

1304958 [2013] RRTA 562 (22 August 2013)

DECISION RECORD

RRT CASE NUMBER: 1304958

DIAC REFERENCE(S): CLF2012/228802

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Shahyar Roushan

DATE: 22 August 2013

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependent.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied to the Department of Immigration (the department) for the visa on 19 November 2012. His claims are set out in his application for a protection visa and an accompanying statement (see folios 45-48 and 55-58 of the department's file). He also provided additional evidence to the department at an interview with a delegate of the Minister on 28 February 2013.
3. The applicant appeared before the Tribunal on 23 July 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. He was represented in relation to the review by his registered migration agent.
4. The applicant, a citizen of Lebanon, is a Sunni Muslim from [location]. He claims that [a relative, Mr A], is a former Lebanese MP allied with the Future Movement. He claims that [Mr A] is a vocal opponent of the Syrian presence in Lebanon, which has caused problems for the extended family. The applicant claims that as a result of his participation in demonstrations and support for [Mr A] he was threatened and assaulted by pro-Syrians. He claims that his brothers have also been assaulted. He fears being seriously harmed if he were to return to Lebanon for the reason of his political opinion and membership of [Mr A]'s family.
5. The delegate refused to grant the visa on 26 March 2013. The delegate found the applicant's claims not to be genuine and that he did not have any political profile that would bring him to the adverse attention of any groups or individuals. He found that the applicant has put forward fabricated claims in an artificial attempt to meet the definition of a refugee. He was not satisfied that the applicant has a well-founded fear of persecutory harm for a Convention reason. The delegate was not satisfied that there are 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 the applicant will suffer significant harm.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
7. 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).

8. 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').
9. 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.
10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
11. The Tribunal did not find the applicant to be a credible and truthful witness. In reaching this view, the Tribunal has had regard to inconsistencies between the evidence he presented to the department and his evidence to the Tribunal, as well as other reasons detailed below.

[Mr A]

12. The Tribunal accepts that [Mr A] is a [relative of the applicant] as he claimed at the hearing. The Tribunal also accepts that the applicant was a supporter of [Mr A] and had shown his support by manning a polling booth during the 2009 elections. The Tribunal, however, is not satisfied that the applicant was threatened, harassed, harmed or mistreated for the reason of his support for [Mr A] and/or membership of [Mr A]'s family.
13. The sources consulted by the Tribunal indicate that [Mr A holds a certain position in] the Democratic Renewal Movement.¹ He is a former parliamentarian from [location and position in the party].² The Democratic Renewal Movement is part of the March 14 Alliance.³
14. As it was put to the applicant at the hearing, the Tribunal has found no information in any of the sources consulted to suggest that [Mr A], his supporters, including members of his family, or members and supporters of the Democratic Renewal Movement have been subjected to harm or mistreatment in Lebanon. In the statement accompanying his application for a protection visa the applicant claimed that [Mr A] was a pro-Iraq Baathist which put him on a 'collision course' with the Syrian Baathist party. He did not pursue this claim at any other point during the process. Nor did he pursue the written claim that in 2000 his father was [arrested] and taken to Syria, where he was detained for one week, tortured and accused of being a pro-Iraq Baathist. There was no evidence before the Tribunal that the incident involving the applicant's father some 13 years ago was in any way connected to [Mr A]. Nor was there any evidence before the Tribunal to indicate that the incident involving the applicant's father entailed any consequences for the applicant. The Tribunal has found no

¹ [Citation]

² [Citation]

³ Website of the Democratic Renewal Movement, <http://www.tajaddod-youth.com/>.

information in the sources consulted to suggest that [Mr A] or members of his family have been targeted or subjected to harm by the Syrians or their allies in Lebanon for the reason of his past pro-Iraq Baathist position. The Tribunal considers it reasonable to expect that if [Mr A] or his supporters, including members of his family, had been targeted in Lebanon by [Mr A]'s political adversaries or anyone else it would have been reported by the media, non-governmental organisations or governmental agencies.

15. Sunnis in Lebanon have been vocal in their support for the uprising in Syria.⁴[Details of localised support for the Syrian rebels]⁵ The Tribunal has found no reports of supporters of the Future Movement or the March 14 Alliance being attacked or harassed by Hezbollah or pro-Syrians in [the applicant's area].⁶ The Tribunal finds the applicant's claims not supported by the country information before it.

Demonstrations

16. In his protection visa application and the accompanying statement the applicant claimed that while he is 'not a political person', as he grew up he felt 'bitter' about the Syrian presence in Lebanon and participated in some demonstrations and when the war in Syria started he took part in 'demonstration activities', calling for a peaceful change in Syria. He claimed that after his participation in these demonstrations he started receiving telephone threats of serious harm from people describing themselves as supporters of Syria. At the departmental interview he claimed that he had participated in demonstrations on the anniversary of the assassination of the former Prime Minister Rafiq Hariri. He claimed that the last demonstration he participated in was in February 2012 in Beirut. He did not claim to have participated in any other demonstrations.
17. At the Tribunal hearing the applicant repeated the claim that he had participated in demonstrations held on the anniversary of the assassination of Mr Hariri. However, he claimed that last demonstration he has attended in Lebanon was in 2008 or 2009. When the discrepancies in his evidence was put to him under s.424AA of the Act, he stated that he would be able to present photographs to prove his claim that he had participated in demonstrations. He also stated he had attended demonstrations in Beirut; that he is not certain about dates and that an incident might have occurred in 2012 and he might have said that it was in 2009.
18. The Tribunal finds the applicant's explanations with regard to the changes in his evidence throughout the process unsatisfactory and finds his evidence regarding his participation in demonstrations in Lebanon unpersuasive. The Tribunal is of the view that the applicant's evidence regarding his participation in demonstrations in Lebanon undermines the veracity of his claims. The Tribunal does not accept the applicant's evidence that he had participated in demonstrations or protest activity in Lebanon.

Threats

19. As noted above, in his protection visa application and the accompanying statement the applicant claimed that following his participation in demonstrations he started receiving

⁴ Sharro, K, The paradoxes of free speech in Lebanon, *Xindex*, 10 November 2011, <http://www.indexonensorship.org/2011/11/censorship-lebanon-namc-register-websites-blogs/>.

⁵ [Citation].

⁶ Sources unsuccessfully consulted include Lebanese and international news media, major human rights reports, foreign government reports, tribunal resources and DIAC resources.

telephone threats from Syrian supporters. He claimed that he noticed cars following him while going to work and that on one occasion, around 2010, several pro-Syrians stopped him in a side street and threatened him, as well as members of his family. As a consequence of these threats he relocated to [a nearby suburb]. He claimed that his parents continue to receive threatening phone calls from unknown persons asking about the applicant.

20. At the departmental interview, the applicant provided a different account of the threats, claiming that he had been under threat for approximately three years; that he received death threats in 2009; that he was threatened whenever he went to [Suburb 1] for work purposes; and that on one occasion he was on his way to work with his brother when another car followed him.
21. At the Tribunal hearing, despite repeated questions in relation to his experiences in Lebanon, the applicant failed to mention that he was ever threatened. When the information he had provided to the department orally and the resultant inconsistencies in his evidence were put to him under s.424AA, the applicant responded that being at the hearing made him nervous and that if he wanted to lie he could have just memorised claims. He added that he had answered the Tribunal's questions truthfully.
22. The applicant's explanations do not satisfactorily address the inconsistencies in his evidence regarding the claimed threats, particularly his failure to mention at the hearing that he was subjected to threats. In the Tribunal's view, if the applicant had received any threats to his life and the safety of members of his family he would not have neglected to mention these threats at hearing. The problematic nature of the applicant's evidence casts serious doubt on the veracity of his claims that he was subjected to threats, including being followed or stopped by pro-Syrians or anyone else. The Tribunal does not accept these claims.

The Applicant's Brothers

23. In his protection visa application and the accompanying statement the applicant claimed that on one occasion he was on his way to work with his brother when another car followed them. In his interview with the delegate he stated that his brother, who works in [Suburb 2], an area located opposite [Suburb 1] was followed and threatened and on one occasion he was assaulted.
24. At the Tribunal hearing the applicant provided an inconsistent account of his brothers' experiences. While he claimed that his [first brother], who works in [Suburb 2], is fearful of the clashes between the Sunnis of [Suburb 2] and Alawis of [Suburb 1], he did not claim that [the first brother] had ever been subjected to threats, harm or mistreatment. Instead, he introduced new evidence by claiming that [the second brother], who works in [a different suburb] has been attacked a number of times by members of Hezbollah and residents of [Suburb 1]. These claims were not raised at any point prior to the hearing.
25. The applicant's oral evidence to the delegate and the inconsistencies in his evidence were put to him under s.424AA. He responded that he was not fabricating evidence. He stated that everyone forgets things and that he might even remember other things after the hearing. He added that he is going through a psychological phase and that he has been unemployed in Australia. He further stated that he would be able to provide evidence to show what has been happening with his brother, such as documents showing that he had been admitted to hospital.

26. The applicant's explanations do not satisfactorily address the inconsistencies and changes in his evidence. The Tribunal does not accept that he had simply forgotten to disclose potentially significant claims. He did not provide any satisfactory evidence to suggest that he was going through a psychological phase that had caused him to become forgetful or provide inconsistent evidence.
27. Following the hearing the applicant provided copies and translations of two separate medical certificates issued by a [Doctor] in Lebanon. The first, dated [February] 2013, states that [the second brother] is suffering from 'several traumas on his body because of being beaten hardly many times and he needs to relax one week at home for rest and treatment' (sic). The second certificate, dated [May] 2013, states that [the first brother] is suffering from 'shoulder dislocation because of hard strike and he needs to relax one week at home for rest and treatment' (sic). The documents submitted did not include any other information or details to shed light on the circumstances in which the applicant's brothers had allegedly been beaten or struck. No further evidence or information was received from the applicant in this regard. It is unclear for what reason exactly and under what circumstances the applicant's brothers had sustained the claimed injuries. More importantly, the information contained in the purported certificates is inconsistent with the applicant's own evidence. As noted above, while at the hearing the applicant claimed for the first time that his [second brother] had been attacked a number of times, he did not claim that his [first brother] had been subjected to harm. The purported certificate in relation to [the first brother] however suggests that he was allegedly struck and dislocated his shoulder as recently as May 2013. The applicant did not offer any further explanations. The Tribunal is not willing to attach any weight to the medical certificates submitted by the applicant. The Tribunal does not accept the applicant's claims that his brothers have been subjected to threats, harm or mistreatment in Lebanon by Hezbollah or anyone else for the reasons he has provided.

[Assault]

28. The applicant claimed at the departmental interview and at the hearing that on one occasion he was [sitting] with a friend when he was hit on this head by people from [Suburb 1] because he is a member of [Mr A's] family. The applicant's evidence regarding this claimed incident at the hearing was vague and unpersuasive. More importantly, this was never mentioned in his application for a protection visa or the accompanying statement. The Tribunal is of the view that if the applicant was [assaulted] about two months before his most recent travel to Australia, he would not have neglected to raise this claim in his written evidence to the department. The Tribunal is also of the view that the applicant has sought to introduce evidence at various stages of the process in order to bolster his case and achieve an immigration outcome. The Tribunal does not accept that the applicant was assaulted [when he was sitting with a friend] or at any other time in Lebanon.
29. For all the above reasons the Tribunal did not find the applicant to be a credible and truthful witness. The totality of his evidence shows a propensity to fabricate claims and tailor and shift his evidence in a manner which achieves his own purpose.
30. The Tribunal, therefore, does not accept that the applicant participated in any demonstrations in Lebanon. The Tribunal does not accept that he expressed anti-Syrian views in the course of any protest activity in Lebanon. The Tribunal does not accept that the applicant was followed, intimidated, threatened in any form, assaulted and/or harmed in any way by Hezbollah, Syrian supporters, persons from [Suburb 1] or anyone else in Lebanon. The Tribunal does not accept that he moved away from his [parent's home], because he feared harm or

mistreatment. The Tribunal does not accept that any member of his brothers have been harmed or mistreated by anyone in Lebanon.

31. The Tribunal finds that if the applicant were to return to Lebanon and support [Mr A] at the same level he has in the past, there is no real chance that he will face serious harm by anyone in Lebanon for the reason of his own political opinion; any political opinion imputed to him because of [Mr A]'s past or present political views or affiliations; membership of [Mr A]'s family or any other Convention reason.

Other Claims

32. In the statement accompanying his application for a protection visa the applicant claimed that in date] another [family member helped stage] an unsuccessful a coup which put his family 'on the spotlight'. The applicant did not pursue this claim in the departmental interview or at the Tribunal hearing. There is no evidence before the Tribunal that either he or any member of his family had suffered any harm as a consequence of his [relative]'s unsuccessful coup. The Tribunal is not satisfied that there is a real chance that he will face serious harm by anyone in Lebanon as a consequence of [relative]'s actions [many] years ago.
33. In the statement accompanying his application for a protection visa the applicant claimed that his [uncle], was 'assassinated' in [year] for being against the Syrian military presence in Lebanon. The applicant did not pursue this claim in the departmental interview or at the Tribunal hearing. Nor did he provide any additional meaningful details in relation to this claim. The Tribunal is not satisfied that there is a real chance that he will face serious harm by anyone in Lebanon for reasons related to his uncle's claimed assassination in [year], including his uncle's views.
34. Finally, in the statement accompanying his application for a protection visa the applicant claimed that he is worried that he will be recalled for military service in Lebanon and the possibility of getting 'hurt' Once again, despite numerous opportunities, the applicant did not pursue this claim at the departmental interview or the Tribunal hearing. Nor did he present any persuasive evidence to suggest that he would be recalled as a reservist. The Tribunal is of the opinion that if there was a chance that the applicant was going to be recalled to the army and he was genuinely fearful of this prospect he would not have neglected to mention this claim at every opportunity afforded to him following the lodgement of his protection visa application. The Tribunal is not satisfied that there is a real chance that the applicant will be recalled as a reservist if he were to return to Lebanon or that he holds a genuine fear on that basis.

General Violence and Instability

35. The country information before the Tribunal indicates that neighbourhoods of [Suburb 1] and [Suburb 2], a Sunni district, have a [feud], which periodically erupts into violent clashes between armed militias from the two areas, resulting in death, injury and destruction of property on both sides.⁷ While these clashes do not appear to have spread wider to encompass other [wider areas], the Tribunal is prepared to accept that properties in [a nearby suburb], including the property where the applicant resided, may have been occasionally caught in the crossfire in the course of skirmishes between the sparring neighbourhoods. The applicant did not claim to have suffered any harm or to have experienced serious property damage in the

⁷ [Citation]

two years that he resided in [that suburb]. The Tribunal finds that these circumstances do not give rise to a real chance that the applicant will face Convention related harm in [the suburbs in question]. The Tribunal finds that there is no real risk that the applicant will suffer significant harm in [this suburb] as a consequence of clashes between the neighbourhoods of [Suburb 1] and [Suburb 2].

36. At the hearing the applicant expressed concerns in relation to lack of safety and instability in Lebanon. There is no persuasive evidence before the Tribunal to suggest that the violence, tensions and the instability the applicant is concerned about are faced by him personally. The Tribunal is not satisfied that the general security situation in Lebanon would expose the applicant to a real chance of persecution for a Convention reason in Lebanon. The Tribunal is satisfied that the applicant fears violence faced by the population generally and not by him personally. The Tribunal finds that there is taken not to be a real risk that the applicant will suffer significant harm in Lebanon as a result of sectarian and political tensions, general instability and lack of security.
37. After considering all of the applicant's claims, both individually and cumulatively, the Tribunal is not satisfied that the applicant has been harmed in the past or that, if he were to return to Lebanon now or in the reasonably foreseeable future, there is a real chance that he will be harmed for the reason of his race, religion, nationality, political opinion or membership of any particular social group. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution.
38. Having considered all the applicant's circumstances, the Tribunal is not satisfied that it has 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.
39. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
40. 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).

DECISION

41. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Shahyar Roushan
Senior Member