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1416470 (Refugee) [2016] AATA 3107 (22 January 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1416470
COUNTRY OF REFERENCE:	Lebanon
MEMBER:	Christine Cody
DATE:	22 January 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 22 January 2016 at 12:56pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 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.

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STATEMENT OF DECISION AND REASONS - APPLICATION FOR REVIEW

BACKGROUND

1. The applicant is a national of Lebanon who seeks to be granted a Protection visa under s.65 of the Migration Act 1958 (the Act). He is represented by a registered migration agent.

2. He first arrived in Australia [in] February 1996 [on a temporary visa]. He applied to the Department of Immigration for his first protection visa, seeking recognition as a refugee ([number]), [in] January 1997[1]. He claimed he feared persecution.

3. The applicant's first protection visa application was refused by the delegate [in] September 1997 and the applicant applied for review with the Refugee Review Tribunal ("the first Tribunal"), which was differently constituted. The first Tribunal affirmed the delegate's decision [in] July 1999. The applicant lodged an application for Ministerial Intervention [in] August 1999, which was finalised by way of being "not considered" [in] February 2000. The applicant however remained in Australia[2].

4. Section 48A imposes a bar on a non-citizen making a further application for a protection visa while in the migration zone in circumstances where the non-citizen has made an application for a protection visa which has been refused. On 24 March 2012, the complementary protection provisions were introduced. On 3 July 2013, the Full Federal Court in SZGIZ v MIAC (2013) 212 FCR 235 (hereinafter referred to as "*SZGIZ*") held at [38] that the operation of s.48A, as it stood at the time of this visa application, is confined to the making of a further application for a protection visa which duplicates an earlier unsuccessful application for a protection visa, in the sense that both applications raise the same essential criterion for the grant of a protection visa.

The current protection visa application

5. The applicant applied to the Department of Immigration a second time for a protection visa pursuant to *SZGIZ* [in] November 2013[3]. The applicant's background, from his protection visa application lodged with the Department, is as follows:

- The applicant was born in [year] and is now aged [age] years of age.
- The applicant speaks, reads and writes in Arabic and English. His ethnic group is Lebanese, and his religion is Maronite Christian. He has never been married or in a de facto relationship.
- He had [number] years of education in [town], North Lebanon. From his birth in [year] until 1991, he resided in [village] (his home village, in North Governorate), and from 1991 until February 1996, he resided in [suburb] (Beirut), in Mount Lebanon Governorate, where he worked as [occupation].
- He was issued with a passport [in] 1995, which was valid until [date] 2000. He claimed he did not travel outside his country before he travelled to Australia.

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[1] As noted in his current application form.

[2] This information is sourced from the applicant who told the Tribunal that he had lodged an initial protection visa application which had been refused, he had lodged an application to the first Tribunal, and thereafter he had lodged a Ministerial Intervention request; it is confirmed by the current delegate's decision record located on the Departmental file.

[3] See Notice of Refusal provided to the Tribunal by the applicant with his application for review.

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- He left Lebanon [in] February 1996[4]; he travelled to Australia [on a temporary visa], arriving [in] February 1996.

- He only provided brief details about his work in his protection visa application form. The Tribunal sought further details at hearing, and had regard to supporting letters/documents he has provided. He stated that shortly after he arrived in Australia, he started work as [occupation], then as a supervisor in a company owned by a relative ([company name]); for the last four years he has been the owner of [company] in [suburb]; and he has also been working as [occupation] (most recently he has entered into a deal worth about $[number] million). [Details of work deleted].

6. His claims are set out, very briefly, in his current protection visa application lodged with the Department:

   - He is a Maronite Christian. Due to his religious background and beliefs, he fears he will face significant harm in Lebanon.

   - He states that Islamic fundamentalism is growing, there has been an influx of Syrians and influence of the Muslim Brotherhood[5]. He fears that he will face a real risk of harm including torture, degrading, cruel and inhuman treatment at the hands of Islamic extremists.

   - He fears that he cannot get state protection and even if he moves to other parts of Lebanon, he will continue to face harm.

7. In his protection visa application form, which was signed [in] November 2013, he claimed that he would subsequently provide a detailed statement as well as solicitor's submissions. No such documents were provided to the Department.

Correspondence with the Department

8. In an email dated [in] June 2014, the applicant's agent stated that the applicant had confirmed that "*he has no further statement he wishes to provide to the Department, and he will be relying on his previous statements and evidence on that Department's file*". As set out in the delegate's decision record contained on the Departmental file, the delegate took this to be a reference to the applicant's previous statement and evidence on the Departmental file relating to the first protection visa application. At hearing, the Tribunal asked the applicant whether he intended that the Tribunal take his statement from his first protection visa application as if he had provided it in the current (second) protection visa proceedings, and he said yes. This statement, dated [in] March 1997, is hereafter referred to as "the applicant's statement". He also referred at hearing to a letter from his parents from the first protection visa file, which the agent then provided to the Tribunal.

Interview with the Department

9. The applicant attended an interview with the delegate [in] June 2014. A recording of the interview is on the Departmental file, the Tribunal has listened to the recording. At the interview, the applicant provided details of his background, noted that he has spent almost half of his life now in Australia, having come here when he was [age] years old. He claimed that he was the subject of a notice of arrest and he had been associated with the then illegal

[4] In one part of his application form, this was erroneously stated as [date] February 1987.
[5] The applicant had claimed in his application form that Al Qaeda has its presence in Lebanon; this was subsequently changed by a Notification of Incorrect Answers form signed by the applicant [in] June 2014 and provided to the Department.

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Lebanese Forces. If he returns to Lebanon, he fears harm from Syrian intelligence, who were operating in Lebanon, and are still operating there. He could be arrested or killed by the Syrian intelligence. He could be taken to Syria and put in prison and people do not return from such prisons.

10. He claimed that he is a Maronite Christian, and Christians are being subjected to ill-treatment from Muslims. He fears ill-treatment or harassment because he is a Christian from the Muslim Brotherhood. He fears kidnapping for money because he is a Christian

11. When asked whether his family had suffered difficulties, he said just minor matters: one of his brothers, stopped at a control point, was investigated and interviewed, and the matter was resolved. He did not say when this occurred.

The delegate's decision

12. The delegate refused to grant the second application for a protection visa [in] September 2014[6]. The delegate referred to the applicant's evidence, country information including DFAT reports, and considered it not plausible that the applicant faces the claimed harm, for reason of political opinion or religion. The delegate refused the claims have regard to both the refugee, and complementary protection, criteria.

The current Tribunal

13. 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 visa under s.65 of the *Migration Act 1958* (the Act). The applicant was informed that the Tribunal has considered the material before it but was unable to make a favourable decision on the information. He was invited to attend a hearing before the Tribunal, and was requested to provide a written submission setting out all claims made and maintained by 7 January 2016. This was not done.

14. Prior to the hearing, the applicant indicated that he may seek to provide witness evidence. The Tribunal then reminded the applicant, via his agent, that he had been requested to provide any witness statement setting out the witness's evidence by 7 January 2016, which had not been done. The Tribunal was subsequently advised that there would not be a witness called on behalf of the applicant.

15. On the day before the hearing, a number of supporting letters and photographs were provided to the Tribunal. The applicant did not provide any country information to the Tribunal (although he made assertions about the country situation, as did the agent). In accordance with Ministerial Direction No. 56, the Tribunal has also taken into account the country information assessments prepared by DFAT expressly for protection status determination purposes, namely the DFAT Country Information Report on Lebanon dated 18 December 2015.

16. The applicant appeared before the Tribunal on 14 January 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages. The agent also attended.

17. The Tribunal informed the applicant that it appeared, as a result of *SZGIZ*, that it did not have the power to consider his claims under the Refugee Convention criterion in s.36(2)(a), but that it would consider his claims under the Complementary Protection provisions in s.36(2)(aa) of the Act. The Tribunal noted however that his agent was pursuing an argument

[6] See Notice of Refusal provided to the Tribunal by the applicant with his application for review.

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in the Federal Court in a separate case (that the Tribunal should consider both of these criteria in a second application).

18. The Tribunal explained the definition of refugee (including that what is required is a well-founded fear of persecution for one or more of five reasons: race, religion, nationality, political opinion, or membership of a particular social group; that what is required is a real chance of serious harm; and that there are exceptions to the definition which could be discussed if necessary, including state protection, relocation, and general violence) as well as the relevant definition for complementary protection. The Tribunal said it was important that the applicant tell the Tribunal all of the reasons why he doesn't want to go back to Lebanon and it would consider whether his claims fell within the relevant criterion.

19. The Tribunal noted that it was not bound to follow any of the delegate's findings and that it would make its own findings based on all of the information before it. The applicant was asked about his claims and background. The Tribunal put concerns to the applicant, and discussed country conditions. The Tribunal put to the applicant its concerns that his initial claims may not be true, which would suggest that he arrived and remained in Australia (for 20 years) for reasons other than a fear of persecution, and, having regard to its concerns, it may be that he has made his current protection visa application also because he wants to remain, not because he faces a real risk of significant harm (or real chance of serious harm). In response, the applicant said he is not aware of what will happen if he goes to Lebanon; he has spent half of his life in Australia.

20. Although, at hearing, the Tribunal approached the claims, in accordance with its view, that it had jurisdiction to consider complementary protection, it also gave the applicant the opportunity to make any submissions in relation to the refugee criteria. The Tribunal also raised with the applicant at hearing, when putting its concerns, that not only did it appear that he did not satisfy the requirements of a real risk of significant harm (for complementary protection), but that if the Tribunal was going to consider his claims under the refugee criterion, it also did not appear that he faced a real chance of serious harm (refugee criterion) for any of the reasons claimed.

21. The Tribunal has referred to relevant evidence and information below.

CONSIDERATION OF CLAIMS AND EVIDENCE, FINDINGS AND REASONS

The Effect of SZGIZ and its relevance to this review

22. Further to paragraph 4 above, the Tribunal's understanding of the reasoning in *SZGIZ* is that it does not have power to consider the Refugee Convention criterion in s.36(2)(a), and thus should proceed on the basis that it can only consider the applicant's claims under the Complementary Protection provisions in s.36(2)(aa) of the Act.

23. The Tribunal notes the decision of the Federal Circuit Court in *SZVCH v MIBP* [2015] FCCA 2950 which indicates that in a case such as this case, where a valid application has been made to the Department, and the Department has considered claims under both the Refugee Convention in s.36(2)(a) and the Complementary Protection provisions in s.36(2)(aa) of the Act, the Tribunal should also consider claims under both.

24. After the decision in *SZVCH*, there had been another decision of the Federal Circuit Court in *SZQTJ v MIBP* [2015] FCCA 3226. This case found that the correct approach is for the Tribunal to *only* consider claims in relation to the complementary protection criterion in s.36(2)(aa) (where the applicant had previously been refused a visa on the basis of the refugee criterion in s.36(2)(a)). The court found that, the approach in *SZVCH* is inconsistent with the clear words of s.48A and with *SZGIZ*, which makes clear that a second application

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can only be made relying on a different criterion. The decision in *SZVCH* cannot be reconciled with the binding authority of the Full Court and is wrong.

25. Subsequently, the Federal Court in *AMA15 v MIBP* [2015] FCA 1424 upheld the Tribunal's understanding that only claims in relation to the complementary protection criterion in s.36(2)(aa) should be considered, where the applicant had previously been refused a visa on the basis of the refugee criterion in s.36(2)(a).

26. This was discussed at hearing, and the applicant's agent conceded that the current state of the law is as found by the Federal Court in *AMA15 v MIBP* [2015] FCA 1424.

27. In light of the Federal Court authority, it is the Tribunal's view that the applicant's claims only in relation to s.36(2)(aa) should be considered.

28. However, the Tribunal notes that at hearing, the agent stated that they represent the applicant in *SZVCH*, which he said is now listed for hearing at the Federal Court in May 2016. In that case they are pursuing the argument that the Tribunal should also consider claims under all criteria once a second protection visa application has been lodged. The agent made a request, for the first time, at the hearing, that the Tribunal's decision be deferred until the Federal Court hears *SZVCH* in May 2016[7]. The Tribunal considered the request to defer its decision, but has decided not to do so, for two reasons. Firstly, there is current clear authority from the Full Federal Court in *SZGIZ,* and from the Federal Court in *AMA15 v MIBP* as to the scope of the Tribunal's powers. Secondly, the Tribunal has made alternative findings below on the basis of the refugee criterion in s.36(2)(a), however having considered the claims in relation to the refugee criterion, the Tribunal is not satisfied that the applicant meets either the refugee criterion, or the complementary protection criterion, for a visa. The relevant law, in addition to that discussed in the body of this decision, is set out in Annexure A (that Annexure also contains the law relating to the Refugee Convention criterion in s.36(2)(a)).

Receiving country

29. The applicant produced to the Tribunal his current Lebanese passport (issued in Australia), in 2014. The Tribunal finds that the applicant is a citizen of Lebanon and that Lebanon is the receiving country for the assessment of his complementary protection claims.

Credibility

30. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. Similarly that the applicant claims to face a real risk of significant harm does not establish that such a risk exists, or that the harm feared amounts to "significant harm". It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out.

31. Pursuant to s.5AAA of the Act it is the responsibility of the applicant to specify all particulars of his or her claim to be a person to whom Australia has protection obligations and to provide sufficient evidence to establish that claim. The Tribunal does not have any responsibility or obligation to specify, or assist the applicant in specifying, any particulars of his or her claims. Nor does the Tribunal have any responsibility or obligation to establish, or assist the applicant in establishing, his or her claims.

[7] This request was repeated after the hearing in a letter dated 18 January 2015.

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32. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).

33. The Tribunal had significant concerns about the credibility of the applicant. The Tribunal had a number of concerns about his evidence as to past events, and what he feared upon return to Lebanon. The Tribunal did not find the applicant to be a credible, truthful, or reliable witness in relation to matters central to, and related to, his claims. The Tribunal's concerns are set out below.

34. ***Firstly,*** the Tribunal found the applicant's evidence to be evasive and vague about why he needed to leave Lebanon. It asked him on numerous occasions to be specific with the reasons why he considered he needed to leave Lebanon. Finally, he confirmed that the only reasons he needed to leave Lebanon (in 1997) were:

    - Because he had attended Lebanese Forces ("LF") demonstrations, he was wanted by the Lebanese Army and Syrian intelligence.

    - He didn't like the general situation in Lebanon.

35. This however was inconsistent with his statement where he claimed that he left Lebanon because he was awaiting sentencing by the military court for his failure to do his military service. He had claimed that he was called up by the Lebanese Army to do military service but refused to join as he does not approve of them killing or detaining members of the LF; after his refusal to do military service he went to military court where he was asked questions about the past. He is awaiting sentence at the military court for his refusal to do his military service. If he returns to Lebanon the military court will detain him and he will probably be killed because he is against the army.

36. The Tribunal put to the applicant that what was contained in his statement was very different to what he had told the Tribunal at hearing. In response, the applicant said that he had claimed at hearing that he would be detained. The Tribunal noted that it had asked him very specific questions about the reasons why he had left Lebanon, and at no time had he mentioned that he was awaiting sentence in military court for having refused to serve in the army. He then said that he had mentioned he was wanted and that intelligence officers had come and asked about him. The Tribunal noted he had said to the Tribunal that the reason he left Lebanon and feared harm was because of his support for the LF at demonstrations. He had not said that it was because he was due to be sentenced (and killed) by the military court.

37. In response, the applicant said he does not know what to say and he already spoke about what is in his heart. The Tribunal has considered this explanation however it does not find it persuasive. The Tribunal considers that if the applicant had left Lebanon because he feared being killed (or sentenced) as a result of his evasion of military service and previous attendance before the military court, he would have remembered this, and told the Tribunal about this when asked why he had left Lebanon. He was given many opportunities at the hearing to disclose this, however he did not do so. The Tribunal considers that his inconsistent evidence undermines his claim that he was forced to flee Lebanon for fear of harm or persecution, and that he had come to the adverse attention of any authorities or anyone who wanted to harm him in Lebanon

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38. ***Secondly***, the Tribunal was concerned that the applicant thereafter gave evasive, changing and inconsistent evidence about the military service. For example, the Tribunal noted that the only claim he had made at the hearing was that he would be harmed because he had attended demonstrations; he agreed. The Tribunal then asked if the applicant was suggesting that he would be harmed because of the military service issue. In response he said he had not wanted to attend military service. The Tribunal repeated that he had evaded military service and was due for sentencing when he left (according to his statement) but it appeared that he had no concerns about this now for his return to Lebanon. In response he said he doesn't know if his sentence would be "dead" now. The Tribunal noted this was inconsistent with his current application form where he claimed there were no outstanding charges or convictions or criminal investigations against him. The applicant agreed.

39. The Tribunal asked the applicant how he managed to get rid of the outstanding military service charge and sentence. He then suggested that this was because military service was abolished by law. The Tribunal asked when this had occurred and he said in 1995. The Tribunal noted that this was inconsistent with his statement, which he had made in 1997, where he claimed that he was awaiting military court sentencing due to his evasion of military service. The Tribunal suggested that if the charge and sentence against him had been abolished because military service had already been abolished, then he would not have made his claims about military service in his statement in 1997, two years after he claims military service had been abolished. He then changed his evidence and said he doesn't know when they abolished military service, and he doesn't know whether they will do anything to people who were charged.

40. The Tribunal noted however that he did not make the claim in his current protection visa application, or at hearing, that he fears any harm in relation to the military service evasion charges or sentence. The Tribunal put to the applicant that if there had been charges and an outstanding sentence, he would have mentioned this in his protection visa application form, or if he knew that the charges had been dropped or that the sentence had been abolished, he would have told the Tribunal about this. In response, the applicant said he is telling what he knows.

41. The Tribunal considers that the applicant's evidence concerning whether or not he faced or faces sentencing for military service evasion charges is highly unlikely, and undermines his claims in this regard, and his earlier claim that this was the reason why he left Lebanon.

42. ***Thirdly***, the Tribunal had a concern with the credibility of the applicant's claims to the Tribunal that he needed to flee Lebanon because he had attended LF demonstrations, so his name was on a list. When the Tribunal asked specifically why he left, he said it was because he had attended LF demonstrations. The Tribunal noted that he claimed that there were thousands of demonstrators present, he had always run away and he had not been caught. The Tribunal asked how the authorities would have known he was attending the demonstrations if he had not been caught. In response he said that among the thousands, there were infiltrators and informants from the intelligence services and people were being caught at the demonstrations and they were being harmed.

43. The Tribunal noted his evidence that the last time he attended a demonstration was in 1992/1993, however he did not leave Lebanon for Australia until 1997, he continued living in Beirut and working in his job as [occupation] until he left. The Tribunal suggested that the authorities would have had plenty of opportunity to harm him, so it appeared that no one had any interest in him prior to leaving. In response he said that where he was in [suburb] was part of the LF area and in general demonstrations were staged on the other side of Beirut. The Tribunal put to the applicant that if he was claiming he remained safely in [suburb], going to work at his regular job, it did not understand why he considered he needed to flee Lebanon. He did not respond other than to say that they could have found him. The Tribunal

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put to him that it did not understand why he thought he was on a list, given that the reason he would be on the list was because he was at the demonstrations, there were thousands of people at the demonstrations, it seems unlikely that they would have had list of all those thousands of people, he had not been detained at the demonstrations, and he had managed to live and do his job in Beirut for a further three years after he last attended a demonstration. He said he lived in someone else's house, and a friend in intelligence told him that he was on the list. The Tribunal has considered the applicant's explanations and evidence but finds it unlikely.

44. Further, the Tribunal's concerns about the applicant having been brought to the adverse attention of any authorities by attending any demonstrations (and being subsequently placed on a list) were heightened because of the applicant's ability to obtain a passport from the Lebanese authorities while in Australia. He told the Tribunal that in order to obtain a passport, he simply made an application, showed them identification documents, was asked questions about how he lost his previous passport. About [number] weeks later he was granted his current passport (2014). The Tribunal put to the applicant that if he was on a wanted list, it seemed unlikely that the authorities would grant him a passport, especially without asking him any questions about his past activities. In response he said that he is aware that the authorities would probably not grant a passport to someone on the wanted list, but "sometimes the intelligence services don't control the passport section, sometimes". While the Tribunal accepts that the applicant's explanation may be possible, having regard to its other concerns, it seems more likely that the authorities have not had any adverse interest in the applicant.

45. ***Fourthly,*** the Tribunal was concerned that the applicant gave inconsistent and not credible evidence about his encounters with the authorities in Lebanon.

46. He told the Tribunal that his name was on a wanted list, held by Syrian intelligence who were in control in Lebanon, such that he was unable to leave Lebanon via the airport, but instead had to travel to Damascus (in Syria) to fly from that airport. When asked why his name was on a wanted list, he claimed that this was because he was a supporter of the LF.

47. However, the applicant's evidence to the Tribunal concerning the authorities' interest in him in relation to his involvement with the LF conflicted with his statement. He told the Tribunal that he was only a supporter of LF, he has never been a member of, or had any particular role in, the LF. He claimed that his only involvement was to attend LF demonstrations, along with thousands of other people, and to run away when the police arrived. He was not caught. This had occurred on about 10 occasions, from about April/May 1990 until 1992/1993. The Tribunal asked him specifically whether he had had any other encounters with authorities apart from what he had described (namely authorities approaching him and thousands of other people at a demonstration and him running away) and he said no.

48. As put to the applicant at hearing however, this was inconsistent with his statement where he stated that he had been "taken" by the Lebanese Army a few times because they wanted information from him about the LF.

49. In response he said they stopped him at a checkpoint but he doesn't remember what happened 20 years ago. The Tribunal put the applicant that it seemed unlikely that he would recall attending demonstrations, running away and not been caught by the authorities, yet he would forget that he had been detained and questioned by the authorities, which would probably have been a frightening experience. In response, the applicant said that human beings encounter things and they forget them. While the Tribunal accepts that 20 years is a long time, the Tribunal notes that he was able to give fairly precise dates and information about his attendance at the claimed demonstrations (and the consequences), and that these claimed events occurred more than 20 years ago. In the circumstances, it seems highly

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unlikely that he would forget being actually detained by the intelligence authorities and questioned. The Tribunal considers that the applicant's evidence about his encounters with the authorities undermines his claims to have had encounters with the authorities in Lebanon.

50. On the basis of the above, the Tribunal does not consider the applicant to be a credible witness.

Other matters

51. The Tribunal accepts that the applicant could have been nervous in appearing before it, or during the proceedings generally. The applicant claimed that he may have forgotten some things from his earlier protection visa application, and some events that had occurred before he left Lebanon, over 20 years ago. While the Tribunal accepts that 20 years is quite a long time, as put to the applicant, it considers that having regard to the seriousness of his claims, he would have remembered matters such as why he left Lebanon, why he had to remain unlawfully for about 13 years[8] and the reason why he was unable to return to Lebanon during all those years, whether or not he had been detained by the army in Lebanon, and whether he had left while awaiting sentencing (and being killed) by the military court for evasion of military service. The Tribunal does not accept that this can explain the difficulties with his evidence. The Tribunal also notes he said that he may have made some mistakes, and while it accepts that mistakes can occur, it is not satisfied that this can explain the concerns with his evidence.

The letter from the applicant's parents in Lebanon

52. The Tribunal was concerned about the applicant's evidence (and his parents' letter) concerning a claimed visit from the authorities in Lebanon. The Tribunal asked the applicant about what he feared if he returns and he said he will be seized by Lebanese army intelligence officers because as advised by his parents, Lebanese army intelligence officers came looking for him in the village. He referred to a document from his parents, which he initially said was recent; it then transpired that this was a document he had produced in his previous protection visa application. The agent provided a copy of the document to the Tribunal; the Tribunal put to the applicant that this was a letter from his parents (translated [in] March 1997); it was not a summons or other such document asking him to come in to be questioned.

53. The applicant told the Tribunal that his parents had told him that they had received a visit from the Security forces as well as a notice from the security forces, that is why they wrote to him. He said the army wanted to talk to him about his political opinion, namely why he supported LF. He said there was no other reason why he would have been wanted in Lebanon or Syria.

54. The Tribunal noted that the letter states that the applicant escaped to Australia because he was "being threatened because his political views are not pleasing to the Syrian security forces present on Lebanese soil in particular the Syrian army". The Tribunal noted that the letter did not mention the two specific events the applicant claimed had occurred, namely that his parents had been visited from the security forces, nor that there was a summons issued to him; nor was the notice produced. In response the applicant said that in Lebanon his parents would have had to sign the summons but it is not given to them. The Tribunal noted that even if that was the case, they still did not mention the visit or summons in the letter.

[8] His evidence was that he was unlawful for about 13 years, after his Ministerial application was unsuccessful.

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55. The applicant did not respond other than to say that this is the letter he got from his parents. While the Tribunal notes that there is a reference to the applicant being "threatened" (which is not something the applicant claimed to the Tribunal), it considers that if the applicant's parents had been visited by the security forces and they were aware of a summons to issued to the applicant, they would have mentioned these matters in the letter. The Tribunal considers that this causes concern about the letter. The Tribunal's concerns are heightened given that the letter does not mention his very significant claim (at the time) that he was awaiting sentencing from the military court, which would probably organise for him to be killed.

56. The Tribunal explained at hearing that it was not bound to accept the assertion made by his family, and that the letter would have to be considered together with credibility issues. In the circumstances, the Tribunal is not prepared to place any weight on this letter from his parents.

The applicant's family and conduct in Australia

57. The applicant had provided to the Tribunal a number of photos which showed that he had family in Australia; some of the supporting letters indicated that he was a role model and very helpful to his family members in Australia, and that he is a well-respected member of the Christian Lebanese community in Australia. It was not claimed that this was relevant to the claims that the Tribunal had to consider; rather it was indicated that these matters were relevant to a request for the Tribunal to make a recommendation for Ministerial Intervention.

The applicant's letter from his church

58. The applicant provided to the Tribunal a letter from the church indicating that he belongs to the Maronite Catholic faith and regularly attends church in [Australia]. He is of good character and donates his time and money to church activities. The applicant himself claimed that he is religious in Australia, in that he attends Mass on Sundays and donates money to the church, as well as donating his [work] ability to the church. Other supporting letters also indicated that he attends church. The letter from the church indicated that it was aware that the applicant was seeking to stay in Australia on a permanent basis, and it asked that the Tribunal look favourably upon his application. The Tribunal explained to the applicant that it was not bound to accede to the church's request, and that it would consider the applicant's claims in accordance with the law.

59. Considered cumulatively, the concerns the Tribunal holds about the applicant's credibility as discussed above, lead the Tribunal to conclude that the applicant is not a witness of truth and the applicant has fabricated accounts of events in Lebanon, as well as future fears and circumstances.

Findings on the applicant's claims of events in Lebanon and future fears

60. On the basis of the adverse credibility finding, the Tribunal is not prepared to accept that the applicant was a supporter or otherwise involved with LF; that he attended or was perceived as attending any demonstrations; that there was or is any reason for him to have been of adverse interest to anyone or any authority; that he was questioned or detained by the authorities about anything including at checkpoints; that he evaded military service or faced any charges or sentencing in relation to military service; that he was on a wanted list; that he had to escape to Syria because he could not leave via the Lebanese airport and that he required bribes and connections to come to Australia; that his family received a visit from intelligence or any authorities or a notice/summons that he attend for questioning; that he faces harm from a military court, the Lebanese army; the Lebanese government and its supporters; Syria; any intelligence agency or any authorities.

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61. The Tribunal considers that the applicant made up both his earlier protection visa claims, and his current protection visa claims, in so far as he has made allegations of past harm or adverse interest in himself by authorities (Syrian or Lebanese).

The applicant's religion

62. The Tribunal is prepared to accept on the evidence before it that the applicant is a Maronite Christian and that he attends church in Australia, and donates money and his [work] ability to the church. The Tribunal is prepared to accept that upon return, the applicant will continue to be involved in his religion and will continue to attend church in Lebanon and provide similar donations.

The applicant's home area

63. The Tribunal is prepared to accept that the applicant's claims that he was born and grew up in his village in [town] in the North governorate, and that he moved to [suburb], Beirut, in Mount Lebanon governorate, for work, and lived there from 1991 until he left for Australia in January 1996.

64. He said that if he did return, he would prefer to return to [suburb] in Beirut, because he considers that that is safer than [his home town]. The Tribunal notes that his last place of residence was Beirut, and that he has cousins who still reside there (with whom he first lived when he moved there), and that his [siblings] now also reside in Beirut. He said that one [sibling] has worked in Beirut of 15 years working in [government], and another [sibling] has resided in Beirut further the last 10 to 12 years; [the sibling] is [occupation] who works for a very affluent man who has a lot of wealth and connections in Lebanon.

65. Concerning [his home town], he told the Tribunal that his parents remained in the village, where they have lived all of their lives, and his [siblings] live with them. [One sibling] takes care of the parents, and the [other sibling] has taken over the father's work on the family [business]. Another [sibling] lives in a village close by.

66. As put to the applicant, either location could be his home area. The Tribunal has considered the applicant's claims in light of both home areas and, as put to the applicant, there are Christian populations in both areas:

> 2.14 Despite some segregation during Lebanon's civil war period, Lebanon's population remains highly mixed. However, there are concentrations of religious groups in certain areas. In broad terms:
>
> - Lebanon's North Governorate is majority Sunni, with a substantial Christian population in the south and east….;
> - Beirut Governorate has substantial Christian, Sunni and Shi'a populations, and the city has both sectarian enclaves and mixed suburbs.
>
> 3.31 Sources suggest that between 35 and 40 per cent of Lebanon's population is Christian. Maronite Christians are concentrated in Mount Lebanon and in Beirut and its surrounds[9].

Terrorism, general insecurity, influx of Syrians into Lebanon, religion

67. The applicant's written claims indicated that he feared harm as a Christian, from Islamic extremists/terrorists and the Muslim Brotherhood, and he claimed that there has been an influx of Syrians.

[9] DFAT Report.

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68. The Tribunal considered the DFAT report, and put extracts of the report to the applicant at hearing. The Tribunal notes the following from the DFAT report:

> *Political System*
>
> 2.26 Lebanon is a parliamentary democratic republic with a confessional structure. That is, key positions in the executive and legislature are allocated to the country's major religious groups. For example, by convention, the position of President is a Maronite Christian, the Prime Minister is a Sunni and the Speaker of Parliament a Shi'a. ….
>
> 2.28 The unicameral Parliament has 128 members – half allocated to Christian representatives and half to Muslim representatives, with further breakdowns along sectarian lines. …
>
> 2.29 Political parties in Lebanon are divided largely along sectarian lines. Since the 2005 withdrawal of Syrian forces, political blocs in Lebanon, commonly referred to as the 'March 8' and 'March 14' coalitions, have been distinguished by their attitude towards Syria. The March 8 coalition is named after a 8 March 2005 rally in support of the Syrian presence in Lebanon. Key members of the coalition include Hizballah (Shi'a) and the Free Patriotic Movement (Maronite Christian). Its nominee for Prime Minister, Najib Mikati, held office from July 2011 until his resignation in March 2013. The Progressive Socialist Party (Druze), formerly aligned with the March 8 coalition, is now unaligned.
>
> 2.30 The March 14 coalition is named after a 14 March 2005 rally protesting against the Syrian presence in Lebanon. Key members include the Future Movement (Sunni), Kataeb Party (Maronite Christian) and Lebanese Forces (Maronite Christian)…
>
> *Religion*
>
> 3.10 For mainstream religious and social groups in Lebanon, the political and legal system is generally free from discrimination on the basis of religion. The Lebanese Constitution guarantees freedom of religious practice and association. Eighteen religious groups are officially recognised in Lebanon's political structure (as set out in the Taef Accord), including four Muslim sects, 12 Christian sects……
>
> 3.11 Lebanon's political system puts religious association at the heart of Lebanon's official practice. DFAT assesses that the confessional structure is designed to support diverse political representation**…….**
>
> 3.12 Overall, Lebanon is a diverse country with a high degree of religious tolerance. DFAT assesses that there are limited examples of individuals being targeted on the basis of their religion alone, and that discrimination and violence are more likely linked to political views than religious affiliations. Nonetheless, there is some low-level societal discrimination against particular religious groups in some areas of Lebanon. In particular, DFAT assesses that inter-confessional relationships and marriages can attract significant societal and official discrimination and, in some circumstances, violence. However, traditionally, sectarian violence has been the main issue confronting religious and political groups in Lebanon (see 'Security Situation' and below). ...
>
> *Christian Denominations*
>
> 3.32 DFAT understands that there is a growing feeling of marginalisation in the Christian community, given the position of President (who is normally a Christian) remains unfilled and the perceived threat of extremist groups such as al-Nusra and Daesh. However, DFAT is unable to point to any specific examples of how this marginalisation has occurred in practice.

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3.33 Overall, DFAT assesses that Christians are not generally at risk from official or societal discrimination or violence on the basis of their religious identity alone. However, this risk increases in the event that a Christian (or a member of any other religious group) voices criticism of another religious group.

Security Situation

2.36 Lebanon is broadly stable, but the security situation is fragile and could deteriorate with little notice...

2.37 Since the conclusion of Lebanon's civil war, violence between armed non-state actors has continued sporadically. Many armed non-state actors have their roots in political and paramilitary groups established during Lebanon's civil war. The majority of Lebanon's sectarian militias, with the exception of Hizballah, disarmed under an agreement in the 1989 Taef Accord, but weapons are prevalent and some non-armed political groups retain the ability to re-arm quickly. Hizballah is the most prominent armed non-state actor and has military strength believed to exceed that of the Lebanese armed forces, particularly in the south. Other armed non-state actors include Palestinian paramilitary groups, concentrated mainly in Palestinian refugee camps and communities, and Tripoli-based militias.

2.38 Since the previous DFAT Country Information Report on Lebanon dated 25 February 2014 and DFAT Thematic Report on Sectarian Violence in Lebanon dated 18 December 2013, incidents of violence influenced by long-standing sectarian tensions have decreased, ostensibly in response to successful interventions by the Lebanese authorities and cooperation between traditionally opposing actors (including Hizballah, which has played some role in safeguarding domestic security in parts of the country). Security plans implemented in a number of locations by the Lebanese Armed Forces (LAF) and a formal dialogue between the Shi'a Hizballah and Sunni-dominated Future Movement have contributed to a more stable security situation.

2.39 However, this stability is being constantly tested by the conflict in neighbouring Syria, including through the large influx of Syrian refugees, and the presence in Lebanon of extremist groups, such as Daesh and al-Nusra, with an intent to perpetrate violence in Lebanon and agitate the pre-existing sectarian tensions within Lebanon. Overall, DFAT assesses that Daesh and al-Nusra currently have an increasing capacity and influence in Lebanon, and that civilians face a moderate risk of violence, depending on their location. For example, recent incidents of violence linked to Daesh or al-Nusra have targeted Alawite and Shi'a interests. DFAT assesses the potential for Daesh or al-Nusra to launch attacks in Sunni-dominated areas as unlikely.

2.40 Mount Lebanon Governorate, Nabatiye Governorate and South Governorate are broadly stable and DFAT is not aware of any recent illustrative examples of sectarian violence. The current security situation in the North Governorate, Beka'a Governorate and Beirut Governorate is more uncertain, and is considered in more detail below (see 'Refugee Convention Claims'). ……

(Refugee Convention Claims)….

3.14 Tripoli is the largest urban centre in the North Governorate and Lebanon's second largest city. It is relatively poor with moderate crime rates, including theft, robbery, burglaries and violent crime.

3.15 Sectarian violence within Tripoli has historically been limited to the predominantly Alawite suburb of Jabal Mohsen and Sunni suburb of Bab al-Tabbeneh, with the meeting point of the two – Syria Street – a recurring flashpoint. The conflict in Syria has exacerbated the traditional hostility between the Alawite and Sunni communities, and resulted in regular rounds of sectarian violence between competing militias, most recently in 2013 and 2014.

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> 3.16 In April 2014, Lebanese authorities implemented a security plan in Tripoli which led to a notable reduction in the number of incidents between the Alawite and Sunni communities. DFAT contacts have noted that Tripoli is now broadly stable, though vulnerable to outbreaks of renewed violence…. (3.21) Sectarian violence within Tripoli has been led, from the Sunni side, by a range of militia groups operating in the suburb of Bab al-Tabbeneh. As outlined above …. Tripoli is enjoying increased stability due to a successful security plan implemented by the LAF and backed by the major political factions.

69. The applicant suggested that the DFAT report was taken from official government sources, and not from what was happening. He suggested that the DFAT report did not refer to extremist groups such as al-Nusra and Daesh. The Tribunal pointed out however that it had quoted to him from the DFAT report specific references to al-Nusra and Daesh, which the applicant then accepted. The Tribunal also noted that the DFAT report…

> is based on DFAT's on-the-ground knowledge and discussions with a range of sources including international organisations, civil society organisations, academics and journalists both in Beirut and Tripoli. It takes into account relevant and credible open source reports from Save the Children, Human Rights Watch, the World Bank and a number of other organisations. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source[10].

70. The Tribunal notes, as set out above, that the applicant did not provide any country information to the Tribunal to support any of his assertions, and in particular circumstances, the Tribunal has accepted the DFAT report where relevant.

71. The Tribunal noted the DFAT assessment that Christians are not generally at risk from official or societal discrimination or violence on the basis of their religious identity alone, but the risk would increase in the event that a Christian voiced criticism of another religious group. The Tribunal had asked the applicant what he had been doing in Australia, and he made no mention of having any interest in, or taking any action to, criticise religious groups. The Tribunal put to the applicant that there was no indication that he was such a person and the applicant did not object to this. For the reasons set out above and below, the Tribunal is not satisfied that the applicant faces a real risk of significant harm (or real chance of serious harm) on the basis of his religion.

72. The Tribunal noted that the Mount Lebanon governorate was broadly stable with no recent illustrative examples of sectarian violence. This suggested that if the applicant returned to [suburb], he would not face a real risk of significant harm (or a real chance of serious harm). In response, the applicant claimed there are risks everywhere in Lebanon which is predominantly Shia, and they are now governing the airport and in Tripoli, people from Tripoli control it and there is no stability and there is no place where there is no risk. Concerning the Mount Lebanon governorate, the Tribunal prefers the DFAT assessment.

73. The Tribunal noted that according to the DFAT report, consideration of the situation in the North Governorate did not lend itself to a generalised statement concerning the whole of the North Governorate. The Tribunal noted that the references to Tripoli indicated that the security plan was generally working, and that the DFAT Report referred to specific people or places of risk, such as persons from Jabal Mohsen, Bab-al-Tabbeneh, Alawites, Akkar, certain Sunnis and Shia, however it did not indicate that a Christian from his village/home town faced a risk of harm. In response, the applicant said that you never know when the security situation would blow up in Lebanon and no one knows what will happen. The Tribunal considers the applicant's assertions to be speculative, and it prefers the DFAT assessment.

[10] DFAT Report, paragraph 1.4

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74. The applicant had suggested at hearing that Hezbollah have an important role in Lebanon, and that they control the airport and that there are many Shia in Lebanon. While the Tribunal accepts that there is a significant Shia population in Lebanon; and that Hezbollah are a significant force in Lebanon[11], the Tribunal is not satisfied on the evidence before it that the applicant faces a real risk of significant harm (or real chance of serious harm) from Hezbollah or Shia or Muslims generally in Lebanon. In making this finding the Tribunal has also considered the applicant's claims (and accepts the DFAT assessment) in relation to Tripoli, noting that his village/home town area is not a significant distance away from Tripoli.

75. The Tribunal has considered the DFAT Report which states:

> 2.13 In addition, conflict in Syria has resulted in a large flow of Syrian refugees crossing the border into Lebanon. As of 30 September 2015, 1.078 million Syrians were registered with the United Nations Refugee Agency (UNHCR) in Lebanon. Lebanon has the highest percentage of refugees of any country in the world, with Syrian refugees now accounting for approximately 20 per cent of the current population. Syrians now account for approximately 20 per cent of the population in Lebanon. The highest concentrations of Syrian refugees reside in the Beka'a Governorate, followed by the North Governorate, Beirut Governorate and South Governorate. Syrian refugees in Lebanon originate from throughout Syria, with particularly large groups from Homs and Jebel Samam. An estimated 95 per cent of registered Syrian refugees are Sunni. In addition to the refugees, DFAT is aware that a number of Syrian guest workers reside in Lebanon.

76. The Tribunal asked the applicant why he specifically claimed to fear the influx of Syrians and he said that in the village there are more than [number] Syrians who live there, and in the neighbouring village many families live there and "a while ago the army went there and were catching terrorists from these refugees". The Tribunal asked how he considered this meant that he would face a real risk of significant harm or a real chance of serious harm and he said that according to UN reports, there are 1.5 million Syrian refugees registered, but in reality, there are 2 million refugees, and so it is possible that 100,000 of them are armed or troublemakers. The Tribunal put to the applicant that there did not appear to be credible evidence that the presence of Syrian refugees in Lebanon would lead to him facing a real risk of significant harm or a real chance of serious harm. The Tribunal notes his evidence that his family members continue to live in the village. In response, he said that his parents are aged [age], and only younger people will be harassed. The Tribunal reminded him of his evidence that his siblings also live there with his parents, and he agreed (he did not indicate that his siblings, being younger than his parents, had been harassed). He had also told the Tribunal that the siblings who live in [suburb]/ Beirut (one [sibling] who works in a government ministry, another who works as [occupation] for a wealthy man) travel to the village once per month to visit his parents, which indicates that his family members do not appear to consider that they face a real risk or real chance of harm in that area; indeed there was no claim made by the applicant at hearing that (since the Syrian conflict began in early 2011) they had faced any harm.

77. The Tribunal noted that the applicant had made a claim at the interview that he may be kidnapped. The Tribunal noted he had not raised this claim at hearing, despite being given the opportunity to tell the Tribunal about his fears, and asked him about it, noting that according to available country information[12], it did not appear that he faced a real risk or real

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[11] According to the DFAT Report: 3.27 Sources suggest that between 20 and 27 per cent of Lebanon's population is Shi'a. Most Lebanese Shi'as live in southern Lebanon, Beirut's southern suburbs, and the northern half of the Beka'a Governorate. However, there are substantial populations of Shi'as across Lebanon. Hizballah and Amal are the primary political and social movements representing the interests of Shi'as. DFAT assesses that Shi'as are unlikely to be targeted on the basis of their religion alone, and attacks affecting Shi'as have been of a political nature and related to the conflict in Syria.

[12] There are references to kidnapping in the DFAT report, in specific circumstances, such as in the Bekka Governorate which has an extensive border with Syria (3.24); Shia's being kidnapped particularly in the Bekka

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chance of being kidnapped in either of his home areas (or because he is a Christian). In response the applicant said that he wants to tell the Tribunal about what he knows; he criticised the DFAT report for relying upon an "official position" (the Tribunal has disagreed with this, as noted above). He said that soldiers have been kidnapped, and not yet returned, however the Tribunal noted that he was not a soldier.

78. The Tribunal is not satisfied on the evidence before it that the applicant faces a real risk of significant harm (or real chance of serious harm) as a result of terrorism, general violence, kidnapping, or the influx of Syrian refugees or Syrians generally in either or both of his home areas.

79. The agent submitted at hearing that ISIS is growing and their attitude to Christians is adverse. As put to the applicant, the Tribunal accepts that there are Islamic extremists and militant Islamic groups who have a presence in Lebanon, and DFAT does note that some extremists such as Daesh/ISIS or al-Nusra who seek to cause harm in Lebanon. The Tribunal is not satisfied however that on the evidence before it a person in the applicant's position faces a real risk of significant harm or a real chance of serious harm on the basis of sectarian violence, harassment or discrimination in Lebanon.

80. The applicant said to the Tribunal that he has a fear because he is Christian; he said especially Christians who live in the north ([his home town], near Tripoli). The Tribunal put to the applicant that he may not choose to go to the home area of [town], but if he did, his family is there and they have not had any problems as Christians (and his siblings travel there regularly). In response, the applicant said that if things don't happen today, they could happen tomorrow. The Tribunal noted this was speculative, and that it had to consider a real risk of significant harm (or real chance of serious harm). He said that not everything in the DFAT report is true and that in Tripoli there are Muslims and extremists and "they" didn't allow some shops to have Christmas decorations, and sometimes "they" don't tolerate Christians with crosses around their neck. His cousin went to Tripoli during the fasting of Ramadan, he was smoking a cigarette however as this is not allowed during Ramadan, a Muslim put it out on his hand. There are lots of things that are not known about officially and anything could happen. Given the Tribunal's finding as to the applicant's lack of credibility, it is not prepared to accept the applicant's assertions as to the country situation. The Tribunal is prepared to accept DFAT's assessment that Christians are not generally at risk from official or societal discrimination or violence on the basis of their religious identity alone. The Tribunal is not satisfied on the evidence before it that Maronite Christians such as the applicant face a real risk of significant harm (or a real chance of serious harm) by Hezbollah, Daesh/ISIS, al-Nusra, Islamic extremists, the Muslim brotherhood or Muslims.

81. The applicant's oral evidence suggests that he is concerned about tension and general violence in Lebanon. However, having considered the DFAT assessment as to the general security situation relevant to the applicant, the Tribunal is not satisfied that the applicant faces a real risk of significant harm or a real chance of serious harm in relation to the general security situation in Lebanon.

82. The Tribunal is not satisfied that there is a real risk that the applicant will face significant harm in Lebanon arising from his religion, imputed political opinion, or either of his possible areas of residence (or travel between if he chooses to do so). The Tribunal is not satisfied that there is a real risk that the applicant will face significant harm in Lebanon at the hands of ISIS/Daesh, al Nusra, Hezbollah, Al-Qaeda and/or other Islamic groups and organisations.

Governorate (3.30); to journalists having been kidnapped in March 2015 in Arsal near the Syrian border (3.64). The Tribunal has also acknowledged that there is crime in Lebanon, as set out in the DFAT report.

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83. Further, the applicant claimed that he would not be able to obtain protection from the authorities of the country. The Tribunal is not satisfied that the applicant faces a real risk (or a real chance) of needing to access such protection.

84. The Tribunal is not satisfied on the basis of the evidence before it that the applicant faces a real risk (or a real chance) of significant (or serious) harm in the form of being killed, or harmed or suffering discrimination or harassment or any other harm in Lebanon (or being taken to a prison in Syria), from anyone or for any reason. Further, as the Tribunal does not accept that the applicant faces a real risk or real chance of harm, it does not accept that he will need (and/or will be denied) state protection.

Employment and survival

85. Although the applicant made no such claim in his protection visa application form, at hearing he referred to unemployment in Lebanon. Initially he told the Tribunal that 80% of the Lebanese population is jobless, and most of the poverty is in Beirut. The Tribunal put the applicant that the country information did not indicate that 80% of the Lebanese population was jobless. He then agreed, and changed his evidence to say that there is not 80% unemployment, but there is unemployment. The Tribunal considers this to be another example of the applicant being prepared to make untrue claims in order to achieve a migration outcome.

86. The DFAT report provides as follows:

> 2.19 Estimates of unemployment have nearly doubled to 20 per cent since 2011. The youth unemployment rate is 22 per cent. The conflict in Syria is likely to continue to adversely affect employment in Lebanon, particularly in areas of high refugee concentration, by expanding the pool of available labour and decreasing wages. However, DFAT understands that the majority of Syrian refugees are engaged primarily in low-skilled roles, which have traditionally been filled by non-Lebanese citizens.

87. The Tribunal put the unemployment rate referred to above to the applicant. It noted that according to his evidence to it, he has been very resourceful in Australia, working his way up through a company's hierarchy from [occupation] to supervisor to subcontracting, to owning his own company, [details deleted], including most recently in relation to a deal which one of the supporting letter says is worth $[number] million. The Tribunal put to the applicant that it would appear that he could return to Lebanon and having regard to his experience, motivation and abilities, obtain work, or start a business. The applicant said it is hard to start a business from scratch at his age ([age] years). He also said that the workers in Lebanon are now Syrians. The Tribunal asked how this would affect his ability to earn a living and he responded that he has developed a business in Australia and he wants to stay here. The Tribunal noted that according to the DFAT report, the roles taken by the Syrian refugees generally were those already filled by non-Lebanese citizens. The applicant disagreed and said that Syrian refugees are doing all jobs including taxi driver, truck driver, working in factories and in restaurants.

88. The Tribunal has considered the applicant's assertions and his evidence, however it is prepared to accept the DFAT report produced one month earlier, and having regard to the applicant's evidence as to his motivation and resourcefulness, it is not satisfied that he would have difficulties in supporting himself in Lebanon.

Conclusion on the applicant's complementary protection claims

89. The Tribunal has found that the applicant is a Maronite Christian from Lebanon, has two possible home areas ([suburb], Beirut in Mount Lebanon Governorate, or [town], North

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Governorate), he is a single man who has studied and worked in Lebanon, has worked [in] Australia, he has been living in Australia for the last 20 years, is resourceful and will return to live and work in either of his home areas, and in relation to both of which his family members reside, and otherwise is not a truthful witness about his circumstances.

90. Having considered the applicant's claims individually and cumulatively, for the reasons given above, the Tribunal is not satisfied that the applicant faces a real risk of significant harm in Lebanon.

91. The Tribunal finds there is no basis for the applicant's claims to fear significant harm. The Tribunal is not satisfied that there are substantial grounds for believing, that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm. Therefore the applicant does not satisfy the criterion set out in s.36(2)(aa).

Alternate finding - Refugee claims in relation to the applicant

92. The Tribunal considers that the appropriate country of reference for the assessment of his refugee claims would be Lebanon. For the reasons set out above, the Tribunal has found that the applicant is not a credible witness, and it does not accept that his claims of past harm or future feared harm are truthful. The Tribunal has not accepted that the applicant has been threatened, harmed, detained, of adverse interest to anyone or any authority, nor does it accept that he faces a real chance of serious harm in either of the home areas he could reside in, whether as a single man who has been away for 20 years, as a result of the political or security situation, or the authorities or criminals or society or Muslims or extremists. The Tribunal also does not consider that he faces a real chance of serious harm such that he will require state protection/ access to the authorities. The Tribunal considers that he will return to his chosen home area, that he has family in his home area, that he is educated and has work experience and has initiative and is resourceful.

93. On the evidence before it, the Tribunal is not satisfied that the applicant faces a real chance of serious harm for any reason now or in the reasonably foreseeable future in either of his home areas (or travelling between) in Lebanon.

94. The Tribunal finds that there is no real chance that the applicant faces serious harm now or in the reasonably foreseeable future, if he returns to Lebanon.

95. On the basis of the findings of fact set out above, considering the applicant under the refugee criteria, the Tribunal finds that it is not satisfied that the applicant has a well-founded fear of persecution for any Convention-related reason in the reasonably foreseeable future if he was to return to Lebanon. Accordingly, the Tribunal is not satisfied that he meets the refugee criterion in s.36(2)(a).

Member of family unit

96. 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).

Request for referral to the Minister

97. At the hearing, it was submitted that because the applicant has been in Australia for 20 years, as well as other reasons, the Tribunal should make a referral to the Minister. Supporting letters and documents were provided, including rates notices showing that the applicant owns two properties. It was submitted that he was making a contribution to the

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economy, and he said he paid taxes. The Tribunal noted the applicant stated in his protection visa application form that he owed a debt to the Commonwealth in relation to his previously unsuccessful proceedings, and asked whether he had paid this. He said he was unaware of this bill. A number of further submissions were made in support of the Tribunal making a referral to the Minister.

98. The Tribunal has considered those submissions however it does not consider that the circumstances warrant it making a referral to the Minister. The Tribunal does note however that the applicant is not prevented from making a request to the Minister himself, and making submissions about his close family ties, his business development, and long-term residence in Australia.

CONCLUSIONS

99. There is no evidence before the Tribunal to suggest 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.

100. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

101. The Tribunal is of the view that it does not have jurisdiction to consider whether the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention (the criterion set out in s.36(2)(a)). The Tribunal considers that even if it were wrong in that regard, having considered the applicant's claims in accordance with that criterion, the applicant does not meet the refugee criterion in s.36(2)(a).

102. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

103. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Christine Cody
Member

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ANNEXURE A - RELEVANT LAW

Note: this is the relevant law applicable when the Tribunal is considering all of the three criteria for a protection visa; namely refugee, complementary protection, and member of family unit of the holder of a protection visa. The Tribunal has considered this law, albeit adapted to meet the relevant criteria as set out in *SZGIZ*.

1. The criteria for a protection visa are set out in s.36 of the Act and 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.

Refugee criterion

2. 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).

3. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.

4. 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.

5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country. 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)). Examples of 'serious harm' are set out in 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. 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.

6. 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.

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7. 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 '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.

8. 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.

9. Whether an applicant is a person in respect of 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

10. 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').

11. '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. 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.

Section 499 Ministerial Direction

12. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

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