



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

LEBANON

IAA reference: IAA18/05425

Date and time of decision: 5 October 2018 12:36:00

C Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim from Tripoli, Lebanon. He arrived in Australia as an unauthorised maritime arrival [in] July 2013.
2. On 18 January 2017 the applicant lodged an application for a temporary protection visa (TPV). A delegate of the Minister for Home Affairs (the delegate) found the applicant's claims were not credible, and refused the application on 31 July 2018.

Information before the IAA

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

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Sunni Muslim from [a location], near Tripoli.
 - In around 2006 his sister married a Shia Muslim who was associated with the Syrian Social Nationalist Party (SSNP) and Hezbollah. His family and the brother-in-law's family all approved the marriage.
 - The marriage has caused problems for the applicant and his family. Local Sunni groups harassed and threatened the family and accused them of supporting SSNP and Hezbollah. On one occasion a group of men attacked him and a cousin at the market. Sunni groups are continuing to harass and threaten his family.
 - If he returns to Lebanon he fears being killed by these groups.

Factual findings

6. The applicant's claims regarding his claimed experiences in Lebanon have been inconsistent and lacking in detail. The claims put forward at the TPV interview were significantly different in a number of respects to the claims in the written application.
7. In the written application the applicant claimed he and his family supported the SSNP and Hezbollah, and for this reason he was considered a traitor in his Sunni community. He claimed his cousin married a Shia Muslim man called [Mr A], and that [Mr A] is also an official in Hezbollah and a member of the SSNP. He claimed [Mr A] provided protection, support, food, and job assistance to the applicant's family, and in return the applicant's family supported Hezbollah. Their support for Hezbollah is well known in the community and his family name is now associated with both Hezbollah and the SSNP. He claimed that in May 2013 he was attacked for being a member of his family. He was unloading produce at the market [when] he was attacked by Salafists. He was punched and kicked, but managed to escape. An old man helped them hide from their attackers, and at night time he caught a taxi home. He left Lebanon the next day.

8. At the TPV interview the applicant provided a different version of events. He denied he or his family were ever supporters of either the SSNP or Hezbollah. He claimed it was not a cousin who married [Mr A], and instead claimed it was his sister. He claimed [Mr A] has never provided support or protection for his family against the groups that harass them. He said [Mr A] was not in a position to provide him or his family with any support, and Hezbollah or SSNP are not concerned with getting involved in private matters such as this. The attack in the market happened about 4 months before he left Lebanon, not the day before. He claimed he was in a car with his cousin when persons with their faces covered started smashing the car. He was also attacked with a knife and in the interview pointed to his thumb and elbow where he claimed he had scars from this attack. Many people were watching the attack and someone called for an ambulance. The police were also called and there is a police report, but he doesn't have it. The attackers fled and the applicant was taken by ambulance to hospital.
9. Issues regarding the plausibility of his claims were put to the applicant at the TPV interview. IN particular, he claimed his sister married [Mr A] in around 2006 but it seemed implausible local Sunni groups would harass and threaten the applicant's family over such a long period of time, yet no serious harm had occurred. The applicant claimed he and his family were harassed by various people and groups over a 12 year period, but gave little detail apart from saying he was harassed 6 or 7 times when working. He also said people came to his parents' house and kicked them out and burnt their cars, but confirmed they have not moved house. The delegate put to him that his parents could move if they were at risk or being threatened. The sister in question was said to have moved to another part of Lebanon, and the parents could have gone there if they were at risk of harm. The sister who married [Mr A] was said to have no problems, in fact the applicant said she lived a normal and happy life with her husband. His other siblings have all moved out of [the home area] since marrying and there was no claim or evidence any of them had been harmed. He was given a break and invited to respond to these issues at the interview. It was only after the break that the applicant told the delegate about the alleged assault at the market. He also claimed persons came to the family home about 20 days before he left Lebanon and beat his father, when the applicant was not home. He said police had been called, interviewed his father, and investigated the matter. He confirmed his brother in Tripoli had not suffered any harm. He had no other claims or detail to provide.
10. The post-interview submissions included a photograph of the applicant's mother. The applicant had shown this photograph to the delegate at the TPV interview, and claimed it was evidence she had been attacked early in 2018. The remainder of the submissions were about the applicant's marriage to an Australian citizen, including material that had been provided to the Department with a Partner visa application.¹ The submissions did not address the inconsistencies, lack of detail or implausibility of the claims.
11. I have considered the photograph of the applicant's mother. It does not show any obvious injury. It is not possible to tell from this photograph that she had suffered an assault, and it may be she was just unwell or depressed when it was taken. I do not accept it as evidence she had been hit by members of a Sunni group as claimed. No other documentary evidence has been provided with the application. The delegate did ask the applicant at the interview if there were police or ambulance records from the alleged market assault, and the applicant said there was, but no such records have been provided. He has also not provided any police or medical records from his parents, or even any statements from family in Lebanon.

¹ The Partner visa application was refused on 4 December 2017 as it was not a valid application, pursuant to s.46A of the Act.

12. The applicant's evidence on who he says has harassed, threatened or harmed his family was vague. He did not identify any individuals or groups known to him, but described them at the interview as 'takfiri' groups. The applicant described Lebanon as a small town where everyone knows everyone else, yet he appears not to know who has targeted him. Had his family offended their local community through this marriage, I would have expected the applicant to have more knowledge of the persons he claims have harassed him and his family.
13. I am concerned by the inconsistencies between the written application and the claims at the TPV interview. I find they are significant inconsistencies that raise doubts about the credibility of the claims. The applicant has not explained why the inconsistencies occurred. Even if I give him the benefit of the doubt and speculate that interpreting or translating issues were the cause, I consider the number of differences are too numerous to be mere translation errors. The inconsistencies include significant differences between the two accounts of what allegedly occurred in the market and when, and whether it was a sister or a cousin who married a Shia man, and whether the family are or are not supporters of Hezbollah and SSNP, and whether they have or have not been protected by Hezbollah or the SSNP. I also find the lack of detail the applicant could provide, for what he claims is 12 years of harassment of his family (7 years of which he was still in Lebanon), indicates the claims are not genuine. These issues were raised at the TPV interview and the applicant was invited to provide post-interview submissions. Instead of addressing the lack of detail, implausibility and inconsistencies, his representative gave a short written submission addressing the compassionate circumstances in keeping the applicant in Australia with his wife, child and step-children. They also provided copies of the supporting documents for his invalid Partner visa.
14. I find no more detail or explanation was provided in the post-interview submissions as there was no further material or explanation to provide. I find this is because the claims are not genuine. I find that even if a sister or cousin had married a Shia man who is a member of the SSNP or Hezbollah, this has not caused problems for his family and was not the reason he came to Australia. I do not accept he is of interest to local Sunni groups in his home area because a relative married a Shia man with connections to SSNP or Hezbollah. I also do not accept he was attacked in the market either 1 day or 4 months before leaving Lebanon.

Refugee assessment

15. 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

16. 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.
17. I accept the applicant is from [a location], near Tripoli, and that his parents continue to live there. I find Lebanon is his receiving country and [the location], Tripoli, is his home area and the area to which he will return.
18. I have considered whether as a young Sunni man with a relative who married a Shia he faces a real chance of serious harm on return to his home area. As found above, I do not accept he has previously been targeted for this reason by any groups in Lebanon. Even accepting there is an inter-faith marriage in the family, I rely on the reports of the Department of Foreign Affairs and Trade (DFAT)² and the Special Rapporteur to the United Nations³, which indicate Lebanon is a religiously diverse country with a high degree of religious tolerance. Mixed marriages are widespread, including between Muslims and Christians and between different schools of Islam.⁴ I do not accept the applicant faces a real chance of harm because a relative is in a mixed marriage, particularly where I do not accept he or his family have faced any harm for the past 12 years because of the marriage.
19. The applicant initially claimed to fear harm because his family are supporters of SSNP and Hezbollah. He denied this claim as the interview, but I have considered whether he faces a real chance of harm because he may be imputed to be a supporter of SSNP or Hezbollah. For the reasons given above, I do not accept he has been harmed in the past because his relative married a Shia man, who may be a member of the SSNP or Hezbollah, and I do not accept his family have been or currently are targeted for this reason. I do not accept he and his family have been targeted because of an imputed affiliation with SSNP or Hezbollah, and I find he does not face a real chance of harm on return to Lebanon for this reason.
20. The applicant did not claim to fear harm merely as a Sunni in Lebanon, although the delegate considered this. I note that Tripoli is in the North Governorate in Lebanon, which has a majority Sunni population.⁵ I acknowledge there is a history of sectarian violence in Tripoli, particularly in the Alawite suburb of Jabal Mohsen and the Sunni suburb of Bab al-Tabbeneh. The point where these suburbs intersect has been a particular flashpoint for violence, with notable attacks including a bomb attack on a café in January 2015 killing 9 people and a bombing of a Sunni mosque in August 2013 killing 13. There have been no other significant incidents of violence however since a security plan for the areas was implemented by the Lebanese Armed Forces in April 2014.⁶ The applicant does not live in these suburbs in Tripoli, and I find the chance of him, as a Sunni man living in a village near Tripoli, being caught up in sectarian violence should it flare up again is too remote to amount to a real chance.

² DFAT Country Information Report Lebanon 23 October 2017, CISED50AD6014

³ 'Report of the Special Rapporteur on Freedom of Religion or Belief on his Mission to Lebanon' United Nations Human Rights Council. CISEC96CF14677

⁴ Report of the Special Rapporteur

⁵ DFAT report

⁶ DFAT report

21. The applicant did not claim to fear harm as a failed asylum seeker returning to Lebanon, although the delegate also considered this. The DFAT report states that Lebanon has a diaspora of 16 million living worldwide, with many retaining ties to Lebanon and returning to visit. There is no evidence suggesting asylum seekers returning to Lebanon would be distinguishable from other returnees or are susceptible to any form of discrimination or violence for this reason.⁷ I find he does not face a real chance of harm for returning as a failed asylum seeker.
22. The applicant claimed it would be difficult to return to Lebanon because he has a wife and children in Australia who are Australian citizens. He told the delegate that if he is returned to Lebanon he would not risk his family by taking them and would return alone. Whilst he has raised compassionate circumstances about not separating his family unit, this does not raise any claims that he faces a real chance of harm for any of the reasons set out in s.5J(1)(a).

Refugee: conclusion

23. 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

24. 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

25. 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.
26. I have found the applicant does not face a real chance of harm in his home area for any of the reasons claimed. 'Real chance' and 'real risk' have been found to equate to the same threshold. For the reasons given above, I also find the applicant will not face a real risk of significant harm for any of the reasons claimed should he return to his home area near Tripoli.
27. DFAT advised in October 2017 that the security situation in Tripoli was broadly stable. I find the possibility of an outbreak of general violence in Tripoli is mere speculation. I find the risk

⁷ DFAT report

of the applicant being harmed in general or sectarian violence in his home area is too remote to amount to a real risk.

28. I acknowledge the applicant may be separated from his Australian citizen wife and children. I acknowledge this would cause significant distress, but I find this does not amount to 'significant harm' as defined in the Act.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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