

0905729 [2009] RRTA 981 (28 September 2009)

DECISION RECORD

RRT CASE NUMBER: 0905729

DIAC REFERENCE(S): CLF2009/41692

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Shahyar Roushan

DATE OF ORAL DECISION: 23 September 2009

DATE OF WRITTEN STATEMENT: 28 September 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be stateless and formerly resident in Lebanon, arrived in Australia [in] February 2009 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] March 2009. The delegate decided to refuse to grant the visas [in] July 2009 and notified the applicants of the decision and their review rights by letter dated [in] July 2009.
3. The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] July 2009 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.
6. The Tribunal gave its decision on the review at the conclusion of the hearing held [in] September 2009. The following are the reasons for that decision.

RELEVANT LAW

7. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
8. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
9. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
10. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
12. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
13. 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.
14. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
15. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
16. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
17. 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.

18. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
19. 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.
20. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
22. The applicants were represented in relation to the review by their registered migration agent.
23. The applicants are husband, wife and their infant child. Only the first named applicant has made specific claims under the Refugees Convention, his wife and child are relying on their membership of his family. For convenience and the purpose of this decision, the Tribunal will refer to the first named applicant as "the applicant".

Application for a Protection Visa

Application Form

24. According to the information provided in his application for a protection visa, the applicant was born in Nahr el-Bared Camp for Palestinian refugees (Nahr el-Bared) in [date of birth deleted: s.431(2)] and lived there until May 2007. He then moved to Beddawi refugee camp (Beddawi) where he remained until he came to Australia. He has completed 9 years of education and worked at his uncle's [business deleted: s.431(2)] from 1994 to May 2007. He was unemployed in Beddawi.
25. In response to questions as to his reasons for claiming to be a refugee, the applicant stated that he fears being arrested and tortured by the Lebanese authorities, who believe that his family was directly involved with and are leaders of Fatah al-Islam. He also fears retaliation by other Palestinians, who believe his family was responsible for the destruction of Nahr el-Bared. In addition, he fears being harmed by supporters of Fatah al-Islam, who believe that his [relative] escaped from them because his name was published in the newspaper. Members of his family were falsely named in a newspaper as being leaders of Fatah al-Islam.

26. The applicant stated that he was living in “terrible conditions” at the refugee camp and there is no “life” for him there. He would not be able to work and support his family. They have nowhere “reasonable” to live. As a Palestinian he has no rights in Lebanon. Palestinians are despised in Lebanon.

Submissions

27. In a submission dated [in] March 2009, the applicant’s then representative submitted that the applicant and his family arrived in Australia [in] February 2009 on a Student visa. After arriving in Australia the applicant sought assistance from the Refugee Advice and Casework Services (RACS). However, RACS did not have capacity to provide assistance and the applicant was referred to the Immigration Advice and Rights Centre (IARC). The delay caused in lodging the application was a result of the applicants trying to obtain assistance in completing the application forms.

Statutory Declaration

28. In a statutory declaration dated [in] April 2009, the applicant provided a detailed account of his claims. These claims are outlined below.
29. Most Palestinian refugees in Lebanon live in Palestinian refugee camps. They do not have citizenship rights and cannot own property. They are not treated with respect and their freedom of movement is restricted as they have to show identification in order to be able to move around, leave or enter the camp. They are prevented from working in a large number of professions. They are unable to work as accountants, salespersons, pharmacists, electricians, guards, drivers, etc and even if they manage to find work they are paid less than the wages paid to a Lebanese citizen. Palestinians are also barred from owning a business involving currency exchange, trade in gold, printing, publishing, car repairs, engineering or health services outside the camps. In order to operate other kinds of business, the business must be registered in the name of a Lebanese citizen, exposing Palestinians to many risks. These restrictions do not apply within the camps, but opportunities there are limited. Lack of employment prospects results in many Palestinian school children leaving school early and many do not pursue higher education as they cannot afford the costs.
30. The Naher El-Bared camp, where he lived, is about 1 square km and houses about 40,000 people. The houses, which are very small and over populated, are all joined together. There are no proper streets and passageways are extremely narrow. There is no sewer system and sanitary conditions are poor. It gets very cold in winter but there is no heating.
31. The applicant attended primary school at the United Nations Relief and Works Agency (UNRWA) schools in Naher El-Bared camp for 9 years from [years deleted: s.431(2)] Due to his family’s worsening financial situation, he was forced to leave school and join his uncle’s business. He spent his teenage years working hard. He had no involvement in any religious or political groups in Lebanon.
32. On 20 May 2007 a war broke out in Naher El-Bared between the Lebanese Army and a Fatah al-Islam. During that time the applicant was with his family in Naher El-Bared.
33. The applicant’s house in Nahr el-Bared was [location deleted: s.431(2)] It was an ideal target of occupation for Fatah-al-Islam. When members of Fatah al-Islam came to occupy the house by force, the applicant and his family were scared. They tried unsuccessfully to stop them.

His brother [Mr A] had a “fight” with them and shouted at them. Fatah-al-Islam wanted to shoot him but his parents intervened and took [Mr A] away. The applicant and his family went to uncle’s house. Fatah-al-Islam then came to his uncle’s house to put snipers on the roof. This made the house a target for the Lebanese Army. The applicant and his family kept on moving between houses in search of safety. Like many others they were victims of both Fatah-al-Islam and the Lebanese Army. At that time the applicant was getting ready for marriage, but as a result of his house being taken over everything he had acquired and worked for was destroyed.

34. On the third day of the war he heard the news of his cousin’s death. He had died as a result of a bomb explosion near a UN Relief truck distributing food. At the time of his death, his cousin was trying to get food to take back to his family. The applicant and his family decided to escape the camp. The Lebanese authorities provided the camp occupants with a short opportunity to leave. They did not know where they were going but they just wanted to leave. They thought they would be back after a few days and did not take any belongings with them. His father, however, remained inside the camp along with two of the applicant’s uncles and three of his brothers, [Mr A, Mr B and Mr C]. His uncle’s family also stayed in a desperate attempt to protect their house and the business which supported the entire family. They did not think that the conflict would last more than a few days.
35. After escaping from the camp, the applicant was arrested by the Lebanese Army in [town deleted: s431(2)]. All camp residents had to pass through an “army barracks” in order to leave the camp. At that point their identity could be checked. The applicant, along with other young men who were leaving the camp, was arrested as he was passing through the army barracks. They separated him from the rest of his family and told him to stand on the other side. They handcuffed and questioned him over a long period of time. He was verbally abused and physically assaulted. He was asked what assistance he had provided to Fatah al-Islam and was accused of trying to attack the army barracks that morning. He told them that he was sleeping at that time. After one hour, they tied his hands behind his back and forced him to stand in the sun for six hours. They did not allow him to sit down or drink water. When he asked to use the bathroom, they told him “do it in your clothes you stinking rat”. He was finally released after they took down all his details and asked him to regularly report to al Qoba intelligence department. The applicant obliged and reported to the authorities regularly. On these occasions he was questioned, mistreated and accused of helping Fatah al-Islam. The authorities accused all residents of the camp of helping Fatah-al-Islam in exchange for money.
36. The family had no shelter outside the camp and the only available place to take refuge in was the [name deleted: s.431(2)] School. They were allowed to live in a classroom sharing it with three other families in Bedawi
37. [In] June 2007 his uncle, [Uncle D], was shot in Naher El Bared as he was trying to get some bread. His uncle was mentally ill and was taken by the Lebanese Army to an unknown location. They tried to search for him in vein and after a week uncle’s two daughters, his uncle’s son and the applicant’s brother, [Mr B], decided to escape from the camp in the hope of finding his uncle. When they arrived at the army check point they were all arrested for being in connection with his uncle. The girls were detained for one day, his brother was held for 8 days and his cousin was detained for 13 days. They forced his cousin to stand up for three days straight. The applicant’s brother was also tortured was hit on his shoulder. He was taken to the hospital and then to prison. They did not find anything against him and released him on the condition of reporting to the intelligence.

38. Later, they learnt that [Uncle D] was shot in the abdomen by the Lebanese Army He was transported by the Red Cross from Naher El-Bared to the north hospital where he was operated on and had a colostomy. He was arrested at the hospital before he could completely recover and was taken to [name deleted: s431(2)] prison. After his uncle was shot his father told him to go to the hospital and ask about [Uncle D]. However, intelligence officers at the hospital beat him and told him that he was very brave to come and ask about a terrorist. He did not get to see his uncle.
39. For two months no one knew where his uncle was until someone informed a member of his family that his uncle was seen at [prison deleted: s.431(2)]. After a determined effort by the Red Cross, his uncle's children were able to visit him in [prison deleted: s.431(2)] His uncle had lost weight and his medical condition had deteriorated. Because of his colostomy, he was separated from other prisoners and had to sleep in the hallway. Intervention from the PLO and the Mufti's office produced no results and the applicant's uncle died on [date deleted: s431(2)]. His story was subsequently published in some newspapers. A person who is now in Australia was in jail with his uncle and would be able to give evidence. According to this person, the Lebanese authorities had thought that the applicant's uncle was a leader of Fatah al-Islam. The authorities considered anyone who was living in the camp and was wounded to be a member of Fatah al-Islam. There were people in the camp who were reporting to the Lebanese Army and if they did not like someone they would report them to the army. The family may have also been under suspicion because Fatah al-Islam was using their house.
40. The applicant's father, his brother [Mr C] and his other uncle [Uncle E] left the camp [in] June 2007. They were all arrested, detained for nearly 5 days and tortured. They were suspected of supporting Fatah-al-Islam. His father can no longer walk on one of his legs.
41. The applicant's brother, [Mr A], stayed behind upon their father's request to look after the applicant's aged aunt, who had refused to flee. A week after the applicant's father left the camp, his aunt's health deteriorated and she was taken out of the camp by the Red Cross. [Mr A] stayed behind fearing arrest and torture. He finally left the camp on [date deleted: s431(2)] after swimming continuously for 12 hours. However, he was arrested by the Lebanese Army and taken to an unknown location. His name was then identified as one of the leaders of Fatah al-Islam. The family was very stressed, especially his wife who was horrified by that news. [Mr A] continues to be detained in [prison deleted: s.431(2)] Family members have permission to visit him but they are given a very hard time when they do. [Mr A] has been accused of being a member of Fatah-al-Islam but has not been to court yet. They sought assistance from a lawyer who told them that they would be able to get [Mr A] out of jail if they paid \$10,000. They could not afford to pay this money.
42. About a week or 10 days after [Mr A's] arrest, the applicant was arrested at Beddawi. He was accused of being a member of Fatah-al-Islam. He was insulted and subjected to "various types of torture". They threatened to kill him, his brother and all members of his family many times. They wanted him to confess that he and his brother were fighting for Fatah al-Islam and helped them to escape, ignoring the fact that the applicant could not drive. He rejected these false accusations and was released after three days After that, he was arrested on six more occasions and subjected to similar treatment. Sometimes he was held for 3 or 4 hours and sometimes for longer periods of time. The last time he was arrested and detained was when he tried to visit his brother a few weeks before he came to Australia His cousin is also in jail. His brothers and cousins have been arrested and released at various times and have been asked to report to the authorities. They are being monitored and members of the family are considered to be associated with Fatah al-Islam

43. Apart from the problems directed at him from the authorities, he has received many calls from Lebanese people threatening him and members of his family. They are held responsible for Lebanese who died or were injured during Fatah al-Islam's war with Lebanese Army. His family ([name deleted: s.431(2)] family) is considered by the Lebanese to be "one of the most important supporters" of the Fatah-al-Islam.
44. Many Palestinian families also consider the ([name deleted: s.431(2)] family) for the destruction of Naher El-Bared. On one occasion, about one and a half months after his brother was arrested, he was approached by four masked men who insulted and punched him. Finally, others intervened, but the people who attacked him tried to shoot him.
45. In addition, members of Fatah-al-Islam threatened him over the phone about 3 weeks after his brother's arrest. They said that his brother has betrayed them because he has handed himself to the army and provided them with information about the organisation. They have given strong indication that an attack is imminent. Members of Fatah al- Islam have also threatened his brother [Mr A] and were going to kill him, but luckily some other people intervened and saved him.
46. After all this "suffering" he decided to leave Lebanon with his wife and his daughter to live a better life and to protect them from danger. Since arriving in Australia he has been in contact with his family. He has been told that the army wanted him and his brother, [Mr B], to go and see them. [Mr B] obliged and told them that the applicant has left for Australia. The applicant is now fearful that the authorities would be after him for failing to report to them

Further Submissions

47. The applicant's then representative provided a further detailed submission, dated [in] April 2009, in which she presented factual and legal arguments in support of the applicant's case. The Tribunal notes the following issues, arguments and information covered by the submission.
48. The applicant is stateless. Although he was born and has lived his whole life in Lebanon he is not recognised as a Lebanese citizen and as a Palestinian, he has no homeland. He holds a Lebanese travel document but not a passport. He would have the right to reside in Lebanon but he has no right to reside anywhere outside Australia other than Lebanon.
49. The applicant lived his whole life in a camp run by UNRWA and was receiving assistance from UNRWA prior to leaving Lebanon.
50. The applicant has a well-founded fear of being persecuted for reasons of his imputed political opinion, nationality, religion and membership to the particular social groups of members of the [name deleted: s.431(2)] family, informers against Fatah al Islam and Palestinians in Lebanon.
51. He fears persecution from the Lebanese Army and government for the reason of his perceived support for Fatah al-Islam, his Palestinian ethnicity and his religion, being a Sunni Muslim; from Fatah al-Islam because they believe that he has informed on them to the Lebanese Army; from Lebanese civilians because his family name has become falsely associated with Fatah al-Islam in the media in Lebanon; and from other Palestinians who consider the [name deleted: s.431(2)] family to be one of the main causes of the destruction of Naher El Bared.

52. Members of the [name deleted: s.431(2)] family have been publicly named as leaders and supporters of Fatah al-Islam and are therefore recognised as a distinct group. Amnesty International has confirmed the suspected involvement of [the applicant's] uncle, [Uncle D], with Fatah al Islam in a report, which stated:

[Information deleted: s431(2)]

53. Such arrests and reports have led to the name '[name deleted: s.431(2)]' becoming falsely associated with Fatah Al Islam, leading to persecution.

54. The applicant's religion is a contributing factor which, together with the other characteristics referred to above, makes him highly susceptible to persecution. Palestinian refugees are discriminated against as a group in Lebanon partly because of their religion. If they were to be legally recognised as Lebanese citizens this would dramatically alter the current religious and political balance. Currently Palestinian refugees make up approximately 10% of the Lebanese population and are largely Sunni Muslims. The recognition of this group as having political rights would greatly alter the current sectarian-religious political balance which is influenced by religious divides

55. The submission referred to and provided extensive country information in relation to current situation of Palestinians in Lebanon; the restrictions imposed on those residing in Palestinian refugee camps; current situation for Nahr el-Bared refugees; the consequences of the events of 2007; the treatment of Palestinians by Lebanese civilians and armed gunmen and adequacy of state protection.

56. The submission also included the following supporting evidence:

- UNRWA registration card for the applicant, his wife and their daughter.
- Certified copy and translation of the applicants' identity cards, issued by Lebanon's Ministry of Interior and Municipalities. The applicant's identity card confirms that he was born in Nahr el-Bared and is married to the second named applicant.
- Letter of support from [Mr F], dated [in] April 2009. In his letter, [Mr F] stated that he knows the [name deleted: s.431(2)] family because they lived together in Nahr el-Bared. After the war with Fatah al-Islam, most people started to "hate" the [name deleted: s431(2)] family as they were perceived to be responsible for bringing Fatah al-Islam to the camp and the subsequent events. In relation to the applicant's uncle, [Mr F] stated that he was in [prison deleted: s.431(2)] when [Uncle D] was brought in under "strict guards" He had undergone a colostomy and smelt bad. The other prisoners could not bear the smell and refused to accept him in their cells. [Mr F], a medical doctor, was asked by the warden to treat [Uncle D]. He refused as there were no medical facilities or means of sterilisation, [Uncle D] died a few days later as a result of *toximia* and *septicemia* due to lack of medical care. The post mortem report, identifying the cause of death as cardiac arrest, was unsubstantiated. A few days after [Uncle D]'s death, the Lebanese Army brought [Mr A] to [prison deleted: s.431(2)]. He was accused of being a member of Fatah al-Islam. If the applicant were to return to Lebanon he would be taken to prison as the "history" of the [name deleted: s431(2)] family is known to the army.
- Letter of support from the Palestine Liberation Organisation.

- Copy and translation of letter from the applicant's father's solicitor to the Investigating Judge of Beirut, requesting a "statement relating to the intern applicant [name deleted: s.431(2)]". It is not clear from the document what the nature of the statement is.
- Copy and translation of newspaper article [Information deleted: s.431(2)].

Copy and translation of death certificate for [Uncle D].

Copy and translation of a newspaper article [Information regarding Uncle D's death in prison deleted: s.431(2)].

- Certified copy of a notice stating that the applicant was living in Nahr el-Bared and his house was destroyed [in] May 2007.
- Certified copy and translation of notice allowing [name] to visit [Mr B] in [prison deleted: s.431(2)].
- Exiled and suffering: Palestinian refugees in Lebanon, Amnesty International, 17 October 2007.
- Ministry of Justice confirming that [Mr A] remains in prison

The Interview

57. The applicant was interviewed by the delegate [in] June 2009 (the interview). The Tribunal has listened to the audio recording of the interview and what follows is a summary of the applicant's oral evidence to the delegate.
58. The applicant was born in Nahr el-Bared. He is stateless and Palestinians in Lebanon face many problems, including restrictions on their movements. Palestinians in camps are surrounded by the army and are discriminated against. He was able to leave the country through his wife as that was his only way out.
59. Nahr el-Bared was attacked by certain people in May 2007. They destroyed the place he lived in and they had to flee. His uncle was killed and his brother was imprisoned. He was followed by Fatah al-Islam and was accused by the authorities of being a terrorist. There is no one to protect Palestinians and no one to look after them. They were put under pressure by the authorities on one side and by the terrorists on the other. He was subjected to torture and his life was threatened.
60. The applicant stated that he fled Nahr el-Bared when the conflict started and he left the camp with his mother and siblings when they were stopped at the border. People from the army had been killed by that stage and there was a lot of anger and resentment directed towards the camp residents. They interrogated and mistreated him. They accused him of being affiliated with Fatah al-Islam. He denied any connection with the group, but they treated him very harshly. He was released but they told him that they would need to speak to him again and this was the beginning of his problems His uncle was also killed during that time. He was named in the media as being a leader of Fatah al-Islam, thereby creating more problems.

61. The applicant stated that he did not belong to any group or organisation. He comes from a poor family and as soon as he left school he started working at his uncle's shop. His family did not have any money and he spent his life working at the shop.
62. After the birth of his daughter, he decided to leave Lebanon to secure the safety of his family. He asked around and found out that people are able to leave by obtaining Student visas. They applied for a Student visa for his wife. He was unable to apply for a Student visa for himself because he had not completed his schooling.
63. He has no rights in Lebanon His family has been named by the media and he was threatened by Fatah al-Islam. He fears the authorities because of what happened to him and members of his family. People believe that members of his family are associated with Fatah al-Islam. There are spies in camps who provide false reports to the authorities in exchange for rewards.
64. At the interview the applicant submitted copy of a certificate issued by the Red Cross containing personal information in relation to the applicant's brother, [Mr A] The applicant indicated that the document shows that his brother is being detained by the Lebanese authorities.

The Delegate's Decision

65. The delegate found that the applicant's fear of persecution in Lebanon is not well-founded. The delegate, having impliedly accepted that the applicant was arrested and interrogated by the Lebanese authorities on "six to seven occasions" on suspicion of affiliation with Fatah al-Islam, reasoned that the fact that the Lebanese authorities have thoroughly vetted the applicant in this fashion "is a strong indication" that the authorities have found that they have no interest in him. She referred to country information indicating that the authorities have acted against Fatah al-Islam in Nahr el-Bared and concluded that the state is able to protect him from Fatah al-Islam. The delegate also found that, as no action was taken against the applicant by Fatah al-Islam militants, Fatah al-Islam is neither interested nor has the capacity to persecute the applicant. The delegate accepted that there is "overall" discrimination against Palestinians in Lebanon. However, she was of the view that the applicant is educated, his family own a [shop] and they are receiving assistance from NGOs and UNRWA.

Application for Review

Pre Hearing Submissions

66. [In] August 2009, the applicant's representative provided a submission, addressing the delegate's decision. It was submitted that the conduct of the delegate suggested a lack of consideration of the detailed submissions and claims. It was stated that at the start of the interview, the delegate did not realise that it was a male making the application, asking him to wait in the waiting room while she interviewed his wife. This was corrected when it was pointed out to the delegate that [the applicant] was the main applicant. Also, the delegate did not put any substantive adverse issues to the applicant during the interview nor did she indicate that she had any concerns with the applicant's claims.
67. The submission included a useful chronology of events (see folio 48 of the Tribunal file).

68. Immediately prior to the hearing the applicant provided a certified translation of an article dated [in] August 2009 and sourced from A-Safir Newspaper in relation to the condition of Palestinian refugees in Lebanon.

The Hearing

69. The applicant appeared before the Tribunal [in] September 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant's representative was also present at the hearing.
70. At the hearing the applicant provided a comprehensive account of his circumstances in Lebanon. He also took the opportunity to provide further information in relation to a handful of matters he had not expanded upon in his written statement and fill any remaining factual gaps. As his evidence was entirely consistent with the contents of his statutory declaration and oral evidence to the delegate, its replication in its totality here serves no purpose.

FINDINGS AND REASONS

71. The applicant's claims are based on the Convention grounds race, religion, nationality, membership of a particular social group and political opinion. His case is essentially that as a Palestinian refugee in Lebanon he was subjected to severe discrimination. He lived in Nahr el-Bared with his large extended family in harsh socio-economic conditions. His situation and that of his family deteriorated significantly in 2007, when during clashes between members of Fatah al-Islam and the Lebanese Army in the camp, his house was occupied and subsequently destroyed. The applicant and members of his family were made homeless and forced to leave the camp. Their circumstances attracted false accusations of association with Fatah al-Islam by the Lebanese Army. They were also accused of collaborating with the Lebanese Army by members of Fatah al-Islam. The applicant, his father, brothers, uncle and cousins, as well as other camp residents, were all subjected to arrest, detention and mistreatment by the Lebanese Army. One of his brothers continues to be detained without charge by the authorities. The applicant's uncle was shot and subsequently accused of being a leader of Fatah al-Islam. He died in prison after being denied adequate medical treatment. The applicant fears further adverse treatment by the Lebanese authorities. He also fears being harmed by members of Fatah al-Islam, other Palestinians who may perceive his family as being responsible for the destruction of Nahr el-Bared and Lebanese nationals for holding his family responsible for the death of loved ones during the 2007 clashes.
72. The applicant travelled to Australia on a travel document issued to Palestinian refugees by the government of Lebanon. Having sighted this document at the hearing, the Tribunal accepts that the applicant is a stateless Palestinian born in a Palestinian refugee camp in Lebanon. The applicant has lived in no country other than Lebanon before coming to Australia. Based on the evidence before it, the Tribunal finds that the applicant has no country of nationality and that his country of former habitual residence is Lebanon.
73. The first paragraph of Art. 1D of the Refugees Convention, states the Convention does not apply to "persons" who are "at present" receiving from organs or agencies of the United Nations other than UNHCR "protection or assistance". Under Australian law "persons" refers to a class of persons; "at present" refers to the time when the Convention was signed; and "protection or assistance" is to be read as disjunctive rather than conjunctive. As it is uncontroversial that Palestinians as a group were as at 28 July 1951 receiving protection (by the United Nations Conciliation Commission for Palestine (UNCCP)) or assistance by

UNRWA), a member of that group can be described as “at present receiving protection or assistance” Therefore, for the purposes of the first paragraph of Art. 1D, the Refugees Convention does not apply to the applicant, who is a member of that group. The second paragraph of Article 1D deals with excluded persons where protection or assistance has ceased without their position being definitively settled. Like the first paragraph, this paragraph is concerned with a class of persons and it is sufficient if either protection or assistance has ceased. As it is also uncontroversial that the position of Palestinians has not been definitively settled, the Tribunal, based on the factual information before it, finds that “protection”, which was provided only by the UNCCP, ceased in the early 1950s when the UNCCP reached the conclusion that it was unable to fulfil its mandate. Accordingly, the applicant is not excluded from the operation of the Refugees Convention under Art. 1D. That said, the applicant will not automatically be deemed a “refugee” under the Convention and his case must be assessed against Art. 1A(2).

74. At the hearing before the Tribunal the applicant’s evidence was wholly consistent with his written claims and the independent evidence before the Tribunal. His account of his experiences was straightforward, unembellished and as compelling as it was persuasive. The Tribunal found him to be a reliable, truthful and credible witness.
75. The sources consulted by the Tribunal confirm that on 20 May 2007 clashes erupted between armed members of the radical Fatah al-Islam and the army in Tripoli. Fighting was triggered when security forces raided an apartment in Tripoli following a bank robbery, and clashes spread to the nearby Nahr el-Bared camp after Fatah al-Islam fighters attacked and killed Lebanese soldiers at an army outpost. A short-lived ceasefire was followed by three months of fighting, during which more than 20,000 Palestine refugees living in Nahr el-Bared camp and about 10,000 other Palestine refugees and Lebanese living in adjacent areas were forcibly displaced (Internal Displacement Monitoring Centre (IDMC) 2008, *Lebanon: Displaced, again*, IDMC website 23 July [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8D8B19A96BDE25F1C125748F0051715D/\\$file/Lebanon+-+July+2008.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8D8B19A96BDE25F1C125748F0051715D/$file/Lebanon+-+July+2008.pdf)). According to Human Rights Watch, the Lebanese army and internal security forces arbitrarily detained and physically abused Palestinian men fleeing the fighting and the government failed to investigate the cases of arbitrary detention and abuse, reinforcing a climate of impunity (<http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/lebano17610.htm>). Similarly, Amnesty International reported on Palestinian civilians being threatened and abused by soldiers at checkpoints on account of their identity following the eruption of the conflict (<http://www.amnesty.org/en/library/asset/MDE18/010/2007/en/35eba2ba-d367-11dd-a329-2f46302a8cc6/mde180102007en.html>).
76. The Tribunal, therefore, accepts that in 2007 the applicant’s family home in Nahr el-Bared was invaded and occupied by Fatah al-Islam fighters during the small scale but intense war which erupted between Fatah al-Islam and the Lebanese Armed Forces in the camp. The Tribunal accepts that as a consequence his family home was destroyed, making him and members of his family homeless. The Tribunal accepts that upon fleeing the death and destruction which ruled Nahr el-Bared, the applicant, alongside other male Palestinian residents of the camp, was stopped, interrogated, accused of being associated with Fatah al-Islam and mistreated. The Tribunal accepts that the applicant’s brothers, father and uncle were subjected to the same treatment as they took their turn in leaving the camp. The Tribunal accepts the applicant’s contention that those who were wounded, such as his uncle [Uncle D], or delayed their departure from the camp, like his brother [Mr A], were more

vulnerable to attracting more serious accusations of being somehow associated with Fatah al-Islam and had ultimately paid a heavy price. In the case of the applicant's uncle and brother, the tragedy of their circumstances extended to envelop the whole family when they were named by the Lebanese media as leaders or associates of a terrorist outfit. The Tribunal accepts that these false accusations carried serious consequences for the applicant, in that he continued to be subjected to interrogation and mistreatment on a number of other occasions, the last being a few weeks before he came to Australia.

77. The Tribunal accepts that the applicant's treatment at the hands of the Lebanese authorities amounts to serious harm for the purposes of s.91R(1)(b) of the Act. In the absence of any other evidence, the fact that the applicant was interrogated on six or seven occasions in recent past does not in anyway indicate that he has been thoroughly vetted or that the authorities do not have any further interest in him. Indeed, the Tribunal is of the view that the authorities' persistent past interest in him, the linking of his family's name to Fatah al-Islam by the media and the continuation of his brother's detention strongly suggest that the authorities would continue to be adversely interested in the applicant. The Tribunal is satisfied that if the applicant were to return to Lebanon there is a real chance that he would face arrest, interrogation, significant harassment, serious physical harm and/or imprisonment at the hands of the Lebanese authorities. The Tribunal is satisfied that such treatment would amount to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that the harm the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.
78. An essential and significant reason for the harm feared by the applicant is membership of his family. Under s.91S, in determining whether the applicant has a well-founded fear of being persecuted for the reason of membership of his family, the Tribunal is required to disregard any fear of persecution, or any persecution, that the applicant's brother has ever experienced, where the reason for the fear or persecution is not a Convention reason (s.91S(a)). Having regard to the evidence before it the Tribunal is satisfied that that the applicant's family's fear of persecution is a Convention reason, being their imputed political opinion. The Tribunal is satisfied that the s.91S does not apply in this case. The Tribunal is satisfied that the applicant's imputed political opinion and membership of a particular social group, namely his family, are essential and significant reasons for the persecution feared by him as required by paragraph 91R(1)(a) of the Act.
79. As the Tribunal has found the applicant to have a well-founded fear of persecution for the reasons outlined above, it is not necessary to address his other claims relating to his fear of Fatah al-Islam, other Palestinians and Lebanese citizens. However, given the compelling nature of the evidence before it, the Tribunal considers it necessary to address the applicant's claims of persecution for the reason of his ethnicity.
80. The Tribunal accepts that as a Palestinian in Lebanon the applicant was subjected to severe discrimination. Some 220,000 Palestinians are registered in the twelve refugee camps in Lebanon in which UNRWA is present. All twelve official refugee camps suffer from serious problems, including lack of infrastructure, overcrowding, poverty and unemployment. The independent sources consulted by the Tribunal leave no doubt that Palestinian refugees in Lebanon live under strenuous circumstances and extremely poor socio-economic conditions. They do not have social and civil rights, have very limited access to the government's public health or educational facilities and no access to public social services. The majority rely entirely on UNRWA as the sole provider of education, health and relief and social services.

They are discriminated against in relation to other non-citizens with regards to the right to work and face severe restrictions in their access to work and to opportunities to gain their living by work. The employment restrictions imposed by Lebanese authorities on Palestinian refugees contribute enormously to their poverty. Palestinians “represent the poorest sector in all of Lebanese society and the poorest grouping of Palestinian refugees in any Arab country” The International Crisis Group has noted that amongst Arab countries who accepted Palestinian refugees, “the Lebanese state distinguished itself by shameful treatment of its refugee population” (see United Nations Relief and Works Agency for Palestine Refugees in the Near East (undated), ‘Lebanon Refugee Camp Profiles’, UNRWA website <http://www.un.org/unrwa/refugees/lebanon.html>; ‘Key facts in a nutshell’ (undated), World Vision website <http://meero.worldvision.org/dyn.php?countryID=16>; “The Status of Palestinian Refugees in Lebanon”, by Wadie Said, 24 May 2000, at www.palestinecenter.org/cpap/pubs/20000524ib.html; and the International Crisis Group, Nurturing Instability: Lebanon’s Palestinian Refugee Camps, <http://www.crisisgroup.org/home/index.cfm?id=5928>).

81. The conflict which afflicted Nahr el-Bared exposed its Palestinian residents to even more serious problems. As already indicated, Nahr el-Bared was virtually destroyed by the Lebanese Armed Forces during the three-month battle against Fatah al-Islam. The shelling of the camp had severe humanitarian consequences for those living in the camp and adjacent areas, where living conditions were already poor. Many former residents of the camp, like the applicant and his family, were displaced to temporary shelter in surrounding areas or to the nearby Beddawi refugee camp. The level of destruction offered no possibility of feasible return forcing displaced residents to continue to rely on host communities, mainly in other refugee camps (IDMC, *ibid*). According to the IDMC, following the conflict unemployment amongst the displaced residents of Nahr el-Bared increased to 79 per cent for both men and women. This situation is not helped by the restrictions they face in the labour market, which contribute to high levels of unemployment, low wages and poor working conditions (Amnesty International, *ibid*).
82. The applicant’s circumstances exemplify the tragedy that afflicted the camp and its residents. His home and the [shop] where he worked were destroyed in 2007. He was unemployed before coming to Australia and relied on the meagre assistance provided to him and his extended family by UNRWA. He is unskilled and his work history is confined to assisting his uncle at the [shop]. This, together with the noted conditions of the displaced former residents of Nahr el-Bared, the harsh work restrictions imposed on Palestinian refugees in general, the serious difficulties faced by them in obtaining work permits, the applicant’s profile as generated by the Lebanese Army and the threats levelled against him by Fatah al-Islam supporters would severely restrict his ability to find work in Lebanon. The Tribunal is of the view that if the applicant were to return to Lebanon he would face significant economic hardship that threatens his capacity to subsist. The Tribunal is satisfied that this would amount to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that the applicant’s Palestinian ethnicity is an essential and significant reason for the persecution he faces. Having considered his circumstances as a whole, the Tribunal is satisfied that relocation to another camp or elsewhere within Lebanon is neither reasonable nor would it provide the applicant with means to escape the harm he fears.
83. The Tribunal is satisfied that the applicant has a well-founded fear of persecution for a Convention reason in Lebanon.

84. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of former habitual residence. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

CONCLUSIONS

85. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria.
86. The other applicants applied as members of the same family unit as the first named applicant. The Tribunal is satisfied that they are members of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). The fate of their applications depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicants will be entitled to protection visas provided they meet the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

87. The Tribunal remits the matter for reconsideration with the following directions:
- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
 - (ii) that the second and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.

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

Sealing Officer's I.D: PRMHSE