

1411598 (Refugee) [2016] AATA 3368 (24 February 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1411598
COUNTRY OF REFERENCE: Lebanon
MEMBER: Christine Cody
DATE: 24 February 2016
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 24 February 2016 at 3:52pm

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

BACKGROUND

1. The applicant is a national of Lebanon who seeks to be granted a Protection visa under s.65 of the Migration Act 1958 (the Act). He claims that he is bisexual and will face persecution and significant harm for this reason upon return.
2. The applicant applied for the visa to the Department of Immigration [in] February 2014. In support of his application he provided an application form, a statement, and supporting documents. The applicant attended an interview with the delegate. The delegate did not accept that the applicant was bisexual as claimed (nor did she accept that he was homosexual) and she refused to grant the visa [in] June 2014.
3. 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). The applicant provided the Tribunal with a copy of the delegate's decision record with his application for review. The applicant was invited to attend a hearing before the Tribunal. Prior to the hearing he provided some witness statements and supporting documents.
4. The relevant law is set out in Annexure A. In accordance with Ministerial Direction No. 56, the Tribunal has also taken into account the country information assessments prepared by DFAT expressly for protection status determination purposes, namely the DFAT Country Information Report on Lebanon dated 18 December 2015.
5. The applicant has been represented by a registered migration agent in the proceedings before the Department, and in the application for review.

Claims made in protection visa application and statement

6. The applicant's claims and background, from his protection visa application and statement lodged with the Department, can be summarised relevantly as follows:
 - The applicant was born in [year] in [his home town], North Lebanon. He is now aged [age] years of age.
 - The applicant speaks, reads and writes in Arabic (according to his IELTS results achieved in 2010, produced to the Tribunal, he also speaks, reads and writes in English. His ethnic group is Lebanese, and his religion is Catholic (but he does not consider himself to be committed). He has never been married or in a de facto relationship.
 - He was educated in [his home town] until June 2009 (he provided to the Tribunal a certificate showing he had studied [a tertiary course] in 2008/2009). He worked as [an occupation] in [his home town] from July 2009 until November 2010.
 - He was issued with a passport [in] 2009. He left Lebanon [in] November 2010 and travelled to Australia as a student (for a [Diploma]), arriving [the next day].
 - Once in Australia he did a [short] English course (until February 2011) and received a Certificate. This is the only qualification he achieved in Australia. He started his [subject] course. He later changed to a [different subject] course, (he told the Tribunal that he did not complete either of these courses). He claimed he was unemployed until January 2013, when he started working as [an occupation] as a sub-contractor. He started his own business in May 2013 ([business type]).

- He claims that as a bisexual he is sexually attracted to males and females and has had sexual relationships with both in Lebanon. Concerning the male relationships, he had to be covert because of family and social intolerance of such relationships in Lebanon.
- His family are not aware of his sexual orientation and have been increasingly putting pressure on him to marry, including when he returned to Lebanon in July 2013 for his [sibling's] wedding. He does not want to marry.
- In Australia he has been experiencing greater sexual freedom. He claimed to have been using gay match-making sites and social media: he attached supporting statements and printouts from his Facebook account showing numerous gay websites he has "liked". He cannot conduct this sort of activity in an open manner in Lebanon as it would not be tolerated by family, society or the authorities. Although there are a number of gay friendly venues in Beirut, it is still illegal to have gay sex. The level of intolerance in Lebanese society has increased with the rise of Lebanese fundamentalist groups.
- If he returns he will face hostile family members, close relatives and others, and there are increasing reports of gay men being subjected to serious harm. In the prevailing intolerant environment he cannot hope to continue to live an openly bi-sexual lifestyle without being subjected to serious or significant harm.

Interview with the delegate and the delegate's decision record (provided to the Tribunal by the applicant)

7. The applicant attended an interview with the delegate [in] June 2014. The Tribunal has listened to a recording of that interview which is contained on the Departmental file. Some of the discussions are referred to in the delegate's decision record provided to the Tribunal by the applicant with his application for review. The delegate discussed with the applicant his claims, and her concerns.
8. The delegate noted the applicant's evidence in the decision record concerning his religion. He stated that he has no genuine interest in religion and that he is not a committed practitioner.
9. The delegate did not accept that the applicant was a reliable, credible or truthful witness. While prepared to accept background information such that his parents and [siblings] are in Lebanon, and that he has been in Australia since November 2010, she considered he gave vague, inconsistent, unconvincing testimony about his circumstances in both Lebanon and Australia (about his alleged sexual experiences with men and bisexuality), and that he provided no credible supporting evidence of his claimed sexuality. She also noted that while there was no requirement to be socially active, the applicant demonstrated no knowledge whatsoever of Beirut's vibrant gay scene and nightlife, and barely any of the Sydney LGBT community/subculture despite having lived here for three years. She was also concerned about his delay in lodging his protection visa application (on the basis of his sexuality, noting he had been in Australia since 2010). She did not accept he was bisexual (with sexual preferences towards men) nor did she accept that if he refused to marry, it would be for reasons of his sexuality. She noted that he had not claimed protection until seven months after he had returned from his [sibling's] wedding in Lebanon (having travelled there while aware that his father had envisaged a joint wedding for [several] siblings in a year or two), indicating no fear of harm on the basis of the claimed pressure to marry.
10. The decision record referred to country information relating to attitudes to and treatment of LGBT people in Lebanon.

The Tribunal

11. As noted above, the applicant appeared before the Tribunal on 12 February 2016 to give evidence and present arguments. The Tribunal also received oral evidence from his claimed partner and two friends (who had also provided statutory declarations). The applicant had provided to the Tribunal a copy of the delegate's decision record, country information, and supporting documents. The agent was present at the hearing. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages (he sometimes spoke in Arabic, other times in English). The Tribunal is satisfied that the applicant understood the proceedings and was able to present evidence and arguments.
12. The applicant gave evidence about his claims. The witnesses also gave evidence. The Tribunal put concerns to the applicant, as well as information pursuant to s.424AA of the Act.
13. After the hearing, the agent provided country information and a further statement of the applicant. Relevant evidence is set out below.

FINDINGS AND REASONS

Country of reference

14. The applicant produced to the Tribunal his passport issued by the Lebanese authorities. The Tribunal accepts that the applicant is a national of Lebanon, and that the appropriate country of reference for the assessment of his refugee claims, and the receiving country for the purposes of his complementary protection claims, is Lebanon.

Credibility

15. The Tribunal notes that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. Similarly that the applicant claims to face a real risk of significant harm does not establish that such a risk exists, or that the harm feared amounts to "significant harm". It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out.
16. Pursuant to s.5AAA of the Act it is the responsibility of the applicant to specify all particulars of his or her claim to be a person to whom Australia has protection obligations and to provide sufficient evidence to establish that claim. The Tribunal does not have any responsibility or obligation to specify, or assist the applicant in specifying, any particulars of his or her claims. Nor does the Tribunal have any responsibility or obligation to establish, or assist the applicant in establishing, his or her claims.
17. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).
18. The Tribunal had a number of concerns about the applicant's changing, inconsistent and not credible evidence as to past events, and what he feared upon return to Lebanon. The Tribunal did not find the applicant to be a credible, truthful, or reliable witness in relation to

matters central to, and related to, many of his claims. The Tribunal's concerns are set out below.

19. **Firstly**, the Tribunal was concerned with the applicant's claims about his sexuality, and his claimed sexual experiences. At one stage during the hearing he told the Tribunal that he had never been sexually attracted to a girl, either in Lebanon or in Australia. The Tribunal asked questions to confirm this; he did so. He also said that he had never had sexual relationships with a girl.
20. This however was significantly inconsistent with his statement (which he had told the Tribunal he had read through and was satisfied it was correct) and with his evidence to the delegate in a number of respects, as set out below.

Inconsistent evidence about sexual attraction

21. He claimed in his statement that: "*since the age of approximately [age] I have continued to be sexually attracted to both males and females*".
22. The Tribunal asked why he said in his statement that he was sexually attracted to girls if he now said he was not, and never had been. He did not explain this; he repeated that he was not and had not been sexually attracted to girls, neither in Lebanon, nor in Australia. The Tribunal considers that the applicant's inconsistent evidence about his sexual attraction for the last 9 years, ever since the age of [age] years, undermines his credibility and his claims about his sexuality.
23. The Tribunal's concerns were heightened in this regard because, as set out in the delegate's decision record provided to the Tribunal¹, at interview the applicant claimed that he was aware of his sexual attraction to both boys and girls since he was [age] years of age and that his classmate had explained to him that this meant he was bisexual. The Tribunal considers that this evidence also undermines his claim to the Tribunal that he was not sexually attracted to girls either in Lebanon or in Australia.

Inconsistent evidence about sexual encounters

24. He claimed in his statement that: "*In the past, I have had sex with both guys and girls*".
25. He told the Tribunal that he had had a girlfriend in Lebanon. They had kissed and hugged. They did not do anything other than this because he was not attracted to her (nor to any females).
26. The Tribunal asked the applicant what he understood by the term "sex" and he said two bodies meeting physically, meeting of two genitals/ sexual organs. The Tribunal asked if hugging was considered to be sex and he said "no". When the Tribunal said it did not understand why he said in his statement that he had had sex with girls, he said he tried but he didn't want to have sex. When the Tribunal asked if he was saying he did more than kissing and hugging he said no. The Tribunal was concerned that according to his own definition of sex, he had given inconsistent evidence about whether or not he had had sex with girls. The Tribunal considers that the applicant's inconsistent evidence in this regard undermines his credibility and his claims about his sexuality.

¹ Page 11.

His evasive evidence concerning his claim to be bisexual

27. He claimed in his statement that he is bisexual and fears returning to Lebanon for that reason. He confirmed to the Tribunal that he is bisexual. However, when asked, he told the Tribunal that he just likes girls as friends. The Tribunal noted he called himself bisexual while claiming that he was not sexually attracted to females, and had not had sex with girls.
28. The Tribunal asked the applicant how he defined bisexual and he did not answer the questions other than to say that he likes boys. The Tribunal again asked him what bisexual meant to him, and he said when a person has been able to have a relationship with both men and women. The Tribunal asked if that applied to him and he gave evasive answers. Firstly he said he has tried to be straight and this is why he is here. The Tribunal asked him again if his definition of bisexual has ever applied to him and he said that he has tried to apply it. It appeared from his responses that his definition of bisexual has never applied to him. The Tribunal considers that his evidence about whether he was bisexual or not was evasive, and undermines his credibility and his claims about his sexuality.
29. The Tribunal also noted that his claim to be bisexual was inconsistent with the (undeclared and undated) statutory declaration of [Mr A] that the applicant provided to the Department in support of his claims. That statement claimed that the applicant is gay, he spends most of his time with guys, and he has never seen him with a girl or heard that he likes women. The Tribunal put to the applicant that this evidence, produced in support of his claims, indicated that he was *not* bisexual. In response, the applicant claimed that he only had a short-term relationship with him and did not tell him about his life. While that may have been possible (he told the delegate that he had a five month relationship with this person as set out in the decision record provided to the Tribunal), the Tribunal also notes that the applicant claimed (in his statement) to have experienced sexual freedom in Australia, and to have been open about himself and his sexuality in Australia. Further, another statutory declaration (by [Mr B]²) produced to the Department by the applicant also stated that the applicant was "gay". The Tribunal is not satisfied as to the applicant's claimed reason as to why the supporting evidence said he was gay as opposed to bisexual' and it considers that his supporting evidence undermines his claim to be bisexual.

Inconsistent evidence about whether he had a relationship with a female in Australia

30. The Tribunal asked the applicant if he had ever had a relationship with girls in Australia. In response he said that he met many girls in Australia. The Tribunal asked the applicant if he had any relationship with a girl in Australia which was more than just friends and he said no, the maximum he has had with girls in Australia is just friends.
31. The Tribunal then put to the applicant that this was inconsistent with his evidence to the delegate (as set out in the decision record provided to the Tribunal by the applicant): he had claimed that in Australia he had three relationships with men and one with a girl. This relationship with a girl ended in failure after two to three months however he still likes girls as well as boys.
32. The applicant said in response that he has tried to have relationships with girls but this has not led further. The Tribunal considers that if the applicant's circumstances were as claimed to the delegate (that he had had these four relationships that he considered important enough to tell the delegate), then he would have told the Tribunal that he had had a relationship with a girl in Australia, but it had not worked out. He had made this claim to the Tribunal in relation to a claimed girlfriend in Lebanon; he did not explain why he did not

² It was claimed by the applicant in the delegate's interview that he had a relationship with this man (as set out in the decision record provided to the Tribunal).

make this claim to the Tribunal about a similarly claimed (failed) relationship with a female in Australia.

33. The Tribunal considers that the applicant's failure to mention to the Tribunal his claimed girlfriend in Australia undermines his credibility and his claims about his sexuality and relationships.
34. **Secondly**, the Tribunal was concerned that the applicant was prepared to give false evidence, rely upon false supporting evidence, and make false claims in order to be granted a protection visa. For example:
 - The applicant lodged his protection visa application ([in] February 2014) while his student visa was ongoing (due to expire [in] November 2014)³. He presented to the Department in his statement accompanying his protection visa application that his usual occupation was that of a student, and he claimed that he was currently studying a [course]. However, when the Tribunal asked the applicant when he stopped studying, he claimed it was because he was upset (suggesting this was related to his sexuality), so he decided to stop his study and instead lodge a protection visa application based on his sexuality. The Tribunal noted that he had decided to stop studying by the time he decided to lodge a protection visa application and he agreed. The Tribunal asked the applicant why then he would have presented himself to the Department as being a student, who was currently studying, and he was unable to explain this, except to say that he had made a mistake. The Tribunal has considered this explanation, but given that the applicant told the Tribunal that he had read through his application form and statement and the contents were all true, the Tribunal does not accept his explanation.
 - The applicant claimed that he was depressed at the thought of going back to Lebanon and he had become lazy and not wanted to do his work. He said that his boss had told him in an email that he was a good worker but he is becoming lazy and has to improve himself. The applicant told the Tribunal that this email was the only time his boss had referred to his bad work attitude/behaviour. This however was inconsistent with the email he produced to the Tribunal, which he claimed was from his boss, and was dated [January] 2016. This email stated that: "*[In] December 2015 I met with you and advised you that your performance [at work] was unsatisfactory and that immediate improvement was required. At this meeting we discussed corrective action that needed to be made and implemented immediately [the email referred to specific aspects and details of his behaviour and attitude which were wrong and had cost the business money. It noted that the applicant had claimed to have personal issues so he had been given a second chance]....It has now been 5 weeks since our last verbal discussion, and as I have not seen drastic improvement I have decided to issue you with a formal warning letter....If this does not improve, your employment... will be terminated.*" When this significant inconsistency as to the discussions he had had with his boss was put to the applicant at hearing, he changed his evidence and said that his boss had spoken to him [at work] and they are close and he did not read his email until a while afterwards and he is actually considering leaving the job. The Tribunal considers that the applicant was prepared to change his evidence to respond to the Tribunal's concern; and he did not explain why he had given inconsistent evidence previously about his discussions with his boss. The Tribunal considers that the applicant would recall if he had had a detailed discussion with his boss in December 2015, warning him about his behaviour and attitude, giving him a chance to change his behaviour, and that having failed to improve his behaviour, five weeks later (and less than one month prior to the hearing) he had received a formal warning letter from his boss. The Tribunal considers that his inconsistent evidence given to the Tribunal (that the email was the first time his boss had spoken to him about his

³ As set out in his protection visa application form.

behaviour, and his failure to say that he had received a formal warning that his employment may be terminated) suggests that the email from his boss is not genuine, and has been manufactured as supporting evidence for the purposes of his claims. The Tribunal considers that this undermines his claim that he has been underperforming at work, which is because he is depressed and anxious about his sexuality and the fear he has about returning to Lebanon. The Tribunal considers that this also undermines his credibility, and indicates that he is prepared to produce false supporting evidence, and to change his evidence, in order to obtain a protection visa.

35. **Thirdly**, the Tribunal was concerned with the applicant's claim that he was interested in discovering himself and his sexuality, yet he also claimed that he made no efforts to discover anything about the gay scene or homosexual activities in Lebanon. He claimed that from the age of [age] years he was conscious about sex, it was interesting and exciting to him, and he was interested in who he was and to know if he liked boys. He claimed that he had two relationships with men in Lebanon, [name] (physical but not homosexual relationship, they met up 10-15 times in 2007) and a homosexual relationship with [Mr C] (2008). He said to the Tribunal that his relationship with [Mr C] was "less than a year"; he then said it was for two months; he had three or four sexual encounters with him. He had told the delegate at interview (as set out in the delegate's decision record provided to the Tribunal) that they had a two month relationship in 2008, they had sex five times in total (when the applicant travelled from [his home town] to his apartment in Beirut), but he couldn't recall when this occurred.
36. The Tribunal noted that the applicant had claimed to have these two relationships with males in Lebanon, to be curious and excited about his sexuality, yet his last relationship finished in 2008, and he did not leave for Australia until [November] 2010. The applicant said he did not have any encounters/relationships in those two years before he came to Australia. When the Tribunal asked why, he said that he didn't come across anyone, he was working and doing IELTSs test and he was busy organising to go Australia. The Tribunal put to the applicant on numerous occasions that he made no enquiries about gay lifestyle in Lebanon when he was living there, which it did not understand as he was trying to discover himself, his responses were evasive. For example, he said words to the effect that "at the end of the day, I did not come to this life and what I am going through will be for no use, I came to the conclusion I am not gay." The Tribunal then read out to him from the delegate's decision record he had provided to the Tribunal information about his evidence and country information:
- The applicant claimed he has engaged in homosexual relationship in Beirut, reportedly a city with a vibrant gay scene and nightlife, yet the applicant demonstrated nil awareness of Beirut's gay/bisexual subculture...".
37. The Tribunal noted his claim to the Tribunal that his relationships had only broken up through a lack of opportunity to meet up, and his claim that [Mr C] was an older, daring, forthcoming and audacious homosexual man. The Tribunal put to the applicant that having regard to the nightlife in Beirut (which he claimed was one hour away from [his home town], he had previously studied in Beirut and had friends there⁴) and his relationship with an audacious older homosexual man, it was difficult to understand that he took no steps to engage in, or even find out about, homosexual lifestyle in Beirut. In response the applicant said that he could not just ignore what his family wants. While the Tribunal considers it is possible that a person may not wish to be socially active as a homosexual/bisexual out of fear or concern for his family members, the Tribunal considers that his initial evasive evidence (not telling the Tribunal that he had taken no steps to make any enquiries about the gay life in Beirut while claiming he was interested in exploring his sexuality and discovering himself), as well as its other concerns, undermines his credibility.

⁴ As set out in the delegate's decision record

38. The applicant produced country information suggesting that homosexual sex is illegal in Lebanon, and that there are some adverse attitudes towards homosexuals in Lebanon. While this may indicate that an applicant may not want to openly explore and announce his sexuality, the Tribunal was concerned that the applicant had sources of information about sexuality in Lebanon (for example his audacious, daring, forthcoming, older homosexual partner in Beirut), and that he was curious about sexuality, yet he claimed not to know about homosexual lifestyle or possibilities in Beirut).
39. **Finally**, the Tribunal found it concerning that the applicant would claim that he could not let anyone (friends, family or no-one at all) in Lebanon know about his sexual orientation, because if he did so he would face persecution and harm. He said that his parents and siblings are all conservative, not only would they not accept that he has a gay or bisexual lifestyle. The whole subject is taboo within his family, friends, relatives, generally in his district, and in the whole of Lebanon, and for the government. If the government found out, he would be killed. The Tribunal notes that not only did he make claims that he would face harm, but so did his supporting evidence (for example the declaration of [Mr A] said that the applicant *“always stress about his community find out about him as gay because this is very unacceptable and it is considered shame in his community”*; and the declaration of [name] that his sexuality is not accepted by his family or generally in Lebanon and he will be disowned and shunned if his family should find out about his sexuality. The applicant told the Tribunal that the whole time he has been in Australia (6 years) he has not told his family (parents, siblings, relatives) about any relationships he has had, because he is not straight and they would not accept this. When asked, he said that his parents and his siblings ask about his love life but he tells them nothing.
40. As set out below, the Tribunal considered that the applicant gave vague, changing, evasive, and inconsistent evidence about his contact with his family in Lebanon, and that he gave implausible evidence about his claimed fear of harm based on people finding out he was homosexual/ bisexual.

Changing evidence about contact with his family members

41. The Tribunal asked the applicant if he was in contact with his family and he said yes. He then said he has not spoken to them for the last two years. His evidence then continued to change about his contact with his family members as follows:
- He doesn't speak to his parents.
 - He spoke to his father last week, and then 2-3 months beforehand, actually he has conversations with them every 2-3 months, but they are only superficial conversations.
 - He later said that every time he speaks with his parents they ask about his love life and ask if he has found a wife and tell him to hurry up and find a bride to marry.
 - He has better contact with his siblings in that they tell him about their lives. He says nothing about his life to anyone.
 - The only contact he has with his siblings is just by telephone.
 - He then said that he also has contact with his siblings by What's App messaging (text messaging)⁵.

⁵ According to <https://www.whatsapp.com>, WhatsApp Messenger is a cross-platform mobile messaging app which allows you to exchange messages without having to pay for SMS. WhatsApp Messenger is available for iPhone, BlackBerry, Android, Windows Phone and Nokia and yes, those phones can all message each other!

- When asked if he uses any other method of contact with his siblings he said “not really anything else”. When asked again to be specific, does he use any other form of contact with his siblings, such as letter or anything else, he said no and confirmed that his only form of contact with his siblings is by telephone and What’s App messaging.
 - Later, noting that he had produced Facebook printouts, the Tribunal asked the applicant if he was in contact with his siblings via Facebook and he said no. The Tribunal referred to his earlier evidence that his only mode of contact with his siblings was via telephone and What’s app messaging, and he again agreed. The Tribunal sought his confirmation that he was saying that he had no contact with his siblings on Facebook and he agreed. The Tribunal put to him however that according to his public Facebook pages that the Tribunal had accessed (and some of which was printed out⁶) he was friends⁷ on Facebook with his siblings⁸ on Facebook⁹. He then changed his evidence and agreed that he was friends on Facebook but said that he had no contact with them via Facebook. The Tribunal put to him that he did have contact with his siblings on Facebook and then his agent submitted that when the applicant said “contact” he meant “talking”. The applicant then agreed with his agent that he meant “talking” when he said “contact”. The Tribunal does not accept this explanation, noting it had earlier given the applicant many opportunities to tell it the different modes of contact he had with his siblings (and it had given the example of letters, and had asked whether there was any other form of communication; the applicant himself had come up with another form of communication apart from telephone, namely WhatsApp messaging). The Tribunal later put this information (about his contact with siblings on Facebook) to the applicant pursuant to s.424AA of the Act, as referred to below.
 - Having claimed that he did not do “likes” or comments on Facebook at all, and then when discussing his Facebook contact with his siblings, he said he did not do likes or comments with them. However when the Tribunal asked the applicant to confirm that he had no such contact on Facebook with his siblings (likes or comments on each other’s profile/pages), he then changed his evidence and said that there were likes and comments, including that he made likes/comments on their pages too.
42. The Tribunal considers that the applicant changed his evidence continually about his contact with his family members, initially generally attempting to downplay any communication but then changing his evidence once he was asked specific information or once it was specifically put to him that his answer was incorrect. It seems likely that the applicant

Because WhatsApp Messenger uses the same internet data plan that you use for email and web browsing, there is no cost to message and stay in touch with your friends.

⁶ Refer to Tribunal file.

⁷ By way of background, “A Facebook friend is someone who is connected to another person through the social networking site of the same name. Usually, Facebook friends are users of the site who knew each other before joining the site or who know each other outside of the site. They might be friends or acquaintances, might know each other through school, work or another organization or might have a mutual acquaintance. To help protect Facebook members’ privacy, one must make a request through the site to become someone else’s Facebook friend. It is then up to him or her to accept or reject the Facebook friend request.

After someone becomes a Facebook friend with another person, the bond does more than just connect two people on a social networking site. After a Facebook friendship is formed, the friends are able to see what’s on the other’s wall, a list of postings on a user’s Facebook homepage. Facebook friends also can view any photos, videos and other information that have been posted by or about that person. Even users who are not Facebook friends typically can view other users’ list of Facebook friends, which might help users discern between a person they know and another person with the same name”: <http://www.wisegEEK.com/what-is-a-facebook-friend.htm>.

⁸ The applicant had not provided details of his family members in his protection visa application form. He had been asked by the delegate to provide these details after the interview (see delegate’s decision record p6) but he had not done so. The Tribunal asked for the names of his [siblings] at hearing which he provided: [names deleted] to the Tribunal.

⁹ This was later put to the applicant pursuant to s.424AA of the Act.

changed evidence about his contact with his family because he has presented claims in this process that his family will not accept (and will harm him for) his claimed bisexuality.

43. The Tribunal considers that this undermines his credibility, and his claims that he is in minimal contact with his family due to his claimed sexual orientation, which he seeks to keep secret, and the claim that his family desire him to marry.

Postings on Facebook

44. The applicant had produced to the Department Facebook printouts from his Facebook profile, which showed the pages that he had “liked”. There were [different] websites he had liked, [a number] of which were gay/LGBT [websites]. These printouts were attached to his statement, and referenced as follows: “Since my arrival in Australia I have been experiencing greater sexual freedoms and I have been regularly attending a number of local gay friendly venues, participating in gay match making sites and the social media...”.
45. The Tribunal asked the applicant about these pages and he said that he “liked” (and thus placed them on his profile, as produced to the Department) all these gay/LGBT websites in 2012 (when he was studying [subject]¹⁰). He claimed to have “liked” the websites one after the other in 2012, and then to have added no more. The Tribunal asked why he did not keep “liking” other websites to add to his profile after 2012, and he said because he just looked at these pages and their updates; he continues to do this to the present date. The applicant said that these pages are there on his profile for anyone to see: they are not private, whoever sees his profile would see that he has “liked” these websites. The Tribunal noted his evidence that he has about 200 or more “friends” on Facebook who are in Lebanon, most of these being his family, relatives and friends in [his home town]. The Tribunal asked the applicant why, in these circumstances, given his claim that he wishes to keep his sexuality a secret from everyone, did he have all of this gay/ LGBT websites “liked” on his profile page, where all of his friends and family could see them. In response the applicant initially said he doesn’t use “likes”. The Tribunal noted that this was not a response to its concern, and the applicant then said “they” don’t use Facebook a lot in Lebanon and if they asked him he would just say that it was a joke. The Tribunal put to the applicant that it was difficult to accept that he would have these websites on his profile, and that he has had them there for four years, given the large number of his friends and family and people from [his home town] who have access to his Facebook account. He initially said (as noted above) that there is no contact between his siblings and himself on Facebook, then that there was minimal activity.
46. The Tribunal put to the applicant pursuant to s.424AA of the Act that he has had a Facebook account since 2011; he has almost 500 [Facebook] friends; which he said half were friends and family in Lebanon. On the front page of his Facebook profile he had actually identified three of his siblings as family members. His siblings regularly comment on or like the postings he makes on Facebook.
47. The Tribunal noted that on his publicly accessible Facebook account he has “liked” numerous LGBT/gay websites including pictures of men kissing men. The Tribunal also noted his claim that he doesn’t tell his family anything about his life, that they are very interested in him and his lovelife, they want him to find a wife and get married; and they put pressure on him to do this. The Tribunal noted that all his friends, family and the whole area consider that to be gay is taboo, a great shame and that he couldn’t tell anyone there about his sexuality. The Tribunal put to the applicant that if it relied upon the Facebook information it would find that he is not a witness of truth, he is prepared to change his evidence and provide false supporting evidence, that he and his witnesses have made up claims that he is

¹⁰ He claimed in his application form to have studied this from June 2011 to June 2012.

gay in order to obtain a protection visa, and that he posted gay/LGBT websites on his Facebook profile (and volunteered for Mardi Gras) in order to strengthen his claims.

48. In response, the applicant said that he is not as worried about his parents finding out that he is gay as much as he is worried about leaving Australia because he fell in love with a man. The Tribunal noted that his claimed concerns about leaving Australia were contradictory to his evidence to the Tribunal that he and his partner would be physically separated (his partner is on a working visa in Australia, he will return to [another country], the applicant would not follow him to [that country] because the applicant has his own life in Australia). Further, the Tribunal was concerned that he changed his evidence concerning his fear of persecution and significant harm as sourced from his family members (including for example his claim that if identified as bisexual he would be killed by his father and siblings¹¹), once the Tribunal put its concerns to him (his inconsistent evidence concerning his contact with his family members on Facebook, and his implausible claim that he would post gay websites on Facebook if, as claimed, he did not want anyone in his area to know about his claimed sexuality, or that he would face harm for reason of his claimed sexuality). The Tribunal's concerns were heightened because in his post hearing statement he again claimed that he would be attacked by family members (or third parties).
49. The Tribunal has taken account of the applicant's post hearing statement that although his siblings have access to his Facebook account, the material on his Facebook has thus far not aroused their suspicion because he has not directly stated that he is gay or made any comments in support of homosexuals. The Tribunal considers this explanation to be inconsistent with his initial evidence (that he did not have contact with his siblings on Facebook), and also to be not credible; having regard to the type of websites he has "liked" on his profile page.
50. He made a further post hearing claim that his siblings "rarely" use his Facebook account as a means of communicating with him and he draws their attention to his Facebook account predominately for the purpose of posting photographs of himself with friends or social occasions and they usually respond by providing comments or likes but "they do not go further into my Facebook account or question other activities that I have posted or liked". The Tribunal had put to the applicant that his siblings regularly liked or commented on posts and showed him at hearing that it had printed his Facebook postings; he has not provided any explanation to support his claim that there is "rare" contact, and the Tribunal does not accept this assertion. Further, having regard to the applicant's claim that his family are very interested in him, and his life, the Tribunal considers it not credible that he could consider that his family would not be interested in exploring information about him available on his profile.

The applicant's return to Lebanon after posting the gay websites on his Facebook page

51. The applicant claimed that he had used Facebook for four years, and that about 200 of his Facebook friends were family and friends from [his home town]. The Tribunal put to the applicant its concern that, after having posted numerous gay/LGBT postings on his (publicly accessible) Facebook profile in 2012, he then travelled back to Lebanon, staying [several] days for his [sibling's] wedding ([in] July 2013). The Tribunal notes he claimed in his statement that he would be confronted by "hostile" family members, close relatives or other individuals; that there were an increasing number of reports of gay men and women being subjected to serious abuse at the hands of the Lebanese authorities; that there was a prevailing tolerant environment in Lebanon. He had also told the Tribunal that his country was "dangerous" for gays and that it does not respect human beings. The Tribunal put to the

¹¹ As stated in the delegate's interview, recorded at page 14 of the delegate's decision record provided to the Tribunal by the applicant.

applicant that if he really was gay/bisexual, then it did not make sense for him to take such a dangerous risk to travel back to Lebanon, after any number of his friends and family in Lebanon could have seen the numerous gay/LGBT websites he had “liked” and assumed that he was gay.

52. In response, he said that he put them there and then he went to Lebanon and no one had asked about it and no one had complained about it, and it was not any big problem for anyone. If they asked him and wanted to talk about Facebook, he would have told them that he and his Facebook are not the same and they can ask him about it. He is not the same as his Facebook. The Tribunal does not consider the applicant’s response to be persuasive. The applicant repeated in his post hearing statement that no one had confronted him with respect to any issues on his Facebook account; he did not make any claim (of feared future harm) in this regard. The Tribunal notes that the applicant chose to return to his [sibling’s] wedding in Lebanon, having posted these websites on his Facebook page one year earlier. The Tribunal considers it extremely unlikely that he would have done so if he was indeed gay/ bisexual/ returning to an intolerant, dangerous society with hostility all around. The Tribunal considers it more likely that the applicant posted these websites for the purposes of his forthcoming protection visa claim, and that he returned to Lebanon because he is not gay or bisexual and believed that there would be no consequence for him of posting the gay websites on his profile. The Tribunal considers that this undermines his claim that he is bisexual or gay.
53. On the basis of the above, the Tribunal does not consider the applicant to be a credible witness.

Other matters

The delegate’s interview

54. There was a last-minute request made by the agent the evening before the interview that he be conferenced into the interview, however this was not possible. As it was the second time the interview had been scheduled (the first time it had been rescheduled because the applicant was ill), the delegate said the interview would go ahead and would send a CD recording of the interview immediately thereafter. Two hours after the interview ended, the agent emailed the delegate stating that the applicant had said that there were significant interpretational errors during the interview. The applicant was invited to provide details of these errors one week later, however no information about interpretational errors was received by the delegate. The delegate indicated that she re-listened to the recording of the applicant’s interview, and apart from a difficulty with one word which the applicant himself pointed out to the delegate, the applicant himself did not raise any other objections to the interpreting during the interview (or thereafter). This was noted in the delegate’s decision record which the applicant produced to the Tribunal.
55. In the hearing invitation, the Tribunal noted the claim made by the applicant about “significant interpretational errors” during the interview with the delegate [in] June 2014; that the delegate had invited details to be provided within one week of the interview, but that no such details had been provided. The Tribunal requested that if it was maintained that there were errors of interpretation in the interview, specific details of those errors (including the time reference point on the recording) should be provided to the Tribunal one week prior to the hearing. The Tribunal did not receive any submission in this regard.
56. At the hearing, the Tribunal asked the applicant whether he could identify any interpreting errors and he said no. The Tribunal put to the applicant that it would expect that any interpreting errors would have identified by now, and reminded him of the reference to an error with one word, which he had corrected during the interview (discussed in the delegate’s

decision record). The applicant said he was unable to point to anything specific apart from that reference. The applicant then made a claim that he considered the interpreter was not expressing the way he talked, it was a bit strange, he did not feel comfortable, and the delegate also had a problem with him. The Tribunal noted this was not the objection that had been raised after the interview. The Tribunal considers that the applicant has had plenty of opportunity (as has his agent) to identify any errors in the interview recording, and to have made any submissions to the delegate (or to the Tribunal) identifying difficulties with the interview and its consequences for the applicant. The Tribunal does not accept that there was any prejudice or difficulty for the applicant at the interview with the delegate.

Corroborative evidence

57. The Tribunal has considered the evidence provided in relation to attitudes to homosexuality in Lebanon, both before and after the hearing (as well as set out in the DFAT Report referred to below). While the Tribunal accepts that there has been some targeting of homosexuals, it also noted that there is a homosexual culture in Lebanon (including for example Beirut). The Tribunal does not consider that this country evidence overcomes the Tribunal's concerns with the applicant's evidence.
58. The applicant produced to the Tribunal an email showing that he had volunteered, about 2 weeks before the hearing, for a Mardi Gras workshop to assist with [an activity]. He had also produced statutory declarations to the Department of [Mr B], [Mr A], as well as the three witnesses who attended the hearing. These asserted variously that the applicant was homosexual; that he went to many parties to the gay club in [location]; that he is proud to be gay; or that he is depressed and anxious because of the thought of returning to Lebanon; that he cannot tell his family or friends or return to Lebanon; that he is in a relationship with the [witness].
59. As put to the applicant, people can provide supporting evidence for a number of reasons, for example they may want to assist him so that he can stay in Australia. The Tribunal also put to the applicant that it could be that his claimed partner was actually a close friend (living together as flatmates, going out together as friends). Having regard to the Tribunal's concerns with the applicant's credibility set out above, the Tribunal does not accept that the activities undertaken by the applicant to suggest that he is gay/bisexual overcome its concerns about his credibility and claimed orientation:
 - attending a Mardi Gras workshop (after the delegate had noted in the decision record that there was no credible evidence of Australian activities indicating his sexual orientation);
 - going to some gay nightclubs in Sydney (as suggested by one statutory declaration);
 - posting some gay websites on his Facebook profile. The Tribunal notes the applicant's evidence that, apart from these gay/LGBT website postings, there are no postings or anything else on his Facebook page which would suggest that he is gay or bisexual;
 - The applicant has produced a number of photographs of him (and his claimed partner) and others in social settings and home settings, which show people having fun/ relaxing/ arms around each other, near a bed, whispering in someone's ear. The applicant said in his post hearing statement that the photos were mere evidence of his social activities and not intended to strengthen his claims. While the Tribunal is prepared to accept that the applicant and his claimed partner are friends, the Tribunal is not prepared to give these photos any weight in relation to the claim that the applicant is bisexual or homosexual or in a sexual relationship with his claimed partner.

- Nor does the Tribunal consider that the assertions made by witnesses as to his claimed gay/bisexual orientation (including by his claimed partner to the counsellor) overcome the Tribunal's concerns.
60. The Tribunal notes that assertions have been made that the applicant has been and is stressed because of his bisexuality, and that this has affected his ability to study and to work. The Tribunal notes the applicant claimed that his attitude and behaviour at his work had led to his boss speaking to him; however as discussed above the Tribunal was concerned with the applicant's clearly inconsistent evidence with his boss's claimed warning letter, such that it gives the boss's letter no weight, nor does it give the applicant's assertions (that he has been having difficulties because of his claimed sexual orientation) any weight.
61. The Tribunal has considered the evidence by his witnesses that he is depressed and stressed about returning to Lebanon (none of whom suggested they had any medical or psychological qualifications). The Tribunal noted that the applicant had produced a letter from a counsellor (who was not a psychologist). The letter stated that the applicant had said that he was bisexual, living with his partner and he had reported that he had difficulty in sleeping, and with headaches and stomach aches. She administered a questionnaire and noted that his answers, when compared to criteria outlined in DSM-V; as well as his reported symptoms, and her observations, indicate that he is suffering from depression. The Tribunal notes that she did not refer to any of her own observations (other than to say that the applicant "presented with anxious feelings about his upcoming visa review" and that "based on a conversational-style suicide assessment, noting he had said to her he would feel like his life was over if he returned to Lebanon particularly because of the persecution he would face as a bisexual, she concluded he was a high suicide risk around the stressor of the possibility of having to return to Lebanon). She provided her opinion that his mental/emotional distress is directly related to whether or not he must return to Lebanon, and if he was allowed to stay he would return to normal functionality as a productive part of an existing work and social community he has established in Australia.
62. The Tribunal notes that the counsellor appears to base the majority of her assessment on what the applicant has told her in three one-hour sessions in a 15 day period in January 2016, less than one month before the hearing. As the Tribunal put to the applicant, just because he reports something to a professional does not mean that the Tribunal has to accept this. Nor does it mean that the Tribunal must accept his claimed sexual orientation, nor that he is distressed for that reason, nor that what he has told the counsellor (and what she has based her diagnosis on) is true. The Tribunal has found that the assertions made by the applicant to the counsellor concerning his sexual orientation, fear of return for that reason, and current distress for that reason, are not true. Given that the assessment appears to be mostly based upon false assertions to the counsellor, the Tribunal gives the letter from the counsellor no weight as corroborative evidence of his claimed sexual orientation. Despite its concerns as to how the diagnosis has been arrived at, the Tribunal is prepared to accept the diagnosis of the counsellor that the applicant is depressed and distressed about returning to Lebanon. The Tribunal considers that this could be for any number of reasons (such as set out in the following paragraph) however the Tribunal is not prepared to accept the assertion that it is for the reasons given to the counsellor (nor does the Tribunal accept the assertion of the counsellor that the applicant will have no social support in Lebanon).
63. The Tribunal has considered the assertions of the witnesses too as to the applicant's mental health, namely that he is upset at the thought of returning to Lebanon. Concerning his current mental state, the Tribunal is prepared to accept that the applicant may well be anxious at the thought of leaving Australia where he has been living for the last five years, and where he has established businesses and friendships; and that he may have shown some symptoms consistent with depression in January 2016. The Tribunal has considered

the counsellor's diagnosis in considering whether or not the applicant faces a real chance of serious harm or a real risk of significant harm but is not satisfied that the diagnosis leads to such a finding.

64. Further, the Tribunal does not consider on the evidence before it that his mental health can explain or excuse the concerns which, cumulatively, have led the Tribunal (below) to find that he was an unreliable witness.
65. Considered cumulatively, the concerns the Tribunal holds about the applicant's credibility on these matters lead it to find that he is not a truthful, reliable or credible witness and that the account of events and fears on which his protection claims are based is false. The Tribunal considers that he is prepared to give false evidence in order to achieve an immigration outcome, namely to be granted a protection visa, and that he is prepared to rely upon false supporting evidence to achieve that aim.

Findings of fact in relation to events to date

66. On the basis of the adverse credibility finding, the Tribunal does not accept that the applicant is or has ever been bisexual or homosexual. It does not accept that he has ever had any sexual attraction to, kissed or hugged or had any sexual encounters with, males, either in Lebanon or in Australia. It does not accept that he came to Australia with a fear of persecution.

Activities in Australia

67. The applicant did not suggest in his statement that anyone in Lebanon would be aware of his activities in Australia.
68. The Tribunal is prepared to accept that the applicant and his friends have taken photos which could suggest that the applicant is bisexual/gay; that he has attended some gay nightclubs; and that he has signed up for a Mardi Gras workshop for 2016. Although he claimed in his statement to have exhibited sexual freedom in Australia, the only evidence he produced of this (apart from statements of witnesses which the Tribunal has not given any weight) was the posting of the numerous gay websites on his Facebook profile. He told the Tribunal that there was nothing else on his Facebook pages to suggest that he was gay/bisexual.
69. As set out above, the Tribunal was concerned with the applicant's posting of numerous gay websites on his Facebook profile, which were printed and provided to the Department as evidence of him expressing his sexual freedom in Australia. The Tribunal put its concerns to the applicant that this was done for the purpose of strengthening his protection visa application. The applicant said that when he had posted these websites in 2012 it was before he lodged his protection visa application, and he was doing his [tertiary study] and everything was going well. The Tribunal put to the applicant however that this was contrary to his earlier evidence to the Tribunal that when he was doing his [diploma], things were not going well, he didn't study, he was failing a number of subjects, and he had no desire or made no effort to study any more¹². The applicant said in response that he has failed in his business and he can't enjoy life. The Tribunal did not consider that the applicant had engaged with the Tribunal's concern. The Tribunal finds that the applicant engaged in posting gay/LGBT websites on his Facebook profile in order to strengthen the refugee claim he intended to make, and the Tribunal thus disregards these postings for the purposes of considering his refugee claims.

¹² The applicant produced to the Tribunal at hearing a transcript showing that he was Not Yet Competent in [number] of his subjects.

70. Having regard to the adverse credibility finding, the Tribunal also considers that the applicant's signing up for the Mardi Gras workshop, and in producing photos, was done for the purpose of his claims.
71. Having regard to the above paragraphs, and the adverse credibility finding, the Tribunal finds that any activities suggesting that the applicant is gay/bisexual undertaken in Australia have been for the purposes of strengthening his protection visa application, and not for genuine reasons.
72. Section 91R(3) of the Act requires the Tribunal to disregard any conduct engaged in by an applicant in Australia unless the applicant satisfies the Tribunal that he engaged in the conduct otherwise than for the purpose of strengthening his claim to be a refugee. For the reasons given above, the Tribunal is not satisfied that the applicant had photos taken, or joined a workshop, or attended some nightclubs, or posted gay websites on his Facebook profile other than for the purpose of strengthening his claim to be a refugee and the Tribunal is therefore required to disregard this conduct in its assessment of the applicant's well-founded fear of persecution.
73. The Tribunal accordingly disregards the applicant's photographs, joining of a workshop, posting of gay websites on his Facebook profile and attendance at some nightclubs for the purpose of assessing the applicant's refugee claims (s91R(3) of the Act).

Return to Lebanon

74. The applicant has been in Australia for over five years. He has returned home to visit, and then returned to Australia. He claimed that he managed to convince his family he should stay and not get married because he was studying. He has not studied for over two years. The Tribunal considers that he has maintained contact with his family in the five years he has been in Australia and has been able to do what he wanted with his life. On the basis of the adverse credibility finding the Tribunal does not accept that the applicant faces pressure from his family to marry. The Tribunal considers that although he may consider this distressing, and that he may be depressed, the applicant will return to Lebanon, continue to reside with his family, and, noting his education and experience, obtain work in the future.
75. The agent provided evidence post-hearing which included information about the general country situation (Amnesty International and Human Rights Watch reports, for example). Also provided, as noted above, was a further statement from the applicant, which did not make any claims in relation to the general country situation. The Tribunal considers that the applicant has made no claims in relation to the general country situation (other than pertaining to his claimed bisexuality/homosexuality, which has not been accepted).
76. Having considered the applicant's circumstances individually and cumulatively, on the evidence before it, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution in Lebanon for a Convention reason if he returns now or in the reasonably foreseeable future. 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).

Complementary protection

77. For the purposes of its consideration of the complementary protection criteria, the Tribunal has considered its findings above, as well as the applicant's activities in Australia (carried out solely for the purposes of strengthening his claims) as set out in paragraphs 67 to 73 above.

78. The Tribunal has not accepted that the applicant is gay or bisexual, nor that he ever has been, nor that his claims in relation to his sexual orientation are true. The Tribunal has also not accepted that he faces being forced to marry in Lebanon. The Tribunal considers the applicant will return to live with his family and will find work, although he is depressed and will find it distressing to leave his businesses and friends in Australia.

Claim about posting gay websites on his Facebook profile

79. As noted above, the applicant did not suggest in his statement that anyone in Lebanon would be aware of his activities in Australia.
80. It was only when the Tribunal put to the applicant at hearing that it was difficult to understand why he would have posted numerous gay websites on his Facebook profile that he made a claim to the Tribunal that he would be “judged” in Lebanon because of these postings, because he is from such a dangerous country. He did not make this claim in his post-hearing statement.
81. However, the Tribunal notes that the applicant claimed to the Tribunal that so far, in the three years he has had the gay/LGBT websites posted on his Facebook profile, no one has asked him about these pages. The Tribunal has considered the DFAT Report in relation to homosexuality/bisexuality. As noted at hearing, this report could, depending on the circumstances, indicate that a homosexual or bisexual person may face a real chance of serious harm or a real risk of significant harm¹³. The Tribunal also noted that if the applicant really thought that he faced a real chance or risk of harm from these “likes”, the applicant would not have returned voluntarily to Lebanon for his [sibling’s] wedding after having had these “likes” on his Facebook page for one year, and having (on his evidence) over 200 people from [his home town] as friends on Facebook who could have become aware of these “likes”. Indeed when initially asked about these gay websites, he did not seem alarmed that he may suffer harm for that reason, instead he suggested that he could easily explain to people that this was not really him.
82. At the time the applicant referred to these “likes” in his statement, he did not make the claim that these “likes” would cause him harm upon return (instead he made the claim when the Tribunal referred to this). The Tribunal also considers significant his willingness to travel

¹³ Sexual Orientation and Gender Identity

3.77 Lebanon prohibits ‘unnatural acts’ (effectively, sodomy) as well as ‘violating public morals’. Both provisions have been used in the past to prosecute homosexual activity. For example, in 2013 a gay club outside of Beirut was raided and those inside were charged with violating public morals. DFAT contacts have also said gay people have been subject to harsh treatment, sometimes including rape, in detention. The maximum penalty for ‘sexual intercourse contrary to nature’ is one year imprisonment.

3.78 Despite this, Beirut enjoys a reputation as an open, relatively gay-friendly environment and provides a degree of anonymity, compared to other, more conservative areas of Lebanon and the region more broadly. Aside from isolated examples, homosexuality has not normally in recent years been prosecuted in Lebanon. Incidents of invasive medical tests undertaken to ‘prove’ that a homosexual act had taken place have now, according to contacts, stopped. Lesbian and gay clubs exist in Beirut and DFAT contacts report that lesbian and gay people can generally avoid prosecution by keeping a low profile. Specific support groups for lesbian and gay people exist, and also provide support to bisexual, transgender and intersex people.

3.79 Bisexual, transgender or intersex people all keep a very low profile in Lebanon. Media has reported that bisexual, transgender and intersex people have taken refuge in Lebanon from across the Middle East. These groups are likely to maintain a low profile due to the presumption of official or societal discrimination against them.

3.80 Overall, DFAT assesses that lesbian, gay, bisexual, transgender and intersex people face a moderate risk of societal and official discrimination and violence. DFAT further assesses that, particularly in Beirut, an individual would be able to lead a relatively open life but would still need to keep a low profile and would be at risk of societal and familial ostracisation.

back to Lebanon for his [sibling's] wedding after having "liked" these websites; his claim that despite having over 400 Facebook friends, half of whom are in [his home town] where to be gay/LGBT is taboo, no one has referred to the LGBT/gay website "likes" in the last three years; and his lack of concern about these "likes", saying that he would have explained them away as joke. In the circumstances, the Tribunal is not satisfied that on the evidence before it that the applicant will face a real risk of significant harm in Lebanon as a result of having "liked" these gay websites, nor that there is a real risk that he will be imputed as homosexual or bisexual in Lebanon.

83. The Tribunal is not satisfied that the other activities the applicant has engaged in in Australia face any risk of becoming known in Lebanon. The Tribunal does not accept, on the evidence before it, that the applicant's circumstances as found would lead to a real risk of significant harm for the applicant in Lebanon.
84. The Tribunal has considered the applicant's circumstances individually and cumulatively, and it finds there is no basis for the applicant's claims to fear significant harm. The Tribunal is not satisfied that there are substantial grounds for believing, that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm. Therefore the applicant does not satisfy the criterion set out in s.36(2)(aa).

CONCLUSIONS

85. 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). 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). 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) for a protection visa.

DECISION

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

Christine Cody
Member

ANNEXURE A - RELEVANT LAW

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

Refugee criterion

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. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

4. 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.
5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country. 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)). Examples of 'serious harm' are set out in 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. 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.
6. 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.
7. 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 '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.

8. 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.
9. Whether an applicant is a person in respect of 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

10. 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').
11. '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. 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.

Section 499 Ministerial Direction

12. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.