

1219733 [2013] RRTA 316 (30 April 2013)

DECISION RECORD

RRT CASE NUMBER: 1219733

DIAC REFERENCE(S): CLF2012/139133

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Filip Gelev

DATE: 30 April 2013

PLACE OF DECISION: Melbourne

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; and
- (ii) that the other applicants satisfy s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of Lebanon, applied to the Department of Immigration for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2012.
3. The primary applicant was interviewed by a delegate of the Minister for Immigration [in] November 2012. The delegate accepted that the applicant has been a Jehovah's Witness since 1990, that his wife belongs to the same religion as does their daughter. She accepted that in Lebanon the applicant suffered verbal abuse, insults and harassment, but they would not amount to serious or significant harm. [In] November 2012, the delegate refused the application on the basis that Australia did not have protection obligations in respect of the applicant.
4. The primary applicant appeared before the Tribunal [in] April 2013 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A], a church elder from the [suburb deleted: s.431(2)] congregation of Jehovah's Witnesses.
5. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicants were represented in relation to the review by their registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

9. The issue in this case is whether in light of the country information which shows a level of official discrimination but otherwise paints a mixed picture in relation to the treatment of Jehovah's Witnesses, the applicants, and in particular the first applicant, face a well-founded fear of persecution for reasons of their religion. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.
10. The Tribunal found the primary applicant to be a truthful and credible witness who did not seek to exaggerate or embellish his claims. While the Tribunal agrees with the findings of the delegate that the applicant does not face a real chance of serious harm if he were to return to Lebanon, the Tribunal finds this is due to the fact that he is too afraid to practise his religion freely.

Jehovah's Witnesses in Lebanon and state discrimination

11. In Lebanon, there are an estimated 3,600 Jehovah's Witnesses making up 70 congregations, many of which are located in Qalamoun and Akkar.¹ The country information in relation to Jehovah's Witnesses in Lebanon is mixed. It is not an officially recognised religion but, the information suggests that in some respects they can practise their religion.
12. The Tribunal accepts the applicant's evidence which is consistent with the country information that Jehovah's Witnesses are not officially recognised by the Lebanese authorities. According to the United States Department of State (USDOS), the Lebanese constitution provides for "freedom of religion and the freedom to practice all religious rites, provided that the public order is not disturbed".² There are 18 officially recognised religious groups in Lebanon, twelve of which are Christian.³ Jehovah's Witnesses is not an officially sanctioned religion in Lebanon but according to the USDOS in practice the government generally respects religious freedom and unrecognised groups assemble for practice without interference.⁴
13. The Tribunal further accepts, based on the country information, that formal recognition by the government is a legal requirement for religious groups to conduct most religious activities. Unrecognised groups can be disadvantaged under the law in that their members may not qualify for certain government positions. Unrecognised groups may own property and assemble for worship without government interference; however, they are disadvantaged under the law as they may not legally marry, divorce or inherit property in Lebanon.⁵
14. The applicants' submitted copies of their Lebanese passports. The copy of the primary applicant's passport includes a visa to [Country 1] valid [in] 2006. According to stamps in his passport he left Lebanon [in] September 2006 and returned [the following day]. According to Part C of his application, he was married [in] September 2006. Based on that written evidence and his oral evidence at the hearing, the Tribunal accepts that the first and second applicant had to travel to [Country 1] to get married. In [Country 1] they held a civil

¹ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#> .

² US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section II.

³ US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section I

⁴ US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section II.

⁵ US Department of State 2010, *International Religious Freedom Report 2010 – Lebanon*, 17 November, Section II.

ceremony and then returned to Lebanon to register their marriage. He explained that there are no civil marriages in Lebanon but once a person is married abroad the marriage can be registered.

15. In November 2005, the Immigration and Refugee Board of Canada obtained advice on the situation of Jehovah's Witnesses in Lebanon directly from the General Counsel for Jehovah's Witnesses, whose office is in Patterson, NY. According to that advice in 1971 the Lebanon Council of Ministers banned the work of Jehovah's Witnesses and prohibited the dissemination of their literature, prompting an appeal to the Lebanon Supreme Court. In 1997, the ban was upheld by the Lebanon Supreme Court; a second appeal following the 1997 dismissal was still pending as of the time of this advice. According to the advice, Jehovah's Witnesses could worship discreetly:⁶

Even so, we consistently learn of individual instances of harassment and intimidation by local authorities. For example, the police have prohibited congregations from meeting for worship. In March 1997, following the Supreme Court's decision to uphold the ban, the Lebanese authorities closed three Kingdom Halls (houses of worship).

In 2000, a Lebanese court convicted two sons (one of whom is a Jehovah's Witness) for following Jehovah's Witnesses' rites when burying their father rather than observing a state-sanctioned Christian burial rite. "Since Jehovah's Witnesses have no legal recognition, **they have no constitutional right to freedom of religion,**" was the court's ruling. (bold added) *The applicant's inability freely to practise his religion*

16. Based on the applicant's oral and written evidence, including his No Blood card, and the evidence of the church elder [Mr A], the Tribunal accepts that the applicant is a Jehovah's Witness who grew up in a Jehovah's Witness family.
17. In 2010, an article in the *LA Times* reported on an undercover Jehovah's Witnesses congregation outside Beirut. According to the article there are an estimated 15 or more 'Kingdom Halls' in Lebanon, which appear to be tolerated by the community, and well attended despite members' fears that they could be harassed or deported. Jehovah's Witnesses say they feel like an oppressed and silenced minority, particularly vilified by the Maronite (Christian) community who reportedly spread lies claiming Jehovah's Witnesses are Jews.⁷
18. Although there are no legal barriers to proselytising, traditional attitudes in Lebanon discourage such activity.⁸ The mixed attitude of the authorities and the Lebanese population is also described in a Department of Foreign Affairs and Trade report from 2008:⁹

⁶ Immigration and Refugee Board of Canada 2005, *LBN43573FE – Lebanon: Treatment of Jehovah's Witnesses by the authorities and society general, and protection offered* (2005), 8 November. The Tribunal notes that it has been unable to locate the original document but has instead relied on the citation of the Refugee Review Tribunal in Research Response LBN31718, 2 May 2007.

⁷ 'Lebanon: In Muslim Middle East, Jehovah's Witnesses congregate in secret' 2010, *LA Times*, 17 April. <http://latimesblogs.latimes.com/babylonbeyond/2010/04/lebanon-christian-muslim-religion-jihad-beirut-illegal-underground.html>.

⁸ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Lebanon*, 11 March, Section 2.c.

⁹ Department of Foreign Affairs and Trade 2008, *DFAT Report 784 - RRT Information Request: LBN32899*, 27 February, accessed on 24 April 2013.

DFAT has not identified any instances where proselytising Jehovah's Witnesses have been harmed in Lebanon. In general, proselytising by Jehovah's Witnesses is not welcomed amongst the population. In Lebanon, with its history of civil war and delicate religious balance, attempts to convert people to alternate faiths are frowned upon and considered 'trouble making' by the security authorities.

According to a variety of sources consulted, there is no legal barrier to proselytising in Lebanon and this extends to Jehovah's Witnesses. Several articles in the penal code prevent people making nuisances of themselves or invading others' privacy. A lawyer consulted by DFAT believes that a case may have been brought against a Jehovah's Witness for aggressively doorknocking and invading someone's privacy several years ago, but the source was not able to provide any additional details (including whether the case was successful). DFAT was not able to uncover any additional details about this alleged case from other sources.

19. The Tribunal accepts that there is widespread prejudice against Jehovah's Witnesses. According to the country information Christian Maronites appear to be particularly opposed to Jehovah's Witnesses. In an article in NOW Lebanon, 2008, it was reported that a prominent Christian identity Father George Rahme regularly denounces JWs on his weekly television programme, and reportedly encourages viewers to "keep a stick near their door to beat any Witnesses who visit."¹⁰ One witness claimed that he had been beaten, assaulted and has had doors slammed in his face.¹¹
20. At hearing, the applicant described in great detail what difficulties he faces when he tries to practise his religion in Lebanon. The Tribunal accepts the claimed instances of past persecution; for example, on one occasion in July 2008 a Muslim came threatened to kill the applicant when he was witnessing.
21. The Tribunal accepts the applicant's oral evidence that over time the level of religious intolerance in Lebanon has increased. Some years earlier, it was mainly Christians who were strongly opposed to Jehovah's Witnesses. In recent times Salafists and Muslim Brotherhood men did the same. He has heard that after he came to Australia, many scheduled meetings and conventions were cancelled. Gatherings at a Kingdom Hall in a village called [village deleted: s.431(2)], which is only about 20-30 minutes from the applicant's village, had been cancelled indefinitely. Jehovah's Witnesses felt so fearful that they organised meetings secretly, by text message.
22. Throughout the hearing, the applicant referred to Australia as paradise in terms of the freedom he has to practise his religion. He was very happy that in Australia, unlike Lebanon, he could wear a badge with his name which identifies him as a Jehovah's witness – he said when he first received the badge in Australia he was so excited that he wore it to bed overnight – he could wear a suit and tie, and carry a briefcase. He explained that in Lebanon he would have to carry Christian literature in a plastic bag because people would identify him as a Jehovah's Witness by the briefcase. The applicant said that soon after he arrived in Australia he went to a convention attended by some 12,000 people. The number of people who were cleaning after the convention was larger than the number of Jehovah's Witnesses he had ever seen gather together in Lebanon.

¹⁰ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November
<http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#>

¹¹ Nash, M. 2008, 'Faith comes knocking', NOW Lebanon, 16 November
<http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=67298#> – Accessed 19 June 2009 – Attachment 3

23. The Tribunal accepts that one of the tenets of the religion is to proselytise. According to the Jehovah's Witnesses magazine *Watchtower*:¹²
24. Jehovah's Witnesses are required to express their belief in the religion's doctrines by participating in both organized and spontaneous evangelizing and proselytizing work, with baptism permitted only for those who demonstrate "regular and zealous" participation. In a statement accompanying his application, the applicant stated that his parent had always been Jehovah's witnesses and he was raised in the religion. He was baptized in 1990. He has always been attending meetings and practising the religion (witnessing) but this has been difficult to do in Lebanon where the religion is banned. If they were to go preaching dressed formally, they would put themselves in danger. They also have to carry their publications in plain bags to avoid attention. The Tribunal puts considerable weight on the applicant's evidence that while in Lebanon, he had to be extremely careful where he went witnessing. The Tribunal asked the applicant whether he selected certain villages and avoid others, e.g. only Muslims or only Christians. He said they only went to houses that they knew to do witnessing. He confirmed that he would only go to the houses of people he knew but through those people he would meet new people.
25. First, he said that he did not talk to strangers about his religion. He would only approach people he knew, including relatives, In accordance with the religion, he would go out witnessing every week, that is, approximately 50 times a year, but he would go to no more than 10 villages and within each village he would only visit the houses of people he knows and of their relatives a total of about 10-20 houses.

Military service obligations

26. The applicant claimed that in the past he had been sentenced to 3 months imprisonment, which he did not serve initially, and to 15 months imprisonment which he did serve in [years deleted: s.431(2)] because he refused to bear arms. He provided certified translations of court documents in support of his claims.
27. He claimed that if he returned to Lebanon he may be sentenced to death in accordance with Art. 152 of the Lebanese Penal Code which stipulates, according to a translation provided by the applicant, that a person serving in the "military whose refuses the order to attack the enemy ... will be punished by Death penalty".
28. The delegate was satisfied that the applicant had already refused to serve in the military and as a result had been sentenced to 15 months in prison. The delegate found that if the applicant were to refuse to serve in the military for a second time, he could potentially face another court judgment and be sentenced to a term of imprisonment. However, the delegate found this would be pursuant to a law of general application and, further, that he would not be sentenced to death – which is what the applicant claimed – and being sentenced to prison would not amount either to serious or significant harm.
29. At the hearing, the Tribunal put to the applicant country information that since 2007 military service is no longer compulsory in Lebanon.¹³ According to sources consulted by the Immigration and Refugee Board of Canada in 2010, "the Lebanese army circulates a list of

¹² "Jehovah's Witness Beliefs", *Watchtower Information Service*, 6 July 2009, accessed at <http://www.watchtowerinformationsservice.org/doctrine-changes/jehovah-witness-beliefs/> on 23 April 2013.

¹³ Response to information request LBN103552.E, "The date when the law abolishing compulsory military service came into effect", *Immigration and Refugee Board of Canada*, 21 January 2010, accessed at http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452747&l=e on 24 April 2013.

citizens who have evaded military service to all border crossings” and a person who is yet to complete their military service will not be allowed to leave the country “until the file is settled”.¹⁴

30. The applicant agreed with the country information put to him that in 2007 compulsory military service was abolished. However, he said that it did not apply to army reservists. Even though he never served in the military he was considered to be an army reservists because he had been called up prior to 2007. On paper, it says that he served for a year in the military, even though he did not. Thus, he was still liable to be called if there is mobilisation of army reservists.
31. The applicant conceded that if there is no war and army reservists are not called in to serve in the Lebanese military, he would not be called to do any military training. But he was liable to serve in the military until the age of 50.
32. Based on the country information and the applicant’s evidence, the Tribunal finds that the applicant might only be called upon to serve in the military in case of mobilisation of army reservists. The Tribunal finds that the likelihood of such an occurrence is remote and therefore, the applicant does not have a well-founded fear of persecution in relation to his refusal to undertake military service.
33. Based on the above evidence – under the heading “The applicant’s inability freely to practise his religion” – the Tribunal accepts that for many years the applicant has been forced to act discreetly and modify his behaviour in Lebanon in order to avoid serious harm.
34. A putative refugee faced with a threat of persecution for exercising his right, and according to his religion his duty to express his religious views may take steps to avoid the persecutory conduct or to mitigate harm flowing from it. The applicant has been concealing his religion by being discreet. In those circumstances, as the High Court has stated, “persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action.”¹⁵ It would be erroneous to require an applicant to take steps, reasonable or otherwise, to avoid offending his or her persecutors, or to modify some attribute or characteristic to avoid persecution.¹⁶
35. Requiring an applicant to live discreetly is both wrong and irrelevant to the task of determining refugee status. Where an applicant has acted in a particular way – witnessing in a handful of villages in Lebanon and going to as few as 10 houses in each village – only because of the threat of harm, the well-founded fear of persecution held by the applicant is the fear that unless he acts to avoid harmful conduct, he will suffer serious harm.
36. If he were to engage in witnessing, which forms an integral part of his religion, from door to door in any village he wishes in Lebanon now or in the reasonably foreseeable future, there is a real chance that the first applicant may experience intimidation, verbal and physical and significant physical harassment, which amounts to serious harm within the meaning of

¹⁴ Response to information request LBN103554.E, “Whether Lebanese authorities keep records on Lebanese citizens who did not fulfill their military obligations prior to the abolition of compulsory military service; whether those citizens can be identified when they enter or leave Lebanon”, *Immigration and Refugee Board of Canada*, 11 February 2010, accessed at http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452789&l=e on 26 April 2013.

¹⁵ *Appellant S395/2002 v MIMA* (2003) 216 CLR 473 per McHugh and Kirby JJ at [40].

¹⁶ *Appellant S395/2002 v MIMA* (2003) 216 CLR 473 per McHugh and Kirby JJ at [40] and per Gummow and Hayne JJ at [80].

s.91R(1)(b) of the Act. The Tribunal further finds that the primary applicant's religion is the essential and significant reason for the persecution which he fears.

37. The Tribunal also finds that the persecution which the applicants fear involves systematic and discriminatory conduct in that it is deliberate or intentional and involves selective harassment for the Convention reason religion.
38. There is no evidence before the Tribunal that the applicants may be able to avoid persecution by relocating within Lebanon.
39. In light of the country information that their religion is not officially recognised in Lebanon and all the official restrictions placed on Jehovah's Witnesses, including the right to get married, property rights, the right to congregate and practise their religion openly, the Tribunal finds that the applicant cannot avail himself of the protection of the Lebanese authorities.
40. The Tribunal finds that there is a real chance that he will be persecuted for the Convention reason of religion, now or in the reasonably foreseeable future, if he were to return to Lebanon. The Tribunal finds that his fear of persecution is well-founded.
41. For the reasons given above the Tribunal is satisfied that the first named applicant is a person in respect of whom Australia has protection obligations. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a).
42. The second applicant did not appear before the Tribunal to give evidence. The third applicant is too young to give evidence. On the evidence before it, the Tribunal is not satisfied that they have a well-founded fear of persecution for any reason or that there are substantial grounds to believe that they will face a real risk of significant harm in Lebanon. However, the Tribunal finds that both are members of the first applicant's family.
43. The Tribunal is not satisfied that the other applicants are persons in respect of whom Australia has protection obligations. Therefore, they do not satisfy the criterion set out in s.36(2)(a) or (aa). However, the Tribunal is satisfied that the second applicant is the first applicant's wife and the third applicant is the first applicant's child and are members of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i).
44. As such, the fate of their application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicants will be entitled to a protection visa provided they meet the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

45. 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; and
 - (ii) that the other applicants satisfy s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant.