

**AT AUCKLAND**

<b>Appellant:</b>	<b>AC (Lebanon)</b>
<b>Before:</b>	B L Burson (Chair) S A Aitchison (Member)
<b>Counsel for the Appellant:</b>	T Mukusha
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	19 February 2015
<b>Date of Decision:</b>	5 March 2015

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**DECISION**

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[1] This is an appeal against a decision of a refugee and protection officer, declining to grant refugee status and/or protected person status to the appellant, a citizen of Lebanon.

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted in Lebanon by Hezbollah (the 'Party of God' – a well known Shi'ite political party and militia group) who associate him with a Sunni imam who has been preaching against its interests. The central issue to be determined is whether the appellant's fears are well-founded. For the reasons which follow the Tribunal is satisfied that they are and that the appellant is entitled to be recognised as a refugee under the Refugee Convention.

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

## **THE APPELLANT'S CASE**

[4] The account which follows is a summary of that given by the appellant at the appeal hearing. It is assessed later.

### **The Appellant's Evidence**

[5] The appellant was born in the early 1960s in Sidon, in the south of Lebanon. As with many Lebanese of his generation, the appellant's family life was severely disrupted with the onset of the Lebanese civil war in the 1970s and 1980s. Throughout the 1980s, the appellant's siblings all left for various Gulf states where they have remained living ever since. The appellant himself departed to study overseas in the mid-1980s in a western state, returning to Sidon after five years to look after his elderly parents who had remained there living alone. After his return, the appellant was regularly detained for hours at a time by Syrian intelligence officers and interrogated about his activities in the western country and his attendance at Sunni mosques. He suffered a number of minor assaults during these interrogations.

[6] In the late 1980s, the appellant and his parents travelled to a Gulf state. Apart from a brief period of forced return to Lebanon in the immediate aftermath of the first Gulf war, during which the appellant suffered a further detention by Syrian intelligence, the appellant remained living in the Gulf region until 2000 when he returned to live in the western state. There, the appellant lodged a refugee claim based on his experiences at the hands of the Syrian intelligence services in Lebanon. The case was dismissed on the basis that at the time it came to be decided in 2008, Syrian forces had been forced to withdraw from Lebanon in the wake of the Cedar Revolution following the assassination of Sunni Lebanese Prime Minister Rafik Hariri. The appellant made a voluntary return to Lebanon and the circumstances giving rise to his present refugee claim began.

[7] The appellant explained that he had never been a devout Muslim while growing up but things had changed when a co-worker at his place of employment in the Gulf state in the early 2000s had a conversation with him which caused him to drastically revise his view of religion. He now became a devout Muslim and observed the requirement to pray five times a day. He carried this practice with him when he returned to Lebanon in the late 2000s following the dismissal of his refugee claim in the western state.

[8] As the family home had been substantially destroyed and rendered uninhabitable during the period he had been away, the appellant lived with a cousin in a nearby neighbourhood populated by Sunni Muslims. He undertook his morning prayers in two mosques close to his cousin's house in the neighbourhood where he was living. However, when going about his daily affairs relating to his work the appellant often went to other Sunni mosques in the neighbourhoods surrounding his area. These included attending a mosque in the Al-Abra neighbourhood which became known locally as the Al-Assir mosque after the imam who was leading Friday prayers there.

[9] The appellant explained that there was a widespread agreement amongst the Sunni community at both a political and religious level that Lebanon could not be truly democratic unless and until the powers of Hezbollah were curtailed. Consequently, in all of the mosques he attended, in their Friday prayers the imams touched upon issues relating to the role Hezbollah was playing in Lebanese society. Of the imams in Sidon, however, it was Sheikh al-Assir who stood out as being the most critical of Hezbollah and, in particular, its significant stockpile of weapons. His sermons became increasingly popular and the appellant attended them from time-to-time. Often, there were more people attending than could be accommodated in the mosque and crowds would spill out into the street. From time-to-time the appellant attended lectures given by al-Assir where he would discuss these issues

[10] Hezbollah kept a watchful eye on the Sunni community in Sidon. It established random checkpoints throughout the city and the appellant was routinely stopped when going about his business and questioned about his identity, his movements and what mosque he was attending. When the appellant was asked specifically whether he was attending the al-Assir mosque, he denied that this was the case. These detentions could last around half an hour during which the appellant was verbally abused by the militants manning the checkpoints.

[11] The appellant also felt that he was being followed by Hezbollah during this time. He would notice on occasion the same person crossing the street whenever he did so. Although nothing was ever said and no approach made to him, the appellant believes that the people following him were from Hezbollah.

[12] In 2010, members of Hezbollah came to the appellant's cousin's house. They stated that they were taking a survey of the area and started to ask questions relating to the appellant's occupation and whether he lived alone. However, the appellant became suspicious when the questioning turned to matters

of religion and the name of the mosque he attended. Again, the appellant did not mention that he attended the al-Assir mosque and named only the two mosques which were located close to his cousin's house.

[13] Throughout 2010/2011, the political and security situation in Lebanon deteriorated. In early 2011, Hezbollah overthrew the government led by Saad Hariri, the son of Rafik Hariri who had been assassinated in 2005, and whose Future Movement and March 14 Coalition the appellant supported. There was an upswing in assassinations of Sunni political figures. Fearing the situation for Sunnis in Lebanon would deteriorate further, the appellant obtained a visa to come to New Zealand, arriving in late 2011.

[14] In the years following the appellant's departure from Lebanon, he followed developments in Lebanon and became aware that Sheikh al-Assir had been involved in open conflict with Hezbollah in Sidon in 2013. He became aware that hundreds of Sunni men had been detained on suspicion of such association with al-Assir following the violence.

[15] The appellant became concerned that he might be targeted by Hezbollah if returned to Sidon because he had been formerly attending the al-Assir mosque and lectures. The appellant's fears were confirmed in late 2014 when he received news from his sister, who had been living in a Gulf state for over 30 years but who visited Sidon briefly for personal matters, that she had been detained at a Hezbollah checkpoint and, once her identity was known, interrogated about him.

[16] The appellant is unsure how the interest in him has arisen. He was not politically active against Hezbollah although he suspects that someone detained following the fighting in 2013 may have given his name under interrogation as being a person who they also knew attended the mosque. Irrespective, he is concerned that he will be detained arbitrarily for many months like these other men. He could even be beaten or killed.

### **The Statement from the Appellant's Sister**

[17] In her statement dated 14 January 2015, the appellant's sister states that she was stopped at a routine Hezbollah checkpoint while visiting Sidon in late 2014. Once her identity had been established, the Hezbollah militia began to ask her in a "rude fashion" the purpose of her visit and wanted to know where the appellant was. She told them the appellant was in New Zealand and the militia asked questions in a "scary way" about what he was doing in New Zealand and

when he was returning. The militia at the checkpoint informed her that her brother used to attend the Al-Abra mosque (the al-Assir mosque). They also indicated they had a serious interest in the appellant and wished to take him for questioning. She was threatened that she should not hide information from them. Notes were taken and she was allowed on her way.

### **Material and Submissions Received**

[18] In addition to the documentation provided to the Refugee Status Branch (RSB), on 14 February 2015 counsel filed a written memorandum of submissions. Attached to the submissions were:

- (a) a further statement (28 January 2015) from the appellant;
- (b) the statement (14 January 2015) from the appellant's sister together with copies of her passport and exit and entry stamps covering a period she claimed she was detained in Lebanon;
- (c) a letter dated 3 February 2015 from the New Zealand Muslim Association confirming the appellant's regular attendance at a local mosque;
- (d) a bundle of country information relating to the general situation in Lebanon and also relating to Sheikh al-Assir; and
- (e) a DVD containing a number of video clips which were viewed by the Tribunal in the course of the hearing. There were seven video clips in total. Of these, five related to the situation in Sidon in 2013 in the immediate aftermath of the conflict between the al-Assir supporters and Hezbollah. One video showed a man suspected of being an al-Assir supporter being surrounded by soldiers from the Lebanese armed forces and Hezbollah militia. He can be seen being asked whether he "loves al-Assir". The man is subjected to punches and kicks while on the ground. Another video contained interviews with civilians living in the area of the mosque who describe how Hezbollah militants visited their homes, during which they destroyed or stole property. Other videos showed weapons being fired from a hillside position into a densely populated urban area identified by the appellant as being the Al-Abra area. Another video showed Hezbollah fighters entering houses.

[19] On 17 February 2015, the Tribunal served on the appellant a bundle of country information relating to Salafism in Lebanon, Sunni radicalisation in Lebanon following the Syrian conflict, and political developments in Lebanon relating to Hezbollah and the Future Movement.

[20] During the course of the hearing, the Tribunal also received further items of country information from the appellant relating to the presence of Hezbollah checkpoints in Sidon in late 2013 and the defection of Sunni Lebanese regular armed forces soldiers on account of the brutality and bias of the Lebanese Army. The appellant also produced an article relating to the use by Hezbollah of “resistance brigades” and Hezbollah’s relationship to Iran.

[21] On 27 February 2015, the Tribunal received further country information from counsel relating to Sheikh al-Assir including a DVD showing videos of a sermon he gave and an interview with him on *al-Jadeed*, a Lebanese current affairs programme, in June 2012. In the sermon, he can be heard beseeching both Hezbollah and Amal (another Shi’ite group in Lebanon) to hand over their weapons to the Lebanese national army and vowing to fight them “by peaceful means”. In the *al-Jadeed* interview, Sheikh al-Assir repeats these points and raises concern that the reason that Hezbollah has not been using its weapons stockpile to attack Israel, despite provocations in southern Lebanon, is that Hezbollah’s claim to be a national resistance movement against Israel is simply a ‘Trojan horse’ aimed at furthering its plans to implement in Lebanon an Iranian-style Islamic government.

[22] Counsel also produced country information regarding claims that Islamic State (also known as ISIS and Islamic State in Syria and the Levant) is planning to declare an Islamic caliphate in Lebanon and the recent abduction in Libya of Egyptian Coptic Christians by militants aligned to Islamic State. Counsel made submissions on this material

## **ASSESSMENT**

[23] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and

- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[24] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

### **Credibility**

[25] The Tribunal finds the appellant to be a credible witness. His evidence was detailed, spontaneous and consistent with what he has said previously. While some of the appellant’s views regarding the conflict which erupted between al-Assir and Hezbollah in 2013 are ones which may not be objectively correct, there is no doubt he generally holds these views and they simply reflect his own opinions on events which occurred sometime after he left Lebanon. The appellant’s account is therefore accepted in its entirety.

[26] The Tribunal therefore finds that the appellant is a middle-aged man from Sidon who, after spending many years abroad, returned to live there in the late 2000s where he attended a number of mosques in accordance with his religious beliefs. This included attending the al-Abra mosque where Sheikh al-Assir had been giving lectures against Hezbollah’s interests. His attendance at this mosque has become known to Hezbollah. In late 2014, the appellant’s sister was detained at a routine checkpoint by Hezbollah and, upon learning of her identity, questioned her in detail about the appellant’s whereabouts. The militants were interested in what the appellant was doing overseas and indicated that they were interested in questioning him.

[27] The appellant’s claim will be assessed against this background.

### **The Refugee Convention**

[28] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[29] Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

[30] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

### **Assessment of the Claim to Refugee Status**

[31] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[32] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008), at [57].

*Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Lebanon?*

[33] In order to understand the predicament of the appellant it is necessary to say something about Hezbollah and Sheikh al-Assir.



## *Hezbollah*

[34] For present purposes, a useful background on Hezbollah, and how it has come to dominate southern Lebanon can be found in Hala Jaber *Hezbollah: Born with Vengeance* (1997) London Fourth Estate. Jaber, at pp17-74, describes how Hezbollah had its origins in the June 1992 invasion of Lebanon by Israel. At the time, a group of Muslim clerics was in Tehran attending an Islamic conference and Iran quickly dispatched members of its Revolutionary Guard to Lebanon's Bekaa Valley to realise its ambition of creating a new Islamic movement in Lebanon, with Iran as its mentor. The aim was to replicate the success of the Iranian revolution in transforming what had been a largely secular state into an Iranian-style Islamic state constitutionally organised in accordance with the principle of *Wilayat al-Faqih* – the rule of the supreme jurist. So Hezbollah was born. As such, Hezbollah was to serve as a counterpoint to the more secular and Syrian-backed Amal group which had hitherto dominated the Shi'ite political landscape in Lebanon.

[35] In 1985, Hezbollah's military wing *Muqawama al-Islamiya* (Islamic Resistance) was formed. It became increasingly involved in operations against the Israeli military forces which had, in 1983, begun to withdraw southwards from advanced positions in Beirut towards a self-declared 900 square mile security zone south of the Litani River. Where the Israeli forces went, so did Hezbollah follow, and its presence in southern Lebanon increased. Jaber remarks, at p26, that "the day after the Israelis pulled out from Sidon, truckloads of Hezbollah members began arriving in the area".

[36] Whereas the Amal-dominated Lebanese National Resistance argued for not using southern Lebanon as a springboard for Israeli operations, Hezbollah's military operations increased. After a period of open conflict between Amal and Hezbollah militia during the mid-to-late 1980s, an agreement brokered in Damascus in 1989 proved something of a watershed. It gave Syrian consent, then the main power broker in Lebanon, for Hezbollah to continue its anti-Israeli resistance in the south of Lebanon on the understanding it abandon any attempt to usurp Amal as the main Shi'ite political force in the country.

[37] Jaber, at pp145-168, describes how Hezbollah also established a large social welfare infrastructure, providing basic service to Shi'ite communities. It was particularly concerned with the welfare of Shi'ites in southern Lebanon, who provided accommodation, hospitality and support for its fighters. By the 1990s, its social welfare operations included running hospitals, health clinics and even

schools whose curriculum was approved by the Lebanese Ministry of Education. It rebuilt homes destroyed by Israeli forces. Jaber, at p168, observes:

“Hezbollah... has gained itself a reputation as a champion of the poor. Its work has made a significant impact on the Lebanese public, many of whom had long feared the group and shrunk from its extremist image. Lebanese who were previously unwilling to accept that Hezbollah was becoming a fact of life in Lebanon now discuss the groups achievements with open praise. In the words of... the head of Hezbollah’s social services, the group’s social work has succeeded in transforming it into something ‘larger than a party, yet smaller than a state’.”

[38] At the political level, Hezbollah is deeply entrenched in Lebanese affairs. Over 30 years it has transformed from being an armed resistance movement into a national political movement. First participating in the 1992 parliamentary elections, it now comprises the leading party in the March 8 coalition, one of the two coalition groups dominating Lebanese politics. Hezbollah is involved in dialogue with the Future Movement, the Sunni political party led by Saad Hariri and the leading party within the rival March 14 coalition, to resolve the political impasse surrounding the election of a new president when the previous president, the Christian Maronite Michel Suleiman, left office at the end of his mandate on 25 May 2014. One theory is that it suits Hezbollah to have a vacant presidential seat rather than the office being assumed by an opposition president who would question Hezbollah’s involvement in the Syrian conflict and its role or status as a ‘national’ resistance movement; see Mario Abou Zeid “Lebanese Presidential Elections” *Carnegie Middle East Centre* (4 February 2015).

[39] The onset of civil war in Syria has, however, had profound implications for Hezbollah. It has been forced to modify its historical emphasis on anti-Israeli operations and become more heavily embroiled in fighting in support of the Assad regime because Syria is one of its main regional backers and conduit for weapons supply. One of Hezbollah’s prime concerns has been to ensure that radical Sunni groups such as *Jabhat al-Nusra* and Islamic State do not gain footholds in Lebanon; see International Crisis Group *Lebanon’s Hezbollah Turns Eastward Towards Syria* (27 May 2014) at pp3-5. It is heavily involved in fighting in the Lebanese-Syrian border region where such groups are fighting to gain a foothold; see “Army: Arsal clashes part of plan targeting Lebanon” *The Daily Star* (2 August 2014); “Hezbollah suffers casualties in fight to root out rebels” *The Daily Star* (15 July 2014).

[40] But there are downside risks for Hezbollah in this strategy. Its deepening involvement in the Syrian conflict has fuelled tensions inside Lebanon and led to attacks on Hezbollah strongholds in southern Beirut in early 2014; see Alexander

Corbeil “The Syrian Conflict and Sunni Radicalism in Lebanon” in *Sada – Analysis on Arab Reform* Carnegie Endowment for International Peace (9 January 2014) (the Carnegie SADA analysis). There have been intermittent suicide bomb attacks and fighting in the northern city of Tripoli throughout 2014 and into 2015: see “North Lebanon suicide attack kills nine” *The Daily Star* (10 January 2015); “Tripoli neighbourhood scarred by battles” *The Daily Star* (28 October 2014). If the recent reports regarding the declaration by Islamic State of an ‘Islamic Emirate’ are accurate, this can be expected to further increase sectarian discord and tension in Lebanon, including in Sidon; see “ISIS Preparing to Declare Islamic Emirate in Lebanon: Sources” *The Daily Star* (23 February 2015); “ISIS Plans to Capture Lebanese Territory, Declare Emirate – report” [www.aljournhouria.com](http://www.aljournhouria.com) (24 February 2015).

[41] Hezbollah’s deepening and more explicit engagement in Syria has also undermined its popular support both within and beyond Lebanon outside its core Lebanese Shi’ite constituency. Its manifesto, while making clear its support for an Iranian-style political system based on *Sharia*, also expressly disavows any attempt to impose Islam by force on the multi-confessional Lebanese population (Jaber, at p61). As noted, its military operations against Israel in the name of “national resistance” and extensive social welfare programme brought it some measure of cross-faith respect, if not support. Of all the militia operating in Lebanon during the civil war, only Hezbollah was allowed to retain its weapons under the 1989 Taef agreement which ended the conflict.

[42] While Hezbollah sees itself as having no choice but to fight in support of the Assad regime, the International Crisis Group argues, at page 14 :

“Convinced it is locked in an existential conflict with the Syrian opposition, Hezbollah is investing more in the regime. In doing so, it is alienating itself from important segments of Syrian society, as well as previously supportive constituencies’ in Lebanon and the region. For a party that long considered its Lebanese, Syrian and wider Arab ‘popular embrace’ a major strategic asset, the deepening Sunni-Shiite divide is a major setback.”

[43] It is into this increasingly combustible mix that the actions of Sheikh al-Assir need to be assessed.

#### *Sheikh al-Assir*

[44] In addition to the above, to understand the significance of Sheikh al-Assir in the context of the appellant’s predicament, it is also necessary to understand the place of Salafism in Lebanese society. Salafism, the trend of Islamic thought

which emphasises individual piety and correct behaviour based on a literal reading of the Koran, has historically been a recognised part of the Lebanese religious fabric. Salafism surfaced in Sidon in the late 1980s but subsequently split between those who favoured non-violent activism (Salafis) and those who did not (Salafi jihadis); see generally Bilal Saab *Salafis Social Networking in Lebanon* Jane's Islamic Affairs Analyst (9 February 2009); International Crisis Group *Understanding Islamism* (2 March 2005).

[45] The fundamental point is that Sheikh al-Assir has, in the years following the appellant's departure from Lebanon, emerged as one of the key figures associated with the Salafi jihadi camp. Commenting on Sunni radicalisation in Lebanon in the wake of the Syrian conflict, the Carnegie SADA analysis divides the "pre-eminent" Salafi sheiks in Lebanon into two camps: "those who utilise the pulpit and those who have taken a more active role in hostilities". Describing Sheik al-Assir as belonging to the second camp, it states:

"Known as the "Sunni lion" among his followers, the Sidon-based Sheikh Ahmed al Assir was the most outspoken critic of Hezbollah and the group's abundant weapons stockpile. He was known for his firebrand sermons, a number of which were coordinated with [Tripoli based Sheikh] al-Masri in Tripoli and Sidon. In April al-Assir began to send followers to fight in Syria and even posted a video of himself purportedly near the battleground of al-Qusayr. After his fighters attacked an army checkpoint near Sidon on June 23, a two-day battle left seventeen Lebanese soldiers and dozens of al-Assir's men dead. The cleric then fled and may still be hiding in the neighbouring Palestinian refugee camp of Ain al-Hilweh. Though on the run, security forces believe that al-Assir's followers were responsible for simultaneous suicide attacks on army checkpoints around Sidon on December 16. There is even the possibility, according to *The Daily Star*, that some of the attackers may have been members of Jahbat al-Nusra, which is one of the two al-Qaeda franchises in Syria (alongside ISIS) and is thought to have a presence in Ain al Hilweh."

[46] Other country information paints a picture of increasing confrontation in al-Assir's messaging and actions over time. The report by Nichols Blandfort "The Lebanese Sheikh Who's Leading a Sit-In Against Hezbollah" *Christian Science Monitor* (5 July 2012), observes:

"A year ago, Sheikh Ahmad al-Assir was only known to a small group of followers who attended his sermons at the Bilal bin Rabeh mosque in Sidon. But with neighbouring Syria mired in ever worsening violence, the sheikh's calls for support for the Syrian rebels and his outspoken criticism of Hezbollah have earned him a national platform and drawn admirers among frustrated Lebanese Sunnis who feel overshadowed by their powerful Shiite rival.

....

The fate of Hezbollah's weapons is at the centre of a political divide in Lebanon, evenly splitting the country between those who support the Shiite group's private arsenal to defend Lebanon against future Israeli aggression and those who distrust

Hezbollah's motives and argue that only the state and the Lebanese army has the right to bear arms to defend the nation.

Sheikh Assir and most Lebanese Sunnis belong to the second camp, arguing that Hezbollah uses its weapons not to challenge Israel, but to threaten other Lebanese and gain political leverage."

[47] Blandfort notes that Sheikh al-Assir and his followers had blocked off a 200 yard stretch of the main highway and had erected tents and shelters for the persons taking part in a sit-in to protest against Hezbollah's non-state arms.

[48] The report "Who is Lebanon's Ahmed Al-Assir?" *Aljazeera* (2 June 2013) also charts something of al-Assir's journey into increasing confrontation with Hezbollah. It cites an interview with one of his followers who states that, while al-Assir assumed national prominence in 2012, he had been well known locally for many years beforehand and had delivered a more peaceful message. The article notes that, following Hezbollah's growing involvement in the Syrian civil war, al-Assir became more outspoken in his denunciations and delivered a series of incendiary speeches from his mosque in Sidon. The report also notes that, in 2012, he and his followers brought Sidon city to a standstill with campaigns of civil disobedience, including through erecting tents in busy thoroughfares protesting at Hezbollah's holding weapons in Lebanon. In November 2012, when his son was arrested for a minor traffic offence, al-Assir sprung his son from custody by force and engaged in a series of increasingly provocative civil disobedience actions towards Hezbollah.

[49] Tensions culminated in a gun-battle between his supporters and combined Hezbollah/Lebanese Armed Forces in June 2013; see the Carnegie SADA analysis. It is this fighting which formed the content of some of the video evidence shown to the Tribunal in the hearing. It also provides the context for the video of the detention of the man suspected of being an al-Assir supporter who was interrogated and beaten.

[50] In the wake of the fighting, persons known to be supporters of al-Assir have been rounded-up. See Hilal Habli "Parents of Those Who Were Arrested in Abra Demand: Search for Sheikh al-Assir and Have Mercy on Our Offspring" *Al-arabiya* (18 February 2014) which states that more than 150 young men remained in detention at that time. It is unclear what their current position is.

*Application to the facts*

[51] The appellant has become identified by Hezbollah as being a person who has attended sermons and lectures given by Sheikh al-Assir in Sidon. It is actively seeking his whereabouts. Should the appellant return to Sidon, he is likely to be detained by Hezbollah at some point at one of the many checkpoints in the city. Counsel submits that there is a complete lack of due process surrounding such detentions and this is a point which is well made. The Tribunal accepts that appellant would be at risk of being arbitrarily detained by Hezbollah in breach of Article 9 of the 1966 *International Covenant on Civil and Political Rights*.

[52] At that point it is difficult to know what will happen. The conditions in which the appellant would be detained are at best opaque and the duration of any detention uncertain. However, given the beating that has been observed in the video footage, and the highly polarised sectarian nature of the situation in Lebanon at the present time, there is a real chance of him being subjected to serious physical mistreatment amounting to cruel, inhuman or degrading treatment in breach of Article 7 of the ICCPR. The chance of the appellant suffering serious harm cannot be dismissed as remote or speculative. The Lebanese state will, at the very least, be unable to protect him from this harm.

[53] For these reasons, the Tribunal is satisfied that the appellant does have a well-founded fear of being persecuted.

*Is there a Convention reason for the persecution?*

[54] The appellant's predicament is being contributed to by his religion and by the imputation of a negative political opinion by Hezbollah. The second principal issue is also answered in the affirmative.

**Internal Protection Alternative**

[55] The Tribunal has turned its mind to whether there would be a viable internal protection alternative for the appellant. Given the political prominence of Hezbollah and its position in Lebanon, it is questionable whether his returning to live in Lebanon, albeit residing outside Sidon, would remove the risk to him. Once his identity was known, his only realistic prospect of not coming to the attention of Hezbollah would be to remain living in a Sunni-dominated suburb in another city such as Tripoli or Beirut. However, both those cities have their share of sectarian problems and the appellant may simply be trading one risk of serious harm for

another in the internal protection alternative location. For these reasons, the Tribunal is satisfied that no viable internal protection alternative is available.

[56] For these reasons the Tribunal finds the appellant is entitled to be recognised as a refugee under section 129 of the Immigration Act.

### **Conclusion on Claim to Refugee Status**

[57] For the above reasons, the appellant is entitled to be recognised as a refugee under section 129 of the Act.

### **The Convention Against Torture**

[58] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[59] Because the appellant has been recognised as a refugee, he is entitled to the protection of New Zealand from *refoulement* to Lebanon. The recognition of the appellant as a refugee means that he cannot be deported from New Zealand to Lebanon; see Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act. The exception to section 129, which is set out in section 164(3) of the Act, does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Lebanon.

### **The ICCPR**

[60] Section 131 of the Act provides that:

“(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.”

[61] Again, because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Lebanon. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial

grounds for believing that he is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Lebanon. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

## CONCLUSION

[62] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[63] The appeal is allowed.

"B. L. Burson"  
B L Burson  
Chair

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