

DECISION RECORD

RRT CASE NUMBER: 0804184

DIAC REFERENCE(S):

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Mr S Norman

DATE DECISION SIGNED: 24 September 2008

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 named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the spouse of 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 citizens of Lebanon, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.
3. The applicants applied to the Tribunal for review of the delegate's decisions.
4. 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.

RELEVANT LAW

5. 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.
6. 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).
7. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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, maliginity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. 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.
17. 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.

18. 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

19. The Tribunal has before it the (now) Department of Immigration and Citizenship (**DIAC**) file relating to the applicants. The Tribunal also has had regard to other material available to it from a range of sources
20. The applicants lodged a Protection Visa (**PV**) application with the Department. Only the applicant husband provided claims to be owed refugee protection in Australia; his wife (the applicant wife) claiming to be a member of his family unit. Therefore, unless otherwise stated, references here-in-after to the applicant should be understood to be references to the applicant husband. That said, the applicant wife provided substantial oral claims at the Tribunal hearing and these were significant in assisting the Tribunal understand the case before it.
21. Attached to the PV application was a statement (translated into English) that had been written by the applicant. He said that he was born in Lebanon and that he:

...ran away to Australia due to the threat to be killed by [name] who is a prominent leader and second in charge of the terrorist organisation [name], headed by [name]. [Name] managed to enter our premises, building of [name] in [name] area during the military assault against the Lebanese army. I contacted the security forces to report the presence of [name] in our building. The security forces came and surrounded the building and succeeded in capturing [name]. [Name] verbally threatened to take his revenge and kill us. For this reason we decided to run away to a village and afterwards left to Australia, due to the fact that [name] organisation have armoured men everywhere in Lebanon. We all know that when [name] threatens to kill someone, he is able to execute it as it happened to my [relative]...who was killed in front of the building. We cannot go back to Lebanon because our life is in real danger and we are old, we cannot defend ourselves. The Lebanese government cannot protect us as they are unable to protect themselves. We are requesting refugee status in Australia.
22. The applicant claimed to be a property owner / manager in Lebanon for a long time (DIAC file folio 35). He claimed to be a Sunni Muslim and to have formerly resided in Tripoli
23. The Department delegate refused to grant the applicants a Protection Visa.
24. The applicants applied to the Refugee Review Tribunal for a review of the Department delegate's decision.
25. By letter, by his migration agent, the applicant lodged with the Tribunal a translation of the 'Mayor of the locality X; a statement from the applicant's relative regarding the situation in their residential area in Lebanon; and selected country information extracts. The Tribunal has had regard to all of this prior to drafting its below Findings and Reasons.
26. That said, in one translation, it was claimed 'some people are asking about [the applicants] and we told them that we have no clue where you are'.

27. The applicant and the applicant wife, and four of the applicants' Australian relatives, attended the Tribunal hearing to give evidence and submissions. To the extent that, and all other, evidence and submissions is considered material, I have included same in my below Findings and Reasons.

FINDINGS AND REASONS

28. The Tribunal has seen the applicants' passports at the Tribunal hearing and accepts they are nationals of Lebanon as they claim.
29. In an effort to simplify my further Findings and Reasons I have set them out under the below sub-headings.

Section 36(2)(b)(i) of the Migration Act - 'spouse':

30. The applicant husband made claims to be owed refugee protection obligations in Australia and the applicant wife claimed to be his spouse. Based on the evidence provided to the Tribunal, I presume it not controversial to accept the applicant wife is the spouse of the applicant husband.
31. Therefore, the applicant wife meets the requirement in section 36(2)(b)(i) of the Migration Act.

Persecution:

32. The applicants' evidence included they feared persecution in Tripoli (where they had at least principally, formerly resided). They lived in an apartment block in Tripoli (owned by the applicant wife's family; and where lived other members of the applicant wife's extended family). This was near to where fighting continued to take place in Tripoli
33. A named member (here-in-after '**local leader**') of the militant group, was fleeing security forces and took refuge in the applicants' apartment block. The applicant wife phoned the police who attended the apartment and arrested the local leader. The applicant wife (and about 10 other persons), stood at (or around) the front of the apartment block when the local leader had been arrested. The applicant wife stood with a cordless phone in her hand. The local leader gazed at the applicant wife and nodded and or smiled. The applicant wife feared this meant that he believed she had informed on him to the police. The applicant wife subsequently received threats.
34. The other residents of the apartment were sufficiently frightened that all left soon after (to live with children or other extended family members). Some returned on occasion to check the apartment had not been attacked or looted. The applicant wife and applicant husband left to live in a village. They lived there with one of their children and child's family; though the applicant wife said this created tensions and their long term residence in the household of their child was not possible. It was also explained (words to the effect), part of the tensions were the financial burden their residence placed on the child and child's family; and the necessity to take up scarce space in their home. At any rate, after approximately two or three months the applicant husband and wife returned to Tripoli They returned to their apartment but the fighting continued and they were constantly required to seek refuge. It was also not safe to venture out onto the street to (for instance)

shop, attend a doctor or withdraw monies from a bank. The applicant husband and applicant wife eventually left from Beirut airport.

35. That said, the country information considered by the Tribunal indicated that serious outbreaks of violence continued in and around Tripoli (including but not limited to Abdallah, H. 2008, 'Four Amal members wounded in Bekaa shooting incident', *Daily Star*, 28 August; 'Berri and the Frightening Situation in the North' 2008, Naharnet Newsdeck, 27 August <http://www.naharnet.com/domino/tn/newsdesk.nsf/0/4CB02546DC8881F4C22574B2002B4301?OpenDocument> – Accessed 2 September 2008; 'Wed, May 7, 2008' 2008, The Angry Arab News Service website, 7 May <http://angryarab.blogspot.com/2008/05/western-reporter-in-lebanon-sent-mehtml> – Accessed 2 September 2008; Prothero, M. 2008, 'Hizbollah builds up covert army for a new assault against Israel: Villages empty as Shia militia sends recruits to tough training camps in Bekaa Valley, Syria and Iran', *The Observer*, 27 April; Ibrahim, A. 2008, 'Fearing a War, Lebanese Prepare by Buying Up Arms; Potential for Violence Between Religious Sects Leaves Many Anxious', *The Washington Post*, 24 April)
36. Regarding the group, recent media reports claim that the groups leader survived the Nahr al-Bared conflict (in and around May 2007), and that the group continues to exist in Lebanon, and that it continues to pose a threat to security in Lebanon (see Mroue, B. 2008, 'Bomb in northern Lebanese city kills 18', *Guardian* website, 13 August <http://www2.guardian.co.uk/worldlatest/story/0,-7721920,00.html> – Accessed 27 August 2008; 'Fugitive Palestinian militant group's chief slams Lebanon's Sunni leaders, Hezbollah chief' 2008, *AOL News* website (source: Associated Press), 11 June <http://www.aol.com.au/news/story/Fugitive-Palestinian-militant-group%27s-chief-slams-Lebanon%27s-Sunni-leaders-Hezbollah-chief/575871/index.html> – Accessed 27 August 2008).
37. As to whether the group is still capable of and willing to commit acts of violence, amongst other comments recorded in media sources was the following:

...Perhaps the most telling verdict on the nature of FaI was offered by a 51-year old resident who escaped Nahr al-Bared after 25 days of fighting, having seen more than he cared for: 'Fatah al-Islam? They don't love anyone' (Taarnby, M. & Hallundbaek, L. 2008, 'Fatah al-Islam: Anthropological Perspectives on Jihadi Culture', Real Instituto Elcano Working Paper 6/2008, February <http://se1.isn.ch/serviceengine/FileContent?serviceID=PublishingHouse&fileid=334A948B-8799-ECD5-8123-1231E6456943&lng=en> – Accessed 27 August 2008)
38. Therefore, based on the evidence I have seen, I am satisfied the harm the applicants are claiming to fear, and based on the country information to which they may be subject, would at least constitute significant physical harassment of the person or significant physical ill-treatment of the person (see s91R(2)(b) & (c) Migration Act).
39. Accordingly, I am satisfied the harm the applicants fear is sufficiently serious to constitute persecution for the purposes of the Refugees Convention.

Convention ground:
40. The claimed fear of persecution must be for reason of at least one of the grounds set out in the Refugees Convention.
41. In the present case, the applicants did not provide evidence as to whether the named local leader (in Tripoli) continued to be detained. Be that as it may, I accept members of the group continued to commit acts of violence.

42. In the context of considering Article 1F of the Refugees Convention the High Court in *MIMA v Singh* [2002] HCA 7 (7 March 2002), Gleeson CJ, Gaudron, McHugh, Kirby & Callinan JJ, stated *inter alia*, ‘even if a killing occurs in the course of a political struggle, it will not be regarded as an incident of the struggle if the sole or dominant motive is the satisfaction of a personal grudge against the victim; however revenge is not the antithesis of political struggle, it is one of the most common features’ (per Gleeson CJ [18]; see also Gaudron J [44]). Though this judgment is not directly on point to the matter at hand, I accept that in cases where a significant and essential reason for feared harm is based on at least one of the grounds provided in the Refugees Convention, protection obligations may arise notwithstanding that another significant and essential reason for the harm may have been non-Convention related.
43. That said, after questioning the applicant wife about the incident (in Tripoli) at the hearing, and though not set out herein (except in summary form), I am satisfied she actually did phone the police to inform on the whereabouts of a local leader of the group. Further, that she had reasonable grounds to fear he believed she may have been responsible for his capture and subsequent detention. That she indicated that other residents of the apartment block (where she and her husband then resided in Tripoli) departed after the incident tends to corroborate her claim. Further, that she provided this evidence at a time in the Tribunal hearing when its import may have been less obvious is another reason I have eventually decided to accept these claims.
44. The Tribunal has little doubt a primary motivation for any harm directed at (in particular) the applicant wife by the local leader (or other members) of the group in Tripoli, would be in order to exact revenge. However, in the context of the violence perpetrated in and around Tripoli, I am also satisfied that an essential and significant reason for the persecution would be the applicant wife's and applicant husband's perceived/imputed adverse political opinion.
45. Accordingly, I am satisfied the applicant wife and applicant husband fear persecution for at least one of the reasons provided in the Refugees Convention (being their adverse political opinion).

Well founded fear:

46. I need now consider whether the applicants have a real chance of being subject to the persecution feared. A real chance is not a remote chance; there needs be real substantial basis that an applicant would be subject to the persecution feared.
47. The Tribunal is satisfied the applicant husband and applicant wife's fear of persecution in Tripoli is well founded for the purposes of the Refugees Convention. Based on the country information in the sources cited in this decision, the evidence of violence perpetrated in and around Tripoli and by the group, in the Tribunal's view, make this finding uncontroversial.

Relocation:

48. However, and as indicated to the applicants at the hearing, part of the Tribunal's function is to determine whether they have a prospective well founded fear of persecution on return to their country of origin as a whole. Further, that an applicant would not be in need of

international protection, if protection is available in another part of their country of origin, and if it could be reasonably expected the applicant could relocate there.

49. In the present case, the applicants claim to have resided (apparently safely) with one of their children in a village for almost three months. That village was located not far away from Tripoli. It was therefore not impacted by the violence more common in Tripoli. The applicant wife said (words to the effect) she none-the-less feared she and or her husband may be located or seen, either by chance or by persons actively seeking them out, and that she may therefore be harmed. That said, she was able to reside there (apparently safely) for three months
50. As stated above, the applicant husband and applicant wife resided with one of their two children who lived in or around the village. They have one child in Lebanon, who they claim did not assist them. However, they have a number of children (and their families) in Australia who they wished to reside with. The Tribunal explained that though it understood they wished to reside with their children's families in Australia, this may not satisfy it that it was (for instance) unreasonable for them to relocate to the village in Lebanon.
51. One of the applicant's witnesses explained that one problem for them was that shopping for food, clothes and other normal 'staples' was more commonly undertaken in Tripoli; where the applicants feared being located and harmed. It was also explained they did not have access to banks or other such institutions except in Tripoli; which meant that travel there was necessary if they lived in and or around Tripoli
52. The Tribunal wishes to state here the applicants were older people. With respect, the applicant husband appeared to be frail if not infirm at the Tribunal hearing. That said, and as stated above, at a time in the hearing when its import may not have been readily apparent, it was claimed one child who resided in Lebanon did not assist them, that of two children who lived nearby, they did not speak to one; and that regarding the other married children, they lived far enough away from Tripoli that the applicant husband and applicant wife did not often see them. Further, that living with their children was only possible with the agreement of their children's families, who, unlike most of their own children, may be less willing to allow them to reside with them long term.
53. At any rate, given their age and (at least with respect to the applicant husband), their apparent infirmity, relocation for them was not as readily available or (more importantly) reasonable as it may have been for younger persons in similar circumstances. For instance, given their age and (the applicant husband's apparent) infirmity, unless they were living either in their own home or with relatives, it is plausible their lives would be unreasonably difficult.
54. Thus, even if the Tribunal accepted the applicant husband and applicant wife may be able to safely reside in the child's village, should they return to Lebanon, the question remains whether it would be reasonable to expect them to do so.
55. With respect, it may have been the case the applicants embellished parts of their evidence. This does not mean however, that they are not owed refugee protection obligations in Australia. In the applicant wife's case, I have decided to accept her evidence that long term residence in the home of her child in the village may not have been available to her and her husband. It is plausible that part of the reason may have included the extra financial burden and the burden of taking up limited living space. At any rate, given the village's proximity

to Tripoli safety issues may arise there. Given the proximity of the other child's homes to Tripoli, I am satisfied that similar issues (including safety issues) would also arise in those locations. That is, when travelling to Tripoli to shop, to bank, to attend medical checks or to check on their former apartment in Tripoli, I would accept the danger to them would increase. However, given their age and infirmity, and their apparent lack of funds (I accept they are subsidised by their children in Australia), and given the difficulties they may face in securing accommodation except with immediate family members (given the long running conflict and destruction of property in Lebanon), I also doubt their capacity to reside without the assistance of their immediate family members; or at least I am not satisfied it is reasonable to expect them to do so.

56. Therefore, irrespective of whether the applicants could safely reside in or around the village/s of their children I am not satisfied it is reasonable in all the circumstances to expect them to do so. That is because of the combination of the possibility they may be subject to harm due to the ongoing conflict (including that arising from their being recognised); because they would plausibly constitute a burden on their children's family's in Lebanon, who are plausibly significantly less able to afford that burden (ie financial and living space); and given their age and infirmity, I am not satisfied it is reasonable to expect them to relocate elsewhere in Lebanon.
57. Consequently, I am not satisfied it is reasonable to expect the applicants to relocate within Lebanon
58. The Tribunal is therefore satisfied the applicant husband and applicant wife have a well founded fear of persecution for a Convention reason in Lebanon.

CONCLUSIONS

59. The Tribunal is satisfied that the first named applicant (the applicant husband) 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.
60. The other applicant (the applicant wife) applied as a member of the first named applicant's family. The Tribunal is satisfied that she is the spouse of the first named applicant for the purposes of s.36(2)(b)(i). The fate of her application 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 applicant will be entitled to a protection visa provided she meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

61. 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 named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the spouse of 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 Officers ID: PRRTIR