

0903507 [2009] RRTA 933 (2 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0903507

DIAC REFERENCE(S): CLF2009/21885

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Jonathon Duignan

DATE: 2 October 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The applicant applied to the Tribunal for review of the delegate's decision.
4. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

5. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
6. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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).
7. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

8. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

10. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, 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) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
13. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
14. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
15. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
16. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

17. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

18. The Tribunal has had regard to material contained on Tribunal case file 0903517 and Departmental case file CLF2009/21885 as well as material available to it from a range of others sources as referred to in this decision.
19. The applicant provided to the Department a statement regarding his circumstances in the following terms:
 1. I make this statement with reference to my application for a protection visa and with reference to the United Nations Convention and protocol relating to the status of refugees.
 2. I am claiming persecution on the Convention related grounds of Religion and implied Political Beliefs.
 3. I am a Lebanese national and have no other nationality or right to enter or reside in a third country.
 4. I was born on [date], at [City A, Country A].
 5. I am currently married and have [number of] children.
 6. I was baptized into the Jehovah's Witness faith in [date]. My wife was baptized in [date].
 7. I have been a member of the [City B] congregation and since [date].
 8. As a member of the Jehovah Witness it is becoming increasingly difficult to practice our faith. We are coming under increasing attacks from authorities, private citizens and the Church. We also fear from the threats of rising Sunni Muslim militancy and terrorist groups. These groups include the Al Salafieyan, Fatab Al Islam and other Al Quada inspired groups.
 9. We are accused by the Church, the state as well as private citizens of being allied to international Zionism and supporters of the state of Israel. We are increasing becoming the targets of Sunni militant groups because of our perceived links with Zionism.
 10. My family's home is located in [City B], which is predominately inhabited by Sunni Muslims and an area where Sunni extremists have gained strongholds in the past [number of] years.
 11. We do not enjoy the same legal and civil rights as other Lebanese citizens. Our religion is not formally recognized and therefore we are denied the opportunity to be married under Jehovah's Witness rites, or obtain the level of protection from the authorities as other citizens enjoy.
 12. Such attacks have resulted in restricting our ability to practicing core tenants of our faith including preaching, attending regularly pray group meetings and disturbing religious material.

13. We fear being harmed particularly when we engage in preaching activity due to the rampant hostility towards Jehovah's Witnesses. We are unable to rely on effective protection from the Lebanese authorities as they also oppose our religious activities. Members of the Jehovah's Witnesses are often arrested and charged under civil disobedience laws. We are most vulnerable in situations where we may be attacked by private citizens and are unable to resort to police protection.

14. My family and I have suffered numerous episodes where we have been targeted by hostile individuals. These attacks have increased particularly in the past [number of] years. The threat from Islamic militancy is increasing particularly in the [Region A].

15. On one occasion which occurred in [month, year], I along with a fellow Jehovah's Witness was physically attacked by a group of militant Muslims whilst preaching in [Village C, Region A]. After the attack we were pursued by another vehicle as we attempted to leave the village. We were fortunate to have escaped our pursuers.

16. Also in [month, year] I was threatened by hostile Muslims whilst preaching at [Village D] I feared for my safety and quickly escaped as a group of Muslim men approached me making threats that they are going to kill me.

17. On another occasion in [month, year] I was attacked whilst returning from work by a Muslim Sheik. Initially he stopped and offered to give me a lift. After a short conversation about religious issues he identified me as a Jehovah's Witness and pushed me out of his [vehicle].

18. We constantly fear for our lives and our home has often come under attack by youths.

19. My work has been adversely affected due to the fact that I am a Jehovah's Witness. I have been [working in occupation A] since [date]. However, due to the increasing hostility towards our faith it is becoming increasingly difficult to obtain work. The vast majority of contractors refuse to give me work after they learn that I am a Jehovah's Witness. My ability to earn a living has been decreasing with rising hostility. Both Christian and Muslim contractors refuse to give me work because of my religious denomination.

20. In the past [number of] months I have worked a total of [number of] months. It is also often the case that after contractors discovers that I am a Jehovah's Witness they do not pay me for the work that I have completed. One contractor who had owned me a total of [amount] pulled out a gun and threatened to shoot me and called me a Jehovah's Witness thief

21. In light of the lack of effective protection that is being provided by the authorities, we have had to resort to restricting our religious activity in an effort to avoid further harm. Restricting core tenants of our faith such as preaching has made adherence to our faith untenable.

22. Although I was born in [Country A] I do not have [Country A] nationality. I am prohibited from entering [Country A] because I am identified by the [Country A] authorities as a Jehovah's Witness. I was imprisoned by [Country A] authorities in [year]. I was arrested by [Country A] intelligence whilst preaching in my parent's [Country A] village of [Village E]. I was detained for a period of [a number of] days and whilst in detention suffered gross human rights abuses including torture.

Following my release I was deported from [Country A] and have not been permitted entry since.

23. I have not visited my elderly mother who is suffering from [an illness] since [year]. Both my parents and [other family members] reside in [Country A], however they are not members of my faith.

24. My name remains on the border check points and if I attempt to enter [Country A] I would be immediately arrested by the [Country A] authorities.

25. Relocating to another party of Lebanon would not resolve our problems because there is widespread hatred of the Jehovah's Witness. We are unable to rely on the Lebanese authorities because they often accuse of causing social discord and are reluctant to protect us when we are attacked or threatened.

26. In Lebanon as in [Country A] there is growing hostility towards Jehovah's Witness in light of the growing resentment towards Israel We are an extremely vulnerable group because our faith is not legally recognized. Even if we practice our faith in a covert or restricted manner, there still remains a real risk of our activities being discovered and suffer harm tantamount to persecution.

20. The delegate interviewed the applicant at which he spoke about his background, travel from Country A to Lebanon and difficulties encountered in Lebanon in the terms referred to above. The delegate was not satisfied that the applicant faced a real prospect of harm for any Convention reason should he return to Lebanon.
21. The applicant sought review of that decision, providing to the Tribunal letters from Congregations of Jehovah's Witnesses in Sydney attesting to the applicant's practise of the Jehovah's Witness faith and the understanding of his circumstances. These letters were signed by a large number of people each of whom was a member of the congregation.
22. The applicant also provided a letter from Person A, a resident of Australia and elder of the congregation and Marriage Celebrant. He attested to the applicant's practise of Jehovah's Witness faith and to his attendance at weekly Bible study sessions and through evangelising.
23. The applicant's adviser referred to a range of previous decisions of the Tribunal which he claimed supported a conclusion that in relation to Lebanon, the Jehovah's Witnesses were not recognised as a religious group, had limitations on their ability to proselytise and were of interest to State security agencies for suspected links to Zionism. This was said to result in the members of the Jehovah's Witnesses being in an extremely vulnerable position in Lebanese society, open to attack from the public and not likely to receive protection from State agencies.
24. The applicant, his family member and Person A each gave oral evidence at a hearing before the Tribunal.
25. The applicant gave evidence about his past experiences consistent with the above. He explained that his statement provided to the Department referred to his having accepted Jehovah's Witness faith in the early 1990's, however he recalled being baptised into the faith in Lebanon in about the mid 1990's. He explained that he had some difficulty recalling the exact dates that things occurred, as these were some time ago. He referred to the harms he had experienced in both Lebanon and Country A in the terms of his declaration.

26. The applicant spoke about his attraction to the faith, noting that his wife initially adopted the faith and he was not supportive of this. Only after some years did he adopt the faith as his own. He referred to the injuries and physical harm he experienced as a result of evangelising as part of his faith in the terms details in his declaration.
27. The applicant was able to give details of the basis of Jehovah's Witness faith and was familiar with the terminology and timing of the most significant religious commemoration associated with the faith. He also spoke of his understanding of the death of Jesus in terms which are recognised by the group, for example that Jesus was not killed on a cross but rather a stake of wood.
28. The applicant referred to his involvement with Jehovah's Witness groups in Australia. He was involved in regular worship and evangelising in Australia in accordance with his faith. He had travelled to Australia to attend the marriage of his family member, which had occurred in a Kingdom Hall in Australia.
29. Person A gave evidence of his involvement with the Jehovah's Witness faith in Australia for many years. He believed the applicant was of the Jehovah's Witness faith and presumed that elders at the Church in Australia had seen information about the applicant from Lebanon. He explained that he had personally witnessed the applicant attending meetings of the faithful and he had accompanied the witness on many occasions when evangelising. The witness believed that during these periods the applicant evidenced a knowledge of the Jehovah's Witness faith consistent with the background he claimed.
30. The applicant's family member gave evidence consistent with the above regarding his father's circumstances. He explained that he had only recently been baptised within the faith and he had then married in a Kingdom Hall in Australia. He had performed military service himself in Lebanon because he had not fully embraced the faith of his father and mother at the time. He did so now.
31. Subsequent to the hearing the Tribunal sought additional information by summons relevant to the applicant. Evidence relating to the application of the applicant's family member indicated that he had made claims consistent with those of his father in association with his own application. The application of the applicant's family member was supported by members of the Jehovah's Witness faith and the marriage is registered as having occurred in the Kingdom Hall in Australia. The applicant's family member disclosed consistent residential details in Lebanon as those disclosed by his father.
32. The applicant also provided to the Tribunal additional documentation, including a letter to the Congregation in Australia from elders associated with the Church in Lebanon which introduced the applicant to members of the congregation here. He also provided a copy of a letter which dealt with the date of the applicant's baptism, noting that it appeared he was baptised with others in Lebanon in the mid 1990's and photographs of this event were supplied.
33. Independent information about the circumstances for Jehovah's Witness followers in Lebanon indicates that while there is freedom of religion guaranteed through the Lebanese Constitution, there can be difficulties encountered in the practise of different faiths. The most recent United States Department of State *Country Reports on Human Rights Practices*, published in February 2009, notes the following:

The constitution provides for freedom of religion and the freedom to practice all religious rites, provided that the public order is not disturbed. The government generally respected these rights; however, there were some restrictions.

Formal recognition by the government is a legal requirement for religious groups to conduct most religious activities. The group must ensure the number of its adherents is sufficient to maintain its continuity.

Alternatively, religious groups may apply for recognition through existing religious groups. Official recognition conveys certain benefits, such as tax-exempt status and the right to apply the recognized religion's codes to personal status matters. Each recognized religious group has its own courts for family law matters, such as marriage, divorce, child custody, and inheritance. Although the government did not recognize officially some Baha'i, Buddhist, Hindu, and Protestant Christian groups, they were allowed to practice their faith without government interference; however, their marriages, divorces, and inheritances in the country were not recognized under the law.

Protestant evangelical churches are required to register with the Evangelical Synod, which represents those churches to the government. Representatives of some churches complained that the Synod has refused to accept new members since 1975, thereby preventing their clergy from ministering to adherents in accordance with their beliefs. The Pentecostal Church applied for recognition from the Evangelical Sect, but the leadership of the Evangelical Sect, in contravention of the law, refused to register new groups. The Pentecostal Church pursued recourse through the MOI; however, at year's end it had not been registered.

Although the law stipulates that anyone who "blasphemes God publicly" may face imprisonment for up to one year, no prosecutions were reported under this law during the year.

The unwritten "National Pact" of 1943 stipulates that the president, the prime minister, and the speaker of parliament be a Maronite Christian, a Sunni Muslim, and a Shia Muslim, respectively. The 1989 Taif Accord, which ended the country's 15-year civil war, reaffirmed this arrangement but also codified increased Muslim representation in parliament and reduced the power of the Maronite president.

Religious affiliation is encoded on national identity cards and indicated on civil status registry documents but not on passports, and the government complied with requests of citizens to change their civil records to reflect their new religious status.

The law provides that only religious authorities may perform marriages; however, civil marriage ceremonies performed outside the country were recognized by the government.

There were no legal barriers to proselytizing; however, traditional attitudes and edicts of the clerical establishment strongly discouraged such activity.

34. In 2006 and 2008, the Australian Department of Foreign Affairs and Trade providing information about the circumstances in Lebanon. The Department was not aware of particular harms to individuals who were involved in proselytising in Lebanon but did note that:

DFAT has not identified any instances where proselytising Jehovah's Witnesses have been harmed in Lebanon. In general, proselytising by Jehovah's Witnesses is not welcomed amongst the population. In Lebanon, with its history of civil war and delicate religious

balance, attempts to convert people to alternate faiths are frowned upon and considered 'trouble making' by the security authorities.

According to a variety of sources consulted, there is no legal barrier to proselytising in Lebanon and this extends to Jehovah's Witnesses. Several articles in the penal code prevent people making nuisances of themselves or invading others' privacy. A lawyer consulted by DFAT believes that a case may have been brought against a Jehovah's Witness for aggressively doorknocking and invading someone's privacy several years ago, but the source was not able to provide any additional details (including whether the case was successful). DFAT was not able to uncover any additional details about this alleged case from other sources.

As previously reported, Jehovah's Witnesses are not one of the 18 recognised sects in Lebanon and this has implications for personal status and family law issues which are dealt with through the religious courts - such as marriage, divorce and inheritance law.

35. The earlier advice of the Department of 2006 noted that:

The Lebanese Constitution extends freedom of belief to all Lebanese citizens. However, the Jehovah's Witness Sect (JWS) is not one of the 18 religious sects recognised under the Constitution. As all family/personal status law is covered solely through the confessional courts of the 18 recognised religious sects, JWS do not have a court dealing with personal status issues. They cannot, therefore, legally marry according to their faith in Lebanon. They can, however, travel to Cyprus, marry there and register their marriage with the Ministry of Interior on their return. This is a recognised and frequently followed process by Lebanese couples not wishing to marry in a religious ceremony.

As we previously reported, associations not recognised in law or which have "failed to acquaint the public authorities" with their existence, membership and aims are "reputed to be secret societies ... which shall be dissolved". The JWS cannot legally convene for public assembly or worship without prior approval from the Interior Ministry. The law also prohibits assembly "in a place open to the public" for groups of three or more persons "for the purpose of committing an offence" or for twenty or more persons "whose attitude is likely to offend public peace". In practice, however, the JWS are left in peace to assemble and worship. However, as advised by a contact at the Interior Ministry, they may be vulnerable to "hassle" from the security forces if, for example, someone held a grudge.

JWS men reportedly refuse to serve their national service as it goes against their beliefs. Any man refusing to undertake national service incurs a prison term equivalent to the period of national service and we heard several reports of JWS going to prison for this reason. National service was recently reduced from one year to six months and next year will be abolished.

Societal attitudes towards the JWS vary. In general, JWS proselytising is not welcomed amongst the population. In Lebanon, with its history of civil war and delicate religious balance, attempts to convert people to alternate faiths are frowned upon and are considered "trouble making" by the security authorities. However, we are not aware of any cases where such proselytising has resulted in criminal action being taken against JWS. Maronite Christians regard JWS as heretics and Christian contacts advise that Maronite priests regularly preach against the JWS.

In a society where 'contacts' and family affiliations with people in power hold greater sway than legal processes, JWS could be more vulnerable to discrimination than those from recognised sects. (Department of Foreign Affairs and Trade, DFAT Report 483 – Lebanon, 2006, 11 May).

36. The most recent International Religious Freedom Report by the US State Department (published September 2008) for Lebanon does not mention Jehovah's Witnesses by name. It does however note the following:

There were periodic reports of societal abuses or discrimination based on religious affiliation, belief, or practice. There was tension between religious groups, attributable to competition for political power, and citizens continued to struggle along sectarian lines with the legacy of a 15-year civil war (1975-90)... Some religious groups do not enjoy official recognition, such as Baha'is, Buddhists, Hindus, and unregistered Protestant Christian groups. They are disadvantaged under the law in that their members do not qualify for certain government positions, but they are permitted to perform their religious rites freely...

Unrecognized groups may own property and assemble for worship without government interference; however, they are disadvantaged under the law because legally they may not marry, divorce, or inherit property in the country...

There are no legal barriers to proselytizing; however, traditional attitudes of the clerical establishment strongly discourage such activity...

Following the July-August 2006 conflict with Israel, tensions between the democratically elected government of Fouad Siniora and the antigovernment opposition led by Hizballah resulted in greater political tension between religious groups. While this political climate contributed to periodic reports of tension and occasional confrontations between religious groups during the reporting period, most of this activity could be attributed to political differences and the legacy of the civil war.

During the reporting period, Hizballah directed strong rhetoric against Israel and its Jewish population. Moreover, anti-Semitic literature was published and distributed with the cooperation of Hizballah.

37. A November 2008 report from *NOW Lebanon* notes:

In Lebanon, there are 3,613 Jehovah's Witnesses who make up 70 congregations. According to Issa Diab, a translation consultant with the United Bible Society and expert on Christianity in Lebanon, many are concentrated in the town of Qalamoun, south of Tripoli, and in the caza of Akkar.

There are 15 Kingdom Halls in the country, where the faithful gather to study the Bible and doctrinal literature published by the Council of Elders, and from where they embark to go door-to-door in search of converts. But reception to their proselytizing in Lebanon, Witnesses say, is mixed.

"I get beaten sometimes," Njeim said. "I've had doors slammed in my face, and I've been assaulted."

Abuse, however, is not the standard reaction Witnesses encounter. Another Witness, Ghassan – who only wanted his first name published so as not to glorify himself – spoke of reception in Lebanon and the Arab world in general as being more tolerant than elsewhere. "In Germany, Hitler killed thousands of Witnesses," he noted.

But many non-Jehovah's Christians in Lebanon, especially Maronites, put signs on their doors warning Witnesses not to come knocking. Father George Rahme is a particularly vocal critic of the sect, frequently denouncing it during his weekly television program on Télé

Lumière, a Christian station founded in 1991 that is broadcast from Lebanon throughout the Middle East.

Rahme drew the ire of Lebanon's Foundation for Human and Humanitarian rights in a 2006 report on religious freedom, which said that he denounces "heretical" Christian sects every week on his program, "his favorite boxing bag" being the Jehovah's Witnesses and other minor religious sects. Rahme reportedly encourages viewers to keep a stick near their door to beat any Witnesses who visit.

...Diab, the scholar with the United Bible Society, stressed that Witnesses face particular trouble in Lebanon because one's religious identity is so closely tied to one's place in both society and politics.

"In Lebanon, belonging to a confession is more than having certain theological beliefs," he said. "It's having a certain social identity or [akin to] belonging to a tribe. In Europe or the [US], every 10 minutes you can change your religious affiliation. In Lebanon belonging to a religious confession is very historical. A big part of social life is based on belonging."

Converting is disloyalty, and those who do are generally banished from their families, Diab added (Nash, M. 2008, 'Faith comes knocking', *NOW Lebanon*, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#>)

38. Article removed pursuant to s.431 of the Act as it may indemnify the applicant.
39. In respect of the importance of prosletysing as an element of the Jehovah's Witness practise, the official website of the faith notes that:

Christians are commanded to "make disciples of people of all the nations," but this does not mean that they are to use pressure or convert others by force. Jesus' commission was to "tell good news to the meek ones," to "bind up the brokenhearted," to "comfort all the mourning ones." (Matthew 28:19; Isaiah 61:1, 2; Luke 4:18, 19) Jehovah's Witnesses seek to do this by declaring the good news from the Bible. Like the prophet Ezekiel of old, Jehovah's Witnesses today try to find those who "are sighing and groaning over all the detestable things that are being done."—Ezekiel 9:4.

The best-known way they use to find those who are distressed by present conditions is by going from house to house. Thus they make a positive effort to reach the public, just as Jesus did when "he went journeying from city to city and from village to village, preaching and declaring the good news of the kingdom of God." His early disciples did likewise. (Luke 8:1; 9:1-6; 10:1-9) Today, where it is possible, Jehovah's Witnesses endeavor to call at each home several times a year, seeking to converse with the householder for a few minutes on some local or world topic of interest or concern. A scripture or two may be offered for consideration, and if the householder shows interest, the Witness may arrange to call back at a convenient time for further discussion. Bibles and literature explaining the Bible are made available, and if the householder desires, a home Bible study is conducted free of charge. Millions of these helpful Bible studies are conducted regularly with individuals and families throughout the world....

... The Witnesses also make good use of openings for talking about the good news as they come in contact with other people in their daily lives. It may be a few words exchanged with a neighbor or with a fellow traveler on a bus or a plane, a longer conversation with a friend or a relative, or a discussion with a fellow worker during lunch hour. Much of the witnessing that Jesus did when he was on earth was of this

kind—as he walked along the seashore, sat on a hillside, dined at someone's home, attended a wedding, or traveled in a fishing boat on the Sea of Galilee. He taught in the synagogues and at the temple in Jerusalem. Wherever he was, he found opportunities to talk about God's Kingdom. Jehovah's Witnesses endeavor to follow in his footsteps in this regard also.—1 Peter 2:21.

(see <http://www.watchtower.org/e/jt/index.htm>)

FINDINGS AND REASONS

40. In the Tribunal's view, the available evidence supports a conclusion that the applicant is a national of both Lebanon and Country A. He was born in Country A and in his interview with the Department did not recall any act which he took which would have deprived him of that citizenship. His belief that he may not retain Country A citizenship is not based on any particular knowledge and he is, in various documents produced in connection with the case, described as a citizen of both Country A and Lebanon.
41. In respect of Lebanon, the Tribunal accepts that he is a citizen of that country after having migrated there with his family. He has travelled to Australia using a passport issued by authorities of that country and has consistently maintained his citizenship of that country.
42. For these reasons, the Tribunal is of the view that the applicant's fear of harm must be assessed against the two countries of which he is a national.
43. The Tribunal accepts that the applicant has genuinely adopted the Jehovah's Witness faith, having commenced those beliefs in the early 1990's and having been baptised into the faith in the mid 1990's. The Tribunal accepts his explanation for differences in respect of those dates arising from different contexts in which he was discussing his adoption of beliefs and the actual act of baptism. The Tribunal accepts that he has followed the tenets of that faith, including proselytising, in Lebanon before his travel to Australia and that he would likely do so on return to either country.
44. The Tribunal is also satisfied that the applicant's activities in associating with those of Jehovah's Witness faith in Australia have been undertaken as a result of his genuine faith, rather than for any reason associated with his application to be recognised as a refugee. He has presented credible evidence of association with the faith and has presented a wide range of documentation and personal evidence from other followers. His family member was married in a Kingdom Hall in Australia and his application was also supported by followers of the faith. The Tribunal, therefore, has had regard to his activity in Australia in assessing the application.
45. The delegate had been concerned about the nature of the applicant's commitment to the Jehovah's Witness faith, however, in the Tribunal's view he has established the nature of his beliefs satisfactorily. Taking account of the similarity between many aspects of Jehovah's Witness and other faiths and the need for this information to be interpreted and relayed during the interview and hearing, the Tribunal believes that the applicant has presented as a person credibly committed to and knowledgeable of the Jehovah's Witness faith. This was supported by the observations and beliefs of Person A, who gave evidence of his witnessing with the applicant which convinced him of the applicant's knowledge.
46. In respect of the circumstances in Country A, the Tribunal is of the view that the applicant would certainly be persecuted in that country if he returned there and practised his faith. The activities of the Jehovah's Witness group is specifically outlawed in that country and all

activity must be undertaken without the knowledge of Government authorities. The public practise would be in contravention of criminal law in the country and would result in serious harms, including imprisonment and potential physical harm.

47. The situation in respect of Lebanon, however, is not so clear. The evidence in respect of the circumstances there is somewhat ambivalent, with some information suggesting little trouble for followers of the faith, while other information suggests that there is a serious potential for harm to arise from the expression of Jehovah's Witness faith. The applicant himself claims to have experienced physical harm directly, as well as serious threats of harm should he continue activities associated with his faith. He has also indicated that he does not believe he can rely on the support or assistance of security authorities should such a threat eventuate in the future.
48. The applicant's view is supported by some of the independent information above which indicates that other persons have experienced physical harm arising from their witnessing, while others have suggested a more benign attitude to the faith than has at least been present historically in other countries. The applicant himself also reports difficulties in his business dealings arising from his faith, although he has been able to found a livelihood in the country and support his family over time.
49. There is also evidence that those of Jehovah's Witness faith continue to operate within Lebanon, and have done so for many years, with a range of Kingdom Halls present in the country and continuing activity reported over time.
50. Against this, however, must be assessed the particular circumstances in which the faith operates in Lebanon and the possible complications that this can give rise to. There is obviously a wide spread hostility to those proselytising in Lebanon and all of those sources consulted above agree on this issue. This hostility, importantly in the Tribunal's view, does not arise only from the individual reactions that persons have if approached in respect of the faith, but is given some official religious and Governmental sanction. Notably, the Australian Department of Foreign Affairs and Trade and the United States Department of State have both recorded that proselytising activity is discouraged in Lebanon, partly apparently because of the difficulties that religious tensions have created in the country historically. It is clearly not regarded as helpful to the country's interests for people to attempt conversions, and yet this is precisely the element of the Jehovah's Witness faith which most clearly defines it as against other Christian faiths.
51. Likewise, the fact that the organisation has not been able to achieve legal recognition as one of the eighteen recognised faiths in the country gives the hostility to it a different character. As an unrecognised faith, the available evidence supports a conclusion that while the faith may generally operate freely, its members are at a significant disadvantage in their place in Lebanese society. The obvious restrictions on family and property law may have limited practical effect on a person such as the applicant, however, the activities of the group must be seen to be officially marginalised where they have to be afforded direct legal recognition.
52. In the Tribunal's view, a balanced view of the available evidence leads it to a conclusion that the cumulative effect of legal, political and religious circumstances affecting the Jehovah's Witnesses in Lebanon means that there is a real risk of serious harm amounting to persecution for the applicant should he now return there. In the Tribunal's view, the acts of physical harm which he has experienced in the past are likely to be repeated and there is no prospect of his achieving protection from these from any Government agency. In continuing

to practise his faith as it is defined he is exposed to the possibility of continual acts of serious physical harm, damage to his property and potentially adverse interest to security authorities. This is supported by his past experiences, the independent assessment of societal attitudes to proselytising and the potential for security authorities to view adversely and hassle adherents as has been reported. In a context where figures associated with leading religious movements are repeatedly denigrating his faith, where the Government sees the activity as potentially threatening to national cohesion and where many, indeed no doubt most, of the individuals he is approaching would see his activities as extremely unwelcome, the Tribunal does not believe it can be said he faces only a remote risk of serious harm in the future.

53. In the Tribunal's view, this risk of harm arises entirely from a religious basis, where those he is approaching, the Government and other faiths are taking an adverse view of the applicant's faith and to his expression of that faith in seeking to discuss it with others.
54. It may be the case that in many countries those who follow the Jehovah's Witness faith experience hostility from those who they approach. In the particular circumstances in Lebanon however, the practise carries significant and additional risk in the Tribunal's view. The general attitude of the society to the activity, together with the discouragement of it by religious and Governmental figures adds an additional layer to the potential harm which brings it within the type of harm anticipated by the Refugees Convention and s.91R(1) of the Act. In the Tribunal's view, the potential harm being direct physical harm and serious physical harassment or ill-treatment and the fact that the harm is not simply individual responses but is prompted by a general societal approbation for the expression of the faith, give the potential harm the qualities required at s.91R(1).
55. In the Tribunal's view then, the applicant faces a real chance of being persecuted for reasons of his religion should he return to either Lebanon or Country A, his two countries of nationality. In the Tribunal's view that risk extends to the whole of both countries and there is no area in either country where it could be said that the risk would be reduced. In the case of Country A the outlawing of the group is national, while in the case of Lebanon the views which give rise to the risk of harm are present throughout society. The activities which would give rise to the harm would also be practised by the applicant throughout the country and as an essential expression of his faith. Owing to his fear he is unwilling to avail himself of the protection of either Government.
56. By virtue of the fact that the applicant would be at equal risk of harm in any country in which he has a right to reside, he is not excluded by the operation of s.36(3) from being found to be owed protection.
57. On the basis of these findings, it is the view of the Tribunal that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. His application then should be returned to the Department with a direction that he meets the relevant part of s.36 of the Act.

DECISION

58. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.
Sealing Officers ID: PMRT01