

1201116 [2012] RRTA 490 (20 June 2012)

DECISION RECORD

RRT CASE NUMBER: 1201116

DIAC REFERENCE(S): CLF2011/148456

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Rania Skaros

DATE: 20 June 2012

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.

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 (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Lebanon, applied to the Department of Immigration for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2011.
3. The delegate refused to grant the visas [in] January 2012, and the applicants applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
15. 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.

Complementary protection criterion

16. 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 to 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Member of the same family unit

19. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include spouses.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The visa application

21. The protection visa application includes the applicant-husband and the applicant-wife. Only the applicant husband submitted his own claims to be a refugee form 866C. The applicant wife submitted an application as a member of the family unit of the applicant husband.
22. According to the visa application form the applicant husband was born in Lebanon in [date deleted: s.431(2)]. He noted his religion as Jehovah's Witness. He married in Cyprus [in] 2005. He is a citizen of Lebanon. He does not hold citizenship of any other country and does not have the right to enter or reside in any country other than Lebanon. He provided

details of his addresses and employment in Lebanon. His parents and three siblings reside in Lebanon.

23. With the application, the applicants provided copies of their Lebanese passports. Also provided was an extract from the applicant's penal record which indicated that he had been convicted between April 1996 and October 1996 for disobeying military orders and refusal to wear military uniform by the Criminal / Military Court. Also provided were two letters, dated [August] 2011, signed by the Services Committee in [Town 1] congregation for each of the applicants, stating that they are baptised Jehovah's Witnesses and are active members of the congregation in Lebanon.
24. The applicant also provided a letter, dated [December] 2011, on the letterhead of the [Suburb 2] Congregation of Jehovah's Witnesses, signed by the Congregational Secretary, [Mr A], detailing the applicant's involvement with the congregation since his arrival in Australia.
25. The applicant husband provided a written statement of claims, dated [September] 2011, which is summarised as follows:
- He was born on [date deleted: s.431(2)], at [town deleted: s.431(2)], Lebanon.
 - He is married and has no children.
 - In 1992 he was baptised as a Jehovah's Witness.
 - His wife is also a baptised Jehovah's Witness.
 - As a Jehovah's Witness he fears returning to Lebanon where he is likely to suffer serious harm on account of his faith.
 - He is unable to rely on the effective protection of the Lebanese authorities because they are hostile towards the Jehovah's Witnesses.
 - He also fears that he would not be able to practice the core tenants of his faith such as preaching without suffering serious harm.

 - He has suffered numerous episodes of serious physical abuse and threats because of his faith, with the most serious being in 1995, after refusing to complete compulsory military service on the basis of my religious convictions. He was detained in a military prison for 17 months, and subjected to torture.
 - He appeared before the military tribunal on five separate occasions on charges of disobeying military orders.
 - His recorded military convictions have adversely impacted his ability to obtain employment in Lebanon. He was precluded from obtaining any public sector jobs and even private firms refused to employ him after seeing my recorded convictions.
 - His only option was to work for his brother who is also a Jehovah's Witness.
 - He and his wife used to attend the [Town 1] Jehovah's Witness congregation in Lebanon.
 - As part of their obligatory religious practice, he and his wife used to engage in door to door preaching. However, such activities could not be conducted in the same open manner as they are done in Australia. Given the antagonism toward members of his faith, preaching is done in an extremely cautious and covert manner.
 - Door to door preaching in Lebanon is mainly carried out by witnessing only to people who have previously contacted them and invited them to their home. Random door to door preaching is avoided because of the potential of being arrested or suffering serious harm.
 - In light of the authority's disinclination to protect members of Jehovah's Witnesses, he fears suffering serious harm by third parties who oppose their activities. There

are areas in Lebanon which strictly forbid any Jehovah's Witness preaching. These areas mainly include predominantly Islamic suburbs or towns.

- He has been threatened on many occasions whilst conducting door to door preaching and it is for this reason that he has had to substantially reduce his activities, only attending the selected homes of people who voluntarily invite them.
- On one occasion which had occurred in 2006, one person who opposed preaching in his building pointed a gun at him and threatened to shoot him if he did not immediately vacate the building.
- His wife has also been threatened whilst preaching and since the incident in 2006, she has not engaged in any public preaching.
- As a result of the increasing hostility towards member of the Jehovah's Witnesses and the Maronite vehement opposition to the existence of his congregation in [Town 1], his wife and him have substantially reduced the frequency of their attendance.
- As the request of the local Maronite dioceses, the Lebanese intelligence unit continued to monitor their congregation and have conducted raids on two occasions. The Maronite Church is calling for the closure of the congregation. There are many occasions when members of his congregation are forced to abandon the congregational building and conduct meeting in the private homes.

26. [In] December 2011 the applicant was interviewed by the Department. Below is a summary of that interview:

- He is a Lebanese citizen and does not have the right to enter or reside in any other country.
- He travelled to Australia to seek protection on religious grounds.
- He was charged and convicted because of his refusal to undertake military service in 1995. He has not been targeted by the authorities since 1995.
- The government does not recognise Jehovah's Witness as a religion in Lebanon. If he got into trouble for whatever reason, the Lebanese government would not offer him protection because he is a Jehovah's Witness.
- He met his wife in 1998. They lived in the same area and were from the same community. They were in the same group in Jehovah's Witness. They married in Cyprus because in Lebanon they are unable to marry as Jehovah's Witness.
- There is freedom of religion in Lebanon but not for Jehovah's Witness. There are some areas which they are prohibited from entering. If he is attacked or threatened or a crime is committed against him, because of his religion, the authorities would not intervene to protect him.
- In 2006 he and another person went out to witness, one of the people they approached pulled out a pistol and told them that if they came around again he would shoot them.
- They used to map the area in which they would witness to be careful to not approach certain extremist groups. There is a lot of misunderstanding about Jehovah's Witness, as associated with Judaism. They could not gather in public and had to gather in houses. It is unlawful to have Kingdom Halls. His congregation gathered at a place in a business district or sometimes in a home, but they had to be discreet and in small numbers so that people do not complain otherwise it would cause a lot of problems for them.
- The applicant clarified that [Town 1] is the name of the group and that they gather in a particular area. He gave an example of an incident faced by the group when one non-Lebanese person met with them. Some people in the area had seen the non-Lebanese person and this had caused problems for them with the

authorities. To calm the situation down they had to gather in homes for about 5 to 6 months before being able to return to the premises.

- He provided details about the way he witnessed, stating that they would approach people on buses and the supermarket and if people accepted they would take their number and visit them at their home. They are unable to approach people in the countryside. In his religion he should approach everybody and witness to everyone but in Lebanon that is very risky.
- He approaches people in the street. He has not been physically assaulted but he has been abused and threatened with assault on many occasions.
- In Australia he attends church every Wednesday and Saturday. They study as a group, they witness to the people on the streets and in public places. He focuses on witnessing to Arabic speaking people.
- When it was put to the applicant that the letters of support from Lebanon suggest that he and his spouse are active members of the congregation but in his written statement he appears to be saying that he has reduced his witnessing activities, he stated that they continued to go to and were committed but had to be careful they had to reduce their activities. They were afraid and had to reduce the size of the group but it does not mean they stopped their activities, he explained that it may have been an interpretation issue.

27. [In] January 2012 the applicants' protection visa applications were refused. The delegate was not satisfied that the applicant was a known proselytiser in Lebanon or that he had a genuine intention to become a proselytiser. The delegate formed the view that the applicant had exaggerated his involvement with the Jehovah's Witness in Lebanon.
28. The applicants applied to the Tribunal for review of that decision [in] January 2012.
29. [In] May 2012 the Tribunal received a detailed submission from the applicant's representative. The submission included extracts from various reports and articles on situation of Jehovah's Witnesses in Lebanon, most of which are extracted below. It was submitted that the requirement to proselytise was a core aspect of the Jehovah's Witness faith and that the applicants would not be able to freely practice their religion in Lebanon due to the strong hostility towards them. He submitted that the applicants were vulnerable to attacks, and other forms of serious harm, at the hands of individuals and communities who strongly objected to their proselytising activities. He also submitted, relying on *S395/2002 v MIMIA* (2003) HCA 71 and *Wang v MIMA* (2000) 105 FCR 548, that while the applicants have been able to avoid serious harm in the past by practicing their faith discretely, the restrictions on their freedom to openly practice their religion amounts to persecution within the meaning of the Convention.
30. The applicants appeared before the Tribunal [in] May 2012 to give evidence and present arguments.
31. The applicants were represented in relation to the review by their registered migration agent.
32. Immediately before the hearing the representative advised that the applicants wished to have witnesses at the hearing. [Mr B], [Mr C] and [Mr D] all attended the hearing.
33. The Tribunal received oral evidence from the applicant wife, the applicant husband and also took evidence from [Mr D].

34. At the hearing, the representative also provided a letter of support from [Mr E], and advised that [Mr A], the [Suburb 2] Congregation Secretary, who had previously provided a letter of support, was available to give evidence to the Tribunal about the applicant's involvement and commitment to the [Suburb 2] congregation by telephone.
35. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
36. The Tribunal first took evidence from the applicant husband. He stated that his migration agent had assisted him to prepare the protection visa application. He told his migration agent his story in Arabic and the migration agent wrote it down in English. He did not wish to change anything but wanted to clarify one issue which may have been misunderstood by the Department. He stated that where it was written that they had reduced their attendance at the congregation meeting and their preaching activities, this did not mean that they were not active members of the congregation. Although their activities were reduced they were still very much active. Because of the persecution, and meetings were closed, they had to go into smaller groups and that is why they reduced their attendance at the meetings. As for preaching, it should be open, but they were not free to preach openly, they had to choose the preaching visits discreetly. In the eyes of the Jehovah's Witness he is active but he could not do all that is required of him because of the restrictions, and it was for this reason that he mentioned his activities had to be reduced.
37. In Lebanon he resided in [Town 3]. He has three brothers and one sister. His brother lives in the same area but parents live in [area deleted: s.431(2)] of Lebanon. He moved to [Town 3] in 2000 because his work was there.
38. He married the second named applicant [in] 2005 in Cyprus. They married on the same day that they arrived in Cyprus. The wedding ceremony was attended by a friend, who is a resident of Cyprus, and their Australian friends, [Mr and Mrs F]. Asked if he had a copy of the marriage certificate, the applicant indicated that he did and provided the marriage certificate to the Tribunal. The Tribunal observed that according to the certificate of marriage the applicants were married in [Cyprus] 2005 in the presence of [Mr and Mrs F].
39. The applicant provided detailed evidence of his education and work experience which was consistent with his visa application form. He stated that he was imprisoned for one and a half years because he refused to undertake military service. He worked with his brother since 1997.
40. He stated that in 1990 a law came into effect and he was called to military service [in] September 1995. He went to the relevant government office. There they asked him to pick up his gear. He explained to them that he is a Jehovah's Witness and cannot serve in the military. He explained to them that he does not hate the army, only that he is not allowed to carry weapons or engage in any military actions, and as a Jehovah's Witness he is not allowed to go into war for any reason. He stated that because there was no law exempting Jehovah's Witness they tried to physically force him to wear the clothing and serve. That did not work, so they tried to convince him by telling him that he would not need to kill anyone or shoot anyone. When he tried to explain that he could not serve in the military, they started to become violent with him. They beat him violently with their hands and he was tortured by belts with studs on them. Several officers were involved. He stated that the physical abuse continued for almost three weeks, they used all forms of torture, even made him crawl on pebbles and he lost skin on his arms. When they realised that he would not change his mind, he was transferred to the military court and was sent to prison. He was sentenced 5 times

because of refusal to take military orders. He was in prison for a period of one year and five months. He asked a lawyer to get him out of prison because normally the service is for one year and his friends served only one year. He stated that for the officer in charge of him, it was a personal thing, and he imprisoned him longer than the required period of service. He was only released after his lawyer attended the office of the defence ministry to plead his case. He was released that day.

41. It was put to the applicant that according to the criminal record he was sentenced to a total of 12 months. He stated that is true, but he stayed in there 18 months because they did not release him. He has paperwork in Lebanon that indicates the period of time he spent there and when he was released.
42. Asked why he did not want to return to Lebanon, he stated that it is because he does not have freedom of religion. He stated that he is not able to practice his religious beliefs in Lebanon. There are many armed groups and they hate the Jehovah's Witnesses and the government will not protect the Jehovah's Witnesses.
43. The applicant provided detailed evidence about the Jehovah's Witness faith and his involvement with the Jehovah's Witnesses in Lebanon. His mother was a Jehovah's Witness. He wanted a good relationship with God and made his own commitment to the faith at [age deleted: s.431(2)] years of age. He was baptised in 1992.
44. In Lebanon he was a member of the [Town 1] congregation. He has been a member of that congregation since 2000. There are about [number deleted: s.431(2)] people in that congregation. They all know each other very well. Asked if he was aware of anyone from that congregation who had previously been to Australia and sought protection, he stated that he did and provided the names of three people.
45. He stated that his congregation faced many difficulties and members of the faith face constant abuse. The neighbours were annoyed by them and complained to the authorities and this led to their meetings being closed. People hate Jehovah's Witnesses for several reasons and feel justified to abuse and insult them.
46. Asked about the most recent incident that occurred to him, he stated that he faced constant abuse, but the strongest incident occurred in 2006 when he went witnessing and was talking to a man about the holy bible. The man asked them to wait at the door and walked inside his house. When he walked back he had rifle in his hand and told the applicant and his friend that if he saw them again he will shoot them. They knew he was serious. He stated that if the man had committed the crime he would not be sentenced for it because no one would pursue the case because no one sympathises with the Jehovah's Witnesses. He stated that he will be subjected to serious harm if he witnesses.
47. Asked if there were any other incidents, he stated that before and after that incident he has been the subject of constant verbal abuse and ridicule. When the religious clergy find they are in the area preaching they approach them, abuse them and ask them to leave the area. They were restricted from even entering some areas and were warned that if they entered those areas they could just disappear and no one would know about them.
48. He stated that when he and his wife arrived in Australia they stayed with their friends, [Mr and Mrs F]. They started attending the [Suburb 2] congregation Kingdom Hall because that is the congregation that their friends attended. The applicant provided detailed evidence about his involvement, as Elder, with the congregation in Australia including details of his

extensive witnessing activities, stating that in some months he had dedicated up to 30 hours for witnessing.

49. He provided detailed information about the Jehovah's Witness beliefs on blood transfusion, and on request, provided to the Tribunal his prohibition to blood transfusion card, which he carried with him. A copy of the card is on the Tribunal's file.
50. He provided details about the dangers of preaching in Lebanon and stated that preaching to Muslims in Lebanon is just not allowed. They would be seriously harmed if they did this. In Australia he has the freedom to preach to all people, including Muslims. He approaches people, including many Muslims, and lets them know openly that he is a Jehovah's Witness and tells them directly about the doctrine in the bible. He is not afraid to share his religion with all people in Australia.
51. The Tribunal put to the applicant that the country information does not indicate that there is targeting of Jehovah's Witnesses in Lebanon by the State authorities. It also put to the applicant that there is little evidence to indicate that the Jehovah's Witnesses face harm by non-State actors. It explained to the applicant that while there is some evidence that while witnessing (proselytising) Jehovah's Witnesses may face hostility or harassment, there does not appear to be much evidence that they suffered serious harm as a result of doing so.
52. The applicant stated that while there may not be official targeting of Jehovah's Witnesses by the authorities, they do not accept that it is a religion in Lebanon. Witnesses are always persecuted and subjected to abuse. They are harmed, they get hit and beaten, and often get chucked out of areas while witnessing. He stated that one example was his sister in law, who was witnessing and a resident called the police and she was taken to the police station for 4 hours. He stated that maybe not all incidents are reported, but Jehovah's Witnesses are under so much pressure and are not able to practice their religion freely in Lebanon.
53. The Tribunal put to the applicant that in his written statement he stated that the local Maronite dioceses and the Lebanese intelligence unit were monitoring his congregations and has conducted raids on two occasions. That the Maronite Church is calling for closure of the congregation and that they were forced, on many occasions to abandon the congregational building. The Tribunal explained to the applicant that he had only referred to one incident in his evidence. The applicant stated that attempts to shut their meetings occurred many times. He stated that it was personal, the clergy would come to the group in person and try and shut the place down. Many attempts were made to shut their meetings. In their area they faced a lot of hostility from the clergy who tell individuals not to open the door to them and not to speak to them. Some of the churches also tell people to put signs on the door that say 'no Jehovah's Witnesses' allowed.
54. The Tribunal took evidence from the applicant wife. She stated that her mother was a Jehovah's Witness and had raised her as a Jehovah's Witness. She made a personal commitment to the faith in 2000. She stated that they were not allowed to freely preach about their faith because the Jehovah's Witness are not recognised as a religion in Lebanon. However, they continued to witness because their religion says that they have to do so. Personally she has been subjected to a number of incidents and threats but there was no actual violence.
55. Her evidence regarding her and the applicant's circumstances in Lebanon, marriage, travel to Australia and practice of the Jehovah's Witness faith, in Lebanon and in Australia, was substantially consistent with the first applicant's evidence to the Tribunal.

56. She provided details of her involvement with the Jehovah's Witness [Suburb 2] congregation and details of her extensive witnessing activities in Australia.
57. She stated that they are applying for protection because they want to practice their religion freely. In her home country she may not have been officially targeted but she has been restricted from practicing her religion because she cannot preach to everybody.
58. The Tribunal then called the witnesses who had attended the hearing, and after discussing with each of the witnesses the evidence that they wished to provide, the Tribunal decided to take evidence from [Mr D], who was from the same congregation as the applicants in Lebanon. All the other witnesses indicated that they had attended to provide evidence about the applicant's commitment and involvement with the Jehovah's Witness since his arrival in Australia.
59. [Mr D] stated that he was baptised as a Jehovah's Witness in 1998. His family are all Jehovah's Witnesses. He has known the applicant for many years. They attended the same congregation in Lebanon, the [Town 1] congregation, where his parents used to also attend. His parents and sister were granted protection visas in Australia because they are Jehovah's Witnesses. He gave detailed evidence about the applicant's involvement, and witnessing activities, in Australia.

Country Information – Lebanon – Jehovah's Witnesses

60. The Tribunal has considered the information in the RRT Country Advice: Lebanon LBN38401, 10 March 2011, regarding the situation of the Jehovah's Witnesses in Lebanon, which is detailed as follows:
61. According to the United States Department of State (USDOS), the Lebanese constitution provides for "freedom of religion and the freedom to practice all religious rites, provided that the public order is not disturbed".¹ There are 18 officially recognised religious groups in Lebanon, four of which are Muslim, twelve Christian, the Druze and Judaism.² Jehovah's Witnesses is not an officially sanctioned religion in Lebanon.
62. Formal recognition by the government is a legal requirement for religious groups to conduct most religious activities. Unrecognised groups can be disadvantaged under the law in that their members may not qualify for certain government positions. Unrecognised groups may own property and assemble for worship without government interference; however, they are disadvantaged under the law as they may not legally marry, divorce or inherit property in Lebanon.³ Although there are no legal barriers to proselytising, traditional attitudes discourage such activity.⁴
63. In Lebanon, there are an estimated 3,613 Jehovah's Witnesses making up 70 congregations, many of which are located in Qalamoun and Akkar.⁵ In 2010, an article in the

¹ US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section II.

² US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section I

³ US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section II.

⁴ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Lebanon*, 11 March, Section 2.c.

⁵ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November
<http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#> .

LA Times reported on an undercover Jehovah's Witnesses congregation outside Beirut. It is estimated that there are over 15 'Kingdom Halls' in Lebanon, which appear to be tolerated by the community, and well attended despite members' fears that they could be harassed or deported. According to the article, Jehovah's Witnesses say they feel like an oppressed and silenced minority, particularly vilified by the Maronite community who reportedly spread lies claiming Jehovah's Witnesses are Jews.⁶

64. According to USDOS, each officially recognised religion has its own court system to adjudicate matters of personal status, including marriage, divorce, inheritance and child custody according to each religion's principles.⁷ As they are not officially sanctioned, Jehovah's Witnesses have no such court. As a result, Jehovah's Witnesses cannot get married in Lebanon, and must travel abroad to do so. As a non-recognised religion, Jehovah's Witnesses are unable to officially register their houses of worship, and are therefore excluded from the property tax exemption enjoyed by churches and mosques. Instead, Kingdom Halls are registered as private property owned by individuals.⁸ Another issue encountered by Jehovah's Witnesses relates to identity cards, which display an individual's religion, but only those that are officially recognised. Jehovah's Witnesses reportedly defer to their ancestral religious traditions on their papers.⁹

65. In an article in NOW Lebanon, 2008, it was reported that a prominent Christian identity Father George Rahme regularly denounces JW's on his weekly television programme, and reportedly encourages viewers to "keep a stick near their door to beat any Witnesses who visit."¹⁰ It was noted that, by definition, Jehovah's Witness members are required to proselytise as a key tenet of their faith, but reception to their proselytising in Lebanon is mixed, with one member claiming he has been beaten, assaulted and has had doors slammed in his face.¹¹ According to NOW Lebanon, abuse is not the standard reaction encountered by Jehovah's Witnesses. Many non-Jehovah's Witness Christians in Lebanon, particularly Maronites, put signs on their doors warning Jehovah's Witnesses against knocking.¹²

66. DFAT reports stated the following with respect to the position of Jehovah's Witnesses in Lebanon:

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, JW's 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

⁶ 'Lebanon: In Muslim Middle East, Jehovah's Witnesses congregate in secret' 2010, *LA Times*, 17 April. <http://latimesblogs.latimes.com/babylonbeyond/2010/04/lebanon-christian-muslim-religion-jihad-beirut-illegal-underground.html>.

⁷ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Lebanon*, 11 March, Section 2.c.

⁸ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#>

⁹ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#>

¹⁰ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#>

¹¹ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#> – Accessed 19 June 2009

¹² Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#> – Accessed 19 June 2009

recognised and frequently followed process by Lebanese couples not wishing to marry in a religious ceremony.

...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.

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.

o 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.

67. According to the Immigration and Refugee Board of Canada Country of Origin Research Response LBN43573FE of 8 November 2005:

The following information on the situation of Jehovah's Witnesses in Lebanon was provided in 4 November 2005 correspondence sent to the Research Directorate by the General Counsel for Jehovah's Witnesses, whose office is in Patterson, NY.

On 27 January 1971, the Lebanon Council of Ministers banned the work of Jehovah's Witnesses and prohibited the dissemination of their literature, prompting an appeal to the Lebanon Supreme Court. In 1997, the ban was upheld by the Lebanon Supreme Court; a second appeal following the 1997 dismissal has still not been resolved.

There are approximately 3,500 Jehovah's Witnesses and over 70 congregations in Lebanon. They "are able to enjoy a degree of freedom of movement and to worship discreetly. Even so, we consistently learn of individual instances of harassment and intimidation by local authorities." For example, the police have prohibited congregations from meeting for worship. In March 1997, following the Supreme Court's decision to uphold the ban, the Lebanese authorities closed three Kingdom Halls (houses of worship).

Since Jehovah's Witnesses are not officially recognized, they face certain problems: "They are usually discriminated against in divorce and custody cases involving a non-Witness marriage mate [. . . and] ministers of Jehovah's Witnesses cannot perform legal marriage ceremonies." Furthermore, civil marriage is not an option for Jehovah's Witnesses.

In 2000, a Lebanese court convicted two sons (one of whom is a Jehovah's Witness) for following Jehovah's Witnesses' rites when burying their father rather than observing a state-sanctioned Christian burial rite. "Since Jehovah's Witnesses have no legal recognition, they have no constitutional right to freedom of religion," was the court's ruling.

Information corroborating that provided by the General Counsel for Jehovah's Witnesses could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

68. The Tribunal has also consulted the Jehovah's Witnesses official website which provides details about the Jehovah's Witnesses' requirement to proselytise and the importance of door-to-door evangelism.¹³

FINDINGS AND REASONS

69. The applicants claim to be citizens of Lebanon. On the basis of the applicants' Lebanese passports, which the Tribunal sighted at the hearing, the Tribunal accepts that the applicants are citizens of Lebanon and has assessed their claims against Lebanon as their country of nationality.
70. The applicant husband claims that he is a Jehovah's Witness. He claimed that he was baptised into the faith in 1992 and has been an active member of the Jehovah's Witnesses in Lebanon. He claims that in Lebanon he is not able to freely practice a core tenet of his faith, namely proselytising, and that if he did he would suffer serious harm. He claimed that he suffered verbal abuse, harassment and threats because of he is a Jehovah's Witness in Lebanon. He claimed that he refused to undertake compulsory military service because of his religious convictions, and that as a result he had suffered physical and verbal abuse at the hands of military commanders. He was convicted by a military court and imprisoned for a period of one and a half years. He claims that the Lebanese authorities will not protect him. The applicant wife also claims that she is a Jehovah's Witness. She claimed that in Lebanon she has had to reduce her proselytising activities for fear of being harmed. The applicants claim that they continue to be committed and active members of the Jehovah's Witness faith and that they have been actively involved with the Jehovah's Witness congregation in [Suburb 2] since their arrival in Australia.
71. On the basis of the applicants' written and oral evidence, letters from the Jehovah's Witness service committee, [Town 1] congregation, in Lebanon and the evidence of [Mr D], the Tribunal accepts that the applicants were active and committed members of the Jehovah's Witness faith in Lebanon.
72. On the basis of the applicant's detailed oral evidence and penal record the Tribunal accepts that the applicant husband was physically and verbally abused by the military, and imprisoned, for his refusal to undertake military service and that his refusal was because of his religious beliefs.
73. On the basis of the applicants' detailed oral evidence, which is consistent with the country information before the Tribunal, the Tribunal accepts that the applicants have experienced incidents of harassment, abuse and threats of harm in Lebanon because they are Jehovah's Witnesses.

¹³ www.watchtower.org

74. On the basis of the country information before it, the Tribunal accepts the applicants' claims that Jehovah's Witness adherents are required to proselytise as a key tenet of their faith. The Tribunal also accepts, with confidence, that the applicants are deeply committed Jehovah's Witnesses, who view the practice of witnessing (proselytising) as a core tenet of their faith and who are committed to witnessing to all people as their faith commands. The Tribunal makes this finding on the basis of the compelling, and consistent, oral evidence provided by the applicants at the hearing. The Tribunal also places significant weight on the corroborative evidence of the witnesses who attended the hearing and the written letters of support from [Mr A] and [Mr E].
75. The Tribunal will now turn to determine whether the applicants have a well-founded fear of persecution for reason of their religion if they returned to Lebanon.
76. The country information before the Tribunal indicates that adherents of the Jehovah's Witness are generally able to practice their religion without interference. It further indicates that there are no legal barriers to proselytizing in Lebanon and no cases had been brought against Jehovah's Witnesses for proselytizing. However, the independent information also suggests that Jehovah's Witnesses in Lebanon are not able to practice their faith freely, especially with respect to proselytizing. The country information suggests that Jehovah's Witnesses are particularly vulnerable to hostility from individuals and various groups in Lebanese society. Traditional attitudes in Lebanese society discouraged proselytizing and members of the Jehovah's Witness faith claim to have experienced beatings, assault and had doors slammed in their faces. The country information further indicates that Jehovah's Witnesses are vilified by the Maronite community who regard them as heretics and spread misinformation about them, suggesting they are Jews. There are also reports that religious figures publicly denounce the Jehovah's Witnesses, and one prominent religious figure had encouraged followers to beat Jehovah's Witnesses if they visited them. The country information also indicates that Jehovah's Witnesses may be vulnerable to 'hassle' from the security forces, if for example, someone held a grudge.
77. On the basis of the country information before it, the Tribunal accepts that the circumstances for Jehovah's Witnesses in Lebanon are extremely difficult and that Witnesses are particularly vulnerable to incidents of serious harm, especially if they chose to openly practice their faith, and especially with respect to the practice of proselytizing.
78. As stated above, the Tribunal accepts that the applicants are committed to the Jehovah's Witness faith and that they would continue to practice their religion if they returned to Lebanon. The Tribunal also accepts the applicants' claim that they have not been able to freely proselytise in Lebanon for fear of being harmed by people who are opposed to the Jehovah's Witness faith. The Tribunal accepts that if it were not for the increased risk of harm from individuals hostile to the Jehovah's Witnesses, the applicants would proselytise, as required by their faith, if they returned to Lebanon.
79. Although the applicants have faced few incidents of serious harm in the past in Lebanon, the Tribunal notes that this was the result of the applicants restricting their religious activity, especially with respect to proselytising. In relation to this, the Tribunal has considered the comments made by McHugh and Kirby JJ in *Appellant S395 v MIMA* (2003) 216 CLR 473, [40]:
- ...persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the

person affected must take steps - reasonable or otherwise - to avoid offending the wishes of the persecutors.

80. Accordingly, requiring the applicants to modify their behaviour by reducing, or ceasing, their proselytising activities would amount to them suppressing their religious activities and would, in the Tribunal's view, amount to persecutory curtailment of their religious expression. It would be erroneous for the Tribunal to expect the applicants to suppress their religious activities to avoid harm in Lebanon. The Tribunal accordingly finds that the suppression of the applicants' religious activity of proselytising, and the harm they would face (including harassment, intimidation and physical violence), if they were to proselytise, amounts to serious harm.
81. On the evidence before it, the Tribunal finds that there is a real chance that the applicants will suffer the feared persecution, which the Tribunal finds involves serious harm, as required by s.91R(1)(b), if they return to Lebanon. The Tribunal also finds that the harm feared by the applicants involves systematic and discriminatory conduct, in that it is deliberate or intentional and involves selective harassment for a Convention reason, s.91R(1)(c). The Tribunal also finds that the essential and significant reason for the applicants facing a real chance of persecution in Lebanon is the convention reason of religion.
82. The Tribunal finds that the applicants would not be able to avoid the harm feared by relocating to another part of Lebanon. The country information indicates that the hostility towards the Jehovah's witnesses is the same throughout all of Lebanon. Moreover, the applicants' proselytizing activities would put them at risk of harm anywhere in Lebanon.
83. The Tribunal has also considered whether the applicants could seek protection from the State. In this case, the applicants mainly fear the actions of private individuals in Lebanon. Persecution by private individuals brings the applicants within the Convention if the State has failed, or is unable, to protect them from persecution.
84. The Tribunal accepts the applicants' claim that the authorities in Lebanon will not protect them as this is consistent with the country information before it. Jehovah's Witnesses are not officially recognised in Lebanon and their meetings are technically unlawful as they fall within the laws prohibiting assembly "in a place open to the public" for twenty or more persons "whose attitude is likely to offend public peace" The independent evidence also indicates that there is a climate of disapproval and hostility towards the Jehovah's Witnesses by the State and that authorities are reluctant to intervene in attacks on Jehovah's Witnesses. Earlier reports also indicate that individuals had been harassed and intimidated by local authorities, and that some Jehovah's Witness congregational meetings had been prohibited by police. The country information further indicates that security authorities consider attempts to convert people's faith as 'trouble making', and that Jehovah's Witnesses are vulnerable to hassle from security forces. On this basis the Tribunal finds that State protection is not available to the applicants.
85. For the purposes of s.36(3), the Tribunal is satisfied on the evidence before it that the applicants do not have a legally enforceable right to enter and reside in any other country other than their country of nationality and so are not excluded from Australia's protection by s.36(3) of the Act.
86. For the reasons stated above, the Tribunal finds that the applicants have a well-founded fear of persecution for reasons of their religion if they return to their country of nationality. The Tribunal finds that the applicants are unwilling, owing to their fear of persecution to avail themselves of the protection of the government of Lebanon. Accordingly, the Tribunal finds

that the applicants have a well-founded fear of persecution in Lebanon for reason of their religion.

CONCLUSIONS

87. The Tribunal is satisfied that each of the applicants is a person to whom Australia has protection obligations. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

88. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.