

1001150 [2010] RRTA 404 (19 May 2010)

DECISION RECORD

RRT CASE NUMBER: 1001150

DIAC REFERENCE(S): CLF2009/113908

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: R Mathlin

DATE: 19 May 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 stateless and formerly resident in Lebanon, arrived in Australia [in] April 2008 and applied to the Department of Immigration and Citizenship (the Department) for a Protection (Class XA) visa [in] August 2009. The delegate decided to refuse to grant the visa [in] January 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The applicant applied to the Tribunal [in] February 2010 for review of the delegate's decision.
4. 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

5. 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.
6. 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).
7. 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'

8. 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.
9. 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.

10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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

18. The Tribunal has before it the Department's and the Tribunal's files relating to the applicant, and has had regard to relevant material on these files, as well as the information from external sources which is referred to below, in making its decision.
19. According to information provided in his protection visa application, the applicant is a single male in his early twenties. He was born in Nahr al Bared camp for Palestinian refugees in Lebanon, and resided there with his family until May 2007, when he moved to Al Baddawi refugee camp. He remained in Al Baddawi until he travelled to Australia in April 2008. He travelled to Australia on a student visa, using a Lebanese travel document for Palestinian refugees issued in January 2008 and valid until 2013. He attended UNRWA schools in the two refugee camps, completing secondary school in June 2007. In Lebanon he worked as a cashier and packer in a [shop] until May 2007, and was thereafter unemployed.
20. In a statement submitted in support of his protection visa application the applicant claims that he is stateless and is registered with UNRWA. He stated that he fears that if he returns to Lebanon he will be harmed because of his nationality, Palestinian, and because he is suspected of having links to Fatah al Islam (FAI).
21. According to *Jane's World Insurgency and Terrorism* database, 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, whose "stated aim, as declared by the group's leaders, is to destroy Israel and institute an Islamic state in Palestine". Its leader is Shakir al-Absi, a Palestinian-Jordanian born in the West Bank moved to Nahr al-Bared in 2006. Fatah al-Islam was based in the Nahr al-Bared Palestinian refugee camp but was 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, as well as cells of sympathisers 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.
22. The applicant claimed that his father was killed in a car accident in 2003. Two older brothers do not live in Lebanon. Another brother is married and lives with his family, the applicant's mother and other two siblings at Al Baddawi refugee camp. He stated that in 2004, while he was still at school, he started working in the [shop] owned by the family's neighbour, [Mr A]. The neighbour was aware that, after the death of the father, the family needed additional financial support.
23. The applicant described the harsh conditions and discrimination faced by Palestinians in Lebanon in relation to citizenship, employment, health care and welfare.

24. The applicant stated that following the invasion of South Lebanon by Israel in July 2006 many residents of the south were displaced to the north, and to Nahr al Bared camp. As a result, a new organisation emerged in the camp, Fatah Al Islam (FAI) The organisation began to recruit males aged between eighteen and forty. It was dangerous to refuse to join or to appear not to support them. The situation in the camp became very tense.
25. Once three men came while the applicant was working in [Mr A]'s shop and tried to recruit him. He told them that he was still at school and they left. The applicant's brother, a teacher at a UNRWA school was also approached, as were many other teachers.
26. As a result of the activities of Fatah al Islam, which included smuggling weapons into the camp, and a number of attacks on the Lebanese army, the army increased security controls at the camp.
27. On 20 May 2007 Fatah Al Islam militants attacked Lebanese Army posts on the outskirts of the camp; the LAF responded by firing missiles and bombs into the camp. Many civilians were killed and there was panic. The applicant's family decided to remain in their home. [A number of] days after the conflict broke out a group of seven FAI militants forced their way into the applicant's home. They demanded that the family leave the house, allowing them fifteen minutes to grab their belongings. The house was on a hill with good visibility; the applicant believes that this is why FAI wanted it.
28. The applicant and his family left the camp with great difficulty and were taken to hospital and from there to Al Baddawi camp. There they met members of [Mr A]'s family who told them that he had been arrested by the LAF on suspicion of being a member of FAI.
29. After about two weeks the family moved into a house in Al Baddawi.
30. The conflict between FAI and the LAF ended in September 2007. The LAF then started investigations and arrests at both Nahr al Bared and Al Baddawi, mostly of men suspected of membership of FAI or of having helped FAI. Many of the men were taken without warning and their families had to retain lawyers to obtain information about them. While in detention they were subjected to torture
31. The applicant had sat his final exams [in] 2007 and intended to go to university but changed his plans because of the ongoing random arrests of young Palestinian men by the LAF and also because he feared the re-emergence of FAI at Al Baddawi camp. The applicant heard of the possibility of obtaining a student visa to study in Australia and borrowed money from a friend of his father.
32. In Australia the applicant experienced financial difficulties and was afraid that he would not be able to pay for the course. He spoke to a friend about his situation and the friend made an appointment at [Organisation A] in July 2008 but the applicant did not attend because he thought [Organisation A] was the Department and he did not know if they could help him.

33. In March 2009 the applicant's mother phoned him and told him that his two brothers had been arrested by the LAF. They were released [in] June 2009. They had been subjected to severe torture and had ongoing medical problems. They said that the family had been accused of helping FAI, which had used their house as an ammunition depot and a base for launching attacks on the LAF. The LAF had thought that their house belonged to [Mr A], but had subsequently found out that it did not, and this led to his brothers' arrests. The authorities questioned them about the whereabouts of their other brothers, including the applicant. The applicant's brothers were released because there was insufficient evidence of involvement with FAI, however they were warned that they could be re-arrested at any time, as could their brothers if they returned to Lebanon. The applicant was told by his brothers that he was especially at risk because he had worked for [Mr A], who was still being held in detention.
34. The applicant went into panic as he could not return to Lebanon, he was still having financial difficulty and could not concentrate at school because of his worries. He was again referred to [Organisation A] and saw them in July 2009.
35. The applicant provided a number of documents in support of his application, including:
- UNRWA family registration card;
 - Lebanese identity card for Palestinians;
 - UNRWA letter confirming the applicant's residency in Nahr al Bared camp until May 2007 and his departure from that camp due to the events of 20 May 2007;
 - Letter (on letterhead of the PLO Popular Palestinian Committee Nahr al Bared camp) confirming that the applicant was employed by [Mr A] from February 2004 until "the start of the war";
 - Death certificate of the applicant's father;
 - Medical reports relating to the applicant's brothers [Brother 1 and Brother 2], stating that they had been examined [in] June 2009 and had been found to have bruises, contusions, burns and serious injuries apparently caused by beatings on the legs and lower back;
 - Letter issued by [name deleted: s.431(2)], solicitor in Tripoli, stating that he represented the applicant's mother in relation to the detention of her sons [Brother 1 and Brother 2];
 - Psychological report dated [in] August 2009 in relation to the applicant, prepared by [Mr B], Sessional Clinician with [health centre deleted: s.431(2)], stating that he had seen the applicant [on two occasions in] July 2009 when the applicant had sought help for tension and anxiety. [Mr B] diagnosed major depressive disorder;
 - Letter on letterhead of PLO Lebanon – North Zone essentially confirming the details of the applicant's account as set out in his protection visa application, including that the family had been residents of Nahr al Bared until the fighting

forced them to flee; and that the applicant's two brothers, [Brother 1 and Brother 2] had been detained on suspicion of supporting the FAI.

36. The applicant was interviewed about his application [in] November 2009 by a delegate of the Minister for Immigration. At the interview he provided a further document on letterhead of the PLO, Lebanon – North Zone, stating that his two brothers had been detained and tortured again between [a date in] October and [a date in] November 2009.
37. The delegate refused to grant a protection visa. She found that while Palestinians in Lebanon experience a high degree of discrimination in relation to employment, social welfare and property rights, she did not find that the level of discrimination faced by the applicant personally was so serious that it threatened his capacity to subsist, and therefore did not constitute persecution. She found that the applicant did not have a well founded fear of persecution based on his imputed association with FAI. She did not believe that the authorities would have taken two years to discover that the applicant's family home belonged to them and not to [Mr A]. She noted that the PLO had provided two letters confirming the family circumstances as described by the applicant, but she understood the applicant's explanation for these letters to indicate that they would be issued by the PLO based on information provided by the family, without independent verification of the truth of the matters reported. She also considered that the applicant's delay in applying for a protection visa was inconsistent with the existence of a well founded fear of persecution.
38. The applicant provided additional information in support of his application for review.
39. In a statutory declaration made [in] March 2010 the applicant made the following comments on the delegate's decision. In relation to her finding that the applicant had achieved a reasonable level of education, he stated that he and his siblings had all attended schools run by UNRWA, which are not resourced as well as schools run for Lebanese citizens by the Lebanese government. Palestinians have to sit special entrance exams for university and must pay higher fees than Lebanese citizens. Palestinians, including the applicant's two older brothers, attended a special tertiary education institution inside the camp, which is run by UNRWA and provides a lower level of education than a university. The best graduates of this institution can obtain jobs in other Arab countries.
40. The applicant's father studied nursing with UNICEF and worked in a private hospital where he was paid less than Lebanese nurses.
41. His family owned the house in which they lived in Nahr al Bared (which is now destroyed) but not the land it stood on. They want to return to Nahr al Bared but the Lebanese government has not made money available for the camp to be rebuilt.
42. In relation to the delegate's finding that it was implausible that it would take the Lebanese authorities two years to discover that the applicant's family, rather than [Mr A], was the owner of their home, he stated that there are no addresses in the camps, and neither the Lebanese authorities nor UNRWA would be aware of the precise location of the house.
43. The applicant indicated that the PLO does make its own investigations before providing letters such as those he presented.

44. The applicant also provided a further copy of the PLO letter; further medical reports detailing the injuries claimed to have been suffered by the applicant's brothers in detention; a letter from [education facility deleted: s.431(2)] stating that the applicant's brother [Brother 1] is employed there and has been suffering from back pain since September 2009; and letters dated [in] March 2010 from [name deleted: s.431(2)], solicitor, stating that he had received the sum of 1000USD from the applicant's mother for "services rendered in the arrest matter of both her sons", and confirming what she had told him about the arrests of her sons.
45. The applicant appeared before the Tribunal at a hearing held [in] April 2010 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, who attended the hearing.
46. The applicant agreed that his claims involved consideration of two main issues – whether there was a real chance that he would be detained on return to Lebanon on suspicion of involvement with FAI, as a result of either his connection with [Mr A] or the use of his family home by FAI during the 2007 fighting; and whether, as a Palestinian in Lebanon, he faced such serious discrimination as to constitute Convention persecution.
47. The applicant stated that he is no longer studying here. He said that his brother [Brother 1], who had been supporting him financially, could no longer afford to do so. Because of the injuries he suffered during his two periods of detention, [Brother 1] was unable to work for long periods and is now only working part time. The applicant said that the money borrowed from his father's friend to fund his studies is not yet being repaid; he does not know what the arrangements were for the repayment of that loan, but said that the lender was a very good friend of his father's who is financially comfortable as his children work overseas and send him money.
48. The applicant's mother, younger brother and sister, [Brother 1] and his wife are now living in a unit in Al Baddawi camp. [Brother 1] is supporting the family on his reduced income and the other two brothers who live overseas send some money. His younger brother and sister attend a UNRWA school in Al Baddawi camp.
49. The applicant said that he attained his certificate of completion of high school [in] 2007 (an untranslated copy of which had been provided to the Department). He had then needed to sit a further examination for entry to university – this exam was for Palestinians, while Lebanese students only needed to complete their final school exams. The applicant had not sat this exam because he had psychological problems and depression resulting from the fighting in Nahr al Bared and the destruction of the family's home and the loss of all their possessions; and because the way Palestinians are treated in Lebanon means that a young man does not live as a human being and cannot fulfil his dreams and hopes.
50. The applicant said that apart from being detained at checkpoints, as was usual for all Palestinians, neither he nor his brothers came to the attention of the authorities following the Narh al Bared fighting until March 2009, when his two brothers were arrested and detained. He said that that until then the authorities had "nothing to prove against [them]". He said that as a result of the investigations carried out and

information obtained from people arrested at the time, the authorities became aware of the fact that the house of the applicant's family had been used by FAI as a base for launching attacks on the LAF; also the applicant's association with [Mr A] became known.

51. The Tribunal asked the applicant whether he knew what his brothers were questioned about during their detention. He said that they could not discuss these things with them over the phone because the phones were monitored, but he knew in general that they were accused of helping FAI by giving them their house and weapons.
52. The Tribunal asked the applicant when he learned that [Mr A] had been arrested. He said that it was when they were living in Al Baddawi, and his mother met [Mr A]'s relative in the street. The applicant said that this was about two or three months after he came to Australia. He said that he has no idea whether [Mr A] is still being detained, but he said that it is now confirmed that [Mr A] was with FAI. He presented some documents downloaded from the Internet which had been translated from Arabic using Google's translation function. The documents made little sense and it was not evident what website they were from. The Tribunal requested the applicant to obtain translations of the relevant documents if he intended to rely on them and his adviser requested three weeks in which to do so.
53. The Tribunal put to the applicant that in the statement submitted with his protection visa application he had stated that they became aware of [Mr A]'s arrest within two weeks of going to Al Baddawi; he was asked to explain the apparent inconsistency with his evidence at the hearing that he was in Australia when the family learned about this. He said that he knew that [Mr A] was arrested when he was in Lebanon but something came from the government about his arrest after the applicant came to Australia. He then said that in Lebanon a relative had said that [Mr A] had been arrested; after he came to Australia he learned that [Mr A] had been formally charged.
54. The applicant said that everyone knew that he worked for [Mr A] and maybe he will be arrested because of this. He said that he asked his brother whether the Lebanese authorities had asked about him (the applicant) when he was detained; his brother told him that they had.
55. The Tribunal put to the applicant that if [Mr A] was arrested in May or June 2007 it made no sense that neither the applicant nor his brothers was arrested until nearly two years later, given what the applicant said about their close association. The applicant said that at the beginning the authorities would not know that they were neighbours; they found this out during the investigation and suspected that the applicant's family had helped [Mr A]. Then they started looking for the applicant's family. The authorities thought that the house belonged to [Mr A]. Only later they found that the house belonged to the applicant's family; then they found out that the applicant worked for [Mr A]. The Tribunal asked the applicant how he knew all this. He replied that he obtained this information from documents that he had received, and from his brother in Europe. The documents he was referring to were the PLO letters and the medical reports. The Tribunal noted that none of these documents described the course of the investigation which had led the authorities to the applicant's family two years after the relevant events. The applicant said that his brother in Europe had spoken to [Brother 1], and had told the applicant what [Brother 1] had said. The Tribunal noted that the applicant had said that he could not obtain details from [Brother 1] over the phone.

because it was too dangerous, and asked how his other brother could do so. The applicant said that this is because his older brother is a citizen of Sweden. The Tribunal asked was not the risk to the brother in Lebanon rather than the person overseas. The applicant said that the danger is for both; but there is no danger to his brother if he has citizenship of another country. The applicant said that [Brother 1] refused to discuss the details of his detention with the applicant, all the information he has comes from his brother in Europe.

56. The Tribunal asked about the letters provided by the PLO and suggested that they merely confirmed information provided by the person to whom they were issued, in this case, the applicant's family. The applicant said that the PLO conducted its own investigations into the matters set out in the letters; he said that he is not sure how they investigate, but perhaps they communicate with the Lebanese government. The Tribunal put to him that surely the Lebanese government would not confirm, for example, that his brothers had been tortured as was stated in the PLO letters. He asked why not, saying that the Lebanese government can do what it likes; he also pointed out that there were letters from doctors confirming that his brothers had been tortured.
57. The Tribunal noted that it had some concerns about the credibility of his account. The applicant stated that he wished to discuss these matters with his adviser so that she could provide written submissions. The Tribunal agreed to this course and allowed three weeks for submissions to be provided.
58. The Tribunal then discussed with the applicant the various forms of discrimination that he claimed to have suffered as a Palestinian.
59. He said that he has no passport and no identity papers.
60. He said that Palestinians cannot be treated in a Lebanese hospital. UNRWA provides some treatment, but if you need surgery or hospital treatment you have to go on a waiting list for UNRWA to pay half of the cost of treatment.
61. He said that Palestinians are restricted in the kinds of work they can do. They cannot work for the government; if they work for private employers, like his father did, they are only casual workers and are paid less. Otherwise, they can only work for UNRWA.
62. Palestinians are not given the same access to university as Lebanese students. Even if he had been able to complete a tertiary education he would not have been able to obtain a proper job for which he was trained.
63. Palestinians are not treated as humans; they have no country. They are very restricted in the camps and it is not safe for them outside. They can be arrested, pulled off a bus or assassinated.
64. At the end of the hearing the Tribunal invited the applicant's adviser to make written submissions in relation to two issues of concern to it. Firstly, the Tribunal noted that the claimed arrests of the applicant's two brothers some eighteen months after the Nahr al Bared fighting appeared inconsistent with country information indicating that the number of arrests of suspected FAI members in the camp had declined since the immediate aftermath of the fighting. In these circumstances, the Tribunal queried whether there was a real chance that the applicant would face arrest, detention or

mistreatment amounting to persecution if he now returned. Secondly, the Tribunal queried whether the available evidence indicated that the applicant, as a Palestinian residing in Lebanon, faced discrimination of sufficient seriousness as to constitute persecution. [In] May 2010 the Tribunal received the applicant's response. This comprised a submission by his adviser; a further statutory declaration made by the applicant; a partial translation of the document submitted by the applicant at the hearing, said to be a news report quoting an official source, listing names of "detained defendants from the Fatah el-Islam organisation", which includes the name [Mr A], who the applicant states is his former neighbour and employer; media reports and an Amnesty International report on discrimination against Palestinians in Lebanon.

65. The submission of the applicant's adviser includes media reports (from November and December 2009 and January – March 2010), indicating that arrests of members of FAI are continuing. The adviser argues that the Lebanese authorities are not merely concerned with identifying and arresting those involved in the Nahr al Bared war, but are also concerned about the ongoing security threat posed by FAI, so that its members, or suspected members or supporters, remain of adverse interest to the authorities.

Country information

66. The following overview of the 2007 conflict at Nahr el-Bared comes from an Internal Displacement Monitoring Centre (IDMC) report on refugees in Lebanon in July 2008:

In mid-2007 tens of thousands of Palestine refugees in northern Lebanon were displaced as the camp and surrounding area they had long inhabited became the scene of a long siege and intense fighting between the Lebanese army and a militant group. On 20 May 2007, clashes erupted between armed members of the radical Fatah al-Islam and the army in Tripoli. Fighting was triggered when security forces raided an apartment in Tripoli following a bank robbery, and clashes spread to the nearby Nahr el-Bared camp after Fatah al-Islam fighters attacked and killed Lebanese soldiers at an army outpost (The Guardian, 4 June 2007; GoL, 23 June 2008).

A short-lived ceasefire was followed by three months of fighting, during which more than 20,000 Palestine refugees living in Nahr el-Bared camp and about 10,000 other Palestine refugees and Lebanese living in adjacent areas were forcibly displaced (UNRWA, 4 June 2007; Reuters, 23 May 2007). In total, according to the government, the conflict resulted in the displacement of over 30,000 people and the death of 50 civilians, 179 soldiers and over 220 Fatah al-Islam members (GoL, 23 June 2008). The battle for control of the camp and use of heavy artillery caused massive destruction in Nahr el-Bared camp and adjacent municipalities, which are densely populated residential areas (Lebanese Republic, 10 September 2007). All buildings in Nahr el- Bared camp were either entirely destroyed or severely damaged (UNRWA, 26 June 2008)

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.

67. According to this report, there were numerous allegations of human rights violations committed by the LAF against Palestinian residents of the camp during and immediately after the conflict:

Amnesty International reported that some 200 people were arbitrarily arrested and detained on account of their involvement with Fatah al-Islam. In addition, scores of

Palestinians were reportedly threatened, humiliated and abused by soldiers. Others were whipped, given electric shocks and sexually abused. On 22 May 2007, two people were shot dead at an army check-point as they fled the camp. On 29 June 2007, three protesters were killed in an apparently peaceful demonstration calling for Palestine refugees displaced from Nahr el-Bared to be allowed to return to their homes. Widespread looting, burning and vandalism of vacated homes and property was reported after the army had taken control of the camp (Amnesty International, 2008; PHRO, 5 June 2008; Alef, 18 June 2008). The government has said it is investigating these allegations (Amnesty International, 2008), but human rights organisations stress the need for an impartial and independent investigation.

68. The IDMC's *Internal Displacement – Global Overview of Trends and Developments in 2007* report from April 2008 states:

...the army's siege of Nahr al Bared camp for Palestinian refugees in the summer of 2007, which aimed to force out members of the militant Fatah al-Islam group, led more than 30,000 residents to flee into other camps including the nearby Beddawi camp. Nahr al Bared was virtually destroyed by the fighting, and the vast majority of its displaced inhabitants remained at the end of 2007 in other camps, with overcrowding and competition for scarce resources exacerbating tensions between communities. By early November, between 700 and 1,000 families had returned to Nahr al Bared, of which only 500 families were considered to have returned permanently

...For those displaced from the Nahr al Bared camp, the level of destruction offered no possibility of feasible return and they continued to rely on host communities, mainly in other refugee camps.

Internal Displacement Monitoring Centre 2008, *Internal Displacement – Global Overview of Trends and Developments in 2007*, IDMC website, April [www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/BD8316FAB5984142C125742E0033180B/\\$file/IDMC_Internal_Displacement_Global_Overview_2007.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/BD8316FAB5984142C125742E0033180B/$file/IDMC_Internal_Displacement_Global_Overview_2007.pdf) – Accessed 21 August 2008.

69. A June 2008 report in the Jamestown Foundation's *Terrorism Monitor* argues that the conflict in Nahr el-Bared relates to wider Islamist influence in Lebanon's Palestinian refugee camps, arguably with consequences for the relationship between Palestinian residents of the camps and the Lebanese security authorities :

Approximately a year has passed since the outbreak of violence between the Lebanese Armed Forces (LAF) and the armed Islamist group Fatah al-Islam in the Palestinian refugee camp of Nahr al-Bared in Northern Lebanon; and yet – one year later – the situation in the camps is far from being stable. On the contrary, episodes of violence have spread to the Ain al-Hilweh camp, and the conflict has broadened to include other Salafist factions, such as Jund al-Sham, or Asbat al-Ansar (Daily Star [Beirut], June 17).

In the past few months fighting has resumed in the Ain al-Hilweh camp, the largest Palestinian camp in Lebanon, located near the southern city of Sidon. Accordingly, Ain al-Hilweh – traditionally a foothold of Fatah and the former operating base of Yasser Arafat in the 1980s – is now increasingly under the control of Islamist groups (Ya Libnan, June 15).

...These episodes have to be analysed in the context of the deteriorating security environment and the rising activism of Salafist groups within the refugee camps, as shown by the increased number of attempted attacks, as well as by the growing presence of international fighters. For instance, in the first week of June, the explosion of a remotely detonated bomb in the

proximity of an army post in the northern town of Abdeh (near the Nahr al-Bared camp), and the killing of a would-be suicide bomber from Saudi Arabia in the Ain al-Hilweh camp put the LAF in a state of heightened alert and again brought attention to the question of cracking down on terrorist activities within the camps (Daily Star, June 17; Naharnet, June 2). The army post struck by the blast is at Abdeh, in northern Lebanon, near the Nahr al-Bared refugee camp where the offensive was launched.

The increased polarisation and factionalism within the camps and the internal weakening of Fatah's authority are gradually undermining the historical bargain between the Palestinian factions and the Lebanese government. Historically, in fact, the Palestinian refugee camps have been outside Lebanese authorities' jurisdiction, with Palestinian factions and Fatah in charge of internal security. In exchange for the de facto autonomy, Palestinians had the responsibility of preventing "spillovers" of internal violence into Lebanon. Therefore, the recent trends of increasingly contested internal authority and the renewed attacks against the LAF seem to confirm that refugee camps have become one of the main security hotspots for the Lebanese government and that the LAF will be increasingly more involved in these areas .

Berti, B. 2008, 'Fighting in Lebanon's Palestinian Refugee Camps Result of Increased Islamist Influence', *Terrorism Focus*, Vol. 5, Issue 24, Jamestown Foundation Global Terrorism Analysis website, 24 June <http://jamestown.org/terrorism/news/article.php?articleid=2374261> – Accessed 27 August 2008.

FINDINGS AND REASONS

70. The applicant claims to be a stateless Palestinian who was born and resided in Lebanon until his departure in April 2008. Having sighted the travel document on which he travelled to Australia, and based on the documentary evidence provided by the applicant, including UNRWA registration documents, and country information about the position of Palestinians in Lebanon, the Tribunal finds that the applicant is a stateless Palestinian whose country of former habitual residence is Lebanon. There is no information before the Tribunal to indicate that the applicant has the right to enter or reside in any other country. His claims to refugee status will be assessed as against Lebanon, as his country of former habitual residence.
71. A threshold question is the applicability of Article 1D of the Refugees Convention to the applicant. Article 1D operates to exclude from the Convention persons presently receiving protection or assistance from a United Nations organ or agency other than the United Nations High Commissioner for Refugees (UNHCR). Article 1D states:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations, other than the United Nations High Commission for Refugees, protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.
72. The Full Federal Court in *MIMA v WABQ (WABQ)* held that the first paragraph of Article 1D applies to exclude a person from the Convention if the person belongs to a class of persons who were receiving protection or assistance from organs or agencies of the United Nations other than UNHCR as at 28 July 1951, the date when the Refugees Convention was signed, this being the time referred to by the words 'at present' The

relevant factual issue in relation to the first paragraph is whether the applicant belongs to the relevant class of persons. In the case of a stateless Palestinian applicant, if Palestinians as a group were as at 28 July 1951 receiving protection or assistance then the first paragraph applies. The Full Court in *WABQ* observed that the United Nations Conciliation Commission for Palestine (UNCCP) and the United Nations Relief and Works Agency (UNRWA) appeared to have been providing protection and/or assistance to Palestinians at the relevant time.

73. If a person falls within the terms of the first paragraph, it is then necessary to consider if the second paragraph applies. The Full Court in *WABQ* held that the second paragraph is also concerned with a class of persons rather than individuals and that it is sufficient if *either* protection *or* assistance has ceased for any reason in respect of the class (without their position being definitively settled) for the second paragraph to apply. It will not be sufficient that protection or assistance has ceased in relation to an individual member of the class. Whether protection or assistance has ceased in relation to the class of persons is a question of fact for the Tribunal to determine according to the material before it. In relation to a stateless Palestinian applicant, if it is found that either protection or assistance has ceased in relation to the class, the applicant is entitled to have his or her application for a protection visa determined according to the Convention definition in Article 1A(2): *WACG v MIMA* [2002] FCAFC 332.
74. The Tribunal is satisfied, based on available information, that Palestinians as a group were, as at 28 July 1951 receiving protection from the United Nations Conciliation Commission for Palestine (UNCCP). The Tribunal is satisfied that the position of Palestinians has not been definitively settled. It also finds, based on the factual information before it, that “protection”, which was provided only by the UNCCP, ceased in the early 1950s when the UNCCP reached the conclusion that it was unable to fulfil its mandate: see BADIL Resource Center for Palestinian Residency & Refugee Rights 2005, ‘Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention’, BADIL website August, p.21 <http://www.badil.org/Publications/Books/Handbook.pdf> – Accessed 3 March 2010.
75. Accordingly, the Tribunal finds that the applicant is a member of a class of persons not presently receiving protection from a UN organ or agency, and that he is not excluded from the operation of the Refugees Convention under Art. 1D.
76. The applicant claims that he resided with his family in Nahr al Bared refugee camp until the fighting between the LAF and FAI from May to July 2007 caused them to leave and seek refuge in Al Baddawi camp, where his family remains. He claims that, should he return to Lebanon, he will be at risk of human rights abuses amounting to persecution from the LAF, because he will be suspected of involvement with FAI. He claims that this is because his family house was used by FAI as a military base during the fighting; and because their neighbour, by whom the applicant was employed, has been detained as a suspected member of FAI. The applicant claims that his two brothers have both been detained for this reason on two occasions, from March to June 2009 and in October/November 2009. He claims that they were detained without charge and subjected to physical abuse and torture. He claims that he will be at risk of the same mistreatment if he returns.

77. The applicant's account is broadly consistent with independent country information. He has provided a number of documents which appear to provide some objective support for his claims. These include medical reports stating that his two brothers were suffering from injuries caused by beatings inflicted while they were in detention; letters from a solicitor stating that he was retained by the applicant's mother in relation to the detention of her sons, his brothers; and letters from the PLO administration in North Zone, Lebanon, confirming the essential details of the applicant's account, namely that he was employed by [Mr A], and that his two brothers were detained on two occasions in 2009. There is country information indicating that a man with the same name as the applicant's former employer and neighbour has been detained as a suspected member of FAI. Country information also indicates that members of FAI are still of interest to the Lebanese security forces, and the Tribunal is satisfied that this is not necessarily because of ongoing interest in the Nahr al Bared events specifically, but because of the perceived risk to internal Lebanese security posed by FAI and other similar groups, on an ongoing basis.
78. While the Tribunal has some doubts about the credibility of the applicant's account, as presented over the course of processing of his application, its reservations are relatively minor. For example, the Tribunal notes that the applicant gave apparently inconsistent evidence about when he and his family learned of the arrest of [Mr A], stating in his written claims that this was soon after he arrived in Al Baddawi, but giving oral evidence that it was after the applicant arrived in Australia. He sought to explain this by saying that they received information that [Mr A] had been arrested in Al Baddawi, but he heard after he was in Australia that [Mr A] had actually been charged. The applicant was not able to explain consistently and satisfactorily, in the view of the Tribunal, the source of his information about how the security forces linked [Mr A] with the applicant's family over the course of the period of eighteen months between his claimed arrest and those of the applicant's brothers. The applicant said that his brother in Sweden had given him this information, which he had obtained from [Brother 1] in Lebanon. Yet the applicant was not able to explain, in the view of the Tribunal, why it was that [Brother 1] would give details to their brother in Sweden that he was unwilling to discuss with the applicant in Australia. Also, as noted at the hearing, the Tribunal finds somewhat implausible the applicant's explanation for the lengthy delay between the arrests of [Mr A] and the fighting in Nahr al Bared, and the first arrests of the applicant's brothers in March 2009, some eighteen months later. However, the applicant's claims about this issue certainly cannot be dismissed outright on the basis that they are inherently implausible; even without the supporting documentation, the Tribunal would not be able to find with certainty that the applicant's claims about the adverse interest of the authorities in his family, and the reasons for it, is not true. While the Tribunal is not convinced that the man referred to in the report submitted by the applicant is indeed his former neighbour and employer, nor can it find with certainty that this is not the case.
79. On the whole, the Tribunal considers that the deficiencies in the applicant's account are minor. Some relate to events which took place some time ago, and may simply represent a failure of memory. They may be attributable to the applicant's psychological condition as described in the report of [Mr B] [in] August 2008, which indicates that the applicant has been suffering from depression for a considerable period of time. The Tribunal also notes that the applicant is young, and was clearly nervous and distressed at the Tribunal hearing. It is possible that the applicant has exaggerated

or embellished some aspects of his story; or that he has felt obliged to try to explain matters which are beyond his knowledge, thereby providing evidence which appears not to be plausible. Even if this were the case, and some details of the applicant's account are not true, this of itself would not entitle the Tribunal to dismiss his entire account as lacking in credibility. Given the level of support provided for the applicant's account in the documentary evidence referred to above, the relatively minor nature of the inconsistencies in his account, and its broad plausibility and consistency with independent information, the Tribunal is prepared to accept the applicant's account of the events which led to his departure from Lebanon. In these circumstances, it cannot discount as remote or far fetched the possibility that he would be of adverse interest to the Lebanese security authorities, as a suspected member or supporter of FAI, should he return to Lebanon, and that he would, as a consequence, be arrested and detained, possibly for a lengthy period, without charge. In so finding, the Tribunal is not satisfied that the fact that his brothers have now been detained and released twice can be taken to indicate that the authorities would no longer be interested in members of this family, including the applicant. The Tribunal accepts, based on the country information about mistreatment of suspected FAI members (and other persons detained on security grounds by the LAF), that should the applicant be arrested and detained there is a high chance that he would be subjected to severe mistreatment, including torture. The Tribunal is satisfied that this is serious harm for the purposes of s.91R(1)(b) of the Act; and that this harm involves systematic and discriminatory conduct as required by s.91R(1)(c) of the Act. The Tribunal therefore finds that such harm amounts to persecution. The Tribunal is satisfied that this persecution would be directed against the applicant because of a political opinion imputed to him, namely support for or membership of FAI. The Tribunal is satisfied that the measures likely to be taken against the applicant are not justified by the fact that FAI is a designated terrorist organisation which engages in acts of violence against the Lebanese state.

80. Because the Tribunal is satisfied that the applicant has a well founded fear of persecution based on his imputed political opinion, it is not necessary to decide whether the discrimination he faces in Lebanon as a stateless Palestinian is of sufficient seriousness as to constitute Convention persecution.

CONCLUSION

81. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

82. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 Officer: PRMHSE