

**1306112 [2013] RRTA 837 (27 November 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1306112  
**DIAC REFERENCE(S):** CLF2012/225192  
**COUNTRY OF REFERENCE:** Lebanon  
**TRIBUNAL MEMBER:** Shahyar Roushan  
**DATE:** 27 November 2013  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, a citizen of Lebanon, applied to the Department of Immigration (the department) for the visa [in] November 2012. His claims are set out in a statutory declaration attached to his application for a protection visa. He also provided additional evidence to the department at an interview with a delegate of the Minister [in] February 2013. The delegate refused to grant the visa [in] March 2013.

2. The applicant appeared before the Tribunal [in] October 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. He was represented in relation to the review by his registered migration agent. At the hearing the applicant submitted a copy of a statutory declaration, a signed copy of which was provided to the Tribunal earlier.
3. The applicant claims that he worked as a [driver], transporting [material] from Lebanon to Syria. Following the Syrian uprising in early 2011 he was unable to continue this work, but he volunteered to transport aid material to Syrians in [Village 1] and across the border. He claimed that as a consequence of his activities his [vehicle] was stolen and burnt. He was also shot at and received threats warning him to stop his activities. He fears Hezbollah, its allies and 'pro-Syrian agents' if he were to return to Lebanon.
4. The delegate was not satisfied that the applicant engaged in cross-border activities or that he was identified and targeted by Hezbollah or supporters of the Syrian regime in Lebanon. He was not satisfied that there is a real chance that he will be persecuted for Convention reason. The delegate was not satisfied that there are 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 the applicant will suffer significant harm.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

5. 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.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. 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').

8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
9. The Tribunal did not find the applicant to be a credible and truthful witness and has concluded that the decision under review should be affirmed. In reaching this conclusion, the Tribunal has had regard to the numerous inconsistencies in his evidence, as well as other reasons detailed below.
10. First, in his written claims to the department, oral evidence to the delegate and testimony before the Tribunal the applicant provided inconsistent evidence in relation to his claim that he had delivered humanitarian aid to Syrian refugees.
11. In his statutory declaration [in] October 2012, submitted in support of his application for a protection visa, the applicant claimed that following the closure of the Syrian Lebanese border, his employer asked for drivers to volunteer to transport humanitarian aid to the Syrian refugees, situated close to the border with Syria. He volunteered to assist the Syrian refugees and made numerous trips to [Village 1] where he came under gunfire. He also claimed to have transported 'scores' of wounded Syrian fighters to hospitals in Tripoli.
12. In his interview with the delegate, however, he claimed for the first time that after the borders closed he crossed the border illegally into Syria, smuggling aid material, such as rice and flour, to Syrians in Syria. When asked where he went to in Syria, he replied 'Homs'. He also claimed that he used old bridges to cross into Syria and that he had carried out this work for 7 or 8 months.
13. At the Tribunal hearing the applicant provided a different account by claiming that in early 2011 he began transporting humanitarian aid into Syria and delivered the material to a house or persons located immediately across the border. He claimed that he did not go into Syria and that he had travelled just across the border. He claimed that he had carried out this work for a period of over one year and until May 2012.
14. The above inconsistencies were put to the applicant at the hearing. He responded by stating that he considered the area 'even before the river' to be part of Homs. The Tribunal does not consider this response to adequately explain the problematic nature of the applicant's evidence and has serious concerns in relation to the applicant's credibility and the reliability of his evidence.
15. Secondly, the applicant provided inconsistent evidence in relation to how he and his truck were impacted as a consequence of claimed activities.

16. In his statutory declaration [in] October 2012 he claimed that [in] May 2012 his truck was stolen and burnt as a payback for his personal contribution to the Syrian uprising. He claimed that he did not report the incident to the police, fearing being detained.
17. In the interview, however, the applicant claimed that his truck was initially stolen and he reported the incident to the Lebanese Internal Security, but he found the truck in Akkar without help from the government. Some time later, when he was returning from Syria to Lebanon, after having off loaded aid material he had in the truck, he was shot at by Alawis in the Lebanese side of [Village 1]. As a result of shots fired at his truck, the truck was burnt. He escaped and then some people gave him a ride back to Tripoli.
18. At the hearing the applicant provided a different account of what had happened to his truck and under what circumstances. He claimed that he was transporting aid material to Syrian refugees on the Lebanese side of the border when he came across a checkpoint in [Village 1]. He decided not to stop and as a result his truck was shot at and the material in the back of the truck caught fire. He left the truck one street away from the checkpoint and escaped on foot. He sought refuge at a house and was subsequently transported back home. He did not claim that his truck was ever stolen. Nor did he claim that he had reported the matter to the authorities.
19. The above inconsistencies were put to the applicant at the hearing. He responded by stating that he did not report the matter to the police because he was not the owner of the truck and that the matter was reported to the police by the truck owner. The applicant did not provide an explanation for the other inconsistencies in his evidence. The Tribunal considers the applicant's account and evidence in this regard highly problematic and bereft of credibility.
20. Thirdly, the applicant introduced entirely new evidence at the hearing by claiming that while he was still in Lebanon his brother was stopped on the street by people affiliated with Hezbollah who told him that they intended to kill the applicant. This information was not provided to the department at any point. When this was put to him at the hearing, he stated that the incident happened to his brother and when he was asked about his brother he reported the incident. The Tribunal finds this explanation unsatisfactory. If the applicant's brother had been told by Hezbollah that they intended to kill the applicant, he would not have failed to mention this to the department, either in his statement or in his oral evidence to the delegate.
21. Following the hearing the Tribunal wrote to the applicant under s.424A of the Act. The applicant did not respond to or comment to the specific information put to him. Rather, he conceded that 'there were a number of inconsistencies' between his oral evidence to the delegate and his evidence before the Tribunal. He explained that the inconsistencies arose due to 'high levels of anxiety' that he had been experiencing during the interview, which 'adversely impacted his ability to accurately recall relevant past events'. He also explained that 'the omission of the claim that his brother was stopped on the street by people affiliated with Hezbollah was again due to heightened level of anxiety'. The Tribunal finds these explanations unsatisfactory. In relation to the applicant's oral evidence to the delegate, having listened to interview the Tribunal did not form the impression that applicant's ability to provide oral evidence to the department had been impeded for any reason. The applicant did not provide any medical evidence to show that he had been incapacitated in anyway or that his ability to give evidence to the delegate was hampered due to medical reasons. Indeed, if the applicant had experienced any difficulties in providing oral evidence to the delegate due to anxiety it would be reasonable to expect him or his representative to have indicated this during or after the interview. In the Tribunal's view, the inconsistencies in the applicant's

evidence seriously undermine the credibility of his claims relating to assistance provided to Syrian refugees.

22. For all the above reasons the Tribunal did not find the applicant to be a credible and truthful witness. The totality of his evidence shows a propensity to tailor and shift his evidence in a manner which achieves his own purpose. The Tribunal, therefore, does not accept that the applicant had raised money for or had delivered humanitarian aid or provided any form of assistance to Syrian refugees in Lebanon or Syria. The Tribunal is of the view that the applicant has manufactured these claims in order to achieve an immigration outcome. It follows that the Tribunal does not accept that he had driven a truck across the border to Syria at any time to deliver humanitarian aid to Syrians after February 2011. The Tribunal does not accept that he had transported wounded Syrian fighters to [hospital]. The Tribunal does not accept that his truck was stolen, damaged or burnt as a consequence of his claimed activities. The Tribunal does not accept that shots were fired at him and/or his truck or that he was targeted by anyone in [Village 1] or anywhere else. The Tribunal does not accept that he was ever threatened in any way, including through his brother, by anyone in Lebanon. The Tribunal does not accept that he was subjected to monitoring or any form of restriction. The Tribunal does not accept that the applicant had participated in anti-Syrian demonstrations in Lebanon, had expressed views critical of the Syrian regime or had received threats for these reasons. The Tribunal does not accept that there is a real chance that the applicant will be denied the capacity to earn a livelihood due to monitoring or restrictions which he claimed would be placed upon him. The Tribunal does not accept that there is a real chance that the applicant will be subjected to serious harm by the Syrian regime, Syrian operatives, pro-Syrian groups or individuals in Lebanon, including Hezbollah, Alawis and groups allied with these groups.
23. As the Tribunal has rejected the applicant's claims that he had raised money for or had delivered humanitarian aid or provided any form of assistance to Syrian refugees in Lebanon or Syria, the Tribunal is not satisfied that there is a real risk that he will suffer significant harm for these reasons.
24. In his prehearing submission the applicant put forward a number of claims, some of which he did not pursue at any other point during the process. The Tribunal has considered and will deal with these claims in turn.
25. The applicant claimed that since his departure from Lebanon there has been an intensification of sectarian and politically motivated violence in Lebanon, including 'intermittent sectarian clashes in Tripoli'. The Tribunal accepts that sectarian clashes have erupted from time to time in certain parts of Lebanon. In Tripoli sectarian tensions and violence have been evident in the neighbourhoods of Jabal Mohsen and Bab El Tabbaneh. A November 2012 International Crisis Group report, which refers to there having been 'chronic conflict between Tripoli's Jabal Mohsen and Bab Tebbaneh districts',<sup>1</sup> indicates that the most visible outgrowth of the fighting in Syria between Sunni Syrian insurgents and the country's Alawite-dominated regime, has been 'intensification of the decades-long conflict opposing the areas of Jabal Mohsen and Bab Tebbaneh in Tripoli'. The fighters from Bab Tebbaneh reportedly opposed the Assad regime in Syria, while the residents of Jabal Mohsen were 'wholeheartedly backing Assad' and seeing in the potential fall of the regime 'an existential threat to their community,

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<sup>1</sup> International Crisis Group 2012, *A Precarious Balancing Act: Lebanon and the Syrian Conflict*, Middle East Report No. 132, 22 November, UNHCR Refworld, p.29, <http://www.refworld.org/docid/50af2c082.html>.

a small and isolated minority'.<sup>2</sup> The clashes in the neighbourhoods of Jabal Mohsen and Bab El Tabbaneh do not appear to have spread wider to encompass other areas in Tripoli, including [El Minieh]. The applicant did not claim to have suffered any harm in the past as a consequence of clashes in Bab El Tabbaneh and Jabal Mohsen or for the reason of his Sunni religion or any other reason. The country information consulted by the Tribunal did not suggest that Sunnis in Lebanon are being seriously harmed or persecuted by Shi'as, Shi'a groups or other religious groups in Lebanon for the reason of their religion.<sup>3</sup>

26. The applicant claimed that his brother was inside [Mosque 2] when it was targeted by a car bomb. He sustained injuries and was [hospitalised]. The applicant stated at the hearing that his brother has now recovered. More generally, the applicant also expressed concerns in relation to bombings and being 'caught up in the orchestrated violence while travelling to work, attending a mosque or whilst shopping' because of his Sunni religion. He claimed that he would be denied the right to worship in mosques, given the threats of further bombings of religious institutions; and that his right to earn a living will be impeded due to 'threats of outbreak of further sectarian violence'. While he also claimed that an increase in 'religious fundamentalism [is] adversely impacting on the youth of [his] country', he did not claim that he personally feared harm for this reason.
27. According to news reports, the August 23 blasts, which targeted two Sunni Muslim mosques and killed 47 people, came less than a fortnight after a deadly explosion in a Shi'a neighbourhood south of Beirut. As it was put to the applicant at hearing, there have been no reports of further similar attacks in Tripoli. Other reports indicate that the authorities have since charged 7 people over the bombing.<sup>4</sup> The Tribunal does not consider the incident to be a typical occurrence. On the basis of the evidence before it, the Tribunal is not satisfied that there is a real chance that the applicant will be killed or harmed or otherwise persecuted in the context of bombings of this nature if he were to return to Tripoli. The Tribunal is not satisfied that there is a real risk that the applicant will be arbitrarily deprived of his life or that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined as a result of bombings of the nature he has referred to if he was returned to Lebanon.
28. The applicant also claimed that as Sunni he will be subjected to a denial of his 'universal right to law and order'; restrictions on his liberties, including his freedom of movement; arbitrary detention; 'censure' of his political and religious views; ongoing monitoring; denial of his right to worship in a mosque (due to threats of further bombings); mistreatment at the hands of militias or gunmen; and deprivation of legal protection and 'processes' in areas 'under the control of militias and gunmen'. Other than making general statements about the situation in Lebanon, the applicant did not expand on these claims at the hearing and did not provide any country information to support of the claims and allegations listed in his pre-hearing submission.

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<sup>2</sup> Ibid.

<sup>3</sup> See, for example, US Department of State 2013, *Country Reports on Human Rights Practices for 2012 - Lebanon*, 19 April, Section 2.a,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204372>.

<sup>4</sup> Lebanese city of Tripoli rocked by deadly explosions, *BBC News*, 23 August 2013,

<http://www.bbc.co.uk/news/world-middle-east-23811328>; and Lebanon charges 7 over Tripoli mosque bombing, *The National*, 14 October 2013, <http://www.thenational.ae/world/middle-east/lebanon-charges-7-over-tripoli-mosque-bombing#ixzz2iQXbyIDE>.

29. The sources consulted by the Tribunal do not suggest that Sunnis are denied the freedom to practise their religion or that the applicant would be seriously harmed in Tripoli because he is a Sunni.<sup>5</sup> The Tribunal has uncovered no information to suggest that Sunnis in Lebanon face restriction on their ‘liberties’ and freedom of movement; that they are denied the right to worship in mosques for any reason. With regard to his political and religious views, the Tribunal has expressly rejected the applicant's claims that he had participated in anti-Syrian demonstrations in Lebanon, had expressed views critical of the Syrian regime or had received threats for these reasons. To the extent that the Tribunal is prepared to accept that, generally, Sunnis in Lebanon may hold views that are critical of the Syrian regime and supportive of the Sunni rebels, the Tribunal has found no information in the sources consulted to suggest that individuals who express their support for the Syrian uprising or criticise the Syrian regime are subjected to harm or mistreatment. When this was put to the applicant at the hearing, he stated that the Lebanese government does not provide such information. The Tribunal finds that the applicant’s chance of facing Convention related harm, including denial of capacity to earn a livelihood, as consequences of clashes between Alawis and Sunnis in their respective Tripoli neighbourhoods of Jabal Mohsen and Bab al-Tabbaneh to be remote. The Tribunal is not satisfied that there is a real chance that the applicant will be killed or injured, or otherwise persecuted by militias, gunmen or anyone else, or that he will be prevented from practising his religion, as a result of rising sectarian tensions in Lebanon or the bombing of [Mosque 2] mosque in Tripoli.
30. Other than the bombing of [Mosque 2] referred to above, the Tribunal accepts that over the years Lebanon has witnessed a number of bombings and assassinations that have been attributed to Hezbollah or Syrian operatives still active in Lebanon. However, these assassinations have specifically targeted high profile politicians, investigators and journalists. The applicant has no profile or characteristics that are likely to bring him to the attention of Hezbollah, the Syrians or anyone else. The Tribunal is of the view that there is only a remote chance that the applicant will suffer harm in the context of this form of violence if he were to return to Lebanon now or in the reasonably foreseeable future.
31. The Tribunal is not satisfied that there is a real risk that the applicant will be arbitrarily deprived of his life or that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined as a result of his Sunni religion, political or religious views, sectarian violence or bombings of the nature he has referred to if he returned to Lebanon.
32. The applicant referred to deterioration of security situation in border area and north Lebanon; ‘tit for tat’ kidnappings and ‘widespread politically motivated kidnappings and extortion’; detention without trial; lawlessness; disorder; widespread criminality; destruction of property and gunmen roaming the streets and threatening civilians in his home town. The applicant did not provide any other evidence to support these general claims. The Tribunal accepts that Lebanon is currently experiencing some instability, as well as political and sectarian tensions, which have resulted in parts of the country being affected by violence. However, there is no persuasive information before the Tribunal to suggest that, other than the clashes in the neighbouring suburbs of Jabal Mohsen and Bab El Tabbaneh, gunmen are roaming the streets of wider Tripoli, threatening or harming civilians. The Tribunal does not accept the claims. The Tribunal is not satisfied that the real risk of significant harm arising from the sectarian

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<sup>5</sup> See, for example, US Department of State 2013, *Country Reports on Human Rights Practices for 2012 - Lebanon*, 19 April, Section 2.a, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204372>.

tensions, instability and the general lack of safety the applicant is apprehensive of in Lebanon is faced by him personally. The Tribunal is not satisfied that the general security situation in Lebanon would expose the applicant to a real chance of being kidnapped, threatened, extorted, harassed, mistreated at checkpoints or seriously harmed in any other way for a Convention reason in Lebanon at the hands of militias, gunmen, militants, Hezbollah, the Syrian regime or anyone else in Lebanon.

33. The applicant referred to Syrian military strikes on Lebanese territory. While there is evidence of cross-border incidents since the refugees began crossing into Lebanon, including reports of Syrian soldiers pursuing people fleeing the country,<sup>6</sup> the Tribunal has found no information indicating that ordinary Lebanese nationals are being targeted by the Syrian regime or the Lebanese government as a consequence of any incursions or strikes on Lebanese territory. On the basis of the evidence before it, the Tribunal finds that there is no real chance that the applicant will suffer harm as a result of Syrian military strikes on Lebanese territory.
34. The Tribunal has found that the applicant does not face a real chance of serious harm arising from intensification of sectarian and political violence, instability and disorder. Having regard to the claims and evidence considered above, the Tribunal is also not satisfied that there is a real risk that he will be arbitrarily deprived of his life or that he will otherwise suffer significant harm as a result of instability, tension, general violence, deterioration of security situation in border area and north Lebanon, kidnappings, extortion, lawlessness, disorder, criminality,.
35. The applicant claimed that the influx of Syrian refugees in Lebanon has resulted in chronic unemployment amongst the Sunni community. He claimed that his family have been 'impoverished' as Syrian workers, who are prepared to work for lower wages, have taken over their jobs. Syrian workers have 'infiltrated' every employment sector, causing high employment, which, in turn, has impoverished the Sunni population and has contributed to criminality and radicalisation of the youth. Whilst in his pre hearing submission the applicant claimed that his brothers' jobs at an aluminium factory were taken over by Syrians, at the hearing he claimed that their place of employment was destroyed as a result of the bombing that also destroyed [Mosque 2]. In any event, as it was put to the applicant at the hearing, the Tribunal appreciates the applicant's concerns and understands that the flow of Syrian refugees into Lebanon has placed a heavy burden on the country.<sup>7</sup> While it is true that the areas populated with Sunnis have been generous in hosting the vast majority of Syrian refugees,

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<sup>6</sup> See, for example, 'France condemns Syrian incursion into Lebanese territories', *The Daily Star*, 8 June 2012; <http://www.dailystar.com.lb/News/Politics/2012/Jun-08/176120-france-condemns-syrian-incursion-into-lebanese-territories.ashx#axzz2I5nJsF8m>; 'Lebanese president condemns Syrian border incursions', Alakhbar, 23 July 2012, <http://english.al-akhbar.com/node/10172>; and Jeff Neumann, 'Syria's newest key battlefield: the Lebanese border', *GlobalPost*, 20 Dec 2012; <http://www.globalpost.com/dispatch/news/regions/middle-east/lebanon/121219/lebanon-border-syria-assad-fsa-rebels-smuggling-sunni-shiite-hezbollah>; and International Crisis Group, A Precarious Balancing Act: Lebanon and the Syrian Conflict, Middle East Report N°132, 22 November 2012, <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Lebanon/132-a-precarious-balancing-act-lebanon-and-the-syrian-conflict.pdf>. See also 'Syrian Refugees Scared to Return, Scared to Stay' 2011, *The National*, 4 October, <http://www.thenational.ae/news/world/middle-east/syrian-refugees-scared-to-return-scared-to-stay>.

<sup>7</sup> See, for example, World Bank: Lebanon lost \$7 billion due to Syrian refugees, *Ya Libnan*, 16 November 2013, <http://www.yalibnan.com/2013/11/16/world-bank-lebanon-lost-7-billion-due-to-syrian-refugees/>



any additional pressure on the Sunni population, as acknowledged by the applicant, has been unintended. It is, however, understandable that Lebanese nationals, perhaps more so Sunnis, feel over-stretched as hosts to over a million Syrian refugees, giving rise to tensions and resentment. It is equally understandable that some Syrian refugees in Lebanon, due to impoverishment or other reasons, might engage in criminal behaviour. The burden of the presence of so many Syrian refugees in Lebanon is carried, more or less, by all Lebanese nationals who have to compete for jobs, access to health care, commodities and resources in difficult economic circumstances. The Tribunal appreciates the applicant's concerns that he might find it difficult to find work in the transport industry due to the closure of the Syrian Lebanese border, his previous employer ceasing his transportation business and the 'influx' of Syrian drivers prepared to work for lower wages. However, the Tribunal is not satisfied that the applicant faces a real chance of being seriously harmed for a Convention reason as a result of the presence of Syrian refugees in Lebanon. Nor is the Tribunal is satisfied that there is a real chance that the applicant will face 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, for Convention related reasons.

36. The Tribunal has found that the applicant does not face a real chance of serious harm arising from the influx of Syrian refugees in Lebanon. Having regard to the claims and evidence considered above, the Tribunal is also not satisfied that there is a real risk that he will be arbitrarily deprived of his life or that he will be subjected to torture; cruel or inhuman treatment or punishment or degrading treatment or punishment as defined as a result of the presence or influx of Syrian refugees in Lebanon.
37. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
38. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
39. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

## **DECISION**

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

Shahyar Roushan  
Senior Member