

0905774 [2009] RRTA 1025 (23 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0905774

DIAC REFERENCE(S): CLF2009/49831

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Susan Pinto

DATE: 23 October 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Lebanon, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. 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 applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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.
7. 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

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

Application to the Department

20. The applicant indicated on the application form that he is an adult male who was born in Town A, Lebanon. The applicant is a Sunni Muslim who speaks, reads and writes Arabic. The applicant has had 8 years education and was previously employed as a tradesperson. The applicant completed his military service nine years prior to his arrival in Australia.
21. The applicant's passport was issued in Lebanon two weeks prior to his arrival in Australia. The applicant indicated that he previously held another passport which was cancelled. The applicant stated that he had previously travelled to Country B where he was working and had visited Australia on previous occasions.
22. The applicant provided a statutory declaration to the Department in which he made the following claims to be a refugee:
 - The applicant is claiming persecution on the basis of political beliefs.
 - The applicant comes from the Northern Lebanese town of Town A. Town A is situated near the Palestinian Refugee Camp, Nahar El Bared.
 - During the Nahar El Bared conflict in May 2007, which was fought between the Lebanese army and Fatah Al Islam, members of the applicant's village watched the unfolding events, fearing that Fatah Al Islam fighters may use their town as an escape route out to sea or through the mountains.
 - The applicant and a number of young men in his village were vigilant in guarding the areas surrounding their village, and were determined to capture any Fatah Al Islam fighters who might try to escape from the Lebanese army during the last phase of fighting.
 - We were successful in capturing a handful of Fatah Al Islam fighters who were trying to escape the Lebanese army advances during the last phase of the fighting.
 - All the Fatah Al Islam captures were handed over to the Lebanese Army.

- Following the fighting, all the members of the applicant's village who were involved in the fighting, including the applicant, received threats from Fatah Al Islam members who maintain an increasing presence in North Lebanon.
- A person who had assisted in capturing a Fatah Al Islam fighter was threatened and recently killed by Fatah Al Islam fighters.
- The applicant feared for his own safety and travelled to Country B nine months prior to his arrival in Australia where he stayed for approximately 4 months. The applicant tried to stay there permanently but was unable to extend his work contract.
- The applicant received a number of telephone calls from callers identifying themselves as members of Fatah Al Islam. The callers threatened him and told him that they know his whereabouts and will harm him if he returns to Lebanon.
- For five months prior to his arrival in Australia, the applicant did not return to North Lebanon where Fatah Al Islam maintains a stronghold.
- Despite his relocation to Town C, the applicant did not feel safe because the Lebanese government remains weak and terrorist groups such as Fatah Al Islam are increasing in strength and influence.
- Fatah Al Islam enjoys a huge following all over the country and is viewed as heroes to some members of the community. They also maintain an elaborate intelligence network and for that reason they are capable of locating and harming the applicant anywhere in Lebanon.

Department's interview

23. The applicant was interviewed by the delegate with the assistance of an accredited interpreter in the Arabic and English languages. The Tribunal has the CD Rom recording of the interviewed and a summary of the applicant's oral evidence follows:

The applicant has previously travelled to Country B nine or ten months prior to his arrival in Australia and stayed there for 4 months. The applicant came to Australia more than once before going to Country B. When asked the purpose of his trip to Country B, the applicant stated that the battle against Fatah Al Islam occurred a year prior to the trip and after it finished he received a telephone call threatening him that they knew he had helped the army and he should "watch himself". The delegate asked whether the applicant was claiming that he travelled to Country B because he received a telephone call threatening him the year before. The applicant stated that when the first threat came he initially thought one of his friends was joking. The first call was received a few months after the battle and then after another month or two came another threat. The applicant started to believe it may be serious. The applicant was asked by someone who he worked with if he wished to go to Country B. The applicant said he wanted to go because of his situation in Lebanon. The applicant confirmed that he went to work in Country B but he also wanted to flee from Lebanon because he was threatened.

The applicant confirmed that he worked as a tradesperson in Lebanon for a private company. The applicant served his compulsory military service in Lebanon for one

year. The applicant's discharge papers are in Australia, but he was not told to bring them. The delegate asked the applicant to provide the discharge papers and an official translation.

The applicant stated that he lived in Town A in Lebanon, where he was born, until the month he travelled to Country B. After he returned from Town A he lived in Town C because he could not return to his own area. The applicant went to Town A from Town C for about 3 visits to see his family but he was in hiding and wore dark glasses. The applicant wrote down an address where he lived in Town C.

The delegate asked the applicant about his involvement in the Nahr El Bared conflict. When the applicant did not respond, the delegate told the applicant that he had said in his statement that he was involved in the conflict in May 2007 between the Lebanese army and Fatah Al Islam and members of his village watched what was happening and became involved in the fights. The delegate asked in what capacity members of the village were involved in the fights. The applicant stated that at about 4 or 5am in the morning on a Sunday, the battle started. The number of soldiers from the army who surrounded the camp of Nahr El Bared was small. The applicant and others heard the shooting. A few days before it there was talk about Fatah Al Islam, an organisation which operates inside the camp. They attacked the army and killed many soldiers by shooting and also slaughtered people. In one spot, Fatah Al Islam killed 9 soldiers. There were many spots surrounding the camp. The applicant and others "got in".

When asked for further details, the applicant stated that a group of men "got in" and they took Russian rifles with them. Everyone who heard about it went to the camp. The applicant and the others surrounded the camp and prevented people leaving so that no-one could leave the camp until the army arrived. The applicant confirmed that everyone has arms in their homes and they are Russian Kalishnikov rifles. The delegate asked whether the group had any uniforms. The applicant stated that they were not an organisation and they heard the army was under attack and they went to help.

When asked what exactly he did, the applicant stated that they people from the area surrounded the camp so that no-one could flee until the army arrived. The Fatah Al Islam had been living in the camp for 3 to 4 months. The Fatah Al Islam helped the poor people. The applicant confirmed that he and the others were guarding the camp and did not allow anyone to leave the camp. When asked for how many hours he did that, the applicant stated that the battle started at 4 or 5 and they stayed until the evening and then the army came. The regiment close to the camp arrived first and after that time the other forces arrived.

When asked what happened after the forces arrived, the applicant stated that the army had surrounded the camp and their role was finished. When asked if he shot at anyone while they were there, the applicant responded that they only surrounded the camp and prevented anyone from leaving and that is all they did. When asked what happened next, the applicant stated that they saw there were enough army forces present, so they left. The applicant and others were told that they should leave by the army and were told to go and look after their area. The applicant confirmed that was what he did. When asked whether he captured anyone or shot at anyone, the applicant stated that after that time they looked after the needs of the army as they needed food. They would give them food and look after them. When asked again whether they shot at anyone or captured anyone or killed anyone, the applicant stated that they did not kill anyone. When asked again whether they captured anyone or shot at anyone, the applicant stated 'no'. When asked if they entered the camp, the applicant stated that

there is a location at the front of the camp and his brother was there and they went as far as that point to give the off-duty soldiers their food. When asked if he is an off-duty soldier, the applicant stated that they would only go there to give them food and that is as far as they went.

When asked the distance between the camp and Town A, the applicant stated that it is a short distance.

When asked what happened after that incident, the applicant stated that the battle in the camp continued and they were vigilant and if they saw anyone who did not belong to the area they would report to intelligence and they would stay awake at night. When asked whether he had weapons or what his role was after that time, the applicant responded that this continued for 3 and a half months. When asked what happened for 3 and a half months, the applicant stated that the Lebanese army was asking for petrol for the cars because they did not have the modern technology of war. The Lebanese Army would take petrol into the camps and throw it on the camp and it would ignite. The delegate again asked the applicant about his involvement in the incident at the camp. The applicant stated that he would take the food and petrol to the soldiers. The delegate queried why he would be required to do this and stated that the LAF is self sufficient and would have petrol and food to look after its own soldiers. The applicant stated that some of the soldiers did not know the area and the LAF did not know how to go in.

The delegate queried how the applicant could take petrol to the LAF and why they would do so and asked the applicant to explain this further. The applicant responded that if the soldiers wanted petrol from motor mechanics they would get it from Town A or elsewhere if there was not enough available in Town A. When asked who they would give the petrol to, the applicant responded that he told the Intelligence that they had it and the soldiers would come and take it. The applicant's relative knows someone from the Intelligence. The delegate stated that he has still not said what he did during the 3 and a half months. The delegate asked again what his involvement was that it resulted in death threats. The applicant responded that every day they did the same until just 1 week before it finished.

The delegate queried when the applicant began receiving threats. The applicant responded that the threats came a few months after the end of the camp incident. When asked how he received the threats, the applicant stated that he was at work and he was telephoned on his mobile telephone. The person said that he was from Fatah El Islam and he was told that they know he has helped the army. When someone calls him by name and on his private number he at first thought one of his friends was joking. When asked again when he received the first threat, the applicant stated that it was a few months after the end of the camp incident. The delegate queried a few months after what date. The delegate asked the applicant in what month did it occur. The applicant responded that it was about 16 months prior to his arrival in Australia but he cannot remember the exact date. The applicant was told that they wanted to kill him because he had supported the army which is supported by Israel and the United States. When asked what the person said to him, the applicant stated that the person said they want to kill him. The person calling was a man who had a different accent and the person knew everything about him. The applicant was unable to tell where the person was from but the person spoke a different type of Arabic accent. When asked whether any of the other men in his group were threatened, the applicant responded that he did not ask any of the other men whether they received threats. The delegate queried why he would not ask the others. The applicant stated that at first he thought it was a joke from one of his friends, but when it was repeated he began to get scared. The applicant was asked how many other threats he received. The

applicant received 3 more threats after the first threat. When asked the time frame of the threats, the applicant stated that after a month and a half, they called again and said the same thing again and they said that they would come and harm him. The applicant was told that he was with the Lebanese Army and they said the army is associated with the Americans.

When asked whether he spoke to any of the other men or did anything after he received the 4th threat, the applicant stated that he spoke to someone in the Army Intelligence. The applicant stated that they asked him for the telephone number but the number did not show up on the mobile telephone. The number on the telephone number said only private. The applicant was asked when he spoke to the Intelligence people. The applicant stated that after he received 2 threats he spoke to the Army Intelligence. The applicant cannot recall exactly when he spoke to the Army Intelligence, but it could have been about a year prior to his arrival in Australia. When asked where he went to go to speak to the Army Intelligence, the applicant stated that he had the telephone number of the Intelligence saved on his mobile telephone. The applicant told them what had happened and said that he had received threats and this had happened 2 or 3 times. The applicant was asked if he had the number. He was told that if he did not have the number they could not help him. The applicant did not report the matter to the police because it was “no use” When asked if he had spoken to any of the other men to find out whether they had received threatening telephone calls, the applicant stated that he did not have the ‘nerve’ to ask any of the other men because he did not know who was behind the threats and he was scared. The delegate stated that it was very contradictory that he was brave enough to go to the camp with machine guns and rifles but he did not have the nerve to ask any of the people in his own village if they had received threats. The applicant stated they were all together at the camp but he did not know who was involved after and he was scared.

When asked why he believed the telephone calls were related to the camp incident, the applicant responded that there could be no other reason. The delegate queried why he would be targeted by Fatah Al Islam The applicant stated that he had helped the army and they stopped people from fleeing the camp. No-one was allowed to pass until they knew who that person was.

The delegate again asked the applicant about his travel to Country B. The applicant confirmed that his employer in Lebanon arranged a work visa for him and he travelled to Country B for work and to avoid the threats. The delegate queried why the applicant returned to Lebanon if he was frightened. The applicant stated that the company went broke and he no longer had any work. When asked why he did not attempt to seek protection in Country B, the applicant stated that he did not have anyone who he could ask and he had no money in Country B.

The applicant confirmed he was in Country B for approximately 4 months. The applicant confirmed that he received a telephone call in Country B When asked for further details about the telephone call, the applicant stated that the telephone call came from a private number and was told that he should not think that because he was in Country B he was safe. They told the applicant that they knew where he was. The applicant had to go back to Lebanon because he had no money and could only afford to buy food once per day. The applicant had sent his money back to Lebanon and in the third month he was not paid and did not have any money in the 4th month. When asked how many men were sent by his company, the applicant stated that he was sent alone but there were men from other companies there as well. The applicant had no choice but to return to Lebanon and told his company that he should return. He told them he wanted to go back to Lebanon. The delegate stated that his evidence

was contradictory because he said he had fled Lebanon because of the calls and asked why he would want to return to Lebanon. The applicant stated that he returned and lived with a friend in Town C. The applicant stated that he could “look after himself”. The applicant confirmed he stayed approximately 5 months in Town C where he worked for someone. When asked to clarify what he meant by the point that he could look after himself in Town C, the applicant stated that there are Islamic groups or other groups in Town C where he lived but the area of Town C was far from fanatics.

When asked what he fears will happen to him if he returns to Lebanon, the applicant stated that he will be shot or killed and there is no security and no-one can protect him in Lebanon. They have killed an officer from his area. When asked who he fears will kill him, the applicant stated that he believes that the people from the camp will know who he is and will kill him. The delegate stated that the applicant had lived in the same area and if someone was interested in him they would have been able to locate him. The applicant stated that the threat came after a few months and although some people were arrested from the Fatah Al Islam but not everyone was arrested. The delegate stated that he had said he felt safer in Town C and could look after himself. The applicant was asked why he could not return to Town C where he felt safe. The applicant responded that it was mostly Christian but Hezbollah is also present near the area he lives and Hezbollah opposes the army. Even if he is in Town C he would not be totally safe. The delegate again asked why Fatah Al Islam would have any continuing interest in him if he was a part of a group of local men and other local men guarding the camp. The applicant responded that he does not know and they may also be interested in him and he does not know if there are other people who they may be interested in.

When asked if the authorities of his country could protect him, the applicant stated that they cannot protect themselves and they could not protect him. When asked if there was anything further he wished to add in relation to his circumstances or claims, the applicant stated that there is nothing further.

Application for review

24. No further evidence was provided prior to the Tribunal hearing.

Tribunal hearing

25. The applicant appeared before the Tribunal on to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration agent. The relevant evidence is summarised below.
26. The applicant confirmed that he is from Town A in the north of Lebanon. The applicant’s parent and siblings reside in Town A and he has 1 sibling in Australia who is married. The applicant also has relatives in Town D and a sibling who resides in Town C.
27. The applicant confirmed that he has previously visited Australia on more than 1 occasion. The purpose of the previous visits was to see his sibling and friends.
28. The applicant is currently employed on a casual basis in Australia and also worked as a tradesperson in Lebanon. The applicant is unmarried.

29. The applicant confirmed that he prepared his statutory declaration that was provided to the Department with the assistance of his registered migration agent.
30. When asked why he cannot return to Lebanon, the applicant stated that in 2007 a problem occurred between the Lebanese army and an organisation called Fatah Al Islam. The Fatah Al Islam is located in the Palestinian refugee camp. The Lebanese army did not have “complete information” about what was happening and had to bring units from another area so that the population supporting the army could provide assistance and information to the army. The fighting continued for approximately 3 and a half months and during the last 20 days of fighting, the Fatah Al Islam attempted to escape. The Lebanese army surrounded the camp, but some places were not covered by the army and there were many areas that the Fatah Al Islam could escape. The young people in the area made themselves into groups to help and to support the army and provided logistical support to the army, including water, food and other supplies because the army was unable to provide all of the needs. The army asked the applicant and others to provide them with food and petrol so that they could produce smoke in the refugee camp.
31. When asked for further detail as to what he did, the applicant stated that at first “we had weapons” and covered the back of the army by not allowing them to flee from the areas that the army was unable to keep covered. The applicant was in one of those groups.
32. When asked again for further detail in relation to his own role, the applicant stated that on the first day of the fighting the population of the area heard the shooting. When asked when this occurred, the applicant stated that he cannot recall the exact date, but it was sometime in June 2007 and it was a Sunday. Early in the morning, the applicant heard shooting. When asked how long he was there for, the applicant stated that he was there for about 3 and a half months. On the first day, the applicant and the others went there in the morning and waited until the army arrived with the heavy weapons. They stayed there until the evening on the same day. When asked what he did the following day, the applicant stated that it was the same as the previous day and they stayed there. The applicant and the others divided themselves into groups and covered the road areas to stop anyone from entering and leaving. They would ask the identification of people going into or leaving the area.
33. The Tribunal queried whether the applicant and the others did that under the supervision or the authority of the Lebanese army. The applicant agreed that they were doing it under the supervision of the army. The applicant stated that because his area is in the countryside everyone knows each other and when they heard shooting they went to the camp.
34. When asked how he and the others organised themselves, the applicant stated that in the north of Lebanon every family has weapons and everyone took their weapons. The men from the area all had the same idea and they gathered together. The Tribunal queried whether they were aware at the time that they went to the camp that 23 Lebanese army soldiers had been slaughtered. The applicant responded that they did not know what was happening when they first went to the camp and in the beginning, Fatah Al Islam slaughtered 13 soldiers and there were other casualties.
35. The Tribunal again asked when it was that the applicant and the others first went to the Refugee Camp. The applicant responded that it was a Sunday in June 2007 and he does

not know the exact date. The applicant confirmed that he did not know before going there that a large number of LAF soldiers had been killed. The LAF had blocked some exit points and had organised checkpoints. The applicant and the others surrounded the camp for 3 months and were there during the daytime until late in the evening as they had to protect their own area.

36. When asked what else he did besides stopping people and asking them where they were going, the applicant stated that the main duty was to protect the army and when the army surrounded the camp they had to stand behind the army and watch what was happening. The Tribunal stated that his evidence as to what he specifically did is very vague and again asked him to describe in further detail his role. The applicant stated that there were a lot of civilian people and a friend would tell him that a car was coming. The applicant would ask the purpose of the visit. When he was confident that the person had legitimate business in the area, the applicant would allow them to pass by. The Tribunal queried why the army would rely on civilians to undertake this role and queried how the army would be able to trust civilians in such circumstances. The Tribunal queried why the army would entrust civilians with such a role and stated that there was no evidence to support his claims that civilians were involved in assisting the army in the manner he claimed. The applicant responded that the army was not very strong and it was very busy. After explosions occurred in Town C the army asked for the support of the civilians to protect their homes. The Tribunal again stated that it is difficult to believe that they would do so under the supervision of the army. The applicant stated that they were not organised and were not really related to any groups. The Tribunal stated that the applicant had earlier said that he and the others were supervised by the Lebanese Army. The applicant stated that there were people in the streets shooting and the Lebanese Army is not powerful.
37. When asked for further detail as to what he did during the conflict, the applicant stated that his job was asking people where they were going but in the day time they were asked to provide blood to the LAF because there were many casualties. The Tribunal asked again what specifically the applicant was required to do. The applicant stated that in addition to guarding he was to provide for the needs of the LAF. The applicant has a brother who is a soldier and he used to contact them and ask for assistance. The Tribunal stated that the applicant had not previously mentioned a brother who was a soldier. The applicant responded that he had mentioned his brother during the Department's interview
38. The Tribunal queried whether the applicant or his group captured any people. The applicant stated that he captured 1 person. The Tribunal advised the applicant that he had been asked by the Department whether he captured anyone and he had said that he had not. The applicant responded that he answered the question asked. The Tribunal also stated that he had said in his statement that he was successful in capturing a handful of fighters. The applicant responded that his actual meaning was that he avoided allowing them to escape and he helped the army to capture them. He did not keep them, but held them until the army came and captured them.
39. The Tribunal also stated that the applicant had given a completely different account of his involvement in the conflict to the Department during the interview and the Tribunal in his oral evidence. The Tribunal stated that he had told the Tribunal that he was present every day, whilst he had told the Department that his role was to provide food

and petrol and their role in surrounding the camp was finished after the army arrived. The applicant responded that this is his “real statement” and he was there every day.

40. The Tribunal queried what happened to his employment during that time if he was present every day. The applicant responded that all of the people stopped work because the fighting was very difficult and civilians could not work. The applicant confirmed that all businesses closed down, although restaurants remained open.
41. The Tribunal also discussed the independent evidence with the applicant that indicated that the fighting commenced on 19 May 2007 and on that day 22 LAF soldiers were killed. The Tribunal queried how he would not have known that the soldiers had been killed at the time he claims to have gone to the Refugee camp in June 2007. The applicant responded that he is unsure whether it was May or June 2007 but it was a Sunday and they were at home.
42. The applicant confirmed that he surrounded the camp for about 3 months. When asked how any other civilians were engaged in this role, the applicant stated that he does not know and there were many of them. When asked to provide an approximate number, the applicant responded that he could not see them all, but there were between 100 and 200 people.
43. When asked what happened after the conflict had ceased, the applicant stated that after a few months he received a telephone call from a man who told him that he knew about the applicant’s involvement in assisting the army. The applicant did not take any notice and did not think it was a serious threat. When asked when he received the first call, the applicant stated that he does not know the dates and it was maybe 14 or 15 months prior to his arrival in Australia. The applicant then received another telephone call a few months after the first call.
44. When asked what the person said to him during the first call, the applicant stated that they threatened to kill him and told him that he should take care. The applicant thought that it was one of his friends joking and did not take much notice. The Tribunal stated that the applicant had told the Department during the interview that the first telephone call was 16 months prior to his arrival in Australia and again queried when it occurred. The applicant responded that he does not know the exact dates and it could have been 16 months prior to his arrival in Australia and he did not know that he would be asked about it and did not keep records of the account. When asked when he received the next call, the applicant stated that it could have been less than a few months later. The applicant received 2 calls in total before he left Lebanon. The calls were made to his mobile telephone number and came from a private number. The applicant does not know how the person would have been able to get his mobile telephone number.
45. The applicant received another telephone call whilst he was in Country B. The Tribunal queried why the applicant did not change his mobile number. The applicant stated that he did get a new telephone number when he went to Country B and he does not know how they were able to obtain his new number.
46. The Tribunal asked the applicant to clarify when he received the telephone calls. The applicant stated that after the conflict ceased, he received a telephone call a few months later. The second telephone call came a few months after the first and when the applicant went to Country B he received 1 telephone call. The applicant returned to

Lebanon and received 1 other call. The applicant informed an Intelligence Officer from the Lebanese Army after he received the second telephone call.

47. The Tribunal advised the applicant that he had given different dates to the Department and the Tribunal in relation to the threatening telephone calls he claimed to have received. The applicant stated that he does not remember the dates of the calls and did not write them down. The Tribunal advised the applicant that it would think that he would be able to recall such a significant matter as when he was threatened by a terrorist group which has links to Al Queda.
48. The Tribunal queried when the applicant went to Country B. The applicant stated that it was eight or nine months prior to his arrival in Australia and he received 1 telephone call. The applicant had to return to Lebanon from Country B because the global financial situation was deteriorating and he did not have any money. The applicant returned to Town C when he went back to Lebanon as a result of the threat he had received in Country B. The applicant tried not to tell people he was back, but after he was in Town C for about 1 month he received another telephone call. The Tribunal queried when he received the telephone call in Town C. The applicant responded that it was two or three months prior to his arrival in Australia. The Tribunal stated that there was nothing in his statement about receiving a telephone call in Town C and he had also not told the Department about receiving such a call. The Tribunal told the applicant that he had told the Department during the interview that he felt safer in Town C. The applicant responded that he was living in a Christian area away from Islamic parties, but Hezbollah was still close to them and they are one of the groups who support Fatah Al Islam. The Tribunal stated that there is no evidence to suggest that Hezbollah targets ordinary people such as him. The applicant responded that the leader of Hezbollah said on television that people who supported the army would be harmed.
49. When asked whether any other people from his group received threatening telephone calls, the applicant stated that he does not know. When asked why he would not ask anyone about this, the applicant stated that he did not feel comfortable and could not trust anyone.
50. The Tribunal queried how long the applicant was in Town C. The applicant stated that he lived there for 2 or 2 and a half months. The Tribunal stated that he had told the Department during the interview that he was in Town C for 5 months. The applicant stated that he thinks it was for 2 and a half months and he left there a year prior to his arrival in Australia.
51. The Tribunal queried when the applicant left Country B. The applicant stated that it was 14 months prior to his arrival in Australia and later he arrived in Australia. The applicant only returned to see his family in the north of Lebanon once or twice. The Tribunal stated that in his statement he had said that he did not return to Town A and queried how many times he went back. When asked again how many times he returned to the north, the applicant stated that he went twice and he just went to see his family.
52. The Tribunal advised the applicant that the dates and period of time he had given in relation to his time in Country B and Town C were completely inconsistent and may indicate that he has not been truthful in relation to his time in either of those places. The applicant stated that he cannot recall the exact dates and he did not think it was important. The applicant had not prepared a "manual" and it is only from his mind.

53. The Tribunal queried how long he was in Town C before he received the telephone call. The applicant stated that he had been there for about 1 month to 6 weeks and he received the telephone call either two or three months prior to his arrival in Australia. When asked whether he again reported the telephone call, the applicant responded that he did not do so because Army Intelligence had not previously been helpful and told him that without a number they would not be able to provide any assistance.
54. The Tribunal queried why Al Fatah Islam would be targeting someone like him who appeared to have a very minor role in the conflict in May to July 2007. The applicant responded that he does not know. The Tribunal also stated that if the Al Fatah Islam had any serious interest in him then it would have pursued him rather than simply telephoning him and threatening him. The applicant stated that he does not know but they may continue to be interested in him.
55. The Tribunal queried why the applicant would be unable to live safely in Town C. The applicant responded that he was feeling happy and safe in Town C, but there is nothing there for him. Town C is also close to Hezbollah and he believes that Hezbollah will be opposed to him.
56. The Tribunal advised the applicant that it would write to him to invite him to comment on some of the adverse issues raised during the hearing. The representative indicated that he did not wish to make any submissions to the Tribunal and would do so in response to the Tribunal's letter.
57. Following the Tribunal hearing, the Tribunal wrote to the applicant pursuant to s424A. The Tribunal invited the applicant to comment on information that indicated that he had given differing versions of his claimed role in the Nahar El Bared Refugee Camp incident to both the Department and the Tribunal and differing versions as to whether he or any of his group captured any Fatah Al Islam fighters. The Tribunal also advised the applicant that he had given inconsistent evidence to the Department and the Tribunal in relation to how long he stayed in Town C and whether he returned to his home town whilst he was in Town C and inconsistent evidence in relation to when he received the threatening telephone calls. The Tribunal advised the applicant that it may find that he has not been truthful in relation to his experiences in Lebanon and that he was not involved in the Nahar El Bared camp incident and he did not receive threatening telephone calls as a result of the incident.
58. No response was received to the Tribunal's s.424A letter.

Independent evidence

Fatah-al-Islam

59. *Jane's World Insurgency and Terrorism* database states that Fatah al-Islam is a "[m]ilitant Islamist...Sunni jihadist group with alleged connections to Syrian military intelligence and to Al-Qaeda-inspired groups in the Middle East. It split from Fatah Intifada, a secular pro-Syrian faction that itself split from the mainstream Fatah Movement in 1983". The Jane's report claims that its "stated aim, as declared by the group's leaders, is to destroy Israel and institute an Islamic state in Palestine":
...Fatah al-Islam appears to be composed of three elements. The first consists of some 70 Al-Qaeda-linked or inspired foreign Arab fighters, veterans of Afghanistan and Iraq who espouse

the jihadist rhetoric of Osama bin Laden. The second element follow Shakir al-Absi, the nominal head of Fatah al-Islam who may have been killed in fighting with the LAF in June, and consist of former Fatah Intifada militants and recruits from other refugee camps and from Lebanese Sunni jihadist circles. The third element consists of volunteers from pro-Syrian factions within the Nahr al-Bared camp.

...Fatah al-Islam is headquartered in the Nahr al-Bared Palestinian refugee camp but is thought to have a small presence in other camps, such as Badawi in Tripoli, Bourj al-Barajneh and Shatila in Beirut and Ain al-Hilweh in Sidon. Cells of sympathisers are believed to exist in Sunni areas of Lebanon such as Tripoli and the province of Akkar in the north and in the Sunni towns and villages of the Bekaa Valley (Jane's Information Group 2007, 'Fatah al-Islam', *Jane's World Insurgency and Terrorism* website, 26 June).

The Nahar El Bared conflict

60. An article from the Council on Foreign Relations states the following in relation to the May 2007 incident relating to Fatah Al Islam:

What is Fatah al-Islam?

Fatah al-Islam is a militant Sunni Islamist group said to have Lebanese, Syrian, and Palestinian members among its ranks. Estimates of its size vary: Reuters reports that the group began with two hundred members yet militants from other Palestinian groups have since joined. It is also reported to have ties to al-Qaeda. Based in Lebanon, the group quickly gained notoriety in May 2007 after violent clashes between its members and Lebanese security forces left dozens of people dead. Many in Lebanon view Fatah al-Islam as a fringe group with no popular backing. As Fatah al-Islam drew the Lebanese Army into a protracted conflict, these Lebanese complained that the country had been hijacked by extremists. CFR Senior Fellow Steven Simon says that while Fatah al-Islam may be a marginal organization, many people in the region sympathize with the group's complaints about the plight of the Palestinian people.

How was Fatah al-Islam formed?

Fatah al-Islam emerged in November 2006 when it split from Fatah al-Intifada (Fatah Uprising), a Syrian-backed Palestinian group based in Lebanon, which itself was a splinter of Yasir Arafat's mainstream organization Fatah. Lebanese security officers dispute that it was a real split and allege that Fatah al-Islam is a part of Syrian intelligence security forces. Syria denies any link to Fatah al-Islam.

Which terrorist acts are linked to Fatah al-Islam?

On May 20, 2007, a battle between Fatah al-Islam and Lebanese troops left at least forty-one dead, Lebanon's worst internal violence since the end of its civil war in 1990. The fighting began when Lebanese security forces investigating a bank robbery raided an apartment north of Tripoli. In response, members of Fatah al-Islam seized control of army posts at the entrance of the Nahr al-Bared refugee camp, which Lebanese army tanks then proceeded to shell. The camp's electricity, phone lines, and water were cut off. On-and-off fighting continued for weeks, leaving scores dead or wounded.

The Lebanese government also linked Fatah al-Islam to deadly bus bombings in Ain Alaq, Lebanon, on February 13, 2007, which killed three people. Fatah al-Islam has denied any role in the bombings (Bloom, Rebecca, Fatah Al Islam, Council on Foreign Relations, 8 June 2007).

61. A July 2007 article sourced from the *Mideast Monitor* provides a description of the events leading up to the conflict in Nahr el-Bared, which were sparked by a bank robbery carried out by Fatah al-Islam members near Tripoli on 19 May 2007:

On May 19, a band of Fatah al-Islam gunmen robbed a bank near Tripoli (their third) and were tracked to an apartment in a wealthy neighbourhood in the city. For reasons that are not entirely clear (but probably owe much to the visit of US Assistant Secretary of State David Welch three days earlier), this time Siniora sent the ISF [Internal Security Forces] into action (with a camera crew from Hariri's Future TV station in tow to record the momentous event). The pre-dawn raid was a disaster – not only was it easily repulsed, but Siniora's failure to inform the Army beforehand left Lebanese soldiers stationed outside Nahr al-Bared vulnerable to a withering reprisal hours later while most were asleep in their barracks (nine

were found with their throats slit). ...the deaths of 22 soldiers that day (the ISF aborted its raid before anyone got killed) united the Lebanese people behind the Army's campaign to eliminate Fatah al-Islam... (Gambill, G. 2007, 'The Rise of Fatah al-Islam', *Mideast Monitor*, vol. 2, no. 1, June-July http://www.mideastmonitor.org/issues/0705/0705_5.htm – Accessed 11 October 2007).

62. A January 2008 Carnegie Endowment report on Fatah al-Islam provides additional background to the conflict, suggesting that the confrontation “took everyone by surprise”, and that Fatah al-Islam members “slaughtered at least fifteen Lebanese soldiers”:

The confrontation with the Lebanese army, which led to the liquidation of Fateh al-Islam and a humanitarian disaster for the 40,000 Palestinian refugees, took everyone by surprise. A bank robbery near Tripoli in May led to clashes in the streets of Tripoli between security forces and members of Fateh al-Islam, the suspected robbers. Two members of the group were killed. In revenge, Fateh al-Islam members slaughtered at least fifteen Lebanese soldiers near the refugee camp. The army decided to attack the camp to capture those responsible. What was meant to be a quick operation went on for three months, suggesting that the group had been armed to the teeth and was prepared for such a confrontation. At the same time, Salafist figures close to Absi said that Fateh al-Islam leaders did not want a showdown with the Lebanese state and that the battle was badly timed (Abdel-Latif, O. 2008, 'Lebanon's Sunni Islamists – A Growing Force', Carnegie Papers, Carnegie Endowment website, No. 6, January http://www.carnegieendowment.org/files/CMEC6_abdellatif_lebanon_final.pdf – Accessed 25 August 2008).

63. A February 2009 report from the International Crisis Group (ICG) states the following in relation to the lead-up to the conflict between the Lebanese army and Fatah al-Islam:

In May 2007, violent clashes erupted between the army and Fatah al-Islam, which took refuge in Nahr al-Bared. The conflict began in North Lebanon on 20 May, when suspected bank robbers – members of the jihadi group – were confronted by the internal security forces (Forces de Sécurité Intérieure, FSI). The fighting soon spread to Tripoli and near Nahr al-Bared, where army members were attacked. Several hours later, an army patrol was ambushed in Qalamoun, a few kilometres south of Tripoli. That same day, two explosions racked Beirut. In Tripoli, the army and security forces took over the buildings in which some militants were located. Nahr al-Bared soon became the central arena of the confrontation, which lasted over three months (International Crisis Group 2009, *Nurturing Instability: Lebanon's Palestinian Refugee Camps*, Middle East Report No. 84, 19 February, p. 11).

64. A footnote in the ICG report provides detail of a Fatah al-Islam attack on members of the Lebanese army prior to Nahr el-Bared:

The attack was particularly bloody and provoked widespread outrage throughout the country. Televised pictures showed the corpses of soldiers; the militants had slit one victim's throat. According to unconfirmed reports, the soldiers were killed while they slept (International Crisis Group 2009, *Nurturing Instability: Lebanon's Palestinian Refugee Camps*, Middle East Report No. 84, 19 February, p. 11, footnote 87).

65. According to a May 2007 report from *Socialist Worker Online*, militia groups took part in the operation against Fatah al-Islam at Nahr El-Bared: “Near the camps, Future Movement gunmen opened fire on those fleeing the siege. Some Palestinians are being stopped in the streets and humiliated by police, the militias and the army. Stories of random killings of refugees are beginning to trickle in from the north” (Makarem, G. 2007, 'Lebanon crisis: Refugees attacked as right wing militias stalk the streets',

Socialist Worker Online, 29 May <http://www.socialistworker.co.uk/art.php?id=11790> – Accessed 25 September 2009 –).

66. A September 2007 report from *Time* magazine relates that some members of the civilian population near Nahr El-Bared were watching for Fatah al-Islam members who might have escaped from the camp:

At Ayoun al-Samaq, a spring on the Bared River three miles upstream from the camp, several residents of nearby Jdeidet al-Qaitta village kept a wary eye on the dense green orange orchards and banana plantations that flank the river. “We know that there are Fatah al-Islam men in the area and we are taking precautions,” said Jihad al-Ajil. A truck full of soldiers was parked on a small bridge over the river. Other troops could be seen scouring the undergrowth and olive groves on the steep slopes of the valley.

The crackle of sporadic rifle fire could be heard a few hundred yards downstream as soldiers hunted for a militant who had been spotted a couple of hours earlier. “He took a tractor driver hostage with a pistol and hoped to get away,” Ajil said. As the tractor rounded a corner before the river bridge, the militant saw an army checkpoint a hundred yards ahead and jumped from the vehicle. “He disappeared into the bushes. He’s armed with a pistol, but God willing we will catch him,” Ajil said (Blanford, N. 2007, ‘Beirut Routs Bin Laden Allies’, *Time* magazine, 4 September <http://www.time.com/time/world/article/0,8599,1658604,00.html> – Accessed 27 August 2008).

67. Several reports were located which provided instances of businesses closing down during the conflict at Nahr el-Bared, or of local residents leaving the area for the duration of the conflict. In addition, comprehensive reports from the Internal Displacement Monitoring Centre (IDMC) and the Lebanese Government provide analysis of the economic cost of the conflict, and the damage to businesses within the camp and in the surrounding municipalities. Extracts from these reports follow below (for reports of business closures, see: ‘Lebanese Troops Tighten Siege of Refugee Camp; Death Toll Nears 50’ 2007, *FOX News*, (source: *Associated Press*), 21 May <http://www.foxnews.com/story/0,2933,274153,00.html> – Accessed 25 September 2009 – Attachment 3; Ghaddar, H. 2007, ‘Bebnin’s sacrifice’, *NOW Lebanon*, 29 August <http://www.nowLebanon.com/NewsArticleDetails.aspx?ID=11350> – Accessed 8 September 2008; and: ‘Local people against rebuilding of Palestinian refugee camp’ 2007, *IRIN News*, 10 September <http://www.irinnews.org/Report.aspx?ReportId=74204> – Accessed 24 September 2009; for the IDMC and Lebanese Government reports, see: Internal Displacement Monitoring Centre 2008, *Lebanon: Displaced, again*, IDMC website 23 July [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8D8B19A96BDE25F1C125748F0051715D/\\$file/Lebanon+-+July+2008.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8D8B19A96BDE25F1C125748F0051715D/$file/Lebanon+-+July+2008.pdf) – Accessed 7 August 2008; and: Government of Lebanon 2008, *A Common Challenge, A Shared Responsibility – The International Donor Conference for the Recovery and Reconstruction of the Nahr el-Bared Palestinian Refugee Camp and Conflict-Affected Areas of North Lebanon*, 23 June http://www.lpdc.gov.lb/NBC_DConf/GoL-NBC-Donor-Conference-Report_2008-07-04.pdf – Accessed 24 September 2009).

Current Fatah Al Islam activity

68. While much of the available reportage suggests that the Fatah al-Islam network has suffered considerable setbacks following the 2007 conflict there have also been reports of continued Fatah al-Islam operations in Lebanon and in neighbouring states such as

Syria. A February 2009 article from the Lebanon *Daily Star* reports that “some analysts believed that the group had been crippled by the losses it suffered during and after the battle” at Nahr el-Bared, but then attributes the August and September 2008 Tripoli bus bombings to Fatah al-Islam, stating that “the militants burst back onto the radar of counter-terrorism officials in August, when they bombed a bus full of Lebanese soldiers in Tripoli”. According to an earlier report from *Reuters India*, from June 2008, “Fatah al-Islam claimed responsibility for a bomb that killed a soldier in north Lebanon last week”, although the report also noted that “[t]he authenticity of the statement, which Reuters received by fax, could not be verified”.

69. The most recent reference to Fatah al-Islam activity in Lebanon came in a February 2009 article from *AFP*, hosted on the *Google News* website, which quotes Lebanese military sources who claim that Fatah al-Islam is planning to attack two Lebanese Members of Parliament, “who represent the anti-Syrian bloc in north Lebanon”. An October 2008 report from *The Daily Star*, sourced from the “pan-Arab daily *Al-Hayat*”, quotes a Lebanese Armed Forces statement which claims that “[a] ‘terrorist’ cell arrested in Tripoli over the weekend previously planned to assassinate the commander of the Lebanese Armed Forces (LAF), General Jean Kahwaji” This report also quotes “security sources” who claim that three of the suspects “were detained near the Ain al-Hilweh refugee camp for alleged connections with the Fatah al-Islam militant group”. Fatah al-Islam has also been accused of being responsible for the September 2008 car bomb in Damascus, Syria which killed seventeen people; a November 2008 *Reuters Alertnet* article reports that alleged members of Fatah al-Islam confessed on Syrian state television that “they had helped plan the Sept. 27 attack on an intelligence complex in the Syrian capital” (for the Fatah al-Islam plot to attack Lebanese MPs, see: ‘Lebanon MPs warned of Islamist assassination threat’ 2009, *Google News*, (source: *AFP*), 10 February http://www.google.com/hostednews/afp/article/ALeqM5gtQ_zxsk30pg-g1iFl9nbcjvBgmA – Accessed 18 February 2009; for the February 2009 *Daily Star* report, see: Wander, A. 2009, ‘Trial of 29 terror suspects kicks off in Beirut’, *The Daily Star*, 18 February http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=99436# – Accessed 18 February 2009; for the assassination plot and Fatah al-Islam links to the Tripoli “terrorist cell”, see: ‘Tripoli cell ‘had planned to assassinate LAF chief’ 2008, *The Daily Star*, 15 October; for the June 2008 bombing, see: ‘Fatah al-Islam statement claims Lebanon bomb’ 2008, *Reuters India*, 2 June <http://in.reuters.com/article/worldNews/idINIndia-33862520080602> – Accessed 17 February 2009 – Attachment 9; and for the Syrian television confessions, see: Oweis, K. 2008, ‘Syria says Fatah al-Islam group behind bombing’, *Reuters Alertnet*, 7 November <http://www.alertnet.org/thenews/newsdesk/OWE685030.htm> – Accessed 18 February 2009).
70. Reports speculate on the fate and current location of leading Fatah al-Islam figures, including the group’s leader Shaker al-Abssi. The February 2009 *Daily Star* report quotes claims aired on “a website used by Islamist militants...which said that Abssi had ‘probably’ been killed in Syria and named another fugitive, Abed Awad, as the group’s new leader”. This report also states that Awad “is wanted for his links to the deadly blasts in Tripoli over the summer and was recently believed to be hiding in the sprawling Ain al-Hilweh Palestinian camp near Sidon”, although “his current whereabouts are unknown”. *BBC News* reported in December 2008 that Fatah al-Islam

issued a statement announcing the death of Shaker al-Abssi, in an ambush by Syrian security forces “in the small town of Jermana, south of Damascus”. A December 2008 article from *Al Arabiya* quotes reports from various Arab media sources which suggest that Abssi may be dead, in Turkey, or hiding in the Ein el-Hilweh camp (Wander, A. 2009, ‘Trial of 29 terror suspects kicks off in Beirut’, *The Daily Star*, 18 February http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=99436# – Accessed 18 February 2009 – Attachment 5; ‘Fatah al-Islam says leader ‘dead’ 2008, *BBC News*, 10 December http://news.bbc.co.uk/2/hi/middle_east/7775239.stm – Accessed 17 February 2009 – Attachment 6; and ‘Islamist group names successor to Abssi: Fatah al-Islam says leader ambushed in Syria’ 2008, *Al Arabiya*, 10 December <http://www.alarabiya.net/articles/2008/12/10/61714.html> – Accessed 17 February 2009).

FINDINGS AND REASONS

71. On the basis of the photocopy of the Lebanese passport issued to the applicant, and in the absence of any evidence to the contrary, the Tribunal accepts that the applicant is a national of Lebanon.
72. The applicant claims that he assisted the Lebanese Army Forces during the Nahar El Bared Refugee Camp conflict between the Lebanese Army Forces and the Fatah Al Islam organization in 2007. The applicant claims that as a result of his involvement in the conflict he was threatened by telephone by members of the Fatah Al Islam. The applicant claims that he went to Country B the year prior to his arrival in Australia for both work and to avoid the threats, but returned to Lebanon due to the shortage of employment opportunities. The applicant claims that he lived in Town C for his safety upon his return to Lebanon because he feared returning to the north of Lebanon. The applicant fears that if he returns to Lebanon, he will be sought by Fatah Al Islam and also fears Hezbollah as a result of its links to Fatah Al Islam.
73. The Tribunal accepts that a conflict occurred between Fatah Al Islam and the Lebanese Army Forces in May to July 2007 at the Nahar El Bared Refugee Camp. The Tribunal accepts, on the basis of the above independent evidence, that militia groups were involved to some extent in the conflict and is prepared to accept that civilians may have provided some assistance to the army in terms of its needs for food, petrol and medical supplies. The Tribunal also accepts that businesses ceased to operate during the period of the conflict, several persons were killed and that Fatah Al Islam and that, although diminished in strength and size, continues to operate in parts of Lebanon. The Tribunal does not, however, accept that the applicant had any involvement in the conflict and that he has at any time been sought by Fatah Al Islam or that he will be of any adverse interest to Fatah Al Islam or Hezbollah upon his return to Lebanon. The Tribunal considers that the applicant’s evidence to the Tribunal in relation to his claimed involvement in the Nahar El Bared Refugee Camp was frequently extremely vague, inconsistent and contradictory to his evidence to the Department. Although the applicant was able to speak generally about the role of the civilian population, the applicant also had considerable difficulty when asked at the Tribunal hearing to elaborate upon his own role in the conflict. The Tribunal is not satisfied that the applicant is a credible witness and does not accept that the applicant has given a truthful account of his experiences in Lebanon. The Tribunal’s consideration of the evidence follows.

74. The Tribunal firstly considers that the applicant's account of his involvement in the Nahar El Bared Refugee camp conflict varied considerably between his interview with the Department and his oral evidence to the Tribunal. During the Department's interview, the applicant stated that on the day the battle started he arrived at the Nahar El Bared Refugee camp early in the morning after hearing the sounds of gunshots at the camp. The applicant told the Department that he prevented people from leaving the camp, but when the army arrived their role was finished and the applicant and other members of his group were told that they should return to their homes to protect their own area and their role at the camp was finished at that time and they would then provide food and petrol to the Lebanese Army. By contrast, the applicant told the Tribunal, after some questioning on the issue, that he "covered the back of the army" at the camp and did not allow the persons to flee. The applicant told the Tribunal that he did the same the following day and for the next 3 months and he would ask people coming and going into the area for identification. Thus, in the version of events given to the Department during the interview, the applicant's role at the camp essentially ceased upon the arrival of the Lebanese Army, whilst to the Tribunal his role was effectively the same for the following 3 months. When asked at the Tribunal hearing to explain the inconsistency, the applicant stated that his "real statement" is that he was present at the camp every day. The Tribunal does not accept the applicant's explanation for the significant inconsistencies between his oral evidence during the Department interview and to the Tribunal and considers that the reason for the inconsistency is because he has not provided truthful evidence to the Department or the Tribunal.
75. In addition to the above, the Tribunal also considers that the applicant has given inconsistent evidence in his evidence to the Department and to the Tribunal in relation to whether any Fatah Al Islam soldiers were captured. In his statement to the Department, the applicant stated that "we were successful in capturing a handful of Fatah Al Islam fighters". However, when the applicant was asked a number of times at the Department interview whether he had captured anyone during the conflict, he said that he had not. At the Tribunal hearing, the applicant told the Tribunal that he captured one person. When asked to explain the inconsistency, the applicant stated that he meant he avoided allowing them to escape and helped the army to capture them, and only held them until the army came and captured them. The Tribunal does not accept the applicant's explanation for the inconsistency and considers that had he captured anyone he would have been able to provide consistent evidence to the Department and the Tribunal on this issue. The Tribunal considers that the reason for the inconsistency is because the applicant has not been truthful in relation to this issue.
76. The Tribunal also considers that the applicant's account of the incident differs from the independent evidence. The applicant claimed in his statement to the Department that in May 2007 members of his village assisted the Lebanese Army. However, when asked at the Tribunal hearing when he became involved in the conflict, the applicant indicated that it was when the fighting first began in June 2007 and he heard sounds of gunshot and went with several others to the Nahar El Bared Refugee Camp. The applicant told the Tribunal that when he went to the camp he was not aware that several soldiers had been killed by members of the Fatah Al Islam organization. The applicant's evidence on this issue does not accord with the independent evidence which indicates that the conflict began on 19 May 2007 and on 20 May 2007 some 22 Lebanese Army soldiers had been killed, some slain whilst asleep, by the Fatah Al Islam organization. The independent evidence indicates, therefore, that the conflict began in May 2007, not June

2007 and the applicant should have known when he went to the Camp that several soldiers had been killed by the Lebanese Army in vicious circumstances. Although the Tribunal accepts that 20 May 2007 is a Sunday, the Tribunal does not accept that the applicant's evidence on this issue indicates that the applicant has been truthful in relation to his claimed involvement in the May to July 2007 conflict at the Nahar El Bared Refugee Camp. The Tribunal considers that whilst the applicant was able to recall that it was on a Sunday because he was living in the area at that time, his other evidence in relation to this issue is indicative of the fact that he did not have the involvement in the incident that he has claimed.

77. In addition to the above, the Tribunal further considers that the applicant's evidence in relation to his claim to be in hiding in Town C is highly problematic. The applicant stated in his statement to the Department that when he returned to Lebanon from Country B he went to Town C because he feared for his safety in the north of Lebanon. However, when asked about this issue at the Department interview, the applicant stated that he returned to North Lebanon 3 times, whilst at the Tribunal hearing, the applicant stated that he returned to North Lebanon to see his family "once or twice" and clarified, at the Tribunal's request, that he returned to North Lebanon twice. When the applicant was asked to explain the inconsistency at the Tribunal hearing, he claimed that he meant that he did not return to North Lebanon except for when he was in disguise and only overnight to visit his family. The Tribunal does not accept this explanation and considers that if he was in hiding and did not return to North Lebanon he would be able to provide consistent evidence to the Department and the Tribunal and would be able to accurately recall how many times, or if at all, he returned to the North of Lebanon whilst dressed in disguise.
78. The Tribunal also considers that the applicant's evidence relating to the length of time that he claimed to be in hiding in Town C was also problematic. The applicant initially claimed in his statement that he was in hiding in Town C for 4 months. However, when interviewed by the Department the applicant stated that he was in Town C for approximately 5 months, whilst at the Tribunal hearing the applicant stated that he was in Town C for approximately 2 and a half months. When asked at the Tribunal hearing to explain the inconsistencies, the applicant claimed that he did not keep records and did not expect that he would be asked to recall such events. The Tribunal accepts that the applicant would not have kept records relating to this issue, but does not accept that he would be unable to recall how long he was in hiding in Beirut and unable to return to his own home in Lebanon as a result of a fear of the Fatah Al Islam organization, if he was genuinely in hiding for any period of time. In the Tribunal's view, the applicant's evidence on this issue is indicative of the fact that he has not provided truthful evidence to the Department or the Tribunal in relation to his claimed experiences in Lebanon.
79. The Tribunal further considers that the applicant's evidence relating to the telephone calls that he claims to have received from Fatah Al Islam is highly problematic. The applicant told the Department during the interview that he received the first telephone call from a member of Fatah Al Islam a few months after the conflict had ceased and he received the second telephone call about a couple of months after the first call. However, at the Tribunal hearing, the applicant stated that he received the second telephone call a few months after the first telephone call and then stated that it was 4 months later. In response to the Tribunal's queries relating to the inconsistencies, the applicant again stated that he did not write down the dates and he could not be expected

to recall the dates of the telephone calls. The Tribunal did not ask the applicant the exact dates of the calls and would not expect him to recall such precise details. However, the Tribunal would expect that the applicant would have a more accurate recollection as to how long after the first call he received the second call in circumstances where he claims that the telephone calls were made by an organization which has links to Al Qaeda. The Tribunal again considers that the discrepancies in the applicant's evidence in relation to this issue is further indicative of the fact that the applicant has not provided truthful evidence to the Department or the Tribunal.

80. The applicant's evidence in relation to the telephone calls that he claimed to have received whilst in Town C is also problematic. The applicant told the Tribunal during the hearing that he received a threatening telephone call whilst he was in Town C. However, the applicant did not mention in his statement to the Department or in his oral evidence to the Department that he had received a threatening telephone call whilst in Town C. Although the applicant claimed in his statement that he did not feel safe in Town C he told the Department during an interview that he felt safer in Town C in the area where he lived. The Tribunal considers it problematic that the applicant did not mention, until the hearing that he received a threatening telephone call whilst he was residing in Town C. In the Tribunal's view, the issue as to whether the applicant received a threatening telephone call upon his return to Lebanon from Country B in a place where he claimed to have been in hiding, is a significant matter and the Tribunal would have expected that the applicant would make this claim both in his statement and in his oral evidence to the Department. The applicant's failure to do so leaves the Tribunal unsatisfied that he at any time received a threatening telephone call whilst he was in Town C.
81. The Tribunal has found that the inconsistent and problematic nature of the applicant's evidence is indicative of the fact that he has not provided truthful evidence relating to his experiences in Lebanon. In addition, the Tribunal found the applicant's claims that he was threatened by Fatah Al Islam on a number of occasions and told that they knew his whereabouts to be highly lacking in credibility. The applicant claimed that although Fatah Al Islam threatened him on 4 occasions over the course of some 18 months and telephoned him in both Town C and Country B and has an "elaborate intelligence network" and is capable of "locating and harming him" anywhere in Lebanon it merely telephoned him and did not take any action against him. The Tribunal does not accept that this is credible and does not accept that a group such as Al Fatah Islam which has connections with other terrorist groups would not have taken opportunities to harm him if it had any adverse interest in him. The applicant himself was unable to explain at the Tribunal hearing why the group would have any continuing interest in him. In the Tribunal's view, this is because it does not have any adverse interest in him now and has never had such an interest.
82. Having regard to all of the above evidence, the Tribunal is not satisfied that the applicant had any role in the conflict between Fatah Al Islam and the Lebanese Army Forces at the Nahar El Bared Refugee Camp in mid 2007 and is not satisfied that he has ever been of any adverse interest to the Fatah Al Islam, Hezbollah or any of its associates. The Tribunal does not accept that the applicant went to Country B for any other purpose other than employment and does not accept that he was at any time in hiding in Town C. The Tribunal is prepared to accept that the applicant's brother was in the Lebanese Army and involved in the conflict at Nahar El Bared, that an officer who

assisted the army may have been killed by Fatah Al Islam, and villagers who did assist the army may have received threats However, the Tribunal has not accepted that applicant had any involvement in the conflict. The applicant has also not claimed, nor does his evidence establish, that his brother has suffered any harm or is being sought by Fatah Al Islam, Hezbollah or any associated groups. The Tribunal has not accepted any adverse interest in the past from Hezbollah, Fatah Al Islam and does not accept that he would be imputed with an adverse political opinion in the future or sought by any such groups in the future. The Tribunal is not satisfied that there is a real chance that the applicant will be harmed upon his return to Lebanon for reasons of his political opinion, imputed political opinion or for any other Convention reasons. The Tribunal is, therefore, not satisfied that the applicant has a well founded fear of persecution in Lebanon now or in the reasonably foreseeable future.

CONCLUSIONS

83. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

84. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PMRT01