro-Hezbollah materials (eg. flag, pictures of Hassan Nasrallah) in their shop, the family was assured Hezbollah protection.
  - He and his older brother M were forced to leave Lebanon because they were being targeted by Salafists<sup>1</sup> for their family's association with Hezbollah:
    - In 2008 he M were attacked in their car which displayed a small Hezbollah sticker logo used to pass through Hezbollah checkpoints. A group of Salafists attacked their car shouting accusations and insults about them being traitors and Shia dogs. They sped away and escaped but did not file a police report as they were too afraid and they could not identify the attackers.
    - They faced heckling, dirty looks and harassment at home in Akkar and this worsened when Hezbollah became involved in the Syrian War. The tension increased and they felt uneasy and tried to spend more time in Beirut.
    - The family started receiving threats from Salafi groups, particularly in 2012 when it was discovered that the applicant and his brother were importing [goods] from Syria. The Salafi group suspected they were smuggling weapons across the border to assist the war efforts and were spying for Hezbollah. Their father who was very worried, stopped travelling to Beirut leaving the applicant's brother, A, in control of the shop. However his father still received threats.
    - This continued into 2013 and the threats became more overt, especially as it became known that the family had voted for a Hezbollah candidate in an election. Their friends and family warned them to stay away from the border but

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<sup>1</sup> In his application and SHEV interview and in the SHEV decision these groups and members of such groups have been referred to interchangeably as 'Salafis', 'Salafiyeh', and 'Salafists'. For consistency and clarity, I have referred to them as 'Salafists' or 'Salafist groups'.

they continued to carry out their business. It became impossible to go home. He and M were shot at while travelling in a taxi in Tripoli. He believed they had been caught in the crossfire of the Jabal Mohsen - Bab al-Tabbaneh conflict which had flared up around then, but their father was convinced the shooting was targeted and he made arrangements for the applicant and M to leave Lebanon.

- In June 2013, they departed Lebanon through the airport and made their way to Australia. The threats against them remain current. He and his brother are constantly enquired after despite their father telling them that they left the country.

### **Refugee assessment**

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4. 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**

5. 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.

### **Identity / background**

6. I accept the applicant is a Sunni Muslim from Lebanon and that this is his receiving country. Although he worked part-time in his father's Beirut based business he lived in Akkar and his parents and some siblings still reside there. I am satisfied that Akkar is the place to which he would return.

### **Previous problems arising from imputed pro-Hezbollah political opinion / imputed smuggling**

7. The applicant claims he has previously been harmed and will also be harmed upon return due to his imputed support for Hezbollah and his imputed weapons smuggling for the Syrian war effort.

8. I accept the applicant's father's business (now run by his brothers) has been, and still is, operated primarily out of a shop front [in] South Beirut, Hezbollah territory. I accept that in order to operate without interference in the area and to shore up Hezbollah protection, the applicant's father registered as a member of Hezbollah, the family displays pro-Hezbollah paraphernalia and a Hezbollah donation box in their shop and that they have a Hezbollah sticker logo on their vehicles to facilitate travel through checkpoints into Hezbollah controlled areas in Beirut and along the Syrian border. I accept the applicant worked in the business, and while not at school or studying he spent time in the shop in Beirut, transporting goods and in the importing and distributing [goods] from Syria. The applicant's account of his father's business operations and his involvement in them has been generally consistent since his arrival and I found his oral evidence on the matter to be adequately detailed and convincing.
9. The applicant claims that he and M were forced to leave Lebanon because they were being targeted by Salafists who accused them of being 'Shia dogs', spies and smugglers for the Syrian war effort.
10. I accept the family's business operations in South Beirut and their importation of [goods] from Syria was known to neighbours and other members of the community in Akkar and that the family is imputed with a pro-Hezbollah political opinion. I accept too, the applicant's evidence that his father initially supported Hezbollah in the conflict with Israel but that in recent years, he has not ideologically supported them, but only pretended to, to attain protection and smooth running of his business. The applicant has variously described himself as a 'Hezbollah member' and a 'silent Hezbollah member' and a 'Hezbollah supporter' but he also mentioned he and M were 'imputed' to be Hezbollah supporters. However, the evidence does not indicate that the applicant or his brother ever actually joined or registered as a member of Hezbollah in any capacity and nor did he ever engage with the organisation for any purpose other than in the ordinary process of entering Hezbollah controlled areas and for business related matters in those areas. I am satisfied he was not any kind of member of Hezbollah nor that he was imputed to be an actual member, and that his support for them was only shown in the context of operating the business. However, I accept nonetheless that he, M and his family were perceived by people in Lebanon to be Hezbollah supporters.
11. I accept that some members of the community have treated them with suspicion over their imputed Hezbollah support and that their trips to the border areas have also led to some false perceptions that the applicant and M were smuggling things into Syria. I accept that from about 2006, the applicant's family experienced some adverse interactions with other members of the community who have disagreed with their pro-Hezbollah associations but that for the most part (and with the exception of the 2008 car attack discussed below), the manifestation of this has been limited to verbal harassment and dirty looks.

#### *2008 attack on applicant's car*

12. I accept that in 2008 the applicant and M were returning to the Akkar area from Beirut in their vehicle displaying a Hezbollah logo when they were attacked in a quiet street by a group of people who threw stones, sticks and bottles at them, and punched and kicked at the car while shouting accusations and insults about them being traitors and Shia dogs. The applicant has been adequately consistent in the telling of this incident across his Entry Interview, written SHEV application and his SHEV interview. I accept this was a targeted attack because they were identifiable as Hezbollah supporters and that there was heightened tension in Lebanon between Sunni and Shia groups around that time. However I am satisfied on the evidence that the applicant and his brother remained in their car and managed to drive away without having any face-to-face interactions with the attackers and without being physically harmed or

followed by their attackers. I am satisfied on the evidence that there was never any follow-up from this group. In the SHEV interview when discussing why he left Lebanon the applicant mentioned he had been beaten by the people who damaged their car but his evidence on this was vague, and he provided no details of the circumstances in which such beating/s occurred. Due to this, and because the applicant himself stated in his SHEV application that he had not complained to the police about the car attack because he was frightened and because he did not know the identity of the attackers, I do not accept the applicant was beaten by the people who attacked his car, in the car attack incident, before this, or subsequently. I accept the car attack was a frightening incident for the applicant and M however I am satisfied there were no further repercussions from this event in the five years that the applicant remained in Lebanon after the attack. I find this was an isolated incident and is not indicative of a risk of harm to him upon return.

#### *2013 shooting in Tripoli*

13. I accept that in 2013 the applicant and M were travelling in a taxi in Tripoli which was shot at. The applicant claims his father told him he and his brother were the intended targets but he has not provided any further information or evidence to indicate why their father would have believed this. On the applicant's own evidence in his SHEV application, the incident occurred in Tripoli at a time when the Jabal Mohsen-Bab al Tabannah conflict had flared up again and he believed their taxi had simply been caught in the cross-fire. In his Entry interview he also stated that the taxi was shot at as a two groups were shooting at each other and he did not believe he was being specifically targeted and in his SHEV interview he stated that he had thought the shooting was natural considering the area they had been passing through at the time. In considering the evidence overall I am not satisfied the applicant and his brother were intended targets of this shooting and I am not satisfied the incident is indicative of the applicant facing a risk of harm upon return.

#### *Attack on the family home*

14. In the SHEV interview, when discussing why he had come to Australia, the applicant also mentioned that "*not long before coming here*" he and his family had been attacked in their home. However I have concerns about the applicant's evidence as he had never previously mentioned a house attack and he appeared to build on the claim throughout the SHEV interview. When he first mentioned the house attack he stated people came and verbally abused them, warning them to distance themselves from Hezbollah. However he later stated that as well as verbally abusing them, the attackers shot at the house and broke the windows and his sister was so affected by the incident that she is now mentally ill and his siblings now mostly sleep at the shop in Beirut because they are afraid to go home. However, he confirmed he had not been at home at the time and when asked how he knew the attackers were Salafists, the applicant said it wouldn't be Hezbollah because they don't control the area and in their region the cars of a Salafist MP and his brother are well known and they also travel in procession. I surmise from this that the applicant was implicating an MP and his brother who are known to be Salafists but I note he still did not explain how, given he was not present, he knew who the attackers were. I have concerns about this and I also consider it implausible that the applicant's house would be attacked by persons associated with a politician in such a recognisable manner and that the applicant's family, who were only low-level supporters and not politically active in any way, would have been of any interest to such persons.
15. As mentioned above, the applicant had previously made no mention of having been being attacked or confronted in their home, or of anything happening in 2013 apart from the taxi shooting which he had claimed was the last straw which prompted his father to make

arrangements for he and M to leave Lebanon. In my view, events such as a house attack involving breaking windows and shooting at the home not long before leaving the country would be so inherently relevant to his claims that I do not accept he would not have thought to disclose these events, or at least made some indications about them before the SHEV interview.

16. I have taken into account that earlier in the SHEV interview the applicant had explained why he had not claimed in his Entry Interview that he had been specifically targeted. He explained that he had been ill advised by the smuggler and other asylum seekers not to discuss his history and troubles in Lebanon but when he later met with a migration agent, he learned this was poor advice. I have considered whether this could explain his omission of the house attack claim but considering he had mentioned his problems regarding the 2008 and 2013 incidents in his Entry interview and he had received migration advice in preparing his application, I do not accept the proffered explanation accounts for his not mentioning the house attack at some stage prior to the SHEV interview.
17. Given this, and the other concerns I have outlined above regarding his evidence as to this matter, I do not find these claims to be credible. I do not accept that anyone ever attacked the house.
18. I am prepared to accept that the applicant's sister has a mental illness but I am not satisfied this was triggered or worsened by an attack on the house. While the circumstances are regrettable, I am not satisfied the sister's illness has any bearing on the risk that the applicant would face upon return.

#### *Threats and beatings from Salafists*

19. In the SHEV interview the applicant stated sometimes when people were verbally abusing him they would slap him on the back of the neck and he also mentioned a number of times that people would beat him. However apart from the 2008 car incident and the 2013 taxi shooting (which I did not accept was targeted at him) and the house attack (which I do not accept occurred), the applicant has not provided any information or examples to explain how such threats have manifested, nor the circumstances in which he claims he was beaten. The applicant's evidence about ongoing threats and beatings has been vague and unconvincing. I am prepared to accept he and his family experienced some verbal harassment in Akkar, but I do not accept he was beaten or that he or any of his family received ongoing threats of harm.
20. In his SHEV application the applicant claimed the threats against his family remain current. He stated he and his brother are constantly enquired about. However the applicant has not provided any specific detail about such enquiries. He has not provided any dates, frequency, described the manner in which such enquiries have been made or by whom, or the nature of the enquirers' behaviour. Nor has he provided any such details to explain why his brothers A and B who now run the business, are purportedly living out of the shop in Beirut and only travel home around once per month to visit the family because they fear being targeted in Akkar. Nor has he provided any details about what specifically prompted his father to decide not to go to Beirut anymore. The applicant's evidence on these matters has been vague and the country information that was before the delegate and is before me does not support that such persons are targeted in Akkar. I am not satisfied there have been any particular incidents of harm or attempted harm against the applicant's brothers. I do not accept the reason his brothers stay at the shop in Beirut is because they fear being harmed in Akkar or that his father stopped going to Beirut because he feared harm in relation to his business or the Hezbollah affiliation, and nor do I accept anyone has made enquiries about the applicant and M. I do not

accept he has a profile of concern to any Salafist groups. I am not satisfied that any member of the family has faced harm on account of his father having registered himself as a member, or for the family's imputed pro-Hezbollah profile.

#### *Imputed smuggling activities*

21. I have taken into account the previous suspicion of Akkar residents and Salafist groups of the applicant's border activities. While I accept that some people suspected he may have been smuggling materials (even weapons) for the Syrian regime, the evidence does not indicate that the applicant was ever formally questioned by any authorities or group about this, and nor have any members of his family faced repercussions and I note his brothers are still engaging in the imports today. I do not accept the applicant is of adverse interest to anyone in relation to the earlier suspicion about his border activities, nor about his brothers' ongoing activities. I similarly do not accept that the applicant would be of any adverse to anyone on account of an imputed affiliation with, or support for, the Syrian regime arising from these activities.

#### **Risk of future harm**

22. I am not satisfied that the applicant has a profile of concern to any Salafist groups, Lebanese authorities or anyone in Lebanon but as a Sunni Muslim returning to his area in Akkar, I accept he may still be identifiable in his home area in Akkar as a member of his family, or remembered for his own association with their shop and border import activities and he may still be imputed with a pro-Hezbollah opinion.
23. Information from sources that were before the delegate including the Australian Department of Foreign Affairs and Trade (DFAT; October 2017) and the United States Congressional Research Service (November 2017) indicate that Akkar province is predominantly Sunni and Hezbollah is a predominately Shia non-governmental organisation representing Shi'a interests. These sources report that Hezbollah publicly supports the Assad regime in Syria and has been committing financial and other resources including fighters to support the regime's military efforts in Syria, drawing from its rising military strength which is now believed to exceed that of the Lebanese Armed Forces. According to DFAT (2017), Hezbollah's active support for the Assad regime has exacerbated existing sectarian divides between Lebanon's Shi'a (who tend to support Syria's involvement in Lebanon and the Assad regime in Syria) and Sunnis (who tend to oppose Syria's involvement and regime).
24. I have found the applicant is not himself a member of Hezbollah (even a 'silent member') and apart from the 2008 car attack incident which I found to be an isolated incident and which occurred five years before he left Lebanon and 10 years ago now, the applicant has not suffered any adverse treatment for his imputed political opinion or activities which I consider would amount to serious harm. He does not claim that he intends to actively engage with Hezbollah, or with any Shia or Alawite group upon return. Country information does not indicate that Hezbollah supporters (including those who are Sunni), or persons with a pro-Syrian regime opinion, or a pro-Shia opinion (or ordinary Shias) are targeted in Akkar and nor does it indicate that persons engaging in imports from Syria are targeted. To the contrary, DFAT (2017) notes there are many examples of individuals who hold political views distinct from their religious affiliation and armed non-state-actors have generally refrained from widespread targeting of people on the basis of their political opinion alone. Rather, instances of discrimination or violence tend to be targeted at people who express strong political views, and I do not consider the applicant has, or would upon return, do this. Taking into account this country information, the applicant's lack of adverse profile, that he did not suffer serious harm in the five years before his departure and his family have not suffered harm since, and that I

am not satisfied he would actively engage with, or seek to otherwise enhance his imputed association with Hezbollah or any Shia/Alawite groups, I am not satisfied he will face a real chance of harm upon return for any imputed pro-Hezbollah/Shia/pro-Syrian political opinion. Nor am I satisfied he will face a real chance of harm arising from Syrian import/border activities.

25. Having regard to his Sunni religion, in 2017, DFAT described Lebanon as a diverse country with a high degree of religious tolerance and indicated it shared the view of the UN Special Rapporteur on Freedom of Religion given in 2015 that the situation between religious groups within Lebanon is largely amicable, that individuals were generally able to practise their religion freely and that there was no religious persecution, that Lebanon has successfully kept society united across religious boundaries, and built resilience in the face of religious extremism. DFAT is aware of only limited examples of individuals being targeted purely on the basis of their religion and assesses that discrimination and violence are more likely linked to political views than religious affiliations.
26. DFAT does acknowledge there is some low-level discrimination against particular religious groups in some areas of Lebanon however the applicant's province, Akkar, is located in the majority Sunni North Governorate. The applicant is therefore in the religious majority and country information does not indicate that religious discrimination is directed at Sunnis in Akkar or indeed that Sunnis are systematically targeted for other harms. Similarly, as touched on above, and taking into account that while I am not satisfied the applicant has been or would actually be perceived to be Shia he claims to have been referred in derogatory terms as a Shia in the past, country information also does not support that ordinary Shias are subject to such targeting.
27. I accept the applicant has previously caught in the crossfire in a sectarian fighting incident, in Tripoli. While sectarian fighting in Tripoli has been a problem, it has mostly been confined to the Jabal Mohsen - Bab al-Tabbeneh neighbourhoods. DFAT's 2017 report indicates that since the applicant left Lebanon, and particularly since 2014 with the implementation of an official security plan backed by the major political factions there has been a notable reduction in Sunni-Alawite incidents. In 2017 DFAT assessed Tripoli as broadly stable albeit vulnerable to outbreaks of renewed violence. In any event, the information in the review material does not support that the Jabal Mohsen - Bab al-Tabbeneh conflict is playing out in such a way that ordinary civilians in the area face more than a remote risk of harm. Nor does the information indicate that the fighting between these groups has ever reached into the applicant's home village in Akkar and he does not claim to have ever previously aligned with either side. His home village in Akkar is outside of the flashpoint zone. The applicant has not previously aligned with any militias, or indicated that he would engage in fighting upon return, or that he would seek to live or work in Jabal Mohsen or Bab al-Tabbeneh in Tripoli and I am not satisfied he has a profile which would cause him to be targeted by any Tripoli based groups. While I note there have been some attacks outside these flashpoint neighbourhoods, I am satisfied that they have not been occurring with any frequency so as to alter the level of risk to the applicant in any other areas of Lebanon's north. I am not satisfied that the applicant faces a real chance of harm arising from the fighting between the Tripoli based Sunni and Alawite militias, nor any other militia groups.
28. I take into account that the applicant's home province of Akkar borders with Syria. In its 2017 and previous reports, DFAT has assessed that Sunni communities close to the Syrian border face a low risk of being caught up in cross-border reprisal attacks by Syrian authorities, although the risk increases if a community is sheltering anti-Syrian regime fighters. The evidence does not indicate that the applicant's neighbourhood would be harbouring

opposition fighters or that it would be targeted for such reasons so as to indicate a risk of cross-border attacks.

29. I have taken into account the reporting before the delegate about Islamic State in Lebanon from sources such as the United States Congressional Service (November 2017) and the Institute for National Security Studies (January 2016) about Islamic State infiltrating parts of Lebanon and conducting attacks in Beirut and Aarsal province in recent years. DFAT's report of 2017 reports that ISIL still has a presence in Lebanon is intent on perpetrating violence and agitating pre-existing sectarian tensions within Lebanon and it continues to conduct sporadic attacks in areas that border with Syria. However DFAT also reports that Lebanese Armed Forces and Hezbollah have been successful in subduing ISIL's further attempts to carry out attacks in Lebanon. Hezbollah has also successfully expelled militants from other groups such as Jabhat Fatah al-Sham from an area near the border. Overall, DFAT assesses that the security situation in Lebanon remains largely stable, but unpredictable. Instability is greatest in areas where ISIL and Jabhat Fatah al-Sham are located, particularly around the north-eastern border, although local authorities largely contain these groups and there is no indication that they have been present in, or have caused problems in the applicant's area.
30. I have found the applicant does not face a real chance of harm on account of his Sunni faith or his family's imputed support for Hezbollah (or any imputed religion/political opinion connected with such) and is not personally known by, or of adverse interest to, any militia groups. He also has no other apparent links to any militia groups or even to Hezbollah directly, and nor is he politically active in any way. The applicant's parents and some siblings remain in his home area and there is no information before me to suggest they have faced any harm from sectarian or other violence in the time the applicant has been away. Overall, country information does not support that there is sectarian or other violence of a scale, gravity or frequency that would give rise to real chance of the applicant being harmed. I am not satisfied the applicant faces a real chance of being targeted and harmed for being Sunni, nor from harm arising from sectarian fighting or from insurgent or generalised violence.
31. The applicant would be returning to Lebanon as a failed asylum seeker. DFAT (2017) reports that Lebanese citizens who have sought asylum elsewhere have not committed a crime under Lebanese law by doing so. Generally there is no stigma accorded to returning asylum-seekers and such people would not be distinguishable from the broader community or susceptible to any form of discrimination or violence. This is not contradicted by other country information and I am not satisfied the applicant would not face any risks as a returning asylum seeker.
32. The applicant would most likely be returned to Lebanon through Beirut airport. DFAT's 2017 report assess that while Hezbollah does exercise substantial control over Beirut's international airport, Hezbollah's influence would create no problems for most returning individuals and that a returning individual would only be targeted if they were a direct threat to Hezbollah's authority. I note that in his written statement, the applicant mentioned he had had problems with Hezbollah. However, this single reference in his Statement of Claims is the only indication of this. He has not otherwise claimed to ever had problems with Hezbollah, nor that he fears them upon return. I am not satisfied the applicant had any problems with Hezbollah or that he fears being harmed by them. To the contrary, the applicant's family have a history of supporting Hezbollah and he himself has mentioned receiving help from Hezbollah in terms of being able to access the border for their imports. I am satisfied he would not be considered by Hezbollah as a threat, or that they would otherwise have any adverse interest in him. The applicant departed Lebanon through Beirut airport using on his own passport and on the evidence he did not experience any problems while doing so. I am satisfied the applicant would

not be considered a threat to Hezbollah, or that he would face a real chance of harm from Hezbollah upon return at the airport, nor upon his return to Akkar.

33. The applicant has not claimed that to have committed any crimes in Lebanon, Australia or any other country which may bring him to the adverse attention of Hezbollah or the Lebanese authorities. I have not accepted the border import activities have or would bring him to the adverse attention of anyone. There is no other information before me which indicates that the applicant would be arrested or charged for any reason on return to Lebanon.

#### **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**

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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 have found that the applicant does not face a real chance of harm from any Salafist groups, or anyone in Lebanon for any reason connected to his and his family's imputed support for Hezbollah or their border activities/imports from Syria and nor does he face a real chance of harm arising from his Sunni faith (or imputed Shia faith), his being a returned asylum seeker or from sectarian fighting, insurgent or generalised violence. As 'real chance' and 'real risk' have been found to equate to the same threshold and for the same reasons given above I find that the applicant does not face a real risk of significant harm for any of these reasons.

38. I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm.

#### **Complementary protection: conclusion**

39. 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.

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

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***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.