

1500034 (Refugee) [2016] AATA 4171 (21 July 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1500034

COUNTRY OF REFERENCE: Stateless

MEMBER: Rodger Shanahan

DATE: 21 July 2016

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicants Protection visas.

Statement made on 21 July 2016 at 1:42pm

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.

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 applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be **stateless**, applied for the visas [in] April 2014 and the delegate refused to grant the visas [in] December 2014.
3. The applicants appeared before the Tribunal on 21 June 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

CLAIMS AND EVIDENCE

Protection Visa Application

4. The first-named applicant claimed that he was stateless and would not be permitted to remain on a permanent basis in Lebanon, would not be able to live with his mother or access adequate health care and education.

Tribunal Hearing

5. The second-named applicant was asked whether the application related to her son alone or whether she had any that related to her only. It was put to her that she had previously made a claim on her behalf and she said she had but it had been refused. This latest claim was based on the same grounds. She claimed that she feared if she returned to Lebanon she had given birth outside of marriage and this was a crime that would be punished.
6. If she returned her son would be subject to social and economic death. Asked to be more specific, she claimed that her father and his brothers would be violent to her son because he was from an illegal relationship. She had been pressured into having an abortion but didn't. Her son would not be a respected person and because she didn't have money her son wouldn't be able to be supported and she couldn't raise him as a single mother. She claimed that both she and her son would be killed because he had been born from an illegal relationship.
7. Asked who the father was, she claimed she was married to one man but had a relationship with someone else. Asked to be more specific, she claimed she went out and met a man and it wasn't really a serious relationship. She was again asked about where they met and she said she went out and slept with him once or twice. Asked again for more details such as his name, she claimed his name was [Mr A] but didn't know his full name.
8. She met him in [city] but they didn't know about each other. She went out with her [relative] and they went out for dinner – it was in the city but she couldn't remember where. She then said she was having coffee with her [relative] and then by coincidence met this guy. Asked for more details, she said she was at this coffee shop and met him, they laughed and he asked her to go with her to the car and they had sex.
9. Asked where her [relative] was, she claimed that she was drunk. She confirmed that her [relative] was drunk from drinking beer at the coffee shop. She didn't know where her [relative] went as she spent the night with [Mr A]; she told her [relative] later on that she was with [Mr A]. She saw [Mr A] twice, the second time she rang him as he gave her his number. She didn't know anything about him other than he spoke English.

10. She no longer had his number and never tried to find out his name from the number. She had been married previously in [city] but had been engaged previously – she asked why she was being asked these personal questions. She was told the questions related to her credibility and if she refused to answer them the Tribunal may draw an inference about her credibility. She claimed that she was concerned about her privacy.
11. She had been married previously – and then said that she never married in Lebanon but was engaged in Lebanon only. She was living in [suburb] with her son only paid for by charity. Prior to that she was living with her [sibling] for two years, then her [sibling] kicked her out of the house because [he/she] couldn't support them. Her [sibling] was an Australian citizen and had come here engaged and was married in Australia but had been divorced and married someone else subsequently. The first marriage was short – [the] current [spouse] was [nationality].
12. She claimed that her son would be targeted because of the disgrace. Her mother warned her of the danger; she had come back a year ago but largely stayed with the applicant's [sibling]. She only saw her mother a few times and she blamed the applicant for what happened. Her mother had not been supportive of the applicant since her son had been born but when she was out here she was still a mother.
13. She had contact with her mother about once a month when she was out here but before that hadn't really talked to her. Asked when the monthly contact began, she claimed it was about a year ago. Prior to this there was no contact between them. She had not worked in Lebanon and people were dying from famine there because of the unemployment. It was put to her that the member went to Lebanon quite regularly and there certainly weren't people dying from famine. She claimed that perhaps the member only saw the good places and that she hadn't been back for nine years and relied on what she had heard.
14. She confirmed that she hadn't worked in Lebanon before coming out here – she had gone to university and did [number] years of [course]. She had no other qualifications. In Lebanon her parents had their own [business]. She then said it wasn't their own business, her father was employed by someone but weren't well off. Asked if she had done [another course], she claimed she had done a [number] year course at the equivalent of TAFE.
15. It was put to her that the Tribunal was unaware of cases where illegitimate children were killed and she was asked for any country information. She claimed the government hid these things as they were honour crimes.
16. Asked why she couldn't get a job if she returned to Lebanon, she claimed no one could care for her son and he had no citizenship. He would have no rights and couldn't go to school. He also had some [physical] impairments and was undergoing therapy. She provided a medical certificate to the Tribunal to see relating to the treatment but was asked to provide a copy of the document for the Tribunal to include in her papers after the hearing. The document was handed back to the applicant.
17. She claimed that her parents were divorced and she was asked to get a copy of their divorce papers. Asked why she couldn't live with her [mother], she claimed she was very sick and had many surgeries. It was put to her that her mother had come to Australia, and she then claimed that she had surgery since she [returned]. She was asked to provide evidence such as hospital or surgery records that supported this claim.
18. She was advised about s 424AA and it was put to her that information had been given that she had been married and divorced twice in Lebanon previously. She claimed that this was incorrect and she had been engaged and could provide documents. It was put to her that the request had been sent to her migration agent in 2012 and then no response was received. She

claimed she had lost communication with him, and then she had been contracted for marriage but they hadn't slept with each other.

19. It was put to her that this had also been included in the previous decision and she claimed she didn't know if she had received it as she had received so many papers. It was put to her that she had appealed the decision so it was reasonable to believe that she had received it. She claimed that she had shown her personal status papers to get her original visa.
20. It was also put to her that she had claimed in 2009 during an interview that she had worked in her parents [business] that they owned, which was inconsistent with what she had said today which could call into question her credibility. She claimed that sometimes she used to help her dad where he worked because the owner considered them like his children but it wasn't really work. Asked why she would say that her parents owned a [business], she claimed that there may have been a misunderstanding.
21. It was put to her that concerns had been raised that her original marriage may have been contrived, particularly given her [sibling] had applied to sponsor [the spouse]'s [relative] to come to Australia. She claimed this would have been okay if her husband had not been abusive.
22. Under s 424AA it was also put to her that during her own hearing in 2012 she claimed she had received support from her mother who sent her money every one to two months (and she had to borrow this from someone) yet here she had claimed she had no contact with her mother until mid-2015. This inconsistency could also point to issues regarding a lack of credibility. She claimed that her mother had supported her previously and had said that there were problems with her mother before.
23. Under s 424AA it was also put to her that she had claimed her then-husband would seek custody of the son in Lebanon – there was no mention of her father or uncles wanting to kill the son. She claimed that she didn't know what was going on and she wasn't sure whose baby it was. In 2012 there had been no mention of [Mr A] and this claim that the baby may not be her husband's was after her claim had been rejected and this may also call into question her credibility. She claimed that she had mentioned this.
24. Country information was put to her that if her son wasn't a citizen, he could gain health care and education but at a more expensive rate. She disputed this and said there was no private sector in Lebanon and that Syrian women as young as 15 were having to sell themselves. It was put to her that she had family in Lebanon and it may well be that they were supportive of her contrary to what she claimed. She could not support herself and there were explosions here and there.

CONSIDERATION OF CLAIMS AND EVIDENCE

25. The primary applicant is a [age]-year old male minor born in Australia and the second-named applicant his mother. She arrived in Australia [in] August 2008 on a prospective marriage visa, and applied for protection in February 2012, was refused and the decision affirmed by the RRT in February 2013, sought and was refused Ministerial Intervention twice and then lodged a protection visa application in April 2014 for the first-named applicant. If they returned to Lebanon the first-named applicant that the son would suffer physical violence from his grandfather and grand-uncles because he had been born out of wedlock, and that there would not be enough money available for him to be raised by the second-named applicant.
26. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth. Nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant.

27. Although the second-named applicant was named as the family member of the first-named applicant and therefore without her own claims, as the minor's mother the evidence was presented by her. I found the second-named applicant's evidence regarding the claims to lack credibility. For reasons set out below I did not find her to be a reliable, truthful or credible witness.

Paternity and Nationality

28. I accept that the applicant is currently stateless. Given his mother is a Lebanese citizen with a right to return to that country, the applicant will be assessed using Lebanon as his country of reference. The second-named applicant has not included the father's name on the applicant's birth certificate and hence he is not entitled to Lebanese citizenship as nationality passes down through the father. I do not accept that the father is someone called [Mr A] who the applicant met in [city].
29. She never mentioned his name previously and her account of their dalliance(s) is both vague and lacks credibility. I do not accept that she went out to a coffee shop with her [relative], who then became drunk on beer at the same time as the second-named applicant met [Mr A], and that the second-named applicant left her drunk [relative] to have sex in [Mr A]'s car and never saw her [relative] again that night. She knew nothing about [Mr A] other than his name and that he spoke English, although she also claimed to have his phone number and to have called him subsequently.
30. If he were the father it would appear a relatively straightforward thing to find out his details using his telephone number, car details or any other method. Her unwillingness or lack of interest in doing so or to know anything at all about [Mr A], as well as the implausibility of their meeting and her inability to name him as the father during earlier interviews leads me to find that this account and the person known as [Mr A] have been fabricated.
31. It is therefore entirely possible that her son has a Lebanese father or someone else that could confer citizenship on him, and that the second-named applicant is well aware of this but unwilling to reveal the name of the person. Regardless, her unwillingness to name a father for the first-named applicant effectively means that he would return to Lebanon without citizenship and would be considered to be stateless.

Attitude of Family

32. I do not accept that her family members would kill the applicants because of the shame of a child born out of wedlock. The first-named applicant has previously made a claim that she would be subject to serious harm for being a sole parent/divorced woman which was not accepted. Given her poor credibility issues I am not satisfied either that the child was born out of wedlock or that she would be killed by family members for having a child born out of wedlock or being a single parent or divorced woman.
33. Her claims regarding a poor relationship with her family are inconsistent and I am satisfied that they have been fabricated. Given her credibility issues, I do not accept that her parents are divorced as she claimed – she was asked to provide evidence of their divorce post-hearing yet failed to do so.
34. I also do not accept that her mother had blamed the second-named applicant for the child being born out of wedlock and that she had been unsupportive and they had not been in contact until her mother came out to Australia to visit a year ago. This was inconsistent with her evidence in 2012 when she had claimed that her mother borrowed money from Lebanon and sent her some every one or two months.

35. There are other inconsistencies relating to her and her relationship with her family. In her 2009 interview to gain her visa to Australia, she claimed that she had worked in her parents' [business] that they owned, yet during the hearing she claimed when asked that she hadn't worked in Lebanon and then that her parents didn't own the business as the father was employed by someone else. I do not accept that the inconsistency is due to a misunderstanding over who owned the business or that she didn't really consider what she did at the [business] as work, more like help.
36. Given that I have found the second-named applicant's parents to be married small business owners in Lebanon who have provided financial support to the second-named applicant, I am satisfied that they would be in a position to assist in caring for the first-named applicant, including in order to allow for the second-named applicant to work.
37. I do not accept that the family members or anybody else would seek to kill the applicant because he had been born out of wedlock. There is no country information available to the Tribunal to support the claim that this occurs, nor was any provided by the applicant even though she was requested to do so. Her claim that the family would kill the applicant and herself is also inconsistent with her original claim that her then-husband would seek custody of the applicant if they were to return to Lebanon. This is both inconsistent with her claim that '[Mr A]' is the father and that she genuinely feared family members killing the applicant, given that it is reasonable that this fear, if genuinely held, would have been enunciated much earlier.

Access to State Entitlements

38. I accept that, as a stateless child the applicant will be unable to access state schooling or public healthcare but do not accept that an inability to do so amounts to serious harm for Convention purposes. I do not accept that there is no private sector in Lebanon as she claimed given it is a well-documented fact. That means that the applicant can access both health¹ and education² in the private sector. Although it will be more expensive than the public sector, I am not satisfied that having to pay for health and education constitutes serious harm for Convention purposes. Given the applicant's credibility issues surrounding her parents' personal and financial issues in Lebanon I am satisfied that she comes from a supportive family that owns a small business and could provide the necessary services for the applicant in the future and/or provide childcare in order that the second-named applicant could work.
39. I have taken into account the applicant's need for some [therapy]. A copy of the document that related to the condition was requested to be provided but never was. I am therefore unable to lend it much weight in determining whether it is a chronic condition or will require serious ongoing treatment the denial of which would constitute serious harm for Convention purposes. Regardless, given that there are such services available in [a town]³ close to the applicant's familial home and the second-named applicant has access to funds with which to pay for any required treatment I am satisfied that if such treatment is required it can be accessed.
40. Having considered the applicant's evidence both individually and cumulatively, for the reasons set out above the Tribunal finds that the applicant does not have a well-founded fear of persecution for any Convention reason either now or in the reasonably foreseeable future.

Complementary Protection

¹ https://www.mcgill.ca/isid/files/isid/pb_2011_02_dejong.pdf

² <http://education.stateuniversity.com/pages/827/Lebanon-EDUCATIONAL-SYSTEM-OVERVIEW.html>

³ [information deleted].

41. Because I do not accept that the applicant has a bad relationship with his family or that they would seek to harm, let alone to kill him, that he would be unable to access healthcare or education or that the first-named applicant would be harmed for having a child out of wedlock, I am not satisfied that there are any substantial grounds for believing that there is a real risk of significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa).
42. Therefore, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Lebanon, there is a real risk that she will suffer significant harm.

CONCLUDING PARAGRAPHS

43. For the reasons given above the Tribunal is not satisfied that any of the applicants is a person in respect of whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

44. The Tribunal affirms the decision not to grant the applicants Protection visas.

Rodger Shanahan
Member

ATTACHMENT A – RELEVANT LAW

1. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

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. 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').

4. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.