

1501959 (Refugee) [2015] AATA 3514 (9 October 2015)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1501959
<b>COUNTRY OF REFERENCE:</b>	Lebanon
<b>MEMBER:</b>	Josephine Kelly
<b>DATE:</b>	9 October 2015
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	<p>The Tribunal affirms the decision not to grant the first and fourth applicants Protection visas.</p> <p>The Tribunal has no jurisdiction in respect of the second and third respondents.</p>

Statement made on 09 October 2015 at 10:07am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 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

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants claim to be citizens of Lebanon. The first and fourth applicants applied for a visa [in] September 2011 and the delegate refused to grant the visa [in] January 2015.
3. The applicants were invited to a hearing before the Tribunal on 16 June 2015. The second applicant telephoned the Tribunal on the morning of the hearing and advised that his wife, the third applicant, had had an "episode". Later that day in response to the Tribunal's request, he provided a written request for postponement and later again that day, a medical report relating to the third applicant.
4. The hearing was rescheduled for 13 July 2015. The second applicant appeared to give evidence and present arguments. He asked the Tribunal to take into account all supporting documents in any of the files relating to the applicants which also included files related to matters 1501955 and 1501957, and the evidence he had given earlier that day in relation to his own application, 1501957. The Tribunal agreed to do so.
5. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

### SUMMARY OF THE LAW

6. The criteria for a protection visa are set out in s.36 of the Act and 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). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
7. 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).
8. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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 country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
9. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she 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 or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

10. 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 expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

## **CONSIDERATION OF THE CLAIMS AND EVIDENCE AND FINDINGS**

### **The issues in this case**

11. The issues in this case are:
  - Whether the Tribunal has jurisdiction in relation to the applications for review for the second and third applicants.
  - Whether the Tribunal has power to consider the first and fourth applicants' claims for protection against the refugee criterion.
  - Whether the Tribunal accepts the claims for protection of the first applicant, and if so whether the fourth applicant is a member of the same family unit.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

### **Jurisdiction**

13. The fourth applicant for review claimed protection as a member of the same family unit as the first applicant in the visa application but without making specific claims. His details were also included in question 10 of Form 866B under the heading "Members of the same family unit not included in this application". However, the Tribunal accepts that this was a mistake.
14. The second applicant signed the application on behalf of the first and fourth applicants.
15. For the following reasons, the Tribunal has found that it has no jurisdiction in respect of the applications of the second and third applicants, as they were not made in accordance with s.412 of the *Migration Act 1958* (the Act).
16. The Tribunal's jurisdiction arises under s.414 of the Act if a valid application is made under s.412 for review of an 'RRT-reviewable decision' as described in s.411. RRT-reviewable decisions include a decision to refuse to grant a protection visa and a decision to cancel a protection visa.
17. Only the first and fourth applicants were named in the primary visa application. The second and third applicants' details were crossed out and initialled "[name]".
18. The delegate's decision was made only in respect of the first and fourth applicants.
19. On the evidence before it, the Tribunal finds that at the time the review application was lodged, no decision of a type described in s.411 had been made in respect of the second

and third applicants. As there is no RRT-reviewable decision, it follows that the Tribunal has no jurisdiction in respect of those review applicants.

20. Section 48A imposes a bar on a non-citizen making a further application for a protection visa while in the migration zone in circumstances where the non-citizen has made an application for a protection visa which has been refused. The Full Federal Court in *SZGIZ v MIAC* (2013) 212 FCR 235 has held at [38] that the operation of s.48A, as it stood at the time of this visa application, is confined to the making of a further application for a protection visa which duplicates an earlier unsuccessful application for a protection visa, in the sense that both applications raise the same essential criterion for the grant of a protection visa.
21. The first applicant was born [in] 2011. He lodged an application [in] September 2011. He has not departed Australia since then. A summary of his migration history is set out in the delegate's decision he provided to the Tribunal. The Tribunal finds that the present application is the first application that the application has made which has been refused.
22. Applying the reasoning in *SZGIZ v MIAC* (2013) 212 FCR 235, the Tribunal finds that it does have power to consider the Refugee Convention criterion in s.36(2)(a) because the first applicant has not previously applied for protection unsuccessfully. It has proceeded on the basis that it can consider the first applicant's claims under both that criterion and the Complementary Protection provisions in s.36(2)(aa) of the Act.
23. The second applicant's first protection application was made before the fourth applicant was born. On the material before the Tribunal, the applicant has not made claims for protection other than as the member of a family unit, as he has in this case. However, the Tribunal considers that on the material before it, he has claims that are the same as the first applicant's and considers them as substantive claims. He has not previously applied for protection unsuccessfully. As in the case of the first applicant, the Tribunal finds that it does have power to consider the Refugee Convention criterion in s.36(2)(a) and has proceeded on the basis that it can consider the fourth applicant's claims under that criterion and the Complementary Protection provisions in s.36(2)(aa) of the Act.

### **Background**

24. The following findings are based on written information provided on behalf of the first and fourth applicants to the Department and to the Tribunal, including the delegate's decision record.
25. The second applicant arrived in Australia [in] February 2005 holding a student visa. He studied at two institutions in Sydney from 2005 to 2007 and from 2007 to 2009. In 2007 he was awarded a [qualification] and in 2009 he was awarded [further qualifications].
26. The first applicant was born [in] 2011 in Australia. His father is the second and his mother is the third applicant. The fourth applicant is the first applicant's older [sibling] who was born [in] 2009 in Australia.
27. The first and fourth applicants are citizens and nationals of Lebanon. A departmental interview was held [in] January 2011. The second applicant attended the interview. A recording of that interview is before the Tribunal.
28. The delegate refused the application [in] January 2012. On review, this Tribunal set aside the delegate's decision and substituted the decision that the protection visa application was not valid and cannot be considered. The application was not valid because the first and fourth applicants were nationals of both [Country 1] and Lebanon.

29. The matter was referred to the Minister to consider exercising his discretion under s.91Q of the Act, which he did [in] August 2013.
30. A departmental interview was held [in] November 2014 when the second applicant again represented the first and fourth applicants. A recording of that interview is before the Tribunal.

### **Claims for protection**

31. The following claims were made in the visa application, obviously by the second applicant.
  - The applicant left Lebanon to come to Australia for the purpose of continuing his studies and pursuing his Baha'i faith, to which he converted. He referred to his statement dated [August] 2009.
  - He has previously applied for protection but his application was refused. He enclosed a Lebanese court document which confirms that his children will be taken from his custody because of the family's conversion to the Baha'i faith. He fears for the life of his children in Lebanon and that his wife will be deprived of custody of the children.
  - His children will be taken away from him pursuant to that court order and he will be persecuted because of his conversion by his family, the Lebanese authorities and fundamentalist Muslims.
  - He had no difficulty obtaining a travel document.
32. The statement dated [August] 2009 was a statutory declaration the second applicant had provided to support his first protection application. In summary, he made the following additional claims:
  - He was claiming persecution on the Convention ground of religion. He was born a Sunni Muslim but has converted to Baha'i.
  - He has returned to Lebanon on three occasions in February 2006, July 2007 and September 2008, staying for a short period on each occasion.
  - He completed [a course] in 2007 and then studied a [further] course which he has not yet completed.
  - He initially became interested in Baha'ism while studying at university in Lebanon where he met a group of students who were of the Baha'i faith.
  - Most of the students were like him, born into the Sunni Moslem faith, and had secretly converted.
  - Baha'ism is regarded by mainstream Moslems as a Kafar faith because it discredits the teachings of Islam. It embraces the teachings of Christianity, Islam and other faiths and teaches that other prophets will be sent by God and that Mohammed is not the last prophet. It is also a very peaceful safe religion and teaches tolerance.
  - The applicant had secretly converted to Baha'ism in October 2004, however, his parents are not aware of that fact.

- There are few followers of Baha'ism in Lebanon and they practise secretly, fearing serious repercussions from family and the government. Most followers practise secretly while continuing to claim that they are Sunni Moslem in order to avoid harm. He openly practised the Sunni faith while in Lebanon in order to avoid his conversion being discovered by his family.
- In Australia he attends the Baha'i [temple].
- He continues to be a committed member of his faith and enjoys the opportunity of practising without fear of harm.
- If his family were to become aware of his conversion to the Baha'i faith he will be seriously harmed.
- He cannot rely on the protection of Lebanese authorities because they do not get involved in religious matters or family disputes.

### Documents

33. The following documents were provided in support of the application:

- Birth certificates for both the first applicant and fourth applicant.
- Copies of the second applicant's passport issued [in] 2004.
- Copies of the third applicant's passport issued [in] 2008.
- A letter of support from [an official] of NSA of the Baha'is of Australia dated [in] March 2011 which refers to the second applicant's conversion to Baha'i and requests the then Minister, Mr Chris Bowen, to consider the case of the second applicant and his family.
- A letter of support dated [in] March 2011 from [Mr A] which states that he has known the second applicant since he arrived in Australia and understands that the second applicant converted to Baha'i when he was at university in Lebanon in 2004 but was unable to declare his belief due the lack of religious freedom in Lebanon and on his arrival in Australia he signed the declaration card and registered with the Australian Baha'i community [and] has since been active in that community. [Mr A] stated that the situation in Lebanon is difficult for Baha'is practising their faith. The second applicant would face discrimination from his Muslim family and friends in his day to day life if he returned and continued to practise his Baha'i faith.
- An undated petition in support of the second applicant from the "Baha'i community of Australia" signed by [a few] people.
- A letter dated [in] February 2010 to the second applicant signed by [an official] of the National Spiritual Assembly of the Baha'is of Australia Inc welcoming the applicant as a member of that faith.
- A translation dated [in] September 2011 of a letter on the letterhead of an "Appeals Lawyer" in Tripoli addressed "To [a] Judge in Tripoli". It is undated. The cases number is [number] and the subject is "Case Summons". The applicant was [Mr B] and the respondent the third applicant in this case. Relevantly it stated:

- “Further to the Case Summons lodged in relation to obtaining custody of children and annulling the custody (sic) of the respondent, and in light of what we have raised in relation to the father’s recklessness and abandonment of his family, we clarify the following:
  - “The reason behind the ‘person required to be included’ leaving his marital home and living by himself was converting to the Baha’i religion. The action of the ‘person required to be included’ deems him as having converted to a religion not recognised in Lebanon pursuant to the Religious (sic) Sects Act, and this behaviour renders him an apostate from Islam. This justified the intervention of the applicant to demand having custody of the father’s children to protect them in their religion and belief and society, considering that they were born to Lebanese parents.
  - “And since the behaviour of the ‘person required to be included’ necessitates by religious law that he be summoned, and if he refuses then this imposes on him a clear punishment by sharia law.
  - And since pursuant to the provisions of sharia and the law, the grandfather on the father’s side takes the place of the father in case the latter abandons his responsibilities towards his children,
  - And since the aim of the applicant is to protect the children from the behaviour of their parents”
- The documents goes on to request that “this summons” be considered “as an addendum complementing the Case Summons”, to notify the respondent and the ‘person required to be included’ and to rule in favour of the applicant to have custody of his grandchildren, the first and fourth applicants.
- An undated translation of a document on the letterhead of the same Appeals Lawyer, although only one telephone number is provided and not two. The subject is Statement of Claims and it contains almost identical substantive information or claims as that set out in the Case Summons document. It differs in that it requests that the second applicant “be detained so that he is to repent, and if he refuses, the clear punishment imposed on him by sharia law”, rather than he be summoned.
- A translation dated [in] November 2011 of an undated letter from [Mr B] to his son, the second applicant stating that he has learned that the second applicant has abandoned his religion and embraced another “which is unacceptable in our religion and law, and that you have abandoned the traditions, kinship, behaviours and habits and principles of the family”. The writer asks and orders the second applicant to send his children “to us” .... “so that we protect and immunize them with the honourable Islamic faith”. The writer says that this is the last warning and that he will stop corresponding and talking to him “and I will take legal and religious actions to deprive you of your children” “because we have the right to raise them up instead of you”. “You can consider this as a direct threat and warning ... there will be great things happening so as to implement the law of God as in such cases”. The third applicant’s family “had learned of the matter and that her brother has decided to kill her as soon they meet and they will not allow her to stay with you”.
- A letter from [name] stating that “you” have caused an earthquake in the family house due to his behaviour against Islam, his father is sick and any [health relapse] will make him lose his life, and that the writer will take his revenge if anything happens to

his father “due to you”, he will not forgive “you” and will punish him“ as per Allah’s will”.

34. In accordance with the request of the second applicant, the Tribunal has taken into account the documents provided in relation his application (1501957) and to the application of the mother of the children in file 1501955. Those documents include a translation of an undated document with the subject “Statement of Claims” which is in similar terms to the document provided in this case. There were also letters from a doctor dated [in] March 2011 and [in] May 2012, and from a clinical psychologist dated [in] August 2014 about the mother of the applicant children.
35. In each of the cases 1501959, 1501955 and 1501957, the applicants provided in response to a 424A letter, identical submissions and a letter from a clinical psychologist relating to the applicant children’s mother.

### **Consideration and findings**

36. Based on the evidence of the second applicant at the two hearings on 13 July 2015 at which he gave evidence, that is, in matters 1501957 and 1501959, and the other evidence before it, the Tribunal makes the following findings.
37. The second applicant has returned to Lebanon on three occasions since first arriving in Australia [in] February 2005 on a student visa. He returned for about six weeks around February 2006, in 2007, and in July 2008. The second applicant met the third applicant during his visit in 2007. He had returned then because his father was sick.
38. He married his wife, the third applicant, [in] January 2008. That was the occasion on which the marriage contract, or katip al kitab, was signed by his parents and his wife’s maternal uncles in Lebanon in the presence of a sheik. His wife’s parents were then in [Country 1]. He was in Australia.
39. The second and third applicants did not live together as husband and wife until the third applicant arrived in Australia in about December 2008.
40. The second applicant’s last student visa ran out in July or August 2009. He said that had been awarded a qualification and was working in the same field and was married with responsibilities. After his wife came to Australia, she fell pregnant. He decided that he should settle down and look after his family. He said that he wanted to live a life that suits him.
41. His wife went back to Lebanon for about a month before the fourth applicant, [was] was born. He was born [in] 2009 in Australia.
42. The first applicant claims that he will be taken from the custody of his parents into the custody of his paternal grandfather because of the second applicant’s conversion to the Baha’i faith, and fears for his life.
43. Even if the Tribunal accepted the claim that the first and fourth applicants are at risk of being taken into the custody of their paternal grandfather, there is no evidence that there is a real chance that either or both of them will suffer serious harm or that there is a real risk that they will suffer significant harm as a result. There is no evidence that their lives would be at risk. Rather, their paternal grandfather considers that it is in the best interests of the first and fourth applicants to be taken into his custody “to protect” them “in their religion and belief and society, considering that they were born to Lebanese parents”.



44. However, the Tribunal does not accept that the first and fourth applicant's paternal grandfather is seeking to obtain custody of them because it does not accept that the second applicant has converted to Baha'ism or that the parents of the second and third applicant know of that conversion because it does not accept that the second applicant's evidence is credible for the following reasons.
45. During the hearing in matter 1501957 (the first hearing), the second applicant gave the following evidence.
46. He claimed that he cannot return to Lebanon because he has been threatened by his family and will be threatened by his family and by society because he has converted from Islam to Baha'i. In Australia there is freedom of speech and faith and expression. People are respected for whatever they believe in. That is not the case in Lebanon.
47. He claimed that he converted to Baha'i "spiritually" in 2004 while studying at university [which] is about [number] minutes by car from Tripoli. He did not disclose that to anyone. He met some Baha'i people who introduced him to the Baha'i faith. Officially he converted in Australia in 2009 when he went to the temple and signed a form and got a membership card. He enlisted in [an Australian] community officially.
48. When asked how he practised his Baha'i faith in Lebanon, the second applicant said at first he was studying about the faith. Prayer is not a big thing to do. He would get into his room and do prayer for a few minutes.
49. The second applicant said that his parents ordered him to live with his older married brother in Australia. The second applicant had his own room. He remained there until the third applicant arrived in Australia in December 2008. During those four years he could only read on the internet about Baha'i and pray in his room.
50. At the first hearing, the Tribunal asked the second applicant how his brother came to be in Australia. He said that his brother had arrived as a student and married an Australian citizen. The Tribunal asked if he had thought about doing the same thing. He said that he had met many girls and had many friends but was not thinking of getting married. He was thinking of establishing his future. At first he refused his mother's approach about getting married but his parents insisted, kept nagging him, and he kept refusing. At the end of the day, he was forced to accept the marriage. His parents insisted on it. Parents have power and can control the family. Children have to respect their parents and listen to them. You try your best not to upset them. His parents were trying to persuade him to agree to the marriage for a couple of months before he agreed. His brother in Australia did not fully support his parents but said that they think that she is a good girl and advised him to listen to them.
51. At the beginning of the hearing in matter 1501959 (the second hearing), the second applicant said that he had come to Australia in 2005 as a student and to establish his future, a better life and to live in freedom. He cannot live in freedom in Lebanon. Each community has its own traditions and customs and you have to stick by them to the social order. He wanted to liberate himself from inherited customs that he did not agree with. He has chosen a religion. He now has contradictors: his family and the community he is living with.
52. When the Tribunal commented that allowing himself to be pushed into marriage in 2007 was inconsistent with his wish to live in freedom, the second applicant said that he did not see that. You do not have to disagree to with your parents on every issue. The Tribunal responded that it accepted that, but he had said that he had argued and was pushed into marriage which was inconsistent with his claim to want to be free. The second applicant said that they argued and came to a compromise. His parents said that they will not force him to marry her straight away. He can talk to her and see her and see if he feels attracted

to her and if they match. They would not force him. He started talking to the third applicant on the internet and found that she was very nice to him. She said that she would do everything for him and be good to him. He did not want to upset them or make a big problem for them. She might agree with him later on about his faith.

53. He was not honest at that time and should have told the third applicant from the beginning about his conversion but feared that if he told her and she refused to marry him, she would tell his parents and other people and he would be in big trouble and would lose her. He made a mistake. He is not perfect.
54. If his family knew that he had converted to Baha'i, he thought his family would restrict him, mistreat him, and disown him.
55. When the Tribunal commented that it was a very thoughtless, selfish act to marry the third applicant, given the consequences for her of his conversion, the second applicant said that he admitted that he made a mistake and he is not perfect.
56. The second applicant was irritated and said but we were talking about his children's application. The Tribunal said that their application depends on what he has done.
57. He became annoyed and repeated that this application is not about how he got married to his wife but about the action his parents have taken in court in Lebanon. The Tribunal said that it depends on the Tribunal's accepting his claim to have converted to Baha'ism is true. The second applicant said that you cannot claim falsely to have converted to another religion and continue to play that role for years and years. He would not have exposed himself and his family to those risks. The Tribunal commented that it may only be the Department and this Tribunal who know that he has converted to Baha'ism.
58. The Tribunal finds that the second applicant's evidence at the first hearing about being forced to marry the third applicant by his parents and parents had to be respected, is inconsistent with his claim that he came to Australia to be free from the constraints of traditions and customs. The Tribunal has taken into account his explanation given at the second hearing, set out above, when the Tribunal put that inconsistency to him but does not accept it. The Tribunal does not accept that if he had genuinely converted to Baha'ism, he would have agreed to marry a Moslem woman and subject her to potentially very serious consequences such as he claims he fears because of his conversion. Further, it does not accept that he would proceed to have a child or children and subject them to the claimed adverse consequences. Further, he was in Australia which would have made it much easier to resist his parents' efforts than if he had been in Lebanon. In making that finding, the Tribunal has taken into account the second applicant's evidence that his parents made him live with his brother, but he said his brother did not fully support his parents but said that they think that she is a good girl and advised him to listen to them. The Tribunal does not consider that to be unbearable pressure, just advice.
59. Further, the applicant's evidence that he agreed to the marriage because he did not want to upset them or make a big problem for them is inconsistent with his claim to have converted spiritually to Baha'i in 2004 which he claims has outraged his family such that they are going to kill or otherwise harm him and result in his losing custody of his children to his father.
60. On 12 August 2015, the Tribunal wrote a letter pursuant to s 424A to the applicants in this and matters 1501955 and 1501957.

"The particulars of the information are:

- Your mother, [name], told the Tribunal that your father, [name] told her he had changed his religion to Baha'i in 2009 when she was pregnant with [the fourth

applicant]. She called her parents and told them and she and your father spoke to your father's parents about the matter. They told her to divorce her husband.

- Your father, [name], claimed that his parents and your mother's parents found out that he had converted to Baha'ism from about 2011 when his mother was last in Australia and found books about Baha'ism in his bedside drawer. She contacted her husband and told him and contacted your mother's parents and told them.

This information is relevant to the review because, subject to your comments, it would lead the Tribunal to find that the evidence of your parents about the circumstances in which your paternal and maternal grandparents found out that your father had converted to Baha'ism is inconsistent, in terms of when and by whom the information that your father had converted to Baha'ism was conveyed to the parents of your mother and father. Because your father's claimed conversion to Baha'ism is central to your claims for protection, such an inconsistency, if found by the Tribunal, would lead the Tribunal to find that their evidence was not credible.

If we rely on this information in making our decision, it may lead the Tribunal to find in the case of [the main applicant] that it is not satisfied that you have a well-founded fear of persecution if you return to Lebanon or to [Country 1] and do not satisfy s.36(2)(a) of the Migration Act, or that there is a real risk that you will suffer significant harm if you return to Lebanon or [Country 1] and do not satisfy s.36(2)(aa) of the Migration Act, and to affirm the decision under review.

Consequently, in the case of [the fourth applicant], the information may lead the Tribunal not to accept that you satisfy s.36(2)(b)(i) or s.36(2)(c)(i) of the Migration Act because you are not a member of the same family unit as a person who satisfies s.36(2)(a) or s.36(2)(aa) of the Migration Act, and to affirm the decision under review."

61. The applicants were granted until 4 September 2015 to respond. A representative appointed [in] September 2015 sought an extension of time "to enable us to obtain the applicant's files under *FOI* and respond appropriately to your request". The Tribunal did not grant the extension but advised the representative that it would not finalise its decision before 11 September 2015.
62. The representative wrote in a letter dated 3 September 2015 that the applicants' instructions were that the second applicant kept his conversion secret until his mother found out during her visit in 2011. The representative referred to the third applicant's ongoing cognitive difficulties in relation to memory and concentration and that she had been seeing a psychologist for over a year to assist her with her illness. The representative submitted that the third applicant's "conditions manifest" in surroundings where she feels confronted and pressured. Like most immigrants, she felt extremely anxious during the hearing. The information she provided during the hearing was not a true recollection of what occurred in 2011.
63. The Tribunal does not accept the representative's submission about the inconsistent evidence. The Tribunal does accept that the third applicant was anxious and nervous during the hearing to some extent. Based on the medical evidence before it, the Tribunal accepts that she has a longstanding history of anxiety and depression. The earliest medical report before the Tribunal is dated [in] January 2011. The most recent report [in] August 2015 states that the third applicant was assessed by a psychiatrist in April and was commenced on psychotropic medication to assist in the management of her symptoms which she continues to take. It states that the third applicant continues to see the clinical psychiatrist and engages in cognitive behavioural interventions, her current goals "being to enhance skills to manage her mood and control anxiety symptoms with arousal reduction strategies".

64. The Tribunal does not accept that the third applicant's mental health resulted in her giving a completely inaccurate account of how and when her and her husband's families found out about her husband's conversion. She did not say she did not remember or give a garbled account. She did not appear to have difficulty remembering or recounting what had happened.
65. The Tribunal finds that the second and third applicants' accounts of how and when their respective parents found out about the second applicant's conversion are inconsistent. For the above reasons, the Tribunal does not accept that the second applicant's claim to have converted to Baha'ism is credible. It finds that he registered as a Baha'i in 2009 for the purpose of seeking protection in Australia.
66. The following matters reinforce that conclusion.
67. The Tribunal finds that the letter from the second applicant's father sets out a different and inconsistent version of how he came to know of the second applicant's conversion from either of the versions given by the second and third applicants. His father stated that he "has heard from people coming back from [Australia] that the applicant has abandoned his religion" "in the land of the infidels and immorality" and embraced another religion which is unacceptable "in our religion and law" and that he has "abandoned the traditions, kinship, behaviours and habits and principles of the family". In making that finding, the Tribunal has taken into account the second applicant's evidence about conversations with his father about his conversion. The Tribunal does not accept that the version in the letter is consistent with the evidence of either the applicant or the second applicant.
68. The Tribunal found the second applicant's claim that his mother found some books about Baha'ism in a bedside drawer in his bedroom implausible. He said that she mainly stayed with his brother but sometimes slept at the second applicant's place. When the Tribunal commented that he was well aware that if his family found out that he had converted there would be serious consequences for him and his wife, he agreed. When the Tribunal commented that it did not understand why he would leave the books out if his mother was coming to stay, he responded that "it did not come to his mind", "it did not come to mind that she would go through drawers". The books were next to his bed in a bedside table. His mother slept in another room. When the Tribunal asked if his mother had been snooping about in his bedroom, the second applicant said that he did not look at it in that way. His mother has the right to check on her son. The Tribunal commented that that reinforced its concern. The second applicant said that his mother is not a very curious type of person. She accidentally discovered them. He did his best to hide the books. Sometimes things happen for a reason. God made her find it. The Tribunal queried whether the reason was to make his and his wife's life miserable. He responded, to make a good path for life. If someone is sick, they have to go through surgery and pain. Life is the same.
69. The second applicant told the Tribunal that he talked with his father a lot about his conversion. Sometimes his father was furious and sometimes he spoke nicely and asked him to return to his faith. At the end, they have threatened him. His brother said that his father has a [medical] condition and that if anything happens because of the second applicant, he will be responsible.
70. They sent him threat messages which escalated more and more. He stopped answering calls on his mobile phone. The applicant said that he received the letter from his father by mail. When the Tribunal asked if he had received any other document from his father about his conversion, the second applicant said that at a later stage he received two letters and he did not respond. He did not respond when the Tribunal asked why had not submitted copies of those documents. That he did not provide copies of those letters is inconsistent with their existing.

71. The Tribunal pointed out to the second applicant that the Case Summons document stated that he had left the marital home and was living on his own. He agreed that that was never the case. The Tribunal commented that the document was not persuasive on its face and that country information indicates that it is easy to get false documents in Lebanon. The second applicant said that a judge cannot make an order unless he hears the applicant first. He had to be summoned. This document shows that there is a case against him. There is a case number mentioned.
72. The Tribunal asked if he had ever provided a copy of a document issued by a court. He said that he cannot say anything. He does not have enough information.
73. The Tribunal does not accept that the Case Summons and the Statement of Claims documents are genuine. They are undated, which is inconsistent with their being genuine. They contain information that is not consistent with the second applicant's circumstances. He has not left the marital home or abandoned his family. They assert that the "Religious" Sects Act renders him an apostate from Islam. The Tribunal does not accept that claim. It accepts that Sharia law would render the second applicant an apostate if he has converted, not a law of the Lebanese government. The Tribunal unsuccessfully tried to explain its concern on this point to the second applicant. His response was unhelpful.
74. The documents were not issued by a court. A reference to a case number does not cause the Tribunal to accept that there is a case before a court in the absence of documents issued by a court.
75. The Case Summons document is nonsensical in that it includes apparent references to itself, when it would be more comprehensible if it referred to another type of document, for example, a Statement of Claims". The Case Summons says: "Further to the Case Summons lodged ...", and requests the judge "To consider this summons as an addendum complementing the Case Summons". Further, it is not apparent from the substance of the Case Summons and the Statement of Claims document that they serve distinct purposes.
76. The Tribunal gives no weight to the letter from [a named person]. Dated [in] March 2011 Below his signature is written" [official]" and then "NSA of the Baha'i of Australia [address], which the Tribunal accepts is the address of the Baha'i temple in [a certain city]. The letter is written on the writer's personal letterhead and not on letterhead of the NSA of Baha'i Australia. The Tribunal finds that is inconsistent with the writer actually holding the position he claims. In contrast, the letter from [an official] of the NSA of the Baha'is of Australia Incorporated dated [in] February 2010 is written on letterhead. Apart from describing the second applicant as "one of my Baha'i friends", [the named person] provides no information about the second applicant's activities in the Baha'i community.
77. The Tribunal gives no weight to the letter from [Mr A]. He claims to have known the second applicant "since he arrived in Australia as I am member of the Baha'i community of Australia and he has been always a truthful and reliable person". He claimed that the second applicant had become Baha'i at university in Lebanon in 2004 but due to the lack of freedom there he was not able to declare his belief to his family or friends or register "Therefore upon his arrival in Australia" the second applicant "signed the declaration card and registered with the Australian Baha'i Community here in [Australia]. If the writer had known the second applicant since 2005 when he arrived in Australia, he would have known that he did not register as soon as he arrived, but more than four years later. Further, on the second applicant's evidence, he did not participate in any Baha'i activities until after he left his brother's house at the end of 2008.
78. The Tribunal gives no weight to the undated petition signed by [a few] people. It is not on letterhead. That it is it only signed by [a few] people is not consistent with the second

applicant being involved in significant gatherings of the Baha'i community over any length of time.

79. During the first hearing, the Tribunal questioned the second applicant about various aspects of the Baha'i faith, practice and administrative structure. The second applicant became irritated and said that the Tribunal should not concentrate on small details that were not relevant to a serious case of a family that is lost and does not know where to go. He can be Baha'i without being involved in gatherings. He can practise at home. He is not saying that because he does not take part. He does go to gatherings. His family is suffering and looking for someone to understand them. His family in Lebanon have threatened him and his in-laws have threatened him as well. Because of this situation, his wife has anxiety attacks and sometimes shakes. She is taking medicine for anxiety.
80. When the Tribunal said that it was concerned that his Baha'i activities were for the purpose of getting a protection visa, the second applicant thanked the Tribunal and said that he did not expect that treatment from the Australian government and did not want to answer any more questions. The Tribunal said that it had more questions. He left the hearing. The hearing ended.
81. The second applicant said that he did not "register" as a Baha'i until 2010. That is supported by the letter from [an official] of the National Spiritual Assembly of the Bahai's of Australia Inc dated [in] February 2010 welcoming him to the faith.
82. The second applicant claimed that in Lebanon any form of identification includes the religion of the person. You are registered with the Ministry of the Interior. The Tribunal pointed out that religion is not stated on Lebanese passports. He claimed that Baha'i is not a recognised religion in Lebanon and on documents Baha'is are included as Shia. He tried unsuccessfully to get a document to that effect from the Lebanese consulate. The Tribunal accepts that Baha'i are not officially recognised under Lebanon's legal system but finds that there are small communities or Baha'i in Lebanon "who can proselytise in practice, as long as they do so in a relatively low-key manner".<sup>1</sup>
83. When the Tribunal said that he had not registered as a Baha'i until after he had applied for protection in 2009, the second applicant said that sometimes things happen together. When someone wants to build a house, they study first how to build the house and then get a building certificate and then start to build the house. People sit, do nothing, and then wake up and want to do something, want to start. He wasted time. He does not want to waste more time.
84. There is no recent evidence of the second applicant's activities in the Baha'i community, which supports a finding that the second applicant was only involved with the Baha'i faith for a period prior to his registration in 2010. In making that finding, the Tribunal has taken into account the second applicant's evidence that he can be Baha'i without being involved in gatherings. He can practise at home. He then said that he is not saying that because he does not take part. He does go to gatherings. The Tribunal does not accept that he does.
85. The Tribunal finds that that the second applicant undertook activities necessary to be registered with the NSA of the Bahai's of Australia [in] February 2010 and nothing more. It does not accept his claims that his registration was not for the purpose of making his 2009 protection application. It does not accept that he has genuinely converted from Islam. It does not accept that his or his wife's parents or any of his or her relatives know of that "conversion". It does not accept that he has been a genuine Baha'i practitioner in the past or will be in the future, in Australia or in Lebanon.

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<sup>1</sup> DFAT Country Report Lebanon, 25 February 2014, at [3.46] and [3.47].

86. The Tribunal does not accept that there is a real chance that either or both of the first and fourth applicants will suffer serious harm, or that there is a real risk that either of both of them will suffer significant harm, if they return to Lebanon, because of whatever activities the second respondent undertook in order to obtain registration with the NSA of the Baha'is of Australia or from obtaining the other claimed supporting documentation from Baha'is, addressed earlier in this decision.
87. Because it does not accept that he has genuinely converted to Baha'ism or that his family or his wife's family know of his claimed conversion, the Tribunal does not accept that the letters apparently from the second applicant's father and brother are genuine. The inconsistency between the father's version of how he learned of the second applicant's conversion and the evidence of the second and third applicants reinforce that finding.
88. For the reasons given above, taking into account the claims for protection singly or cumulatively, the Tribunal is not satisfied that there is a real chance that either or both of the first or fourth applicant will suffer serious harm for a Convention reason in the reasonably foreseeable future if they return to Lebanon.
89. It is therefore necessary to consider the complementary protection criterion.
90. For the reasons given above, taking into account the claims for protection singly or cumulatively, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of either or both of the first and fourth applicant's being removed from Australia to Lebanon, there is a real risk that he or they will suffer significant harm.
91. The Tribunal does not accept on the evidence before it that either or both of the first or fourth applicants is/are citizens of [Country 1]. However, even if they were, for the reasons given above, the Tribunal's conclusions would be the same in respect of [Country 1].
92. For the reasons given above the Tribunal is not satisfied that either or both of the first and fourth applicants is/are a person in respect of whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

## **DECISION**

93. The Tribunal affirms the decision not to grant the first and fourth applicants Protection visas.
94. The Tribunal has no jurisdiction in respect of the second and third respondents.

Josephine Kelly  
Member