

1313202 [2014] RRTA 181 (7 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1313202
COUNTRY OF REFERENCE: Lebanon
TRIBUNAL MEMBER: R Mathlin
DATE: 7 March 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

BACKGROUND

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Lebanon, arrived in Australia [in] October 2010 holding a student visa. That visa ceased [in] March 2013. The applicant applied to the Department of Immigration for the protection visa [in] March 2013.
3. The applicant's claims are set out in the protection visa application and supporting material which is on the [Department's file], at an interview with an officer of the Department held [in] August 2013, and in his oral evidence at the Tribunal hearing. The Tribunal also had before it the [Department's file] relating to the student visa application, but did not have regard to any information on that file in determining this application.
4. The applicant claims that he will be harmed in Lebanon for reason of his political opinion. He claims, and I accept, that he was a member of the pro-Syria Baath Party. He claims that he was threatened by members of another political party, the Future Movement, over the period from 2005 until 2010 when he left Lebanon. He claims that the situation will be worse now because conditions in Lebanon have been exacerbated by the war in Syria. He claims that his family continues to be threatened by people from the Future Movement, the Free Syrian Army and the Al Nusra Front who are looking for him.
5. The delegate refused to grant the visa [in] September 2013. Essentially she did not believe the applicant's claims, did not accept that he had been a member of the Baath Party, and did not accept that he faced harm for this reason.

CLAIMS AND EVIDENCE

6. The applicant appeared before the Tribunal at a hearing held on 5 March 2014 to give evidence and present arguments. The hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant's current registered migration agent attended the hearing.
7. The applicant comes from [a district] in [Province 1], North Lebanon. The applicant, his parents and one brother lived in the same residence; his married siblings lived elsewhere in the village, which the applicant said at the hearing had a population of about [number]. The applicant worked in [a certain] industry from 2005 until he left Lebanon. During this time he completed his secondary education by correspondence.
8. At the hearing the applicant said that he worked in one area which was close to his own village. He said that the nearest large town was Tripoli, [a certain distance] away. I asked whether he had completed his schooling by correspondence because of the remote location of his home and he indicated that this was not the reason; it was simply that he was permitted to complete the course by correspondence so he did so. He was working at the same time.
9. He claims that he joined the pro-Syrian Baath Party [as a teenager]. No other members of his family belonged to the Baath Party. At interview he said that his activities involved attending

rallies and events to support the (Syrian Assad) regime, distributing pamphlets, and having debates about party principles, although in his written claims he said that he was mainly involved in cultural and folkloric activities. At the hearing the applicant said that there were no other Baath Party members in his village. The nearest office was in [Town 2], about one hour away. He attended monthly meetings there, and this was where he performed the other activities.

10. In the protection visa application the applicant said that following the assassination of Rafik Hariri in 2005 members of the Baath Party were accused of being his killers, and traitors. He was subjected to harassment and threats from members of the Future Movement or Al Mustaqbal Party and all parties who were anti-Syrian. These threats continued until he arrived in Australia. At the hearing the applicant said that he was beaten up on three occasions, suffering bruises; however, in his protection visa application he stated that he was beaten on one occasion and on another he was threatened with death by masked men. He said that each time he was able to get away, or someone would come along; he said that it was like a threat and he would be let go. Sometimes he was followed home.
11. I put to the applicant that he had said that when he first came to Australia he intended to return to Lebanon. I said that this, together with the fact that he had never suffered serious harm during the five year period that he claimed to have been subjected to threats and assaults, might suggest that his enemies only ever intended to threaten him but had no serious intention to harm him or kill him. It also might suggest that his situation in Lebanon was not intolerable and that he had exaggerated the level of fear he claimed to have. He said that the threats had decreased by the time he came to Australia and he thought that they would forget about him. I noted that he had still been able to work and he said that he did but not as much. He then said that the threats had not decreased, but he ran away. He said that they wanted to kill him but he was able to run away.
12. The applicant spoke about an incident which he was said was in May 2007 when the [Town 2] office of the Baath Party was attacked and a number of members were killed though he was able to escape. I asked what he was doing in the office that day and he said “meetings and activities”. Asked for more details he said that it was preparation for labour day. He added that they were preparing to support the Baath Party against the Future Movement. I asked whether the attack in [Town 2] was connected with events elsewhere in Lebanon and whether there was anything in particular that set off this attack. The applicant said that in Beirut, Tripoli and [Town 2] the Baath Party was accused of interfering in Lebanese politics; he said that there were assassinations other than Hariri’s; specifically he said that the assassination of some ISF officers sparked this attack, and the conflict in Jabal Mohsen in Tripoli.
13. I put to the applicant that I had information about this attack stating that it was in May 2008 and it followed widespread fighting in Beirut between Hezbollah and its allies and fighters from the Future Movement¹. He said that he was probably confused about the dates, but said that he had mentioned incidents in Beirut as part of the reason behind this attack.
14. I asked the applicant why he did not move away from his village if things were as bad there as he claimed. He said that Lebanon is pretty small and people know everyone. These parties are everywhere.

¹ [Source deleted].

15. I put to the applicant that I suspected that he had exaggerated the level of harm he faced prior to coming to Australia in 2010. Given that he had never tried to move away, he had not been seriously harmed over a five year period, he said that had intended to return to Lebanon when he came to Australia in 2010, and he had not applied for protection at the time, I was not satisfied that he had suffered serious harm amounting to persecution before his departure.
16. The applicant then claimed that he had been in hiding, he had not been able to go out and he had reduced his hours of employment. I noted that he had remained in the same small village living with his family; he had not indicated initially that he had not worked consistently between 2005 and his departure; and when asked why he was educated by correspondence he had not suggested that it was because of fear of going out. I put to him that if anyone had seriously intended to harm him in the circumstances it would have been very easy to do so.
17. As a consequence of these threats the applicant resigned from the Baath Party. He told the delegate this was about four months before coming to Australia; at the hearing he was very vague as to the timing but said that it was two, three or four months before his departure. I asked at the hearing why he resigned given that he was leaving the country anyway. He confirmed that his departure plans were on foot when he resigned, and said that he could not leave Lebanon without resigning because his enemies could follow him anywhere. I put to him that he could not have thought that his enemies would follow him to Australia and he said that these parties have offices everywhere. He asked how hard it would be to kill him in Australia. I put to him that given he had not been killed and no serious attempt had been made to harm him over the previous five years in Lebanon it seemed unlikely that he would be killed in Australia.
18. The applicant claimed that the situation has become worse since the outbreak of fighting in Syria and his family has been threatened because of him. He said that his [sibling] has fled to Australia and is applying for protection. A brother was beaten. When I asked the applicant what had happened to his brother – the circumstances in which he had been attacked, who had attacked him and why the applicant thought it was connected with his situation - he said that he did not know, he was not told details. I informed him that I was not satisfied, based on what he told me, that his brother had been beaten because of any connection with the applicant and his political opinion.
19. The applicant is afraid that if he returns to Lebanon, he will be killed. He now fears rebel groups, the FSA and Al Nusra Front that have a presence in his area. His family knows who is making the threats because they wear special uniforms that identify them. He said that some are from the local area and some are from Syria and other parts of Lebanon. I asked how people from other parts of Lebanon would know that he had been with the Baath Party prior to 2010. He said that there are Baath Party offices everywhere, they know who comes and goes. I noted that some of these organisations (the FSA and Al Nusra) did not even exist prior to 2010 when he was a member of the Baath Party.
20. The applicant referred to the situation in Jabal Mohsen and Bab al Tabbaneh areas of Tripoli. He said that anyone known to be a follower of Bashar should die. I noted that he lives [a certain distance] away from Tripoli, so that the fighting, which is confined to those areas, should not affect him. He said that he is not always in his own area, there is no work and no services there. He said that his work is in Tripoli. I noted that he had previously given evidence that he worked in another village close to his; surely if he had worked in Tripoli he would have said so when I specifically asked him where he worked. He said that he did not name the area where he worked.

21. The applicant said that he is not in contact with Baath Party colleagues in Lebanon. I put to him that there were no reports of Baath Party members being targeted or harmed in Lebanon currently. He said that prominent members can get protection but not ordinary members, who are followed and killed because they have no protection. I asked the applicant whether he knew of any Baath party members who have been killed. After a long silence he replied “of course, but I don’t know their names”. He then referred to the killing of many people in bombings. He said that the Baath Party is a “huge, huge party”.
22. I put to the applicant information in the DFAT report indicating that it was possible for most people to relocate within Lebanon to avoid harm they might face in their local area. He said that people who are watching him know when he is coming and going and there is no safe place in Lebanon. He said that the al Nusra Front and the FSA are everywhere in Lebanon. Baath Party members are abducted from anywhere.
23. The applicant asked me to speak to his brother in Lebanon by telephone. The [brother] said that the family is very tired because of the different parties and the war conditions. They can’t visit anyone. There are threats; people come and ask about the applicant. These people belong to the FSA and the Al Nusra Front. They tell the family who they are. They want the applicant because he was with the Syrian Baath Party. This has been going on for two or two and a half years. The family has never told these people where the applicant is. I asked how they would know he was with the Syrian Baath Party. He said that they have access to the records. I asked why they would not know that his brother had resigned in 2010. He said that they think that even if the applicant has resigned he is still working for the Baath Party. He said that no one in the family has been harmed, they do not beat anyone who is not in the Baath Party; they just want the applicant.
24. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of country information assessments prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes. DFAT has prepared two such reports, a Thematic Information Report on *Sectarian Violence in Lebanon* dated 18 December 2013, and a *Country Report* on Lebanon, dated 25 February 2014. Both reports indicate, consistently with country information from other sources, that Lebanon’s political groups and religious communities are divided over the Syrian revolution based on their opposition to or alignment with the government of President Bashar al Assad.² The March 14 coalition and the Sunni community are both seen as opposing Assad. The March 8 coalition – which includes Syrian aligned groups the Arab Democratic Party, the Baath Party, the SSNP and Hezbollah, as well as the Shia and Alawite religious communities - are seen as Assad supporters.³ However, while there have been a number of political and religious assassinations of leading figures, and several bombings which have resulted in injury and deaths to people in the vicinity, the available country information does not indicate that ordinary individuals are targeted because of political opinion, actual or imputed.

² Blanchard, C 2012, *Lebanon: Background and US Policy*, US Congressional Research Service, 6 November, p.4 <http://assets.opencrs.com/rpts/R42816_20121106.pdf> Accessed 10 May 2013; Lavender, L & Petersen, J 2013, *Lebanon at Risk: Conflict in Bekaa Valley*, Civil-Military Fusion Centre, March, p.5 <https://www.cimicweb.org/cmo/ComplexCoverage/Documents/Reports/20130221_BekaaValley_Final.pdf> Accessed 10 May 2013 ; Khodr, Z 2012, ‘Syria’s conflict overflows into Lebanon’, *Al Jazeera*, 21 May <<http://blogs.aljazeera.com/blog/middle-east/syrias-conflict-overflows-lebanon>> Accessed 14 November 2012; Mroue, B 2012, ‘Syria tensions spill over border to Lebanon’, *The Boston Globe*, 15 August <<http://www.bostonglobe.com/news/world/2012/08/15/syria-tensions-spill-over-border-lebanon/oDDeXTa1aG33dOQq32uWbK/story.html>> Accessed 14 November 2012; ‘Two die in first Beirut clashes over Syria conflict’ 2012, *BBC*, 21 May <<http://www.bbc.co.uk/news/world-middle-east-18141604>> Accessed 19 November 2012; Stratfor 2012, *Deepening Sectarianism in Lebanon*, 8 March <<http://www.stratfor.com/analysis/deepening-sectarianism-lebanon>> Accessed 2 May 2013.

³ Schenker, D 2012, *Syria’s Instability Reaches Lebanon*, The Washington Institute for Near East Policy, 20 December <<http://www.washingtoninstitute.org/policy-analysis/view/syrias-instability-reaches-lebanon>> Accessed 17 May 2013; Blanchard, C 2012, op cit.

25. The report on *Sectarian Violence* supports the applicant's contention that *Salafi* and Sunni extremist groups are active in the poorer Sunni regions, including [Province 1], but DFAT assesses that overall, non-militarised Sunnis are not at risk of harm in these areas; it does not mention [Province 1] at all as an area of risk, and cites no examples of Salafi and Sunni extremist groups, such as Al Nusra, who the applicant claims to fear, harming members of the local population regardless of their political views. Sunni extremist groups have been blamed for the suicide bombing of the Iranian Embassy in Beirut in mid-November 2013, and a series of car bombs in the southern suburbs of Beirut and in the Beka'a Valley throughout 2013 and DFAT assesses that Sunni extremist groups have the capacity to undertake occasional, targeted, large scale attacks across Lebanon, but:

3.19 Attacks ascribed to Sunni extremist groups have tended to target sites and institutions associated with Shia interests, particularly Hizballah and the Syrian and Iranian Governments. As a result, Shias are at risk of being caught up in indiscriminate violence. However, DFAT assesses that low-profile, non-militarised Lebanese Shias are not being targeted on the basis of their religious affiliation alone.

26. DFAT's *Country Report* states that the security situation in parts of northern Lebanon is poor because of some sectarian clashes and cross-border skirmishes provoked by the fighting in Syria. The report identifies no specific threat to Sunni Muslims in north Lebanon who support Syrian allied parties rather than the majority Future Movement. This report also states that members of most ethnic and religious communities would be able to relocate within Lebanon, most likely to Beirut, in order to avoid any difficulties they might face in their usual place of residence.

27. I discussed these reports with the applicant. I also noted that there was no information available to me from any other source which indicated that Baath Party members such as him faced a real chance of persecution or significant harm.⁴

RELEVANT LAW

28. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c).

Refugee criteria

29. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention). Article 1A(2) of the Convention as amended by the Protocol relevantly defines a refugee as a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

⁴ Sources consulted include major government and non-government reports and news articles via UNHCR Refworld, ECOI, DIAC database CISNET, the Immigration and Refugee Board of Canada database and general internet searches. See also United State Department of State 2013, *Country Reports on Human Rights Practices for 2012–Lebanon*, 19 April, Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>; MacFarquhar, N 2012, 'Cold Ravages Syria Refugees as Aid Falters', *The New York Times*, 24 November <<http://www.nytimes.com/2012/11/25/world/middleeast/winter-threatens-syrian-refugees-as-aid-falls-short.html?pagewanted=all>> Accessed 22 April 2013; 'And still they come' 2013, *The Economist*, 27 March <<http://www.economist.com/blogs/pomegranate/2013/03/syrian-refugees-lebanon>> Accessed 19 April 2013.

country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country

30. Persecution must involve ‘serious harm’ to the applicant (s.91R(1)(b) of the Act), and systematic and discriminatory conduct (s.91R(1)(c)). Serious harm includes a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2). ‘Systematic conduct’ refers to conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason⁵.
31. An applicant’s fear of persecution must be well-founded. A person has a ‘well-founded fear’ of persecution under the Convention if they have genuine fear founded upon a ‘real chance’ of being persecuted for a Convention stipulated reason. A ‘real chance’ is one that is not remote or insubstantial or a far-fetched possibility.⁶
32. The Convention definition of ‘refugee’ does not encompass those fleeing generalised violence, internal turmoil or civil war.⁷ It is necessary to consider whether such violence has the necessary selective or discriminatory quality.⁸

Complementary protection criteria

33. The complementary protection provisions in section 36(2)(aa) of the *Act* provide that a person found not to meet the refugee criterion may be granted a protection visa if he is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he will suffer significant harm. “Significant harm” is exhaustively defined as the arbitrary deprivation of life; imposition of the death penalty; being subjected to torture; or being subjected to cruel or inhuman or degrading treatment or punishment⁹. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These include where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Membership of family unit

34. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa.

⁵ *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds).

⁶ *Chan’s case*, per Mason CJ at 389, Dawson J at 396-8, Toohey J at 407, McHugh J at 429.

⁷ *MIMA v Haji Ibrahim* (2000) 204 CLR 1 at [141] per Gummow J, Gleeson CJ and Hayne J agreeing.

⁸ See *Rahman v MIMA* [1999] FCA 73 (Hely J, 10 February 1999) at [10]; *Haque v MIMA* [1999] FCA 1582 (Hely J, 4 November 1999) at [7]-[9]; *Rodrigo v MIMA* [2001] FCA 1027 (Kenny J, 1 August 2001) at [18]; and *S2192 of 2003 v MIMIA* [2005] FMCA 241 (O’Dwyer FM, 14 July 2005).

⁹ S. 36(2A); these terms are further defined in s.5(1) of the Act.

Ministerial direction

35. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 *Refugee and humanitarian - Complementary Protection Guidelines* and PAM3 *Refugee and humanitarian - Refugee Law Guidelines* – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

FINDINGS AND REASONS

36. Having seen the Lebanese passport on which the applicant travelled to Australia I find that he is a national of Lebanon. There is no information before me to suggest that he has the right to enter and reside in any other country. His claims to protection will be assessed against Lebanon.
37. I do not accept that the applicant has a well-founded fear of persecution, or that there are substantial grounds for believing that there is a real risk that he faces significant harm in Lebanon. Although I accept that the applicant was a member of the Baath Party in Lebanon, and that this group is allied with the Assad regime in Syria, I do not accept that the applicant has faced persecution or significant harm in the past because of his political opinion, or that there is a real chance or real risk that he would in the reasonably foreseeable future. Nor do I accept that he faces persecution or significant harm because of general insecurity in Lebanon.
38. I found the applicant to be a most unsatisfactory witness. He provided oral evidence that was inconsistent in some respects with his written claims – for example, as to how often he was beaten. He changed his evidence during the course of the hearing in a manner suggesting that he was seeking to overcome problems as they were identified – for example, as to whether he lived and worked in his local area over the period from 2005 until 2010 when he claimed to have been subjected to threats and assaults. Parts of his evidence were clearly implausible and exaggerated- for example, his claim that he resigned from the Baath Party before leaving Lebanon because otherwise he could have been killed in Australia. This claim is simply not credible, particularly given that he was not killed or even seriously harmed during the previous five years in Lebanon. The applicant stated that he knew that Baath Party members are currently being killed in Lebanon, but was unable to provide any details of such killings, and it is evident that this claim was fabricated. Overall, he gave the impression that he was prepared to say anything to enhance his claims, or to overcome problems identified with them. While I accept that the applicant was a member of the Baath Party, I consider that he has significantly exaggerated the degree to which he faced harm prior to his departure from Lebanon, and the risk of harm he faces now and in the reasonably foreseeable future.
39. I do not accept that the applicant was at real risk of harm over the period from 2005 until 2010 before he left Lebanon. I accept that he was beaten on one or possibly three occasions, suffering bruises. I do not accept that this constitutes serious harm. I accept that he received threats as a member of a pro-Syrian party in an area where the vast majority of the population supports the Future Movement. However, I consider that the applicant has exaggerated the degree of these threats and the extent of his fear. I consider that anyone who had really intended to inflict serious harm on the applicant over that five year period had ample opportunity to do so. The applicant's evidence was that despite the mistreatment, harassment and ongoing threats, he continued to live in the same village with his family and attend work

as usual. When I suggested to him that this indicated that he was not genuinely afraid, or at serious risk of harm he said that he was in hiding a lot, he only slept at home and he did not always attend work. However, in my view these were changes and embellishments to his evidence intended to overcome the difficulties raised. Previously, the applicant had not suggested that he lived anything but a normal life in his village; he said that he attended work in a neighbouring village, that he had savings to fund his study in Australia and when asked why he studied by correspondence he did not indicate that he was afraid to leave his home. I do not accept that the applicant was only able to avoid being seriously harmed by taking the precautions he claimed. Moreover, he said that when he left Lebanon in 2010 he intended to return home; consistent with this, he did not apply for protection until 2013. All of these factors lead me to conclude that the applicant was not subjected to serious harm amounting to persecution prior to his departure from Lebanon. While a threat of harm may in some circumstances be sufficiently serious as to amount to persecution, I do not consider that is the case here. I consider that while he may have encountered minor assaults, threats, and insults for reason of his political opinion, this was not persecution. Persecution must involve “serious harm”¹⁰, including a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist¹¹. I do not accept that the beatings, as described by the applicant, in which he suffered only bruises, constitute serious physical harassment or a threat to his life. I do not accept that the death threats to which the applicant was subjected were as frequent as he claims; moreover, I do not believe that they reflected a serious intention on the part of those making them to actually harm the applicant. I believe that they were empty threats never intended to be carried out, and that the applicant knew this, otherwise he would have taken additional measures to protect himself. I therefore do not consider that the threats delivered to the applicant represented a serious intention to inflict actual harm on him and I find that his experiences do not meet the threshold for serious harm as is required for persecution.

40. I do not accept that the attack on the [Town 2] office of the Baath Party constituted a deliberate targeting of the applicant. I have serious doubts that he was even present on that day, given his vague evidence and lack of knowledge about the events which the country information indicates precipitated the attack. In any event, I do not accept that the incident reflects a pattern of targeting of Baath Party members; the independent evidence indicates that it arose because of specific events which occurred at that time, namely fighting in Beirut between armed pro- and anti-Syrian factions which it was feared would escalate into civil war.
41. I am not satisfied that there is a real chance that the level of harassment encountered in the past would escalate in the reasonably foreseeable future so that the applicant would have a well-founded fear of persecution if he were to return, despite the worsening political and sectarian tension in Lebanon. The available information does not indicate that the applicant is now at an increased risk, such as to establish a well-founded fear of persecution, or substantial grounds for believing that he would be at real risk of significant harm.
42. Most significantly, there is no independent information available to me from any source which indicates that members (or former members) of the Baath Party are routinely subjected to serious harm – including killings and abductions as claimed by the applicant - in Lebanon as a result of the tensions created by the Syrian war. While it is logical to assume that people

¹⁰ s.91R(1)(b) of the Act;

¹¹ s.91R(2) of the Act.

perceived as pro-Syrian would experience a degree of harassment, I would expect that if they were routinely, or to any significant degree that would support a conclusion that all members face a real chance of persecution, being subjected to serious harm amounting to persecution, this information would be reported. The DFAT reports referred to above make no mention of any targeting of Baath Party members specifically, or to the targeting of individuals with a low profile such as the applicant, and there is no information from any other source before me which indicates that this is the case.

43. I do not accept the applicant's claim that his brother was beaten up because of him. He knew virtually nothing about the circumstances in which his brother was injured and I am not persuaded, based on his vague evidence, that any injury to his brother was connected with the applicant's circumstances. Nor do I accept that his family has been subjected to constant ongoing threats over the period of three years that the applicant has been absent from Lebanon. I accept that questions may have been asked about him and that empty threats such as those made previously may have been made, but I find highly implausible, given his low profile, the fact that he resigned from the Baath Party prior to his departure, and his long absence from the country which predated the outbreak of fighting in Syria, his claim that his family is being constantly harassed and threatened because of him.
44. Overall, there is no reason arising from the evidence before me to support a finding that the applicant would be at greater risk of serious or significant harm should he return to Lebanon now, or in the reasonably foreseeable future, than he was prior to his departure.
45. Even if the applicant were at risk of harm of any kind in his home village, I am satisfied based on the information available in the DFAT report referred to above, which was discussed with the applicant at the hearing, that he could avoid such harm by relocating to another area of Lebanon, most likely a large city such as Beirut. I note that the applicant has extensive experience in [a certain] industry, and DFAT advises that rental accommodation is readily available. The applicant presented no reason indicating that it would not be reasonable for him to relocate, and I do not accept his claim that he would be located anywhere by his political enemies. I find that a person with his low profile would only be of any interest to people who know him in his local area.
46. I am not satisfied that the applicant has a well-founded fear of persecution for reason of his political opinion. I do not accept that he has been persecuted in the past for this reason, or that there is a real chance that he would face persecution now or in the reasonably foreseeable future even in view of the changing political and security situation in Lebanon, which I find does not establish an increased risk of the applicant being targeted as an individual or as a member of a group because of his political opinion.
47. While there is some possibility that any person in Lebanon could be affected or harmed in a violent incident in which neither they nor any group to which they belong was deliberately targeted, I consider that the possibility of this resulting in serious harm to the applicant is remote and insubstantial. Moreover, it is clear that such harm would not be directed at him for one of the Convention reasons; nor would the conduct causing the harm be systematic, as required by the Convention, but would rather be random in terms of its effect. In these circumstances, it is not Convention persecution and the Refugees Convention does not provide protection against that harm. There is much speculation about how events in Lebanon might play out in the light of the Syrian conflict, but any assertion that the situation will get worse for people in the situation of the applicant, resulting in a real chance of persecution, is only conjecture or speculation.

48. For all of these reasons I find that the applicant does not satisfy the criterion in s.36(2)(a) of the Act.

Complementary protection criterion

49. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), I have considered the alternative criterion in s.36(2)(aa). The applicant has not raised specific claims in relation to the complementary protection criterion that he fears significant harm in circumstances other than those already identified and dealt with in relation to his claims to fear persecution under the Refugees Convention. For the same reasons as I have decided that the applicant does not have a well-founded fear of persecution arising from those claims, I conclude that there are not substantial grounds for believing that there is a real risk that the applicant will suffer significant harm in Lebanon. I do not consider that the assaults, threats and harassment experienced in the past by the applicant constitute significant harm, as defined; or that there is a real risk that he would be subjected to other, more serious kinds of harm on return that would meet the definition of significant harm. I do not accept that there is a real risk that the applicant would be arbitrarily deprived of his life, or that the death penalty would be carried out on him or that he would be subjected to torture if he returns to Lebanon. Based on the credible evidence I do not accept that the threats to which the applicant was subjected in the past did, or might be in the future, reach the threshold for the definitions of other forms of significant harm – acts by which severe pain or suffering, physical or mental, was intentionally inflicted on the applicant, or conduct that could reasonably be regarded as cruel or inhuman in nature. Nor does the evidence establish, in my view, that the threats amount to degrading treatment or punishment, namely, an act which causes, and is intended to cause, extreme humiliation which is unreasonable. The available information does not support a conclusion that the situation has worsened in his absence as a result of the fighting in Syria so that there is a real risk that the applicant faces more serious mistreatment in the future that would meet the definitions of significant harm.
50. While the country information indicates that he might be at some risk of being harmed in indiscriminate violence in Lebanon, I am not satisfied that the risk is sufficiently great to amount to a real chance or a real risk, as opposed to a remote or insubstantial possibility. In any event, under s.36(2B)(c) of the *Act* there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally. The available evidence indicates, and I find that any risk of harm faced by the applicant in the event of increasing political and sectarian violence in Lebanon would be one faced by the population generally, and not by the applicant personally.
51. I conclude that there are not substantial grounds for believing that there is a real risk that the applicant will suffer significant harm in Lebanon. I am therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

CONCLUSION

52. For the reasons given above, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

53. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), I have considered the alternative criterion in s.36(2)(aa) but I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
54. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

55. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

R Mathlin
Member