

1502689 (Refugee) [2016] AATA 4283 (15 August 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1502689
COUNTRY OF REFERENCE:	Lebanon
MEMBER:	Rodger Shanahan
DATE:	15 August 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 15 August 2016 at 3:25pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a **citizen of Lebanon**, applied for the visa [in] December 2014 and the delegate refused to grant the visa [in] February 2015.
3. The applicant appeared before the Tribunal on 3 August 2016 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A]. and [Mr B]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

CLAIMS AND EVIDENCE

Protection Visa Application

5. The applicant comes from a conservative Muslim family of [number] children but claimed that was attracted to boys from the time he was a teenager. He tried to ignore these feelings because of the circumstances that he found himself in living in Lebanon. If his family had found out his brothers would have beaten him to death.
6. He arrived in Australia on a student visa in October 2009 and realised that sexuality was a private issue and he felt that he could be free. He was only his true self when not around his family because he knew this could be relayed to his family in Lebanon. He felt liberated around his friends and alive.
7. In December 2012 he was at a party and had a little too much to drink and kissed a man he had been talking with. He decided to stop himself and didn't exchange numbers as he didn't want his [relatives] to find out. After this party he began to frequent gay clubs, mostly [club name]. On a Friday night he was feeling ready to explore his sexuality and downloaded Grinder and found a man living only [distance] away. He drove to the man's house and he was let in. They had a glass of wine and things became heated and they had sex.
8. He was still coming to terms with having given open expression to his homosexual identity. He cannot return to Lebanon as having a same sex relationship is illegal and unacceptable in the community. If his family found out he would be killed.

Tribunal Hearing

9. The applicant was asked when the photos that he submitted had been taken given they were undated and he claimed the party photos were more than two years old. Asked to be more specific he claimed it was exactly two years. He claimed that he feared that his family would find out that he was gay and that he would be killed because they were very religious. They had forced him to pray five times a day and worship God and they considered homosexuality to be a big wrong. His other relatives and people in his village would also physically target him if they knew he was gay. He had no other claims but said the government was unable to protect him.
10. He had been attracted to men from the age of [age] and came to Australia when he was [age]. He attended [University] in [location] and stayed with his [sibling], who paid for all of his fees

given he wasn't allowed to work more than 20 hours a week. There was someone from his village that also attended the same university that made him nervous that news about his sexuality may get back to his village.

11. The applicant did [a course] at university from [years]. Before this he studied English at a different institute at the same location. The person from the village did the same [course] but he then said the person was at the university but did a different course. He then said the person did do the same course as him. The applicant dropped out of university as he couldn't pay the fees and went to [another] Institute in the city instead.
12. While at university he found people did whatever they wanted without the government interfering and he found out about gay clubs. He used to go to these once or twice a month. His [sibling] wouldn't allow him to go out at night because he was new and his [sibling] paid his expenses so he had to listen. He was asked why he didn't just tell his [sibling] he was going out.
13. He would then tell the [sibling] that he was going to his [Relative 1]'s but then go out to the club. Asked if his [sibling] would check on him, he claimed that the [sibling] would sometimes ring the [Relative 1] and she would tell the [sibling] that the applicant had gone out with the boys. It was put to him that he had said his [sibling] was controlling and wouldn't let him go out and yet [sibling] was happy for him to go to his [Relative 1]'s and then go out, which seemed inconsistent.
14. He claimed the [Relative 1]'s house was about [number] minutes' drive and the boys would hang out there, so his [sibling] thought he was going there. It was put to him that he had said the [Relative 1] would tell the [sibling] that the applicant had 'gone out' with the boys. He then claimed his [sibling] was concerned that he went out on his own. His [Relative 1] didn't know he went to a gay club as she would not have approved.
15. He would return about 12 midnight or 1 am. He was asked how his [sibling] never found out that he went out on his own until these hours, given [sibling]'s controlling nature. He would go to his [Relative 1]'s two or three times a week but his [sibling] didn't call every time. He told his [Relative 1] he was going out with his friends; his [Relative 1] also went to Lebanon for a period and he stayed there. Asked if he had mentioned his [Relative 1] covering for him previously, he claimed he didn't but said he had slept at his [Relative 1]'s house.
16. Asked how he covered the expenses of going to clubs, he claimed he was given enough money to go out. He would eat at home to save money to go out. He began going to gay clubs about a year after he came (2011) because he knew how to move around and got a car. Asked why he didn't go for 18 months, he claimed he was worried because he had friends from the village at his university and everyone knew everyone. If he was walking the street and someone he met at a gay club came and talked to him, and he was seen by the person from the village he would then report him back to his [sibling]
17. Asked why he began going if this was a fear, he claimed he had to go out and he began going to mixed clubs to begin with. He was asked again why he thought circumstances had changed that made him comfortable to go to clubs; he claimed he had gained confidence to move around on his own and went to mixed clubs. He was afraid that his [sibling] would find out. Once he worked in [suburb] with his [sibling] and the mardi gras was on. His [sibling] told him to go home and the applicant told [sibling] he had 45 minutes to get home and [sibling] would phone to make sure he had arrived. This was how opposed to gays his [sibling] was.
18. It was put to him that his [sibling] would not have been happy for him to study at a university right in the middle of gay [city] where he could have studied elsewhere. He claimed his [sibling] wasn't educated and he had just chosen this university because it was cheap and was done through an agent in Lebanon. His [sibling] paid for his university.

19. Asked how he had expressed his homosexuality in Australia (he claimed he had no homosexual experiences in Lebanon). Here it took him a while to try it. Once he was out with his friends. He had a few drinks with uni friends (he didn't drink much as he got drunk easily). He began talking to someone who then asked the applicant to kiss him and he did. After this he looked around for some gay apps and then downloaded Grindr. Two days after the kiss incident he was in a club called [name] and heard someone talking about the application Grindr. It was put to him that he had said he only went out once or twice a month but here he had gone out two nights out of three.
20. He claimed he told his [sibling] he was out for a dinner for university. He heard people talking about apps that could be downloaded. He didn't know about the application as there were problems with the internet in Lebanon. It was put to him that he had been in Australia for two and a half years and it was strange that he knew nothing about it as a way of meeting men. He claimed he was too scared all the time.
21. He began an account and created a profile in his car and found someone nearby. The profile was in a different name but he no longer had the account. He used different apps and had to have separate email addresses so he had too many and deleted them. He had no way of showing he had a Grindr account as he didn't expect he would need it. He got a person's address, drove there (behind [name] St) and had sex with this man that night only.
22. He never maintained contact as he was worried the person would find out his identity and visit him. Asked how he could find the applicant's identity, he claimed he would have had to tell him his name if he wanted to start a relationship. Asked how his [sibling] would find out he had anonymous sex using the name [deleted] with someone he didn't know. He claimed he was worried that if he started a relationship his [sibling] would find out. He was asked again how his [sibling] would find out and he claimed that he was scared and kept on worrying someone would find out. He was asked how this could be feasible and he claimed that he just panicked in his mind, particularly as he relied on his [sibling] for his money.
23. He was asked and said he really liked the sexual experience. He was asked why he didn't continue to find one-off sexual partners using Grindr; he knew how to use the system and enjoyed the experience. He claimed he tried and couldn't find anyone he liked. It was put to him that he had found someone to have sex with after 30 minutes yet he couldn't find anyone in the next four years. He claimed he had been tipsy and had tried but had travelled to [another Australian State] and [city] to work and was busy working to save money.
24. It was put to him that it had been four years since the encounter and lots of people worked and still used Grindr and had sex. He claimed he had different thought processes and kept going to clubs but couldn't find anyone he was attracted to. He had [an injury] [number] years ago and couldn't do anything as a result. He didn't feel safe and couldn't walk or protect himself. It was put to him that he had two years since his sexual encounter before he [injured himself] but had no sexual encounter. He repeated what he had said about not finding anyone.
25. He was asked why he would feel the need to express himself sexually in Lebanon if he didn't in Australia. He claimed there were already people in Lebanon who knew he was gay and the family continued to ask why he wasn't married. Asked to confirm that people in Lebanon knew he was gay he said he wasn't sure. It was put to him that he had said people knew he was gay; he claimed he hadn't said people knew, just that he wasn't sure if they knew.
26. Asked why they would think he was gay just because he wasn't married, he then said that a [relative] knew. He was again asked to clarify who knew he was gay and he claimed it was his [Relative 2] [Mr B]. The applicant had stopped studying and then worked for [Mr B] and wanted to know if he could get a working visa for him. The visa didn't work and on their way to [city] he

told him he was gay. The applicant claimed that he has unsuccessfully applied for [number] working visas and then applied for a protection visa.

27. The applicant had [injured himself] at [Mr B]'s work and [Mr B] had then taken him to nightclubs ([names]). They went 3 or 4 times, the last time was 6 or 7 months ago. His [Relative 2] went with the applicant but had drinks with another [relative] of theirs, while the applicant spoke to other men. He had also told [Mr A] that he was gay and he was okay with that. The applicant just went to the clubs, had a few drinks and then left to go home with his [Relative 2]. He would just speak to other people but had no relationship because he felt insecure. He had gone to clubs around 5 times with [Mr A], the last time a few months ago.
28. Asked if he was in contact with any gay community or support groups, he claimed that he hadn't. It was put to him that if he was trying to find his way in the gay community, it would be reasonable that he would try to contact them, particularly as there were some ones for Arabs and online. He claimed that if there was a gay Arab nightclub not all the Arabs there would be gay; he was afraid his [sibling] would find out. He claimed that he went to a club once and a Lebanese who visited their shop went to the club and he left; in another club he saw someone from their village and had to leave. It was put to him that it was coincidental that he had studied with someone from his village and another in the club and he agreed.
29. It was put to him that there was [name] dance club, Queer Muslims Australia and Helem for Muslims and Arabs and it was strange that he had made no attempt to contact any gay support group at all during his years in Australia. He claimed he had been in Lebanon for [number] years and was scared and had been scared for the first years in Australia. Concerns were raised regarding the absence of any independent corroborative evidence that may support this claim. He claimed that he hadn't intended to apply for protection and wanted to hide his homosexuality so he didn't have evidence.
30. Concerns were raised that he had been on a student visa that finished, [number] failed to get a working visa and had a delay of years before applying for protection, with a lack of evidence that he was gay or connection with any gay group so the Tribunal had concerns that this was just an effort to remain in Australia. He claimed when he came to Australia he relied on his [sibling], had poor language and was in Australia and knew there were other ways to remain in Australia, such as being married but he didn't want to do this.
31. It was put to him that the psychologist's letter made no mention of his homosexuality and said that he had no history of emotional or psychological difficulties yet he had claimed that he had been in very dark times in Lebanon. He claimed he went to the psychologist for depression because of his [injury], and the difficulties he referred to related to his time in Australia. It was put to him that the letter said there was no history, not just in Australia. He repeated he only had to talk about his [injury] to the psychologist, and was asked why he submitted the letter.
32. He claimed that he wanted it to show that he was depressed and couldn't go out. It was put to him that it appeared from what he had said he did go out to clubs with his [relatives]. He claimed that he did not go out all the time and the last time was a few months ago. He was told about s 91R(3) and it was put to him that the photos he had submitted showed an anonymous club and they could just have been taken to show he had been to a gay club as it showed him in some circumstances such as kissing someone on the cheek and standing next to a drag queen. He claimed they had been taken some years ago and he had been asked to bring in photos that he had so he did.
33. The first witness ([Mr A]) was brought in and said he had been with the applicant and saw that he was gay. The witness claimed they went clubbing and he went home alone as the applicant went home with another guy. This occurred more than a dozen times and the people the applicant went home with were gay sexual partners but only for the night. He had no idea

whether the applicant was connected to any gay groups. They had last gone out to a club or pub when the applicant [injured himself], which was around April 2014.

34. The second witness ([Mr B]) claimed that the applicant was his best friend and they went to gay clubs and he knew from the way he lived his life meant he was gay. He wasn't attracted to women and gave an example of when they were going to pick two attractive women who were going to enter their car at [suburb] but the applicant drove away instead. The applicant had had [number] male sexual partners; he went home with three of them definitely. He knew this as he went out with the applicant and was present. This had occurred within the last two years (since he had [injured himself]).
35. The applicant was advised about s 424AA and it was put to him that two witnesses; the first said the applicant had more than a dozen sexual partners, while the second had definitely three and perhaps more partners since he had [injured himself]. They were inconsistent with each other and with what the applicant had claimed. He claimed he didn't know why they didn't tell the truth and didn't really know what he did. They knew he had only one sexual partner.

CONSIDERATION OF CLAIMS AND EVIDENCE

36. The applicant arrived in Australia on a student visa [in] October 2009. He [number of times] unsuccessfully applied for temporary working visas and then applied for a protection visa [in] December 2014.
37. The Tribunal has sighted the applicant's passport and is satisfied that he is a citizen of Lebanon. He is a [age] single Lebanese male. He claimed that he feared being killed by his family for being homosexual. He had no other claims.
38. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth. Nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant.
39. I have taken into account a letter provided by the applicant pre-hearing from a psychologist that indicates the applicant had moderate levels of [certain] symptoms. I note however, that this was a consequence of seeing the psychologist in relation to his [injury] and that the letter made no reference to his alleged homosexuality.
40. The letter also claimed that the applicant 'denied any significant traumatic or distressing life events prior to his accident' which was inconsistent with the applicant's claim that he had been in very dark times in Lebanon because of his homosexuality. I do not accept that there is anything in the letter that would explain the applicant's inconsistencies in his testimony nor (as claimed by the applicant post-hearing) that this would explain the lack of corroborative evidence regarding his homosexual identity.
41. I found the applicant's evidence regarding his claims to lack credibility. For reasons set out below I did not find the applicant to be a reliable, credible or truthful witness, and find that he fabricated his claim in order to be granted a protection visa.

Homosexuality

42. I do not accept that the applicant is gay or bisexual, that he kissed a man at a party, frequented gay clubs other than to stage a photo shoot, had sex with a man he met through Grindr, that he had told any family members that he was gay or that people in Lebanon suspected or knew that he was gay. While there is no precise test to determine one's sexuality I have taken into

account the applicant's actions since being in Australia, as well as the inconsistencies throughout his evidence and that of his witnesses to come to this conclusion.

43. To begin with, despite claiming that he was interested in males in Lebanon he made no claim regarding homosexuality until after his student visa had run out and [number] attempts had been made at procuring a working visa. This was despite the fact that he claimed he felt trapped in Lebanon and that it was a 'very dark time for me when I could not express my true nature' (folio 46). In a later statement he claimed that he had already experienced the hatred that the Lebanese people have towards gay people (folio 63) when he saw a gay from his village being hit.
44. Despite this, he waited over five years before he applied for protection. I do not accept that he was afraid to do this for fear what his [sibling] would do if he found out because of his reliance on [sibling] financially. He could have applied for protection at any stage without his [sibling] knowing that he had done so, yet never did. I do not accept that he would be too afraid to do this, yet not be too afraid to secretly visit gay clubs.
45. I do not accept that he ever kissed another man at a party. This relies entirely on his own oral evidence and, as I have outlined below I have not found the applicant to be credible.
46. I do not accept that the applicant ever used Grindr or any other gay dating application. Despite claiming to have had a sexual relationship with a man he met one night using Grindr, there was no evidence that he produced that could support the claim that he had ever been utilising a gay dating app using an alias or otherwise, which could overcome the doubts the Tribunal had about the credibility of his claim. Given he had claimed to have enjoyed the sexual experience and did it without being found out, and claimed that he knew how to use Grindr as a consequence I do not accept that he didn't ever seek to use it to gain other partners subsequently.
47. There is also no corroborative evidence that indicates he has ever had a profile, let alone been active on any gay social media sites. I do not accept that he deleted his profile because he had so many that he lost track of the email logons or that he never found someone again that he was attracted to. Given he claimed that he found his only gay sexual partner after 30 minutes on Grindr it lacks credibility that he then never found anyone in the four years after that with whom he could have sexual relations.
48. I have taken into account the testimony provided by his witnesses (one of whom he claimed was his [Relative 2]) although lend them little weight given they were inconsistent with what the applicant himself had claimed. The applicant claimed that he had only kissed one person and had sex with one person since he had arrived in Australia, yet his first witness said that he knew the applicant had sex with more than a dozen people as he had been at clubs with him, while the other witness said the applicant definitely had sex with three men and perhaps [number] more. The applicant himself had never said that he had gone home with anyone, and indeed stated that when he went to clubs with his [Relative 2] they would have a few drinks and he would leave with his [Relative 2]. The witnesses' testimonies are wildly inconsistent with the applicant's claim and further indication that his claim to be homosexual has been fabricated, as has the testimony of the two witnesses.
49. The applicant has made no effort to contact any gay support organisation in [Australia] even though there are ones for Arabs and Muslims. Country information¹ indicates that there is an active scene for Arabic-speaking gays in [Australian city], including ones that create a safe space for gay people. Given his claim that he is still afraid of running into people who may

¹ 'The Only Gay Arab in the Village', The Music, 2 March 2014
<http://themusic.com.au/interviews/all/2014/03/01/patrick-abboud-mardi-gras-sbs/24204/>, accessed 31 March 2014

know, or that his [sibling] may have found out about his homosexuality, it is reasonable to believe that he would have sought out a safe space that would allow him to express the homosexuality.

50. I have taken into account the photos he provided pre-hearing. However, given they appear to be staged and are undated and without any identifying details as to where they were taken, as well as the fact that the applicant has not presented as a credible witness, I give them little weight as proof of his homosexuality. As I advised the claimant during the interview, s.91R(3) requires me to disregard this conduct and the photos in determining whether the claimant has a well-founded fear of persecution if I found that it was carried out for the sole purpose of strengthening his refugee claim.
51. A have also taken into account the post-hearing submission provided by the applicant's agent, however there is nothing contained within it that submission that would outweigh any of the concerns that I have outlined regarding the credibility of the applicant or of his claims.
52. Because I do not accept that the applicant is homosexual, it follows that nobody would simply assume he was gay nor that anybody would have seen him in, or associated him with gay venues; or reported back to Lebanon by whatever means any information that would mean he would be imputed with being gay. Given that I found the photos to have been staged he was in control of the situation and of the photos themselves so I am also satisfied that they would not somehow find themselves in someone's possession which would mean he would be imputed with or perceived to be gay. As a consequence I do not accept that he would be killed on return to Lebanon for being gay.
53. As the applicant hasn't raised any other claims to fear persecution, and having had regard to all the evidence, and the applicant's claims both singularly and cumulatively, the Tribunal finds that the applicant does not have a well-founded fear of persecution for any Convention reason either now or in the reasonably foreseeable future.

Complementary Protection

54. Although I have disregarded the photos for the purposes of the applicant's refugee claims, I have had regard to them in assessing his claims relating to s.36(2)(aa). Because I do not accept that the applicant is or would be perceived to be gay, or that any of his relatives or friends in Australia or Lebanon believed him to be gay, he would not show the photos to anyone in Australia or Lebanon and I am not satisfied that there are any substantial grounds for believing that there is a real risk that the applicant will suffer significant harm.
55. As a consequence I also do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that the applicant will suffer significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa).

CONCLUDING PARAGRAPHS

56. For the reasons given above, the Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant **does not satisfy** the criterion set out in s.36(2)(a).
57. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

58. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).]

DECISION

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

Rodger Shanahan
Member

ATTACHMENT A – RELEVANT LAW

1. 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

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

3. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

4. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines, and DFAT country information assessments – to the extent that they are relevant to the decision under consideration.