

**1304329 [2013] RRTA 816 (25 November 2013)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1304329
<b>DIAC REFERENCE(S):</b>	CLF2012/224833
<b>COUNTRY OF REFERENCE:</b>	Lebanon
<b>TRIBUNAL MEMBER:</b>	Ms Christine Long
<b>DATE:</b>	25 November 2013
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	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 dependant.

**STATEMENT OF DECISION AND REASONS**

**APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who is a citizen of Lebanon last arrived in Australia [in] September 2012. He applied to the Department of Immigration for a protection visa [in] November 2012 and the delegate refused to grant the visa [in] February 2013. The applicant applied to the Tribunal [in] March 2013 for review of the delegate's decision.

**RELEVANT LAW**

3. 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.

4. 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).
5. 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’).
6. 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 – to the extent that they are relevant to the decision under consideration.

## **CLAIMS AND EVIDENCE**

7. The Tribunal has before it the Department’s file relating to the applicant which includes the applicant’s application for protection visa and the delegate’s decision record. The Tribunal also has had regard to the material referred to in the delegate's decision. The Tribunal also has before it the applicant’s application for review to this Tribunal.

### *Application for Protection Visa*

8. In the application for protection visa the applicant states that he was born in [Town 1] in Lebanon in [year] and he gives his religion as Muslim. He indicates that he lived at the same address in [Town 1] in his country from 1989 until September 2012 when he came to Australia. He indicates that he worked in the family [business] before he came to Australia as a labourer from 2006 until September 2012. He indicates that he has never married and is not in a de facto relationship. He indicates that he left his country legally using a passport in his name issued in his country in 2012 expiring in 2017; he came to Australia as a visitor and his visa to enter Australia was issued [in] August 2012. The visa in his passport is noted as allowing him to remain in Australia for 45 days after entry. He indicates that he visited Australia previously in 2007 and in 2010. He indicates that his parents are residing in Lebanon, he has [siblings] living in Lebanon and one [sibling] living in [Country 2]. He has [siblings] living in Australia.
9. The applicant claims that he left his country because he is a gay man and he cannot live freely in Lebanon. He states that he has had casual gay partners in Lebanon and a longer term

relationship had to stop because they were caught together. He was seen with his partner by some men who attacked and injured them. The men told his parents and others and rumours spread. He and his partner were banned from seeing each other and his partner was married to his [relative]. He himself was forced to become engaged to his [relative]. His family in Lebanon suspect he is gay and are pressuring him to marry; one [sibling] in Australia knows he is gay and accepts this fact reluctantly. He cannot live freely in Lebanon and will be persecuted and maybe killed there because he is gay. He fears harm in his country from his family, the community and the authorities as homosexuality is not accepted in Lebanon. He cannot get protection from the harm he fears in his country as homosexuality is illegal there.

10. A copy of relevant pages of the applicant's Lebanese passport issued in Lebanon [in] 2012 and valid until 2017 is on the departmental file.
11. The applicant was interviewed by the delegate about his claims [in] February 2013.

#### *Application for Review*

12. In his application for review the applicant makes no new claims.

#### *Tribunal Hearing*

13. The applicant appeared before the Tribunal on 15 October 2013 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 produced his Lebanese passport to the Tribunal; a copy is on the Tribunal file.
14. A representative of the applicant's registered migration agent attended the hearing.
15. At the hearing the Tribunal spoke with the applicant about his background and his claims.

### **FINDINGS AND REASONS**

16. Essentially the applicant claims that he left his country and cannot return there as he fears harm there, and will suffer harm amounting to serious and/or significant harm there, because he is a homosexual man. He claims that homosexuality is illegal and not accepted in Lebanon and that he will be persecuted, be gaoled or maybe killed, if he returns to Lebanon. He claims that [in] 2012 in Lebanon he was discovered with his partner by men who beat them and told his parents and spread rumours. In his application he states that he fears harm in his country from his family who have banned him from seeing his partner and who have put pressure on him to marry/will force him to marry, from the community and from authorities. He told the Tribunal at the hearing however that he does not fear harm from his family but he does not want his family to suffer a social stigma because of his sexual preference.
17. The Tribunal accepts that there is country information, including that referred to by the delegate, which supports in a general way the applicant's claims that those who are homosexual are sometimes persecuted in Lebanon. Although the Tribunal accepts that there is country information which generally supports the applicant's claims, for the purposes of the Refugee's Convention the Tribunal must determine whether the applicant before it has a genuine fear founded upon a real chance of persecution for a Convention reason if he returns to his country, or, for the purposes of s.36(2)(aa) ('the complementary protection criterion') whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant in question being removed from Australia to a receiving

country, in this case Lebanon, there is a real risk that he will suffer significant harm in that country.

18. The Tribunal accepts that the applicant is a citizen of Lebanon and that he is who he claims to be; a copy of the applicant's Lebanese passport was produced by the applicant to the Tribunal at the hearing.
19. The Tribunal finds that the applicant last arrived in Australia [in] September 2012 as recorded in his passport. The Tribunal accepts and finds that the applicant travelled to Australia previously in 2007 and in 2010 to visit his [siblings] and he then returned to Lebanon; the applicant told the Tribunal that he has many [siblings] in Australia and he came to Australia on prior occasions to visit them and he then returned to Lebanon. Having regard to the details in the applicant's passport the Tribunal finds that the applicant last entered Australia in September 2012 on a visitor visa granted in Beirut [in] August 2012 valid [until] November 2012; the visa is noted as allowing the holder to remain in Australia 45 days after entry.
20. The Tribunal does accept that the applicant fears harm in his country for the reasons that he claims, that he left his country and cannot return there for the reasons that he claims or that there is a real chance or real risk that he will suffer harm amounting to serious or significant harm in his country for the reasons that he claims. It follows that the Tribunal also does not accept that the applicant cannot get protection from harm in Lebanon for the reasons that he claims.
21. The Tribunal does not accept as true that the applicant was caught with a homosexual partner in Lebanon and beaten and that this event was disclosed to his parents by those who found them together as he claims. The Tribunal does not accept that this incident occurred. It follows that the Tribunal does not accept as true that this incident caused the applicant to decide to leave his country and come to Australia as he told the Tribunal at the hearing. The applicant gave confused and conflicting evidence to the Tribunal about when this incident occurred and in the Tribunal's view if the incident had in fact occurred, given its seriousness for the applicant, he would remember generally the time it occurred. He told the Tribunal that this incident caused him to make the decision to leave his country and after it happened he talked to his [sibling] and made the decision to leave Lebanon. When the Tribunal asked him when the incident occurred he said that it happened at the end of 2011 and he then "prepared the papers" and applied for the visa about two months before he came to Australia. When the Tribunal reminded the applicant that in his application for protection visa he states that the incident occurred [in] 2012 not in late 2011 the applicant then said that could not remember the month, only roughly the period. He also said that he got mixed up with the names of the months and made a mistake. Given the seriousness of this event for the applicant the Tribunal does not consider that he gave the Tribunal a reasonable explanation for the inconsistency in his evidence about the date of this incident.
22. Also in the Tribunal's view if the applicant genuinely feared harm in his country and left that country for the reasons that he claims he would have applied for protection in Australia earlier than he did so, especially given that he told the Tribunal that he knew about the availability of protection visas in Australia from the time of his second visit to Australia (in 2010) and especially given that he claims in his application for visa that things were/are so serious for him in Lebanon that he may be killed if he returns there. When the Tribunal asked the applicant why he delayed making his protection visa claims in Australia [until] November 2012 after arriving in Australia [in] September 2012 the Tribunal does not consider that he gave the Tribunal a reasonable explanation for this delay; he said that he had to talk to his

[sibling] and get help, it took time to prepare the “paper work”, and that he did not know the country. The Tribunal does not consider that this explanation is reasonable especially given that he told the Tribunal that he knew about the availability of protection visas in Australia from 2010, that he had discussions with his [sibling] about leaving his country/staying in Australia before he left Lebanon and that he had made the decision to leave Lebanon and not return there before he left there in September 2012.

23. The Tribunal also does not consider that it is consistent with the applicant’s claims about the incident involving him and a gay partner that he continued to live with his family members in the family home in the community where he had always lived, and to work in the family business, from the time of the incident [in] 2012 until just before he came to Australia about six months later in September 2012. He told the Tribunal that up until he left Lebanon to come to Australia he was living in the family home in El Minieh with his parents and his single [sibling] and that he was working in his father’s [business] (the family business) helping in the office and sometimes working as needed as a labourer. When the Tribunal spoke with the applicant about his stay in Lebanon after the time of the incident [in] 2012 until September 2012 and noted that in his application it states that his family forced him to get engaged to his [relative], the applicant said that he refused to get engaged but had to end the relationship with his gay partner, that he could not leave Lebanon until September because he had to prepare the papers and had to sell his car to get money, that after the incident it was only really the person/s who found him in a private garden and the families who knew about what happened, that the rumours did not “go public”, and although he was bashed he did not have to go to hospital after the incident as it was not a “hard bashing”. The Tribunal does not consider that he applicant reasonably explained why and how he managed to stay living with his family in the same place he had always lived and working in the family business in his country after the incident which he claims caused him to make the decision to leave his country and come to stay in Australia.
24. On the evidence before it the Tribunal does not accept that the applicant is homosexual as he claims and/or that he left his country for the reasons that he claims. In the Tribunal’s view he gave little detail about socialising in Australia as a gay man although he has been living in Australia for over a year and claims that he made the decision to leave his country and stay in Australia so that he could live freely as a homosexual man without fear/persecution. Although he told the Tribunal that he goes out once or twice a week to gay clubs and to meet people, when the Tribunal asked him more about this he only mentioned one [club] and he also mentioned [a beach]; he said that he has not gone to other clubs yet although he has heard about them and then said that his social activities are limited because of his poor English. Also although the applicant claims that he lives with one of his [siblings] in Australia and that [sibling] knows he is gay, and he also told the Tribunal that he has had a least one longer term gay relationship in Australia with a Lebanese man whom he has known since 2010, he did not produce one statement or witness to support his claims; given the seriousness of what the applicant claims he may face on return to his country the Tribunal does not consider that he gave a reasonable explanation for not doing so. When the Tribunal asked him if he had thought to ask his [sibling] to be a witness for him he said that it was a special religious day and his [sibling] went to the mosque and when the Tribunal asked him if he had thought to arrange the attendance of his longer term partner in Australia or obtain a statement from him the applicant said that the man with whom he has had a relationship had to go to work in [another city] and was very busy and he did not want to put pressure on him.

25. The Tribunal has considered the applicant's claims and has concluded on the evidence before it that there is not a real chance that this applicant will be targeted for, and suffer, harm amounting to serious harm from those he claims to fear in Lebanon, either now or in the reasonably foreseeable future, for a Convention reason, including because of his membership of a particular social group, if he returns to his country.
26. Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well-founded fear of persecution in Lebanon within the meaning of the Convention.
27. Further in the Tribunal's view there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, in this applicant's case Lebanon, there is a real risk that he will suffer significant harm for the purposes of s.36(2)(aa) ('the complementary protection criterion').

### **CONCLUSIONS**

28. 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).
29. 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).
30. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

### **DECISION**

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

Ms Christine Long

Date : 25 November 2013

Member

