

1501217 (Refugee) [2016] AATA 3782 (2 May 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1501217
<b>COUNTRY OF REFERENCE:</b>	Lebanon
<b>MEMBER:</b>	Shahyar Roushan
<b>DATE:</b>	2 May 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 02 May 2016 at 10:28am

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 applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).

### BACKGROUND, CLAIMS AND EVIDENCE

2. The applicant, a national of Lebanon and a Sunni Muslim, is [age]. He arrived in Australia [in] May 2011 on a Student visa and applied to the Department of Immigration (the Department) for a Protection (protection) visa [in] September 2014.

#### *Application for a Protection Visa*

3. In a statement attached to his application for a protection visa, the applicant made the following claims:
4. He left Lebanon because he had received threats and his life was in danger. The threats were directed against him because of his involvement in the 10 May 2008 demonstrations in [Town 1], Akkar against the Syrian regime and Hezbollah. The demonstration turned violent and when shooting started, he fled by car amidst the chaos. On the way to his village, [name], he was stopped at a checkpoint by armed men who claimed to belong to Hezbollah. They took his ID card, tied his hand and covered his eyes at gun point. He was assaulted, verbally abused, threatened and placed in the basement of a nearby building. He was told that he should not have participated in the demonstrations. He was questioned in relation to his involvement with the Future Movement and whether he had any information about weapons distribution in the area. He was also accused of 'firing' at Hezbollah members during the demonstration.
5. The incident was witnessed by his cousins who were following him in their cars. His cousins returned to the village and informed the applicant's father. His father, in turn, contacted the [official] and other 'connections' in order to secure his release. He was eventually released at 'around midnight'.
6. Since the incident, the applicant feared for his life. His aunt's husband, who is aligned with Hezbollah, advised the applicant's father to send him overseas. He stayed in hiding but he was fearful for his life and the lives of his family members. If he were to return to Lebanon, he would be harmed because he has been blacklisted and Hezbollah controls the government and the Beirut airport. They also have supporters in [name], a Shia village located near his village.
7. In support of his application, the applicant submitted a printout of a Wikipedia entry in relation to the May 2008 conflict in Lebanon.

#### *The Interview*

8. The applicant attended an interview with the delegate of the Minister [in] January 2015. Where relevant, the applicant's evidence to the delegate is referred to below.

### *The Delegate's Decision*

9. The delegate refused to grant the visa [in] January 2015. The delegate found the applicant not to be credible. He found that the applicant has fabricated his claims for protection in order to prolong his stay in Australia.

### *Application for Review*

10. The applicant applied for a review of the delegate's decision. A copy of the decision was provided by the applicant to the Tribunal for the purposes of the review and the applicant is taken to be on notice of the delegate's findings and reasons.
11. The applicant appeared before the Tribunal on 28 April 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

12. 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.
13. 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).
14. 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.
15. 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').
16. 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. The Tribunal has had regard to the *DFAT Country Report Lebanon* (published on 25 February 2014); the *DFAT Thematic Report-Sectarian Violence in Lebanon* (published on 18 December 2013); and *DFAT Country Report Lebanon* (published on 18 December 2015).

### **Analysis, Reasons and Findings**

17. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
18. The Tribunal accepts that the applicant was a supporter of the Future Movement in Lebanon. The Tribunal also accepts that, as a supporter of the Future Movement, the applicant attended meetings, participated in demonstrations, prepared flags and placards to carry at demonstrations, and provided limited assistance to Future Movement officials in connection with demonstrations, including recording the registration number of cars carrying participants. He was not involved in any other activities and conceded at the hearing that he was a low level supporter of the Future Movement.
19. The applicant, throughout the process, has provided a consistent account of his participation in the May 2008 demonstration in [Town 1]. His oral evidence to the Tribunal in relation to this incident appeared to stem from his personal experience. The applicant's evidence is also consistent with the country information before the Tribunal to the effect that in May 2008, political tensions escalated into violence between supporters of 'March 8' and 'March 14' coalitions following the Government's decision to disable Hezbollah's telecommunications network and remove senior officials with links to Hezbollah. The violence spread to Akkar [Town 1] with pro-government Future Movement supporters attacking the Hezbollah aligned Syrian Socialist National Party (SSNP). According to the [name] news service '[information deleted]'. A [name] report listed the incident as a Future Movement revenge attack following Hezbollah's occupation of Beirut.<sup>1</sup>
20. The Tribunal accepts that as the violence and chaos engulfed the demonstration, the applicant and his companions, including his cousins, decided to leave to avoid danger. The Tribunal accepts that as the applicant drove away in his car he came across a checkpoint manned by masked armed men. The Tribunal accepts that the applicant was stopped, assaulted, threatened at gunpoint, questioned in relation to his involvement with the Future Movement, gagged and bound and detained for 5 or 6 hours before being released. The Tribunal accepts that he sustained minor injuries and briefly attended a hospital for treatment.
21. The Tribunal appreciates that the incident was traumatic and very frightening for the applicant. Nevertheless, as it was put to him, and he conceded, at the hearing, the applicant had found himself at the wrong place at the wrong time during a particularly tense and politically volatile period. At that particular point in time he was not specifically targeted, but as a Future Movement supporter, his presence in the area had prompted those at the checkpoint to treat him in the manner they did. The applicant stressed at the hearing that, as a consequence of this incident, his life continues to be in danger and that groups opposed to the Future Movement, including Hezbollah, continue to have an interest in him. For the following reasons, however, the Tribunal does not accept these claims.
22. The Tribunal found the applicant's reasons and explanations as to why he was 'blacklisted' or continues to be targeted vague, unsatisfactory and unpersuasive. The applicant claimed at the hearing that following the May 2008 incident he received 'something like a threat'. When asked to clarify, he said they had all of his information and the nearby village of

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<sup>1</sup> [Information deleted]

[name] is populated entirely by Shias. When pressed, he stated that many supporters of [name], a Future Movement supporter, were accused of going to [Town 1] and killing SSNP members. When again asked if he had received threats, he said his aunt's husband, who is close to Hezbollah, warned his father that Hezbollah wanted him (the applicant). He further stated that officials of the Future Movement also conveyed the message that he is wanted and should be in hiding. He claimed that sometimes there were suspicious vehicles with tinted windows in the village, which made him feel that he was being watched. The applicant did not offer any other explanation as to why his life would continue to be under threat as a result of his encounter with Hezbollah supporters some eight years ago.

23. Moreover, despite the applicant's claims that he was wanted, blacklisted, monitored and threatened, he was unable to persuasively explain why nothing had happened to him in the three years that he remained in Lebanon following the May 2008 incident. Initially the applicant gave evidence at the hearing that he resided at the same address in his village of [name] continually until his departure from Lebanon. When asked if he had lived or stayed anywhere else between May 2008 and May 2011 when he came to Australia, he stated that, he had spent short periods of time in Tripoli, where he assisted with his father's business, or in Beirut where he worked as a [Occupation 1]. He stated the longest period of time he had spent away from home was three to four months during the summer in 2010. During that time he worked as a [Occupation 1] in Beirut and surrounding areas. He further stated that in the year prior to his departure from Lebanon he travelled to Beirut on weekends to work as a [Occupation 1]. When, later in the course of the hearing, the Tribunal noted that he had suffered no harm after May 2008 despite residing at a single address and freely travelling in and out of his village, the applicant changed his evidence by claiming that when he travelled to Beirut he put on a wig to disguise himself. He also stated that sometimes he was in hiding and lived near the river. When he was reminded of his earlier evidence, he stated his address was in [Town 1]. The Tribunal also put to the applicant that, according to the delegate's decision record, he had stated at the interview that a month after the May 2008 incident he had fled to another town, [name], where he lived in a house in the bush until his departure from Lebanon. The applicant stated that he did not say that he lived there for three years continuously and that he had lived in different places at different times. The Tribunal finds the applicant's evidence in this regard inconsistent, improvised, unpersuasive and unsatisfactory. The Tribunal does not accept that, following the May 2008 incident, the applicant was threatened, warned, monitored, watched or placed on a blacklist by anyone. Nor does the Tribunal accept that he was in hiding or had to disguise himself when travelling outside of his village.
24. In making the above finding, the Tribunal has taken into account the applicant's delay of three years in leaving Lebanon. At the hearing, the applicant stated that he tried to go to other countries and asked around, but he was not successful. He stated that he eventually discovered that the best way to leave Lebanon was to get a student visa. The Tribunal finds this explanation unsatisfactory. If the applicant was fearful of being harmed in Lebanon after the May 2008 incident, he would not have waited three years to arrange his departure from that country. Similarly, if the applicant was fearful of returning to Lebanon he is wanted or would be targeted, he would not have waited three years before applying for a protection visa. At the hearing the applicant explained that he was studying and he had financial support from his father. He was new in the country, he was under pressure to obtain his educational qualification and he was unaware of the system. The Tribunal finds these explanations unsatisfactory and unconvincing. The Tribunal does not accept that the applicant was unaware that he could seek protection in Australia until three years after he arrived here. Whilst the Tribunal appreciates that he was trying to focus on his studies, his significant delay in applying for protection casts serious doubt on his claim that he was wanted, threatened, blacklisted or targeted by anyone in Lebanon.

25. The applicant stated at hearing that he has not been involved in politics and has not carried out any political activities in Australia. According to DFAT, Future Movement supporters would not be at risk from Hezbollah, the main opponent of the movement, unless they presented a direct threat to Hezbollah's political power in Lebanon. In practice, this is only the case for senior leaders of the movement. Similarly, DFAT assesses that non-Shi'a critics of Hezbollah would not be at risk unless they presented a direct threat to Hezbollah's political power.<sup>2</sup> The Tribunal has found that the applicant was a low level supporter of the Future Movement. On the basis of the evidence before it, the Tribunal is of the view that the applicant is of no adverse interest to Hezbollah, its allies or anyone else. The Tribunal finds that if the applicant were to return to Lebanon and support the Future Movement or engage in political activities at the same level he has in the past there is no real chance that he would be seriously harmed by Hezbollah or anyone else.
26. The applicant's evidence points to general fears and concerns in relation to general violence and tension in Lebanon. While the Tribunal appreciates the applicant's concerns, there is no evidence before the Tribunal to suggest that the tensions, lack of general security and the instability the applicant is concerned about is faced by him personally. The Tribunal is not satisfied that the general security situation in Lebanon would expose the applicant to a real chance of persecution for a Convention reason.
27. Based on all of the evidence before it, considered individually and cumulatively, the Tribunal is not satisfied there is a real chance that the applicant would face serious harm amounting to persecution for the Convention reasons of his political opinion, religion, membership of a particular social group.
28. For the reasons provided above, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm arising from his support for the Future Movement, his past political activities in support of the Future Movement, his experiences in the immediate aftermath of his participation in a demonstration in May 2008 or any other reason.
29. The Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will be subjected to any form of harm that would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant for the reasons specified in paragraphs (a)-(e) of the definition of torture in s.5(1). The Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer harm that would involve the intentional infliction of severe pain or suffering or pain or suffering, either physical or mental, such as to meet the definition of cruel or inhuman treatment or punishment in s.5(1). Nor is it satisfied that it has substantial grounds for believing that there is a real risk that he will suffer such harm as to meet the definition of degrading treatment or punishment in s.5(1) which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is not satisfied that it has substantial grounds for believing that there is a real risk that the applicant will suffer arbitrary deprivation of his life or the death penalty.
30. For the reasons given above, the Tribunal is 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).

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<sup>2</sup> DFAT Country Report Lebanon (published on 18 December 2015).

31. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
32. 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**

33. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Shahyar Roushan  
Senior Member