

071800256 [2007] RRTA 329 (18 December 2007)

DECISION RECORD

RRT CASE NUMBER: 071800256
DIAC REFERENCE(S): CLF2007/135283
COUNTRY OF REFERENCE: Lebanon
TRIBUNAL MEMBER: Shahyar Roushan
DATE DECISION SIGNED: 18 December 2007
PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the dependent of the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants are a mother and her son. They claim to be citizens of Lebanon. They arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicants applied to the Tribunal for review of the delegate's decisions.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being

outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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.

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)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

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.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

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

The applicants appeared before the Tribunal 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 applicants were represented in relation to the review by their registered migration agent.

The second named applicant is essentially relying on his membership of the first named applicant's family. For convenience, therefore, the Tribunal will refer to the first named applicant as "the applicant".

Application for a Protection Visa

According to her application for a protection visa, the applicant is a Lebanese national. She claims to be a Jehovah's Witness. She speaks, reads and writes Arabic. She has completed some years of education and has never worked before. She lived at the same address for over a decade until her departure from Lebanon. Her husband continues to live in Lebanon and she has an older child who is currently residing in Australia.

In a statement attached to her application form, the applicant made the following claims:

She was born into the Jehovah's Witness faith and so were her children. Her Husband converted to the Jehovah's Witness faith over 30 years ago She first met her husband whilst attending a Jehovah's Witness Congregation meeting in Lebanon Her husband was assigned to a specific role and has continued to be in that role until now.

Both the applicant and her husband have increasingly come under attack as a result of their faith as Jehovah's Witnesses. Her husband was singled out because of his role is prominent. She too was singled out for being his wife. Because of his status, her husband is under greater risk of being detained than ordinary members of their congregation. For this reason they had to live under continuous fear for their safety

Her children have suffered at great deal as a result of their faith. Her eldest child who is now residing in Australia was imprisoned and tortured. As a Jehovah's Witness her child refused to confirm to certain requirements or carry out particular duties Her child was imprisoned and suffered numerous episodes of torture at the hands of superior officers.

On one occasion, the family vehicle was vandalized whilst they attended a Jehovah's Witness meeting. Their family home was also vandalized on a number of occasions, resulting in damaged doors and spray paint on the walls. They received anonymous threats that if they continue to pursue their faith they would be harmed. These threats were conveyed by the telephone or were articulated by neighbors. She was personally subjected to numerous threats of physical harm whilst she was undertaking preaching activities. These threats resulted in a dramatic reduction in her preaching activities and forced her to abandon distributing religious material in order to avoid confrontation and possible harm.

Her Congregation has come under increasing threats from the local Churches in her area. The Church is particularly powerful in Lebanon and often authorities act on complaints from the Church by arresting members of her church or interrupting prayer group meetings.

The applicant stated that she could not rely on the authorities for protection, because they are firmly against them. The family's inability to rely on the authorities for protection when the need arises makes their position in Lebanon extremely vulnerable.

Application for Review

In a submission provided in support of the application for review the applicant's representative stated that the applicant continues to be strongly committed to her faith. She currently attends an Arabic Congregation. Since arriving in Australia she has also partaken in preaching activities. If she were to return to Lebanon, she would feel it necessary to continue to practise her religion, albeit covertly and in a restricted manner. Even if she were to choose to practise her faith in this manner she still faces the real prospect of being arrested and detained. Her husband is under a greater risk of being attacked compared to ordinary members of the Congregation.

He submitted that the independent evidence confirms that there continues to be a degree of hostility towards Jehovah's Witnesses and their activities are strongly discouraged if not legally prohibited by the clergy and authorities. Given the general attitude of the authorities towards Jehovah's Witnesses, the applicant would be unable to rely on the authorities for protection. The applicant would be able to avoid further physical harm or threats if she were to drastically curtail her religious activities, including proselytising. However, as these activities constitute core tenants of her faith, such precautions would render adherence to her faith untenable. Unlike other mainstream Christian groups, a Jehovah's Witness is expected to preach to both Christians and Moslems and as long as the applicant and her family remain committed to their faith they remain exposed to harm.

The Hearing

The applicant confirmed the accuracy of the information contained in her application for a protection visa and her accompanying statement.

The applicant stated that she lived at the same address in Lebanon for many years. Apart from her husband, she has a Relative A who lives in Lebanon, Relative B lives in another Country and Relative C lives here in Australia. Her eldest child migrated to Australia. In Lebanon she did not have the freedom to practise her religion. She explained that Jehovah's Witnesses are required to go door to door and tell people about their faith, to distribute Jehovah's Witness material and to attend regular meetings. She was unable to carry out any of

these activities openly and freely. She was able to share her faith only with those whom she knew and trusted and attended Jehovah's Witness meetings in secret.

Despite these precautions, along with her husband, she was harassed and threatened on many occasions, particularly when she went out to share her faith with friends or acquaintances. She explained that in circumstances she was subjected to threats and abuse by other members of the friend or the acquaintance's family. On one occasion she was told by the relative of a friend that he would break both her legs if she ever returned to their house. Also a neighbour who found out that they were Jehovah's Witnesses told them that, if he could, he would slaughter them and bomb their place. In addition, their property was vandalised on a number of occasions as people identified her husband. He also received many anonymous threatening phone calls.

As a consequence of the threats levelled against her and her husband, she was extremely fearful of walking down the street. She feared being beaten or otherwise humiliated. She was very careful and took many precautions. For instance, she always checked to see whether friends she intended to visit were alone or with people who were known to her. She was unable to express her religious beliefs and was forced to significantly limit the manner in which she practised her religion. She stated that the threats against her and her husband were never acted upon because they reduced their religious activities considerably and lowered their profile. If they had practised their religion openly, they would have been harmed.

The applicant stated that the Jehovah's Witness sect is not a recognised religion in Lebanon and its adherents are subjected to the false accusation of being Zionists. Leaders of other religious groups tell their followers that Jehovah's Witnesses are associated with Israel. This causes others to hate them.

The applicant stated that her child was discriminated against at school and was forced to sit through religious education classes. The teacher compelled her child to do things that were contrary to their beliefs by, for instance, making her child pray as other Christians do.

The applicant stated that in Australia she has been attending meetings regularly (three times a week) and has been actively and openly teaching her faith.

The Tribunal explained to the applicant that it wanted to discuss with her country information that could be a reason for affirming the decision to refuse her a visa. The Tribunal explained that she may respond to this information immediately or after an adjournment, either in writing or orally. The Tribunal put to her that it had not come across any credible reports to suggest that Jehovah's Witnesses are facing serious physical harm or harassment by members of the community, including other sects. She stated that she wanted to respond immediately and commented that Jehovah's Witnesses in Lebanon have been able to avoid serious physical harm by keeping a low profile and curtaining their activities. She stated that Jehovah's Witnesses should not have to be murdered in order to prove that they are being persecuted.

The Tribunal took evidence from the applicant's Relative C. She stated that she came to Australia a few years ago and she knew that the applicant was threatened all the time. The applicant has been very active in practising her faith in Australia and she likes teaching her faith or discussing the Bible.

The applicant's representative submitted that Jehovah's Witnesses were not legally recognised in Lebanon, which made their situation precarious and rendered them vulnerable to harm. The only reason the applicant was not harmed in the past was the fact that she had curtailed her activities. Jehovah's Witnesses are under an obligation to proselytise their faith and the applicant was unable to do this in Lebanon. Jehovah's Witnesses are afforded no protection by the authorities in the face of private harm.

The representative submitted a letter from Mr Don Adams, President of the Bible and Tract Society of Pennsylvania, stating that "the worship of Jehovah's Witnesses in Lebanon was banned in 1971. Since then, Jehovah's Witnesses have had no legal representation in that country, although the community of Witnesses continue to discreetly meet and worship. The Lebanese government continues to restrict the worship of Jehovah's Witnesses in Lebanon. Periodically, the individuals who identify themselves as Jehovah's Witness in Lebanon are mistreated by the government."

He further submitted a letter from Person A, an Elder of a Congregation of Jehovah's Witnesses. In his letter, Person A essentially confirmed that the applicant is a Jehovah's Witness and a member of his congregation in Australia. A joint letter from the secretary and the overseer of the Congregation also confirmed the applicant's membership of and participation in activities of Jehovah's Witnesses in Sydney.

Evidence from other Sources

The Jehovah's Witnesses claim that there are nearly four thousand Witnesses in Lebanon and seventy congregations. Nevertheless there is no official branch office of the Jehovah's Witnesses in Lebanon (The Watchtower Bible and Tract Society, 2006, *2006 Report of Jehovah's Witnesses Worldwide*, <http://www.watchtower.org/e/statistics/wholereport.htm>). The Lebanese constitution allows for the freedom of religious expression and there is no official state religion. However, all religious bodies must register with the government to be officially recognised. There are eighteen officially recognised religions in Lebanon To fully secure the full benefits of official status some religious organisations, for example some evangelical Christian sects, align themselves with one of the 'official' religions. The Jehovah's Witnesses have not taken this course and there is no evidence to suggest that they have attempted to. As such the Jehovah's Witnesses are not a recognised religion in Lebanon. Nevertheless, the Jehovah's Witnesses may still practice their religion but they may not avail themselves of the benefits of official recognition such as electoral rights and tax exemptions. This 'unrecognised' status would also mean that Jehovah's Witnesses would be unable to establish its own judiciary which oversees 'personal laws' such as marriage, divorce, child custody and inheritance. Again, whilst proselytising is not illegal in Lebanon, traditional attitudes as well as government and clerical statements strongly discourage this activity in order to reduce tension between various faiths. According to the US State Department's latest *Religious Freedom Report*:

The Constitution provides for freedom of religion and the freedom to practice all religious rites provided that public order is not disturbed. The Constitution requires the state to respect all religions and denominations and guarantee respect for the personal status and religious interests of persons of every religious sect. The Constitution declares equality of rights and duties for all citizens without discrimination or preference but stipulates a balance of power distributed among the major religious groups. The Government generally respected these rights in practice; however, there were some restrictions, and the constitutional provision for apportioning political offices according to religious affiliation may be viewed as inherently discriminatory.

The Government permits recognized religious groups to exercise authority over matters pertaining to personal status, such as marriage, divorce, child custody, and inheritance. The "Twelver" Shi'a, Sunni, Christian, and Druze confessions have state-appointed, government-subsidized clerical courts that administer family and personal status law.

The Constitution provides that Christians and Muslims be represented equally in Parliament, the Cabinet, and high-level civil service positions, which include the ministry ranks of Secretary General and Director General. It also provides that these posts be distributed proportionally among the recognized religious groups. The constitutional provision for the distribution of political power and positions according to the principle of religious representation is designed to prevent a dominant position being gained by any one confessional group. The "National Pact" of 1943 stipulates that the president, prime minister, and speaker of parliament be Maronite Christian, Sunni Muslim, and Shi'a Muslim, respectively. This distribution of political power functions at both the national and local levels of government.

The 1989 Ta'if Agreement, which ended the country's 15-year civil war, reaffirmed this arrangement but, significantly, mandated increased Muslim representation in Parliament so that it would be equal to that of the Christian community and reduced the power of the Christian Maronite presidency. In addition, the Ta'if Agreement, which concluded the country's 15-year civil war, endorsed the constitutional provision of appointing most senior government officials according to religious affiliation. This practice is operative in all three branches of government. The Ta'if Agreement also stipulated a cabinet with power equally allocated between Muslims and Christians. The political establishment has been reluctant to change this "confessional" system, because citizens perceive it as critical to the country's stability.

Formal recognition by the Government is a legal requirement for religious groups to conduct most religious activities. A group that seeks official recognition must submit a statement of its doctrine and moral principles for government review to ensure that such principles do not contradict popular values or the Constitution. The group must ensure that the number of its adherents is sufficient to maintain its continuity.

Alternatively, religious groups may apply for recognition through recognized religious groups. Official recognition conveys certain benefits, such as tax-exempt status and the right to apply the religion's codes to personal status matters. An individual may change religions if the head of the religious group the person wishes to join approves of this change. Refusal is not reported to occur in practice. Religion is encoded on national identity cards and noted on ikhraaj qaid (official registry) documents, and the Government complies with requests of citizens to change their civil records to reflect their new religious status.

Some religious groups do not enjoy official recognition, such as Baha'is, Buddhists, Hindus, and unregistered Protestant Christian groups. They are disadvantaged under the law in that their members do not qualify for certain government positions, but they are permitted to perform their religious rites freely. For example, a Baha'i cannot run for Parliament as a Baha'i candidate because there is no seat allocated for the confession, nor could such an individual hold senior positions in the Government, as these are also allocated on a confessional basis. However, a number of members of unregistered religious groups are recorded under the recognized religions. For example, most Baha'is are registered under the Shi'a sect. As such, a member of the Baha'i community can run for office and fill a seat allocated to the Shi'a sect. Similarly, Mormons are registered under the Greek Orthodox faith. Government decisions on granting official recognition of religious groups do not appear to be arbitrary...

Unrecognized groups, such as Baha'is, Buddhists, Hindus, and some evangelical denominations, may own property and assemble for worship without government interference; however, they are disadvantaged under the law because legally they may not marry, divorce, or inherit property in the country. Protestant evangelical churches are required to register with the Evangelical Synod, a nongovernmental advisory group that represents those churches with the Government. It is self-governing and oversees religious matters for Protestant congregations. Representatives of some churches have complained that the Synod has refused

to accept new Protestant groups into its membership since 1975, thereby crippling their clergy's ability to minister to the members of those communities.

Many families have relatives who belong to different religious communities, and intermarriage is not uncommon; however, intermarriage is difficult to arrange in practice between members of some groups. Shari'a, which applies to personal status matters of Muslims, forbids the marriage of a non-Muslim male to a Muslim woman. Druze religious leaders will perform marriages only of Druze couples. There are no procedures for civil marriage; however, the Government recognizes civil marriage ceremonies performed outside the country.

There are no legal barriers to proselytizing; however, traditional attitudes of the clerical establishment strongly discourage such activity. The respective sect's leadership councils make appointments to senior clerical posts. For example, the nomination of Sunni and Shi'a muftis is officially endorsed by the Government's Council of Ministers, and they receive monthly salaries from the Government. The Government appoints and pays the salaries of Muslim and Druze ecclesiastical judges. The leaders of other religious groups, such as Greek Orthodox and Roman Catholics, do not receive salaries from the Government.

The Government does not require citizens' religious affiliations to be indicated on their passports; however, religious affiliation is encoded on national identity cards and noted on ikhraaj qaid documents. The ikhraaj qaid, a civil document that indicates personal status information, can be presented by citizens instead of an identity card when they apply for various purposes, such as to obtain government employment or to enroll in or be employed at a university.

In most cases religious groups administer their own family and personal status laws. Many of these laws discriminate against women. For example, Sunni inheritance law provides a son twice the inheritance of a daughter. Although Muslim men may divorce easily, Muslim women may do so only with the concurrence of their husbands.

Article 473 of the Penal Code stipulates a maximum prison term of 1 year for anyone convicted of "blaspheming God publicly." There were no prosecutions reported under this law during the reporting period...

The July-August 2006 conflict during which Israeli attacks in Lebanon caused considerable civilian deaths and destruction of infrastructure, as well as Israel's former occupation of the southern part of the country, resulted in a strong antipathy for Israelis. The country's media sometimes referred to Israel as "the Jewish State" to avoid referring explicitly to Israel. During the reporting period, the Shi'a terrorist organization Hizballah through its media outlets regularly directed strong rhetoric against Israel and its Jewish population and characterized many events in the region as part of a "Zionist conspiracy." Moreover, anti-Israeli literature was published and distributed with the cooperation of Hizballah, who also controlled and operated Al-Manar TV. On October 20, 2006, Al-Manar broadcast an interview with the head of the Lebanese Islamic Action Front in which he stated that the resistance and Lebanon were victorious and that defeat was "the lot of Israel and this accursed Israeli people--this accursed nation, the offspring of apes and pigs"...

Following the July-August 2006 conflict with Israel, tensions between the democratically elected government of Fouad Siniora and the antigovernment opposition led by Hizballah resulted in greater political tension between religious groups. While this political climate contributed to periodic reports of tension and occasional confrontations between religious groups during the reporting period, most of this activity can be attributed to political differences and the legacy of the civil war (US State Department, 2007, Religious Freedom Report: Lebanon - <http://www.state.gov/g/drl/rls/irf/2007/90215.htm>).

The most recent advice received from the Department of Foreign Affairs and Trade states the following about the treatment of Jehovah's Witnesses in Lebanon:

A1. Lebanese constitution extends freedom of belief to all Lebanese citizens. The Jehovah's Witness sect (JWS) is not recognised in Lebanese legislation on confessional and personal status. Accordingly, a confessional court dealing with personal status issues does not exist for the JWS.

Persons seeking to change sects must petition a confessional court to effect the change. Although the sect is not banned, it follows that, without a JWS court to decide on petitions, there are no legally recognised JWS members in Lebanon.

Without legal recognition of the sect, the JWS cannot legally perform JWS marriages. There is no provision for civil marriage in Lebanon however it is not uncommon for Lebanese to have a civil marriage ceremony in Cyprus then register the marriage in Lebanon.

Associations not recognised in law or which have 'failed to acquaint the public authorities' with their existence, membership and aims are 'reputed (to be) secret societies... This shall be dissolved.' As the JWS is not recognised legally, it cannot legally convene a public assembly for worship or other matters unless it obtains prior approval from the interior ministry. We note also that the law prohibits assembly 'in a place open to the public' for groups of three or more persons 'for the purpose of committing an offence' or for twenty or more persons 'whose attitude is likely to offend public peace'.

The JWS has had problems distributing 'The Watch Tower' in the community due to allegations that the publication is 'associated' with 'Zionist' publishers. It is illegal to commit, through 'written material... Distributed to persons', an 'outrage against one of the creeds publicly professed' or to 'raise... Scorn against one of them'.

A2. Jehovah's witnesses may engage in private religious activity without harassment by Lebanese authorities - although refer to our comments on public assembly, above. Security agencies in Lebanon monitor the activities of religious groups and other community associations. Agencies do not impede those activities if they are non-political, do not threaten state security and do not offend definitions of public morality.

As the JWS claim 993 members in Lebanon in 1999, in 100 congregations, it is probable that the authorities allow such groups to operate in peace. A well informed observer of Lebanese religious institutions had not seen any evidence that authorities were persecuting JWS members in Lebanon.

We understand that most Jehovah's Witnesses in Lebanon are from affluent backgrounds and that many are western-educated. (DIMIA country information service 2000, country information report no 465/00 -Lebanon - Jehovah's Witnesses, (sourced from DFAT advice of 17 August 2000), 24 August)

FINDINGS AND REASONS

The applicant's case is based on the Convention ground of religion. Her case is essentially that as a Jehovah's Witness she has been forced to practice her religion covertly in order to avoid risk of harm and persecution.

At the hearing before the Tribunal the applicant gave her evidence in a straightforward, unembellished and consistent manner and the Tribunal found her to be a reliable and credible witness.

The Tribunal accepts that the applicant is a national of Lebanon The Tribunal, based on her oral evidence and the supporting documents she has provided accepts that she is a Jehovah's Witness. The Tribunal accepts that throughout her lifetime she has had to significantly limit her religious activities and to restrict the expression of her beliefs in Lebanon. The Tribunal accepts that her ability to proselytise her faith, a core obligation for Jehovah's Witnesses, has

been severely curtailed and she has not been able to overtly hold or attend meetings. The Tribunal accepts that the applicant was threatened by members of the public on numerous occasions. The Tribunal accepts that these threats were levelled against her for the reason of her religious beliefs and practises. The Tribunal accepts that these threats succeeded in intimidating the applicant into imposing considerable restrictions on the manner in which she gave expression to her religious beliefs. The Tribunal accepts that the only reason she carried out her activities discreetly was her fear of and her desire to avoid harm.

Jehovah's Witnesses are not a recognised religion in Lebanon and they may not avail themselves of the benefits of official recognition such as electoral rights and tax exemptions. This *unrecognised* status also means that Jehovah's Witnesses would be unable to legally perform marriages and divorce; and exercise authority over other personal matters such as child custody and inheritance. Jehovah's Witnesses cannot legally convene a public assembly for worship or other matters unless a prior approval from the interior ministry is obtained. Although Jehovah's Witnesses are able to meet in private, their meetings may technically fall under the purview of laws prohibiting assembly "in a place open to the public" for groups of three or more persons "for the purpose of committing an offence" or for twenty or more persons "whose attitude is likely to offend public peace" They have problems distributing their publications in the community and are discouraged from proselytising by traditional attitudes as well as government and clerical statements. In addition, they experience a greater degree of suspicion in Lebanon due to their alleged association with Zionism which within the Arab world is a clear reference to Israel (see US State Department, 2005, Religious Freedom Report: Lebanon – 8 November - Accessed 12 April 2006 - <http://www.state.gov/g/drl/rls/irf/2005/51604.htm>; and DIMIA country information service 2000, country information report no 465/00 –Lebanon – Jehovah's Witnesses, (sourced from DFAT advice of 17 August 2000), 24 August).

The above evidence suggests that Jehovah's Witnesses live in a tense and antagonistic environment in Lebanon where they could easily become targets of harassment by the authorities and private individuals. It is therefore not surprising that the applicant had made the difficult choice of driving her religious identity underground and severely restricting her activities. She had done so in order to avoid harm. In the Tribunal's view, such a level of self-imposed restriction on one's beliefs and practices for fear of harm over a period spanning many years is sustained and serious enough to, cumulatively, amount to persecution on the ground of religion.

The applicant struck the Tribunal as someone who is dedicated and strongly committed to her beliefs. This was supported by the written statements from senior figures in the Australian Congregation where she is an active member. The Tribunal has no doubt that if she returned to Lebanon she would continue to practice her religion.

The applicant's evidence suggests that she was able to avoid persecution in the past by practising her faith discreetly. However, the Tribunal cannot require a protection visa applicant to take steps to avoid persecution (*Appellant S395/2002 v MIMA* (2003) 216 CLR 473). The applicant had acted discreetly in the past because of threat of harm. As noted by the High Court, in these cases it is the threat of serious harm with its menacing implications that constitutes the persecutory conduct (*Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*, per McHugh and Kirby JJ at [43]).

The Tribunal is of the view that if the applicant were to return to Lebanon she would be discreet in practising her faith and would modify the open conduct she has been engaged in

Australia out of fear of persecution. If the applicant were to practise her faith freely and openly in Lebanon, the Tribunal cannot exclude as remote and insubstantial the chance that she would face serious harm. The Tribunal is satisfied that the reason for the persecution in question is essentially and significantly the applicant's religion. The Tribunal is of the view that the state itself provides avenues for persecution of Jehovah's Witnesses through the operation of various laws and is satisfied that she does not have adequate and effective state protection available to her. The Tribunal is satisfied that the applicant could not avoid the persecution she fears by internally relocating within Lebanon. The Tribunal, therefore, is satisfied that the applicant has a well-founded fear of persecution for a Convention reason.

As the Tribunal has found that the applicant's fear of persecution is well-founded, it is unnecessary to consider the claims she made at the hearing on behalf of her dependent son.

CONCLUSIONS

The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.

The Tribunal is satisfied that the second named applicant is a dependent of the first named applicant for the purposes of s.36(2)(b)(i). The fate of his application therefore depends upon the outcome of the first named applicant's application. He will be entitled to a protection visa provided he satisfies the criterion set out in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the dependant of the first named applicant.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officer's I.D. PRDRSC</p>
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