



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

**Decision and Reasons**

**Referred application**

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LEBANON  
IAA reference: IAA18/04748

LEBANON  
IAA reference: IAA18/04750

LEBANON  
IAA reference: IAA18/04749

Date and time of decision: 25 May 2018 17:50:00  
J McLeod, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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 referred applicants (the applicants) claim to be citizens of Lebanon. They a family unit comprising a husband who is the primary applicant (herein referred to as 'the applicant'), his wife with whom he travelled to Australia, and their son who was born in [Australia]. They applied for Temporary Protection Visas (TPVs) on 4 September 2017. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the referred applicants visas on 10 April 2018.

### 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). This includes inter alia, supporting documentation and country information provided with the applicants' TPV application.
3. On 30 April 2018 and 1 May 2018 the applicants' representative provided further information to the IAA on their behalf. Inter alia, this included two submissions. To the extent that the submissions reiterate the information already before the delegate and contain argument addressing the delegate's findings, I am satisfied this is not new information and I have had regard to it. However, new information was also provided including new country information and additional details about the applicants' employment in Australia.
4. An extract was quoted from, and the full text provided of, a 2013 article from the Canadian Immigration and Refugee Board addressing the recruitment practises of Hezbollah. The report pre-dates the decision by more than four years. No reasons have been provided as to why it could not have been provided earlier and I am satisfied it is a report containing general country information and is not credible personal information which may have affected consideration of the applicant's claims. The applicants have not satisfied me as to the matters in s.473DD(b)(i) or (ii). No matters have been put forward by the applicants indicating that there are exceptional circumstances for considering this new information and none are discernible to me. I am not satisfied that there are exceptional circumstances to justify consideration of this new information.
5. The delegate was advised that the applicant owned and operated his own business in Australia where he employed Australian citizens and permanent residents. The representative has now provided the IAA with the applicant's Australian Business Number (ABN) details and other information about his business, and about the applicant wife's work in a [business]. The additional business and employment details amount to new information. No explanation has been provided about why this information could not have been provided earlier and while I accept it is credible personal information, I am not satisfied that had it been known it may have affected consideration of the applicant's claims. It relates only to the applicants' life and activities in Australia. There is no suggestion that any claims for protection arise from this new information and I am not satisfied it has any bearing on the claims or information in the review material. I am not satisfied that s. 473DD(b) is met and nor am I satisfied there are exceptional circumstances to justify considering this new information.

## **Applicants' claims for protection**

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6. The applicant husband (the applicant) has made the primary claim for protection and raised claims on behalf of himself, his wife and his son. These claims can be summarised as follows:

- They fled Lebanon due to the continuing deterioration of the country situation in Syria and Lebanon. The security in Lebanon continues to be unpredictable due to the civil unrest and the conflict in neighbouring Syria. Anti-government protests and terrorists attacks can occur anywhere and at any time. Violence continues to happen without warning. Extremists are everywhere, including the Akkar district. Suicide bombs happen very often, causing death and injuries. The applicant was constantly anxious, distressed and fearful of being harmed.
- The unrest in Syria led to Hassan Nasrullah committing the Lebanese forces, specifically Hezbollah, to fight alongside the Syrian Army. He called for all young and able males to join the fight, especially targeting the applicant's area as it was close to the Syrian border. The applicant knew that should approach him to join, it would be impossible to refuse them. He had heard stories of men being taken to fight and of their own men being arrested for refusing to fight. He worried for his safety and that of his family should he not be around to provide for them.
- With the focus on Syria, Lebanon was left exposed and has become a target for Islamic State and their associates. In recent years Lebanon has been subject to retaliation attacks and bombings for the support Lebanon has offered to the Syrian government.
- The influx of Syrian refugees has dramatically increased the population and diminished the standard of living. It has led to a housing crisis, a lack of employment and further pressure on the already insufficient amounts of basic necessities. Syrians offer cheap labour; they are willing to work for half the wage of Lebanese nationals so people are losing their jobs. The applicant was fired and replaced by a Syrian employee who accepted a much lesser wage. Finding employment was extremely difficult and given the ongoing conflict, he was unable to travel far for employment as roads were often closed or unsafe. The closest major city to their area was Tripoli, which was rife with conflict. The city was subject to shelling and bombing making it dangerous for him to travel for work.
- Robberies, kidnapping, rapes and murders, particularly of women take place regularly. Due to the risks, his wife was unable to complete her studies.
- With no income and with increasing conflict and danger, the applicants felt there was no option but to escape. They had no one to protect them as the army were serving Syria and the actual government had no power.
- On 29 of April 2013, the applicant, his wife and five of their relatives left Lebanon together through Beirut international airport and journeyed to Australia.
- The applicant fears that if returned, he may be forcibly recruited by Hezbollah, and harmed by them if they discover he is Sunni. He also fears that he and his family will face harm arising from the poor security situation and crime and that they will not be able to subsist.

## **Factual findings**

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7. There are no apparent issues as to the applicant's credibility. Since his arrival in Australia he has been internally consistent with regards to his identity and personal history, his family

composition and his account of the events which led him and his wife to leave Lebanon. He has also provided supporting documentary evidence of his identity (and that of his wife and son). At the TPV interview the applicant provided apparently spontaneous and unembroidered recollections and responses. I do not consider there has been any attempt to embellish his claims. I accept the applicant is a credible witness and that he has provided an honest reflection of his experiences in, and perceptions of, Lebanon.

8. I accept the applicants' identities are as claimed. I accept they are Sunni Muslims and that the applicant and his wife come from Akkar Province in Lebanon's Northern Governorate. While the applicant's son was born in Australia I am satisfied he has Lebanese nationality and that Lebanon is his, and his parents' receiving country. I accept the applicant has a genuine subjective fear of him and his family being harmed in Lebanon as claimed.
9. While the applicant claims the government cannot protect him, I am satisfied he and his wife departed Lebanon on their own genuine passports and they have not raised any claims relating to a fear of harm from the authorities. The applicant confirmed in the TPV interview that he does not have a criminal record in Lebanon, that he has no outstanding military service obligations and that he has not had any problems with the police or military in Lebanon. I am satisfied the applicant does not have a subjective fear of authorities in Lebanon. On the evidence I am satisfied that this is also true of his wife and son.

### **Refugee assessment**

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10. 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**

11. 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.
12. I accept the applicant holds genuine subjective fears that he and his family will face harm in Lebanon. However as the below discussion sets out, I am not satisfied there is a real chance of the feared harm occurring in Lebanon now or in the reasonably foreseeable future.

*Risk of being harmed by Hezbollah*

13. Inter alia, the applicant fears being forcibly recruited by Hezbollah, the most prominent non-state actor in Lebanon. As noted by the delegate, Hezbollah publicly supports the Assaad regime in Syria and has been committing financial and other resources (including fighters) to support the regime's military efforts in Syria. Although a predominantly Shi'a organisation, The Tower report that was before the delegate indicates that Hezbollah does recruit non-Shias including Sunnis, Christians and Druze into its ranks. It is plausible that a Sunni such as the applicant could join, however while Hezbollah has previously exerted general political and social influence to encourage people to join, information from 2011, 2014 and 2015 that was before the delegate indicates that they do not forcibly recruit members. More recent country information considered by the delegate also does not indicate that forced recruitment from Hezbollah has been an issue. DFAT reported in 2017 that Shia are increasingly joining Hezbollah rather than the Lebanese Armed Forces. DFAT assesses that Hezbollah has a rising military strength believed to exceed that of the Lebanese Armed Forces, particularly in the south of Lebanon.
14. On the applicant's own evidence at the TPV interview, neither he, nor any member of his family has ever been approached or asked to join Hezbollah. He claims he knew of others who had been forcibly recruited including his friend who subsequently died in Syria and he was not willing to wait for Hezbollah to approach him. The applicant stated his friend had not wanted to join any group but he has provided no details about the circumstances of his recruitment or death (apart that it was in Syria) or explained how he knows of this, and nor has he provided any details about others he claims were involuntarily recruited. The applicant has made only vague suggestions that forced recruitment occurred and while I accept he believes this did happen, he has provided no persuasive evidence of Hezbollah taking people away and nor have I identified any within the review material.
15. The country information that was before the delegate does not support that Hezbollah engages in forced recruiting practices or that persons who refuse requests to join Hezbollah are harmed. It also does not indicate that Hezbollah targets and harms ordinary civilians of the Sunni faith. DFAT advises that those at risk from Hezbollah are those who threaten its political power or individual Hezbollah members. Non-Shi'a critics of Hezbollah are not at risk unless they represent a direct threat to Hezbollah's authority. DFAT suggests that in reality, this is most likely to affect leaders of rival political factions or other outspoken critics, such as journalists. I am satisfied the applicant would not be perceived as a threat to Hezbollah for any reason and as he himself confirmed, he, nor any member of his family have ever been approached by them. I am satisfied that Hezbollah does not have any interest in the applicant and the evidence does not indicate that they would develop such interest upon return. I am satisfied the applicant does not face a real chance of being forcibly recruited by Hezbollah or being harmed by them in retaliation for any refusal to join, or for any reason related to his Sunni religion. I do not accept he, his wife or his son face a real chance of harm from Hezbollah now or in the reasonably foreseeable future for any reason.

*Risk of being harmed in sectarian/other insurgent violence*

16. The applicant has raised fears about him and his family being harmed in sectarian fighting and from insurgent attacks and generalised violence, both within their home area and while travelling to nearby places such as Tripoli for work.
17. In general, DFAT describes Lebanon as a diverse country with a high degree of religious tolerance. DFAT's most recent report on the country noted that the UN Special Rapporteur on Freedom of Religion stated 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. The Special Rapporteur further noted that Lebanon has successfully kept society united across religious boundaries, and built resilience in the face of religious extremism. DFAT confirmed its agreement with these views in 2017.

18. DFAT noted, in the reports before the delegate, that it has 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. DFAT does however acknowledge there is some low-level discrimination against particular religious groups in some areas of Lebanon. The applicant is a Sunni Muslim from Akkar province which, I surmise from the information before the delegate, has a nuanced religious and political dynamic compared with other parts of Lebanon. Although majority Sunni, Akkar has an Alawite community and whereas Lebanese Sunnis are generally seen to be anti-Syrian regime, in Akkar, people are generally pro-Syrian and therefore in step with the general Shi'a community. However even with these dynamics the country information that was before the delegate does not suggest that Sunnis are systematically targeted in the applicant's area.
19. The applicant has raised claims regarding his fear of harm resulting from the war in Tripoli, specifically, the conflict between the Jabal Mohsen and Bab al-Tabbeneh neighbourhoods. However the DFAT reports before the delegate indicate 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 has ever reached into the applicant's home region within Akkar and on the applicant's own evidence, he does not like to talk about politics and he does not claim to have ever previously aligned with either side. His home area is in Akkar, outside of this flashpoint neighbourhood and outside Tripoli. 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 return to this neighbourhood or any other part of Tripoli and I am not satisfied he has a profile which would cause him to be targeted by any Tripoli based groups in his home region. The same can be said for his wife and son.
20. According to DFAT the stability of Akkar province is complicated by its extensive border with Syria, which is largely defined but poorly controlled and has long been a conduit for smuggling into 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. While Akkar province borders with Syria, the location of the applicant's home village in Akkar is such that it does not border with Syria and the evidence does not indicate that his neighbourhood would be harbouring opposition fighters or that it would be targeted for such.
21. I note that in recent years ISIL has infiltrated parts of Lebanon and has conducted attacks in Beirut and Aarsal province. DFAT 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 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.

22. The applicants have no apparent links to the military, Hezbollah or any militia group and nor are they politically active in any way. Their village is not on the border and I am not satisfied that the previous incidents have occurred with such frequency that it indicates a real chance of ISIS, Jabhat Fatah al-Sham or other insurgent related harm to the applicants in the reasonably foreseeable future. I am not satisfied the applicants face a real chance of harm arising from their Sunni faith, the conflict with ISIS, Syrian war or from armed force responses to such threats.
23. 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 being harmed. The applicant's parents and some siblings remain in the area and there is no information before me to suggest they have faced any harm from sectarian violence in the area. I am not satisfied the applicants face a real chance of being targeted for being Sunni, nor from harm arising from sectarian fighting or from insurgent or generalised violence.
24. Akkar is one of Lebanon's poorest provinces and the applicant has raised claims about the influx of refugees into Lebanon and its social implications, particularly with respect to employment, housing and access to services and necessities. Consistent with the applicant's claims, DFAT notes that the influx has resulted in significantly increased the cost of rental accommodation in many areas and I have accepted his job was given to a Syrian who accepted a lesser wage. I accept the situation was, and would still be, difficult. However I am not satisfied on the evidence that the applicants' capacity to subsist was threatened previously and I find that the applicant's varied work experience including establishing and operating his own business in Australia will be conducive to his employability upon return. There is nothing in the review material to indicate that persons of the applicant's profile face discrimination in obtaining employment or access to services and basic necessities. I note too that his parents and several siblings still reside in his home area and the evidence does not indicate they have been unable to obtain work and sustain a living. On the evidence, while I accept the situation will be challenging, I am not satisfied that the applicant will be prevented from or otherwise unable to find employment should the applicants return to Lebanon and I consider they will have some access to family support to support their re-integration. I am not satisfied the applicants will face significant economic hardship, be denied the capacity to subsist or access to services or that they would otherwise face serious harm.
25. The applicant has raised fears relating to the crime levels in Lebanon, particularly, robberies, rape, kidnapping and murders. He claims his wife had to cease studying due to these risks. I accept the applicants may fear such things however I am not satisfied on the evidence that they were ever previously victims of crime. While Lebanon as a whole is affected by criminality, the country information that was before the delegate does not indicate that persons with the applicants' (including women) are particularly targeted by criminal elements. Furthermore, I am satisfied that the applicant and his wife's familiarisation with Lebanon and with Lebanese culture and the presence of their family members in Lebanon will be conducive to the applicants' integration and their ability to take reasonable precautions consistent with those taken by other ordinary civilians in Lebanon which would not amount to precluded modifications of behaviour. Considering all of this, I am not, on the evidence, satisfied that the applicant would face a real chance of harm in Lebanon as a consequence of criminality.
26. Although the applicant confirmed at the TPV interview that he did not fear harm in relation to coming to a western country to seek protection, the delegate assessed the risk facing the applicant as a returnee failed asylum seeker.
27. DFAT 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.

28. The applicants would most likely be returned to Lebanon through Beirut airport. DFAT's 2015 and 2017 reports 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. As above, I am not satisfied that Hezbollah or any other militia would consider the applicants a threat, or would otherwise have an adverse interest in them upon return. The applicants departed Lebanon through Beirut airport (under the substantial control of Hezbollah) using their own genuine passports and on the evidence they did not experience any problems while doing so. I am satisfied the applicants would not be considered a threat to Hezbollah, or that they would face a real chance of harm from Hezbollah upon return at the airport, nor upon their return to Akkar. The applicants have not claimed that to have committed any crimes in Lebanon, Australia or any other country which may bring them to the attention of Hezbollah or the Lebanese authorities. There is no other information before me which indicates that the applicants would be arrested or charged for any reason on return to Lebanon
29. The applicant claims he has experienced distress and anxiety and while I accept this, no other information has been provided about his mental health and I am not satisfied on the evidence that he has a diagnosed psychological condition. Nor on the evidence am I satisfied the applicant's wife or son suffer any mental health problems. There is no evidence before me that the applicants would face particular risks as a result of the mental health concerns raised by the applicant upon return. Additionally, DFAT's 2015 and 2017 reports that were before the delegate advises that Lebanon has adequate health facilities and although the services and facilities are under strain, country information does not indicate that they are unavailable. Country information that was before the delegate does not indicate that mental health factors would contribute to a person having a risk profile, or that treatment for such conditions in Lebanon is intentionally withheld from persons of any ethnicity or profile, or for any reasons. I am not satisfied that should it be required, the applicants would be denied treatment or necessary medications. The applicants would be returning to an area where they have family support and I consider it too speculative on the evidence before me to conclude that the applicants' mental health would worsen upon return, or as a product of their return being carried out or that they would not be able to obtain health care. I am not satisfied that the applicants' mental health conditions and the environment to which he would be returned would lead to their facing a real chance of harm for reasons relation to mental health.

### **Refugee: conclusion**

30. Having regard to all of the information and evidence above, I am satisfied the applicant has not been approached by Hezbollah in relation to recruitment or other reasons, been engaged in any political activism, or militarism, and has never been of adverse interest to any authorities, Hezbollah, or insurgent groups, has not publicly criticised any such groups or been otherwise affiliated with them in any other way, has had no involvement in the neighbourhood rivalries in Tripoli, has no criminal history and departed lawfully on his own passport. I am satisfied that these findings also apply in relation to the applicant wife and applicant son. I find that the applicants do not face a real chance of harm: at the hands of Hezbollah, from religious targeting or discrimination as a Sunni Muslim; as a result of generalised or sectarian violence or crime; or for being a returned asylum seekers. I find that the applicants do not face a real chance of

serious harm in relation to the influx of Syrian refugees and I am satisfied they can safely access their home area in Akkar. I also find that they do not face a real chance of serious harm when these claims are considered cumulatively.

31. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

### **Complementary protection assessment**

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32. 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**

33. 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.

34. I accept the applicant has suffered some difficulties obtaining employment however there is nothing in the material before me that indicates that he, his wife or son has faced, or will now face, a real risk of being deprived of their lives, that they will be subjected to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment.

35. Country information that was before the delegate indicates Lebanon has adequate (albeit strained) health facilities. It does not indicate that mental health factors would contribute to a person having a risk profile, or that treatment for such conditions in Lebanon is intentionally withheld from persons of any ethnicity or profile, or for any reasons. I am not satisfied the mental health condition of the applicant, his wife or their son (even noting the applicant's self-described distress and anxiety) and the environment to which they would be returned would lead any of them to be arbitrarily deprived of their life, have the death penalty applied, or be tortured. I am also not satisfied that through any act or omission the authorities or anyone would intentionally inflict pain or suffering, or severe pain or suffering on any of the applicants such as to meet the definition of cruel or inhuman treatment or punishment, nor that they would intentionally cause extreme humiliation. I am not satisfied that the applicants would be subject to acts or omissions which would constitute significant harm upon return.

36. I have otherwise found that the applicants do not face a real chance of harm: at the hands of Hezbollah, from religious discrimination as a Sunni Muslim; as a result of generalised or sectarian violence; or for being a returned asylum seekers. I also found that the applicants do not face a real chance of serious harm in relation to the influx of Syrian refugees. As 'real chance' and 'real

risk' have been found to equate to the same threshold, I am satisfied that the applicant does not face a real risk of significant harm for any, or any combination of, these reasons.

37. I have also found the applicants can safely reach their home region in Akkar and will not face a real chance of being harmed through sectarian, insurgent or generalised violence or criminality. For the reasons discussed above and because 'real chance' equates to 'real risk', I am satisfied that the applicants do not face a real risk of suffering significant harm in that manner upon return. Further I am also satisfied these risks are faced by the population of the country generally and are not faced by the applicants personally, and as such under s.36(2B)(c) there would be taken not to be a real risk that the applicant will suffer significant harm in Lebanon.
38. The representative has raised arguments in relation to Australia's obligations under the Convention of the Rights of the Child (CROC) and suggested that the applicant's son should not be denied the chance to reach his full potential and to grow in a peaceful and relaxed environment, free from all forms of physical or mental violence, injury, abuse, neglect, negligent treatment, maltreatment or exploitation. However, the representative has not indicated in what capacity the son may be at risk of the harms specified and I consider it based on speculation only. While some breaches of the CROC may amount to significant harm, the question before me is whether the applicants' circumstances meet the criteria in s.36(2) of the Act and I am not on the evidence satisfied that they do.

#### **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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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40. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who is mentioned in s.36(2)(a) or (aa) and who holds a protection visa of the same class as that applied for by the applicant. The relevant definitions for 'member of the same family unit' are contained in s.5(1) of the Act and r.1.12 of the Migration Regulations 1994.
41. The applicants are members of the same family unit in the relevant sense. However as they do not meet the definition of refugee in s.36(2)(a) or the complementary protection criterion in s.36(2)(aa), it follows that the applicants do not meet the family unit criteria in either s.36(2)(b) or s.36(2)(c).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

## Applicable law

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

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

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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:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - 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
  - 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:

- conflict with a characteristic that is fundamental to the person's identity or conscience; or
- conceal an innate or immutable characteristic of the person; or
- without limiting paragraph (a) or (b), require the person to do any of the following:
  - 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;
  - conceal his or her true race, ethnicity, nationality or country of origin;
  - alter his or her political beliefs or conceal his or her true political beliefs;
  - conceal a physical, psychological or intellectual disability;
  - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
  - 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):

- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- the persecution must involve serious harm to the person; and
- 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 threat to the person's life or liberty;
- significant physical harassment of the person;
- significant physical ill-treatment of the person;
- significant economic hardship that threatens the person's capacity to subsist;
- denial of access to basic services, where the denial threatens the person's capacity to subsist;
- 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:

- 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
- disregard any fear of persecution, or any persecution, that:
  - 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.