



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

**Decision and Reasons**

**Referred application**

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LEBANON

IAA reference: IAA18/05455

Date and time of decision: 20 December 2018 13:48:00

M Oakman, 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 a referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim from Lebanon. He arrived in Australia [in] July 2013 and lodged an application for a Temporary Protection visa (TPV) (XD-785) on 3 February 2017. On 3 August 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). 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 and his brother do not want to return to Lebanon as if they do there is an extreme threat to their lives. Their lives were at high risk in the last period they were in Lebanon and their return would definitely be their demise;
  - There is an existing and thriving sectarian war in Lebanon and in all of that there are innocent civilians like him and his brother caught in the crossfire. Things were made worse by the break out in Syria;
  - One of his brothers was shot and family members threatened, but he and his brother did not think anything would happen to them because they were not politically involved. There were a lot of rebellious groups recruiting and he and his brother tried to keep a low profile. However, they were spotted and approached to join, which they persistently refused to do. His shop was burnt down. They faced increasing threats and escalating pressure to join. They were told if they did not join they would be killed as the group did not like to be defied as it would damage their reputation in the village. This was the red flag, they knew they had to flee and they did;
  - There is no safe place in Lebanon because of the people targeting him and his brother. The Lebanese government cannot protect them because it is corrupt and there is no order. Also Lebanon the whole country is not a safe place; and
  - He has a family now in Australia and his death means his wife would be widowed and his child orphaned.

### Factual findings

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#### Receiving country

4. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Lebanon from [Village 1] I find that the applicant's receiving country is Lebanon. The applicant has consistently claimed, and I accept, he is Sunni.

## Background

5. The applicant states that he was born in [Village 1] in North Lebanon in [year] and, except for a short time in Beirut for work, lived his life in [Village 1] in the family home with his parents and some of his siblings. He has [brothers] and [sisters]. One of his brothers, [Mr A], lives in Australia. His parents, his other [brothers] and his sisters live in Lebanon, with his parents and some of his siblings still living in the family home and the others also live in [Village 1]. The work done by his family in Lebanon is varied, with [some] of his [family] in the [armed forces] and others working in [a business]. He remains in regular contact with his family in Lebanon and maintains a normal relationship with them. He attended school in Lebanon between [year] and [year]. He worked as [an Occupation 1] in Lebanon from August 2006, mainly in [Village 1] but also in Beirut for a time in 2008. He ran his own [shop] for a time but after it was destroyed he worked as [an Occupation 1] in the [Village 1] area. He married in June 2015 and has a son who was born in [specified month]. His wife and son are Australian citizens. He is separated from his wife and son, who live at a different address. In Australia he sometimes works as [an Occupation 1] and sometimes drives a [vehicle].

## Problems in Lebanon

6. In his TPV application dated 11 October 2016, and received by the Department on 6 February 2017, the applicant claimed:
  - As widely known, there is an existing and thriving sectarian war in Lebanon. There is no area that is not affected or influenced by the current events. An individual of a certain religion or party is only allowed into areas of the same following and if they pass into other areas with followers of a different sect, party or religion, they can be persecuted and killed. In all of this there are innocent civilians like him and his brother who are caught in the crossfire. Additionally, the break out in Syria worsened things in Lebanon.
  - He and his brother [Mr A] lived in an area that bordered on Syria, Tripoli in North Lebanon. They have a brother in the [armed forces] in Lebanon who was shot and family members were threatened. He and his brother did not think they would be targeted as they were not involved in politics and tried to stay away from problems as much as they could, but the problems did not leave them alone. He opened his own shop and tried to be independent and keep a low profile. A lot of rebellious groups were recruiting, he did not want to be part of it because of the danger but those groups were relentless. He decided to get his brother to work with him and maintain a low profile. It did not last long as they were both spotted and approached by a group to be recruited and go to Syria and fight against many others. They objected and that is when all hell broke loose. They objected to joining in a civil way. But the group said they were at a ripe age to fight and because they had family in the [armed forces] they could help the group by finding out information they needed.
  - He and his brother were persistent in their refusal to join. The group made it clear they would not be left alone and burnt down his shop. The applicant was shattered and he and his brother feared for themselves and their family's safety. It all escalated from there and the threats were increasing and the pressure was real. They knew they would be under attack again soon and their lives were in danger. It was all happening in 2013 which was the height of the conflict. He and his brother always had their bags packed and were ready to flee at any time. The group told them that if they did not join they would kill them as the group did not like to be defied as it would damage the group's persona or image in the village and they had to be stern in their demands. The group

said they were traitors as he and his brother did not want to fight alongside them and that traitors needed to be killed.

- That was their red flag and he and his brother knew they had to flee Lebanon. The journey to Australia was a dangerous one but they knew remaining in Lebanon meant death. They saw what was happening to everyone else in their area and they did not want the same thing to happen to them and they definitely did not want to fight and kill innocent people for a political motive they did not even possess. Every second they spent in Lebanon their lives were in danger, there was nowhere to go as they were sure the group would find them as they have informants everywhere. They fled Lebanon legally and travelled to [Country 1], from where they took a boat to Australia. He has family in Australia now and death means his child will be orphaned and his wife widowed.

7. At the TPV interview on 26 July 2018 he claimed:

- He was working in Beirut in about 2008 when Hizballah spread its activities to there, with its armed groups attacking people, and he was forced to return to [Village 1]. He opened a [shop] which he operated for about eight months before it was burnt down in 2011. He worked in the shop by himself, unless he needed someone to give him five minutes assistance on rare occasions. When the shop was set on fire he was trying to get equipment out of the shop but they came and stole everything. He does not know who burnt it down. While he was running the shop people would pass by and ask how his business was, he would say it was going okay and they would say to him in that case they have to collect \$200 from him. He said he could not pay because he was trying to expand his business. He believes his shop was burned because of that. The people who asked for money from the shop were from [Village 1] and the surrounding suburbs, he had seen them but did not know any of them, they were some sort of mafia gang who had some power, and he believes if he was not new in the business when he refused them money they would have killed him.
- His village had lots of supporters and leaders from Hizballah and this group started recruiting young men from the village to fight in Syria. The people doing the recruiting were not in power, but they had some power and were getting money from Syria and were forcing people to go. They did not approach him to recruit him, but they were talking to his neighbours in the village and those neighbours told him they were collecting people from the village. He does not know who these people doing the recruiting were, they were some sort of armed gang that approached young men to fight in Syria. There were lots of people being recruited at that time for different groups including the Syrian Army, Al Nusra, Daesh and other armed groups. They would come to a coffee shop or other place people were gathered and tell the young men they would give them money to come and fight in Syria and other young men were taken by force to fight in Syria. He was worried that any day they would approach him and ask him to fight in Syria, and that they might kill him when he refused. He does not know anyone who was killed for refusing to fight in Syria but he knows people who were forced to join and people who went to Syria to fight, and he does not know if they came back. He confirmed that he was never pressured at all to join any group. A few months after he left Lebanon, men came to his family home and asked if there were any males to fight and his family told them there were [males] but they left the country. They have lots of informers in the area looking all the time for males to recruit. His [other] brothers who are in Lebanon have not been approached or recruited to fight. He attributed that to [his family members] cannot be touched because they are in the

[armed forces], one is married and keeps very much to himself and [another] brother spends all his time as his mother's carer.

- His brother, [Mr B], was shot in 2009. He was shot by someone from the village, the applicant saw the man, knows him, and he is not sure what happened to the man whether he was apprehended and is in detention. It was some sort of silly dispute that started small and got bigger and bigger and then his brother [Mr B] was shot in front of their house. The applicant came out of the house with a hunting rifle and fired to scare them away. The police came to investigate, he was detained for ten or so days while they investigated the incident and then he was released with a clean file. He has had no other issues with the police or authorities in Lebanon. He said his brother was fine.
  - He lives separately from his wife and child. His wife applied for divorce about a month prior to the TPV interview, making it around June 2018. He hopes he may be reconciled with his wife. If he returned to Lebanon he would not take his wife and son with him as it is not safe in Lebanon.
8. The applicant provided a number of supporting documents during the visa application process including identity documents, marriage certificate, birth certificate and a Lebanese police record check, dated [in] May 2013, showing he has no police record.
  9. Country information<sup>1</sup> confirms that Lebanon has suffered from sporadic outbreaks of violence since the end of the civil war in the 1980's; there was spill-over violence in Lebanon due to an influx of Syrian refugees from the Syrian war in 2011; and the Tripoli area in North Governorate experienced a high level of sectarian violence, particularly during 2011, 2012 and 2013, while Akkar province experienced limited incidents of sectarian violence.
  10. In assessing the applicant's evidence I have taken into account the difficulties of recall over time, the scope for misunderstanding in interpreted material, cross cultural communication issues, and the problems people who have lived through trauma may experience in presenting their story in a cohesive narrative. The applicant was generally consistent about his residential, education, work and family history and I accept the applicant's residential, education, work and family history as set out in his TPV application and TPV interview, including that his brother was shot in a dispute, except as discussed below. However, there are a number of issues with the applicant's evidence about the problems he encountered in Lebanon.
  11. In his TPV application he claimed he and his brother [Mr A] were approached and pressured a number of times by an armed group to join them and fight in Syria; that they were persistent in their refusal to join, leading to increased pressure from the group who burnt down the applicant's shop; that this all occurred in 2013; and the group then threatened to kill them as traitors if he and his brother continued to refuse to join, so the applicant and [Mr A] fled Lebanon. At the TPV interview he claimed there were armed groups recruiting young men in the village; he was never pressured or approached to join any of them; he was concerned that one day one of the armed groups may approach him to join and there would be problems, possibly him being killed, when he refused to join; and his shop was burnt down in 2011 by unknown persons but he suspects it was some mafia gang that used to ask him for money when he was operating his shop. I consider these two claims to be not just substantially different, but also incompatible with each other – multiple approaches and

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED850AD6014; DFAT "DFAT Thematic Information Report - Sectarian Violence in Lebanon", 18 December 2013, CIS26835; "Syria's unrest seeps into Lebanon", The New York Times, 4 May 2011, CX269011; and "Clashes rage in north Lebanon, three killed", The Daily Star, 21 May 2013, CX318109.

pressure to join versus never approached or pressured to join. I do not consider it credible that his claim about his [shop] being burnt down changed from it was burnt down in 2013 by the armed gang because of his refusal to join, to it was burnt down in 2011, he does not know by who but believes it was a mafia gang that used to ask him for money from the shop. I also do not consider it credible that he failed to mention in his TPV application, if it were true, something as significant as a mafia gang trying to extort money from him while he was running his [shop] or that while he was trying to recover equipment from his burnt shop people came and stole everything. Additionally, his claims in the TPV application that he and [Mr A] were approached about joining, together with his claims in the TPV interview that men came to the family home after they left to ask if there were any males to recruit, are not credible in light of his other evidence that none of his [other] brothers, notwithstanding that [some] of them are in the [armed forces], have ever been approached to join any armed group.

12. These issues go beyond minor discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, or a lack of cohesive narration due to trauma, and show substantial credibility problems in the applicant's evidence. Overall, I am satisfied he has fabricated and exaggerated parts of his evidence in order to boost his claims for protection. I reject his claims that armed groups in [Village 1] approached, pressured or threatened the applicant in order to recruit him to fight in Syria; that his [shop] was burnt down; that he was subject to extortion from a mafia group in [Village 1]; and that men approached his family home after he left Lebanon to ask if there were any males to recruit; and that his family was threatened. It follows from rejecting these claims that I also do not accept that the applicant left Lebanon either because he was threatened for refusing to join an armed group or that he feared he would be asked to join an armed group and harmed when he refused. Based on the country information I accept that there was a level of generalised violence in Lebanon because of sectarian clashes, particularly in 2011 to 2013, and find that the applicant left Lebanon because of that generalised violence.

### **Asylum Seeker**

13. The applicant claims to have left Lebanon in May 2013 by plane to travel to [Country 1] via [Country 2]. He subsequently left [Country 1] to travel to Australia in a boat organised by a smuggler. I find that, if he were to return to Lebanon, he may be considered a returned asylum seeker by the Lebanese authorities.

### **Refugee assessment**

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14. 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**

15. 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.

*General security situation in Lebanon and Sunni from Akkar in the North*

16. Country information<sup>2</sup> indicates that there has been a history of sporadic conflict in Lebanon since the conclusion of the civil war in the late 1980's. There was increased spill-over violence following an influx of refugees from Syria in 2011, with deaths occurring particularly in Tripoli, Aarsal and the southern suburbs of Beirut. Since late 2013 incidents of violence from longstanding sectarian tensions have decreased and security plans implemented in a number of areas, and developed by the Lebanese Armed Forces and dialogue between the Sunni dominated Future Movement and the Shia Hizballah, have contributed to many areas having a more stable security situation and Lebanon's internal security situation has remained relatively calm. There remain challenges to Lebanon's stability including from the conflict in Syria, and although ISIL controlled areas in Syria are diminishing, sporadic attacks still occur in areas that border Syria as well as ISIL maintaining a presence in Lebanon around Aarsal and the mountainous Baalbek region. Tensions between Israeli and Hizballah have remained high since 2006 and there are sporadic skirmishes, including frequent cross border artillery fire. The Department of Foreign Affairs and Trade (DFAT) assesses overall that the security situation in Lebanon remains largely stable but unpredictable, with the greatest areas of instability where ISIL and Jabhat Fatah al-Sham are located, particular the north-east border areas.<sup>3</sup> Tripoli in North Lebanon experienced regular rounds of sectarian violence from competing militias up to 2013 and 2014; in April 2014 the Lebanese authorities implemented a security plan in Tripoli that lead to a notable reduction in incidents; and Tripoli has only experienced some isolated incidents of violence since that time.<sup>4</sup>
17. Country information<sup>5</sup> indicates that for mainstream religious and social groups in Lebanon the legal and political system is generally free of discrimination and Lebanon is a diverse country with a history of religious pluralism and a high degree of religious tolerance. Discrimination and violence relates more to political affiliation than religious affiliation, there are limited examples of people being attacked for their religious views alone, but there is low level societal discrimination against particular religious groups in some areas. Most Sunnis live in West Beirut, North governorate and South governorate, with Akkar province in the North governorate hosting a substantial Sunni population, and DFAT does not identify any incidents of societal discrimination against Sunnis in Akkar, but states that security there is

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014; USDOS, "Lebanon 2017 Crime and Safety Report", 27 February 2017, CISED50AD5766; and "Take New Approach to Protect Tripoli", Human Rights Watch (HRW), 28 May 2013, CX308179.

<sup>3</sup> DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014.

<sup>4</sup> DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014; and "Army distributes aid in former front line", The Daily Star, 15 July 2015, CXBD6A0DE10099.

<sup>5</sup> DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014.

complicated by an extensive border with Syria. The US Department of State (USDOS) did not report any human rights abuses against Sunnis for 2017.<sup>6</sup> DFAT has assessed that Sunnis are unlikely to be targeted because of their religion alone and attacks against Sunnis are often political and related to the conflict in Syria. Sunni communities close to the Syrian border face a low risk of being caught up in cross border attacks from Syria, but the risk increases if they are sheltering anti-Syrian regime fighters.<sup>7</sup>

18. I found that the applicant left Lebanon because of the general violence occurring in Lebanon at that time. The applicant and his family were not subject to any specific or targeted security incidents. He has not claimed that he or his family in Lebanon have been involved with anti-Syrian regime fighters or exposed to any cross border attacks whether from ISIL, Hizballah, Syrian or other armed forces and, on my findings, he was not subject to any adverse attention from any armed groups or mafia gangs while he was in Lebanon or since he left for Australia. As discussed above, country information confirms that the security situation in Lebanon has generally stabilised since 2013. Tripoli itself, which he mentioned in his evidence, experienced regular sectarian violence until early 2014, but since April 2014 a security plan has notably reduced incidents. Now there are only isolated incidents of violence in Tripoli. He was detained briefly by the authorities in 2009 in relation to his brother [Mr B's] shooting incident, but he was released without charge and a clean record once the police completed their investigation into the incident. I am satisfied by the lack of any other interest being shown in the applicant or his family since 2009 that he would not be of any adverse interest to the authorities if he returned to Lebanon. He does not claim that he or his family members have suffered any harm on account of being Sunni. Although the general security situation that existed prior to his departure may have impacted on his life to some extent, there is no suggestion that he or his family were unable to support themselves in Lebanon. I am not satisfied on the evidence before me that he and his family were unable to subsist in Lebanon whether due to security concerns, as Sunnis, or otherwise. Given the improvement in the security situation and his evidence about his family's current circumstances, including that he remains in contact with them and they have a normal relationship, I am not satisfied that he would be unable to subsist if he returned to Lebanon.
19. The applicant comes from [Village 1 in], Akkar, in the North governorate where his parents and some of his siblings still live and I am satisfied that this is the area of Lebanon to which he would return. He is Sunni. I am satisfied from the country information discussed above that the security situation in Lebanon is generally stable. Sunnis that are close to the border with Syria, which applies to some parts of Akkar, are at low risk of being caught up in cross border attacks. Sunnis are not at risk of harm from official or societal discrimination, particularly those in an area with a substantial Sunni population like Akkar. Given that country information about current country conditions, and the applicant's own profile and history, I consider the chance of the applicant suffering harm if he returned to Lebanon is remote.
20. I am not satisfied that there is a real chance of harm to the applicant due to the general security situation and/or as a Sunni, if he returned to Lebanon, now or in the foreseeable future.

#### *Returned asylum seeker*

21. I accept that if the applicant returned to Lebanon he may be considered a returning asylum seeker from Australia.

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<sup>6</sup> USDOS, "Country Report on Human Rights Practices 2016 – Lebanon", 3 March 2017, OGD95BE926883.

<sup>7</sup> DFAT, "DFAT Country Information Report Lebanon (23 October 2017)", 23 October 2017, CISED50AD6014.

22. However, Lebanon has a long history of migration and return, including a sizable Lebanese diaspora with many maintaining close family and business links to Lebanon.<sup>8</sup> DFAT states that overall it is not aware of any evidence suggesting an asylum seeker returning to Lebanon would be distinguishable from the broader community or susceptible to any form of discrimination or violence based on having sought asylum abroad. Returning asylum seekers are unlikely to face any stigma in either Beirut or their home area and it is not a crime for a Lebanese citizen to have sought protection elsewhere.<sup>9</sup> The USDOS also confirms that Lebanese law provides for freedom of internal movement, foreign travel, emigration, and repatriation; and the government generally respected these rights for its citizens.<sup>10</sup>
23. I accept that the applicant has an Australian citizen wife and an Australian citizen son. He is separated from his Australian citizen wife, who has filed for divorce, and his Australian citizen son. I accept his evidence that he would not take his wife and child with him if he was returned to Lebanon, and I also accept that he may find these circumstances distressing. However I am not satisfied that one or more of the reasons set out in s.5J(1) of the Act is the essential and significant reason for this or that the applicant faces a real chance of persecution as a result of his family situation.
24. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker from Australia, now or in the reasonably foreseeable future.
25. Considering the applicant's circumstances and profile as a whole, in the context of the country conditions in Lebanon I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

26. 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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27. 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**

28. 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

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> USDOS, "Country Reports on Human Rights Practices for 2017 - Lebanon", 20 April 2018, OGD95BE927315.

- the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
29. I accept that if he returns to Lebanon the applicant may be separated from his Australian citizen wife and son. While such a separation would be distressing for the applicant and his family, I am not satisfied that any suffering caused to the applicant because of the separation would constitute any form of significant harm as defined, including cruel, inhuman or degrading treatment or punishment, which requires an element of intention in relation to the infliction of harm which is absent in the present circumstances. I am not satisfied that the Australian authorities, in removing the applicant from Australia in accordance with the requirements of the Act, would intend to cause pain or suffering or extreme humiliation by doing so. Having regard to the Federal Court's decision in *SZRSN v MIAC*<sup>11</sup>, I do not consider that harm arising from the act of removal itself, such as separation from his wife and son, meets the definitions of 'significant harm' in s.36(2A).
30. I have found that there is not a real chance of harm to the applicant, now or in the reasonably foreseeable future, from the general security situation, as a Sunni, as a returned asylum seeker or a combination of those. As 'real chance' and 'real risk' involve the same standard,<sup>12</sup> it follows that I am also satisfied that there is no real risk of significant harm if he is returned to Lebanon.
31. Having considered the applicant's circumstances individually and cumulatively, I am not satisfied that he faces a real risk of significant harm.

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

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

#### **Decision**

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

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<sup>11</sup> *SZRSN v MIAC* [2013] FCA 751.

<sup>12</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***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.