

1111731 [2012] RRTA 199 (29 March 2012)

DECISION RECORD

RRT CASE NUMBER:	1111731
DIAC REFERENCE(S):	CLF2011/116003
COUNTRY OF REFERENCE:	Lebanon
TRIBUNAL MEMBER:	Shahyar Roushan
DATE:	29 March 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

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 claims to be a citizen of Lebanon, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant].
3. The delegate refused to grant the visa [in] October 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

16. 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 to 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Protection Visa Application

The Form

20. According to the information provided in the applicant's protection visa application, she is a [age deleted: s.431(2)] Muslim, born [in] Lebanon. She was widowed in [month and year deleted: s.431(2)]. She has completed 5 years of schooling and describes her profession before coming to Australia as 'hairdresser' She was [employed] in that profession from November 2005 until 'current'. She resided at a single address in Tripoli, Lebanon from 1986 until June 2011.
21. The applicant departed Lebanon legally [in] June 2011. She arrived in Australia on a Visa issued on [a further date in] June 2011.
22. In response to questions in relation to her reasons for claiming protection, the applicant made the claims summarised below.

23. The applicant came to Australia to visit her brother, her 'closest family member', as she was experiencing 'emotional breakdown' due to her relationship with a Christian man in Tripoli. She conducted the relationship 'discreetly' for two years. When her parents found out about the relationship, they started 'pressuring her to an extent [she] had to ask for leave from work and visit [her] brother in Australia' The applicant fears another one of her brothers, [Mr A], who sent her a SMS message [in] July 2011, threatening to kill her if she returned to Lebanon. [Mr A] is in the Lebanese Armed Forces (LAF), carries arm and is 'capable of killing [her]'. The authorities will not protect her because her brother 'is the authority' and will arrange for someone to kill her.

Departmental interview

24. The applicant was interviewed by a delegate of the Minister [in] October 2011. The Tribunal has listened to the audio recording of the interview and what follows is a summary of the applicant's oral evidence to the delegate.
25. The applicant stated that she came to Australia to 'relax' because she was unwell psychologically. She explained that her husband passed away in [year deleted: s.431(2)] and she raised her children. She then met another person and they loved each other. Her children did not accept this, because he is Christian. Her family also did not accept the situation and one of her brothers threatened to kill her. When she came to Australia, she intended to return to Lebanon. However, after receiving the threat she became too scared to go back
26. The applicant was asked about the person the applicant was involved with. She stated that his name is [Mr B] and he is [age deleted: s.431(2)]. The applicant used to live with her mother-in-law. After her husband died and her mother-in-law sold the house, she sometimes lived with her parents and at other times with her sister or daughter. Before her departure for Australia, she resided with her daughter.
27. The applicant was asked about [Mr B]. She stated that he was a good man and they loved each other a lot. She lived under difficult circumstances but [Mr B] was very supportive. She explained that after her husband passed away, her husband's family did not give her enough money, forcing her to work in order to raise her children. She was a person without a house and could not afford to buy one. The applicant was asked when she had started living with her parents. She replied 'one year ago'.
28. The applicant was asked if she could provide any other information about [Mr B]. She stated that it was a 'normal relationship' He has a house and they decided to get married and live together. About two weeks before she came to Australia, she informed her family of her decision and they found out that [Mr B] is Christian. Consequently, her son left her and her brother 'got crazy' and sent her a threat in Australia.
29. The delegate noted that according to her application for a protection visa, she decided to come to Australia because of her family's reaction to her relationship. The applicant was asked if she decided to come to Australia after she informed her family of her decision to marry [Mr B]. She stated that she came to Australia for a visit because her family refused her marriage. Her brother, [Mr A], found out later as he did not live with his family and that's why he sent her the threat later.
30. It was put to the applicant that she had applied for a visa [in] April 2011, about 2 months and 10 days before she came to Australia. She stated that she received the visa one week before

she came to Australia. When she came to Australia she was unwell because of all that she had suffered before. She explained that she was a widow not living in her house. She was living under difficult circumstances which led her to seek to come to Australia for a visit. The issues relating to her relationship with [Mr B] only added to her existing problems.

31. The applicant was asked when her family started putting pressure on her. She stated that her parents are very old and they became upset. They did not accept her situation, which gave rise to daily problems and arguments. She stated that she started experiencing these types of problems with her parents for about a month or more.
32. The applicant was asked to show the delegate the SMS message she had received from her brother. The applicant showed the delegate two messages written in Arabic, transliterated into English. The messages were dated [in] July 2011 and [in] August 2011 and both contained explicit threats to the applicant.
33. It was put to the applicant that her evidence presented a number of problems. It was put to her that according to the claims contained in her application for a protection visa, she was under pressure from her parents sometimes because of her relationship with [Mr B]. In order to escape these pressures, she came to Australia. However, she applied for a visa about two months before her departure from Lebanon and informed her parents about her relationship about two weeks before she left Lebanon. She had also claimed that she had other problems as well and her parents were pressuring her about a month before she came to Australia. In addition she had claimed that her son had left her about two weeks before she came to Australia because of her relationship with [Mr B]. It was put to her that these claims appear to be inconsistent. She stated that her problems were all accumulated. She stated that she came to Australia to escape the pressures she was under and the problems she was facing only to receive threatening messages after she came to Australia.
34. The applicant was asked, if she knew her family were going to harm her because of her involvement with [Mr B], which had forced her to conduct the relationship discreetly for two years, why she had decided to tell her family that she was in a relationship with a Christian man. She stated that she thought if she told her family that she was going to marry this man, she might be ostracised, but now her brother wants to kill her.

The Delegate's Decision

35. The delegate decided to refuse the application because he did not find the applicant's reasons for travelling to Australia to be based on fact or to be plausible and did not accept that her family's reaction to her relationship was a trigger for her departure from Lebanon. The delegate was not satisfied that the applicant had provided a reasonable and plausible reason for announcing her relationship to her family. Accordingly, the delegate did not find the applicant to be credible and attached little weight to the SMS messages she had provided as evidence.

Application for Review

The Hearing

36. The applicant was represented in relation to the review by her registered migration agent.

37. The applicant appeared before the Tribunal [in] March 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
38. The Tribunal took evidence from [Mr C], the applicant's brother. [Mr C] stated that he is an Australia citizen, having arrived in Australia in 1993. He stated that he visits Lebanon regularly and that most recently he returned from Lebanon a week ago after spending 4 weeks in Tripoli. He explained that he decided to visit Lebanon because his father was gravely ill. During his stay in Lebanon he was mostly in the hospital by his father's bedside who suffering from [details deleted: s.431(2)]. However, he also met all other members of the family, except [Mr A], who refused to meet him. He stated that another brother told him that [Mr A], a soldier, had called [Mr C] a 'pig' for defending the applicant and her right to be in a relationship with a Christian man. He stated that he has lived in Australia for a long time and what Australia has offered his Islamic country has not offered him.
39. [Mr C] stated that while all members of his family are taking a stance against his sister, [Mr A] is particularly religious and has threatened her with violence. About two days before her scheduled departure from Australia, the applicant received a SMS message from [Mr A] threatening to kill her. He was asked why he thought [Mr A] is capable of acting on his threats. He stated that he might or might not, but he did not want to put his sister at risk. He stated that none of his brothers are speaking to the applicant and they are all unhappy about the situation. [Mr A], however, is very religious and [in] the LAF. He explained that [Mr A] is the only member of the family who prays regularly.
40. [Mr C] stated that if his sister were to return to Lebanon, [Mr A] might kill the applicant even if he had to spend the rest of his life in prison as he would be content with having 'washed away' the shame. He stated that his parents and brothers are all very upset. If he could see any chance of reconciliation between the applicant and [Mr A], he would have taken her back to Lebanon to give effect to reconciliation as all the applicant's children are in Lebanon.
41. [Mr C] stated that before the applicant's visa was approved, someone saw her with [Mr B] and informed the applicant's son. Consequently, her son stopped talking to her and informed the applicant's parents. The family started talking to and reproaching her. [Mr A] however did not find out until later as he was living at the army base and did not visit the family often. [Mr C] stated that he knew all along about his sister's relationship as he is very close to her.
42. The Tribunal took evidence from the applicant. She was asked about the preparation of her application for a protection visa. She stated that she was assisted by a migration agent in completing her application for a protection visa. She confirmed the accuracy of the information contained in the form and stated that she did not want to change any of the information provided in the application form.
43. The applicant stated that she was born in Tripoli in [year deleted: s.431(2)]. After finishing Year 5 at school, the civil war broke out and she was unable to complete her studies. She married her late husband in [year deleted: s.431(2)] and gave birth to [details in relation to the applicant's children deleted: s.431(2)].
44. The applicant stated that she has [details in relation to the applicant's siblings deleted: s.431(2)]. She stated that all her siblings are married. She stated that her parents are still living and reside in Tripoli.

45. She was asked if she is in contact with any member of her family other than [Mr C]. She stated she is sometimes in contact with [name deleted: s.431(2)] by telephone. She further stated that she spoke to [name deleted: s.431(2)], who is currently residing in [country deleted: s.431(2)], and her parents on a handful of occasions when she first came to Australia.
46. She was asked about her movements and residential addresses before coming to Australia. She stated that she arrived in Australia [in] June 2011. Until her husband's death she lived with her family, as well as mother-in-law in house owned jointly by her husband and her mother-in-law. After her husband's death, she continued to live in that house until about a year ago when the house was sold. Although she received her share of the sale, this was not enough to allow her to buy another property. By then her two oldest daughters were already married and living elsewhere. Her mother-in-law did not want to live with the applicant anymore as she had [a number of] daughters of her own. After residing with her sister for two months, the applicant split her time between her daughter's house and her parents' house.
47. The applicant stated she started working two years after her husband passed away. [Details of employment deleted: s.431(2)] in Tripoli, working 4 days a week. She worked continuously from 2006 until she came to Australia. Her place of work was closest to her sister's house and about 20 minutes' drive from her parents' house.
48. The applicant was asked why she did not want to return to Lebanon. She stated that she met someone by the name of [Mr B], a Christian. If she were to return to Lebanon she will be killed by her brother, [Mr A], who has sent her messages threatening to kill her to 'wash his shame'.
49. She was asked about her relationship with [Mr B]. She stated that [Mr B] was single when they met about two years ago. She explained that [Mr B] had a [shop] near her place of work and she was a customer. At that time she was going through very difficult circumstances, but she had no one to talk to. He was a very good man and when he spoke to her at his shop, she felt that she could open her heart to him. They spoke whenever she visited the shop, which happened more frequently. He also started helping her by lifting her spirits. He also extended financial assistance to her. During the period her mother-in-law was selling the house, she was under great psychological pressure and she became very much attached to him and he became to her. She then started going to his house and that's where they spent most of their time together. They rarely visited public places because she was fearful of being seen by members of her family. She went to his house two or three times a week. She was asked if her children, parents or sister became curious about the time she spent outside the house. She stated that she often told members of her family that she had to visit customers at their homes.
50. The applicant was asked how she communicated with [Mr B]. She stated that they mainly communicated by telephone and through text messages
51. The applicant was asked when she and [Mr B] decided to get married. She stated that they decided to get married soon after they met, but she was fearful of telling her family. After speaking to [Mr B], they had decided that she would tell her family about the decision after her trip to Australia. However, about two weeks before her departure from Lebanon, her son saw her with [Mr B] and told the applicant's father. When her parents enquired about the situation, she told her parents. She did not tell them how long she had been seeing [Mr B]. Rather, she only told them that she was intending to get married to this man. Her parents became upset and warned her that her brothers would not react well to the news. After that,

her father became very strict and started controlling her movements. He forbade her from going out or to town. The situation became unbearable and about two weeks before she came to Australia she left her parents' house for her daughter's house. During these two weeks, she was unable to go to work every day. Her son also decided to take his sister and live at the applicant's mother-in-law's house.

52. She was asked if she has continued to be in contact with [Mr B]. She stated that she is no longer in contact with [Mr B] because his telephone number is not working and her brother is harassing him. She does not know what has happened to him. She was asked when the last time she had contacted [Mr B] was. She said about three weeks after she came to Australia.
53. She was asked if anyone knew about the relationship before she informed her family. She said only [Mr C] knew about the relationship.
54. It was put to her that she has a number of brothers who are all presumably Muslim. She was asked why [Mr A] had reacted so adversely to the news of her relationship with [Mr B]. She stated that [Mr A] is the most religious out of all her siblings. His thinking is backward and 'fossilised'.
55. She was asked why [Mr A] wanted to harm her. She stated because she was in a relationship with a Christian man and she has brought shame to the family. He wants to defend his honour.
56. The Tribunal put to the applicant that she had never told the delegate that her son had seen her with [Mr B] and that this had compelled her to disclose her relationship to her parents. Rather, she gave evidence to the effect that she told her parents because she had decided to marry [Mr B]. She stated that they had decided to inform her parents about the relationship, but they wanted to wait until after her trip to Australia. When her son saw her, she had to let her parents know. She added that the delegate did not specifically ask her these questions and she had difficulties understanding the interpreter at the interview.
57. It was put to the applicant that she had told the delegate that she had told her family about the relationship two weeks before she came to Australia. However, she also told the delegate that her parents began harassing her about the relationship a month before her departure from Lebanon. She stated that her parents were harassing her a month before because of her status as a widow without a man. The cultural norms in Lebanon make widows vulnerable to gossip and rumours. Her parents were constantly concerned that her behaviour might cause gossip and wanted to control her movements. The applicant and her parents were frequently having verbal arguments.
58. It was put to her that according to the claims contained in her application for a protection visa, she was under pressure from her parents sometimes because of her relationship with [Mr B]. In order to escape these pressures, she came to Australia. However, she applied for a visa about two months before her departure from Lebanon and informed her parents about her relationship about two weeks before she left Lebanon. She stated that she was already under a great deal of pressure and going through very difficult circumstances. When her brother suggested that she should visit Australia to feel better, she accepted. However, the problems she encountered as a consequence of her relationship with [Mr B] compounded these pressures and made the situation even more difficult.

59. The Tribunal asked the applicant to read out the messages that were sent to her by her brother. The messages contained explicit threats to the applicant's life due to her relationship with [Mr B] and the shame she had brought to her family. One of the messages also contained threats against [Mr B].

FINDINGS AND REASONS

60. The applicant presented the Tribunal with her *Ripublique Libanaise Passport* Having sighted the document, the Tribunal accepts that she is a national of Lebanon.
61. The applicant, a Sunni Muslim widow from Tripoli, claims to have been in a relationship with a Christian man. The relationship was conducted discreetly for 2 years and until the applicant came to Australia. When her parents and other members of her family became aware of the relationship they began pressuring and harassing her. Following her departure from Lebanon, one of her brothers, [Mr A], threatened to kill her for shaming the family by becoming involved with a Christian man. The applicant fears being killed by her brother if she were to return to Lebanon.
62. The Tribunal had some concerns with the credibility of aspects of the applicant's evidence. These concerns were not dissimilar to the concerns expressed by the delegate in his decision.
63. The applicant's written claims give the impression that the reason she departed Lebanon was the problems she was facing as a consequence of her relationship with [Mr B]. However, she maintained consistently at the interview and the hearing that when she decided to visit Australia she was living under very difficult circumstance, she was psychologically worn-out and she was having problems with her parents because of her situation generally. The conflict arising from her relationship with [Mr B] had only compounded her existing problems. The Tribunal has carefully examined the applicant's written claims and is of the view that the manner in which these claims are expressed do not explicitly suggest that the applicant was motivated to leave Lebanon solely as a result of her family's reaction to her relationship with [Mr B]. In view of the applicant's limited education, the Tribunal cannot rule out the possibility of minor miscommunications in the manner in which the applicant's claims were presented in writing through her migration agent.
64. More significantly, the Tribunal was concerned with the applicant's belated claims at the hearing that she was compelled to disclose her relationship with [Mr B] to her parents after the applicant and [Mr B] were sighted together by her son who then informed the applicant's parents. The reasons behind the applicant's decision to disclose the relationship to her parents two weeks before her departure for Australia were discussed at the interview. The applicant did not mention her son's role in exposing the relationship and the delegate did not find the applicant's account credible. At the hearing, the Tribunal was not entirely persuaded by the applicants' explanations for her belated claims to the effect that the delegate had not been specific in his questions with regard to what had motivated her to disclose the relationship and that she had faced difficulties understanding the interpreter at the interview. Nevertheless, having carefully listened to the audio recording of the departmental interview, the Tribunal formed the impression that some miscommunication had occurred at the interview and the applicant had experienced some difficulties understanding the delegate through the interpreter. The Tribunal is of the opinion that these miscommunications, however minor, combined with the applicant's low level of education and the consistency with which the applicant had provided her evidence in relation to other key claims

significantly reduce the Tribunal's concerns regarding the impact of this deficiency in her evidence on the overall credibility of her claims.

65. As already indicated, the Tribunal found many other aspects of the applicant's evidence persuasive and consistent throughout the process. The Tribunal has also attached weight to [Mr C]'s evidence and has no persuasive reason to doubt the truth of his testimony in support of the applicant. The Tribunal, therefore, gives the applicant the benefit of the doubt and accepts her account as a true account of her experiences.
66. The Tribunal accepts that the applicant is Sunni Muslim. The Tribunal accepts that she formed a relationship with a Christian man in Lebanon and conducted this relationship discreetly for a period of two years. The Tribunal accepts that when the relationship was exposed, she informed her parents of the relationship and her intention to get married to [Mr B]. The Tribunal accepts that while she faced pressure, low level harassment and rejection by her parents and the majority of her siblings, at that time, she did not face and was not threatened with serious harm. The Tribunal accepts that this reaction was not replicated by one of her brother's, [Mr A], who threatened the applicant with death when he became aware of the applicant's relationship with [Mr B] These threats were received by the applicant while she was in Australia. The Tribunal accepts that she has taken the threats seriously and is genuinely fearful of returning to Lebanon.
67. On the basis of the evidence before it, the Tribunal is of the view that if the applicant were to return to Lebanon her chance of facing harm at the hands of her brother cannot be ruled out as remote or insubstantial. The Tribunal is satisfied that the harm the applicant fears involves significant physical harassment or ill-treatment and therefore involves 'serious harm' as required by paragraph 91R(1)(b) of the Act .
68. The Tribunal has considered whether the applicant could avoid the persecution she fears by internally relocating within the Lebanon. The applicant is a widow with limited education. Other than Tripoli, the applicant did not reside anywhere else in Lebanon. Although she worked and supported herself in a limited way, her circumstances suggest that she was not even in a position to reside by herself in Tripoli without the support of her family. The Tribunal is not satisfied that in all the circumstances relocation is a reasonable option for the applicant.
69. The evidence before the Tribunal suggests that her brother is intent on harming her because of her extramarital relationship with a Christian man and the consequent shame felt by her conservative brother. The Tribunal finds the applicant's brother's motives in harming the applicant are personal. The Tribunal is not satisfied that in harming the applicant, her brother is essentially and significantly motivated by any Convention reason. Rather, the harm feared by the applicant is a personal matter involving traditional concepts of shame and family honour.
70. While the harm feared by the applicant is not Convention related, the Tribunal is of view that the Convention test in this case may be satisfied by the selective and discriminatory withholding of state protection for a Convention reason from serious harm that is not Convention related (see *MIMA v Khawar* (2002) 210 CLR 1).
71. Country information before the Tribunal indicates that women suffered discrimination under the law and in practice. Many family and personal status laws, which varied widely across the various confessional court systems, as well as the Lebanese penal code, discriminated against

women.¹ Domestic violence and honour crimes are serious problems in Lebanon and the authorities are not always able and willing to provide sufficiency of protection. There is little state protection for women in Lebanon who face violence from their family members. Domestic violence is not specifically prohibited by law and culturally is generally seen as a private, family matter.² Sources report that victims' complaints are usually ignored by police, and that the discriminatory nature of the judicial system, as well as cultural restraints, prevents victims from seeking legal redress.³

72. A 2009 UK Home Office report states that cultural constraints may prevent victims from seeking state protection from domestic violence, but notes that convictions are reported in the media.⁴ However, a more recent US Department of State report indicates that legal protection for women from domestic violence is limited, particularly in cases concerning honour crimes, and that victim's complaints to police are often ignored⁵
73. Other reports indicate that although police may record violent incidents against women, their reports often do not identify the perpetrator.⁶ In most cases, allegations of domestic violence are ignored by the police,⁷ and the victims are instructed to sort out their problems at home.⁸ The lack of a specific law relating to family violence, and the perception that such incidents are a family matter, informs the reluctance of the police to intervene.⁹ In addition, hospitals often report cases of abuse as 'home accidents' without making any further investigations.¹⁰
74. Based on the information before it, the Tribunal is satisfied that widowed women who are perceived to have dishonoured their family in Lebanon or alternatively widowed women who have breached social mores in Lebanon possess characteristics and attributes that make them distinguishable from the rest of the society and based on the prevailing social and cultural norms in Lebanon they constitute a particular social group within the Convention meaning (see *Applicant S v MIMA*). The Tribunal accepts, therefore, that widowed women who are perceived to have dishonoured their family form a particular social group in Lebanon for the purposes of the Convention.
75. In view of the country conditions in Lebanon, the Tribunal finds that state protection would be withheld from the applicant for the Convention reason of her membership of a particular social group. The Tribunal finds that there is a real chance that the applicant would be denied protection by the Lebanese authorities from the harm she fears at the hands of her brother for the reason of her membership of the particular social group of widowed women who are

¹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Lebanon*, 8 April, Sec.2 <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154466.htm>

² US Department of State 2011, *ibid*, Sec.6; Chemali Khalaf, Mona 2010, 'Women's Rights in the Middle East and North Africa 2010: Lebanon', Freedom House, 3 March .; UK Home Office 2009, *Operational Guidance Note: Lebanon*, 10 June, Sec.3.9.

³ UK Home Office 2009, *Operational Guidance Note: Lebanon*, 10 June, Sec.3.9.

⁴ UK Home Office 2009, *ibid*.

⁵ US Department of State 2011, *ibid*, Sec.6 <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154466.htm>

⁶ 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247>.

⁷ US Department of State 2011, *ibid*, Sec. 6.

⁸ 'Liberal Lebanese women suffer under outdated laws' 2008, *Agence France Presse (AFP)*, 7 March <http://www.naharnet.com/domino/tn/Newsdesk.nsf/0/0B134D5B4DC1C6D0C2257405000EC229?OpenDocument>

⁹ 'Domestic violence remains hidden in shadow of tradition' 2007, *The Daily Star*, 18 October http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=86044

¹⁰ 'Move to take domestic violence cases out of religious courts' 2009, *ibid*.

perceived to have dishonoured their family in Lebanon. The Tribunal, therefore, is satisfied that the applicant has a well-founded fear of persecution for a Convention reason.

76. The Tribunal is satisfied that the applicant has a well-founded fear of persecution for a Convention reason in Lebanon. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than her country of nationality. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

CONCLUSIONS

77. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

78. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.