

1406045 [2015] RRTA 47 (9 February 2015)

DECISION RECORD

RRT CASE NUMBER: 1406045
COUNTRY OF REFERENCE: Lebanon
TRIBUNAL MEMBER: Ruth Cheetham
DATE: 9 February 2015
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.

Statement made on 09 February 2015 at 1:56pm

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 visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Lebanon, applied for the visa [in] September 2013 and the delegate refused to grant the visa [in] February 2014.
3. The applicant appeared before the Tribunal on 9 February 2015 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's adult daughter, a permanent resident of Australia. Two previous hearing dates had been vacated at the request of the applicant, due to the unavailability of her daughter on those days to give evidence. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
4. For the reasons which follow, the Tribunal has decided to remit the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

CONSIDERATION OF CLAIMS AND EVIDENCE

Protection claims – summary

5. The applicant claims to fear harm from her husband. She claims to have been sexually, physically and emotionally abused by her husband throughout her marriage but more seriously since her husband took a second wife in 2008. The applicant claims that her children and others have witnessed episodes of physical violence against her by her husband. She claims that her husband became violent when she attempted to obtain a divorce. She claims that she came to Australia because she fears harm by her husband.
6. The applicant claims that she is unable to access effective protection by the authorities in Lebanon.
7. The applicant claims that she is unable to relocate within Lebanon to avoid harm.

Personal and migration history – summary

8. The applicant was born in North Lebanon in [year]. She completed primary education and has never been employed. She lived in [District 1] since her marriage. She married her husband in [year] and has [children] with him, ranging in [age]. She has [children] in Australia, and [children] in Lebanon.
9. The applicant has travelled to Australia on two occasions, including her current trip. The first time, the applicant was granted a tourist visa and arrived in Australia [in] July 2010, when her daughter in Australia was pregnant. She stayed until [date] October 2010 and returned to Lebanon before her visa expired. For her current trip, she was granted another tourist visa [in] November 2012 and arrived in Australia [in] December 2012. Her visa was valid until [date] June 2013. She applied for a protection visa application [in] September 2013.

Issues

10. The Tribunal is satisfied that the applicant is genuinely in fear of returning to Lebanon. The reasons for that conclusion are set out below. The issues, therefore, which are dispositive of this matter are whether the applicant's fear is well-founded, and whether the harm she fears is for a Convention reason, for which she is unable to access effective State protection or to relocate within Lebanon to avoid the harm.

Protection claims – evidence

11. The applicant's claims have been advanced in her protection visa application which included a copy of her passport, an interview with the delegate, her review application, and the hearing before the Tribunal.
12. The applicant has provided documentation to the delegate and to the Tribunal to support her claims, all of which is held on the relevant Departmental and Tribunal files. The documentation (set out in the order in which it was received by the Department and the Tribunal) consists of:
 - a. Letter (with translation) dated [in] July 2013 by [an official] of the applicant's District ([District 1]) attesting that the applicant has been married to her husband since [year], that her husband treats her badly and the abuse has worsened since her husband married a second wife six years previously who is [much younger]. The [official] attests that the applicant was forced by her husband's ill-treatment to leave home and stay with her married daughter and her family in Australia;
 - b. Statutory declaration made 10 September 2013 by the applicant's daughter in Australia attesting that she had witnessed her mother being beaten and abused repeatedly by her father, in front of her and her siblings, and that her mother has been financially and emotionally neglected by her father, escalating when he married a much younger second wife;
 - c. Letter, undated, by the nephew of her husband attesting that he known the applicant since she married his uncle and that he has witnessed his uncle repeatedly beating and humiliating the applicant in front of others, and that the ill-treatment has gotten worse over the past few years;
 - d. Letter, undated, buy the wife of the author of the letter above (the nephew of the applicant's husband) attesting that while she was in Lebanon in 2011 for 10 months she witnessed the applicant being beaten and abused on several occasions and being unhappy and depressed in her marriage;
 - e. Letter (with translation) dated [in] March 2014 by [an official] of [District 1] attesting that the applicant's husband has married a second wife and treats the applicant badly, abusing and humiliating her and forcing her out of their home on a number of occasions. The author states that he tried twice, and the police tried, to reconcile the applicant and her husband, unsuccessfully;
 - f. Document (with translation) entitled "Warning to stop physical abuse and initiative for divorce" dated [in] September 2012 by the applicant's attorney to

the applicant's husband setting out reasons for requesting the husband to stop the violence and agree to an amicable divorce;

- g. Petition (with translation) to the Islamic Court of [District 1] dated [in] September 2013 by the applicant's attorney setting out the reasons for requesting a separation;
 - h. Letter (with translation) dated [in] March 2014 by [an official from a stated location] (in the district of [District 1]) attesting that the writer knows the applicant personally and that her husband has married a second wife and treats the applicant badly and has sent her out of the home many times.
13. The applicant's then migration agent also provided a written pre-hearing submission, undated but received on 28 March 2014, taking issue with the findings by the delegate set out in the decision record. The applicant provided a copy of that decision record with her review application.
 14. At the hearing, the applicant gave compelling evidence of her fear of harm by her husband and provided additional details of the nature of the harm that he has inflicted on her during her marriage. She said that he has threatened to harm her if she returns to Lebanon. She no longer has any contact with him but when she first arrived in Australia (on her current trip), she received threatening and abusive telephone calls from him.
 15. The Tribunal asked the applicant about the separation petition which she filed in September 2013. The applicant responded that her husband refused to agree to a legal separation and has told her that he would take revenge on her if she tries to get a separation or divorce.
 16. The applicant said that on the occasions that her husband had kicked her out of the home, she had stayed temporarily with her married daughter (in [District 1]), and also temporarily with her step-mother and step-siblings in Tripoli but that this was not a long term solution since her daughter and her step-mother both have their own families to provide for.
 17. The Tribunal asked the applicant whether she had ever reported her husband to the police for assaulting her. She stated that shortly after her husband married his second wife, he beat her badly and she went to the police and reported him, but instead of acting on her report, the police officer said it was a marital matter and called the husband to the police station. The husband came, the police officer told him he should not behave in this way, especially in front of their children, and induced him to apologise to the applicant, after which the police officer scrapped the report and said the matter was finished. The applicant said that her husband is very good friends with the police officer.
 18. The Tribunal asked whether she would be able safely to relocate within Lebanon and thereby avoid the risk of harm by her husband. The applicant said she would not be able to, that her husband would be able to find her through his connections. She said that he has threatened that he would find her and he has also said that if he wanted to he could harm her even in Australia. The applicant said that her husband is very well connected and wealthy, that he has said he would take revenge on her "even after a hundred years", and that she is not safe anywhere in Lebanon. She said that her husband, who moved to live with his second wife when they married, has now moved back into the family home and brought his second wife with him and their [children], so she does not have a home to return to if she went back.

19. The applicant's daughter gave evidence at the hearing consistent with the applicant's evidence, and first-hand observations of the manner in which the applicant's husband was violent and abusive towards the applicant. The daughter said that she does not have contact with her father anymore because his phone calls were always abusive and threatening. She said that her father abused and threatened her in particular because she has been her mother's main support, emotionally and financially. The daughter said that even before her mother came to Australia on this occasion, she sent money to her every month because her father does not give her mother any financial support. The daughter stated that her father is a very wealthy man, that he has his own [company], he owns [details deleted], he owns several other [businesses] and he has very good contacts and connections through his businesses. The daughter said that her father verbally threatened her mother over the telephone after she had arrived in Australia. The daughter said that her father has always been violent towards her mother but that it escalated after his second marriage, and that her father has his own weapons at home and has a licence to have them and this increases her fears for her mother's safety.

Criteria for a protection visa, and relevant law

20. The applicant can be granted a protection visa if she meets the criteria set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). Relevant to this application are s.36(2)(a) (the refugees criterion), which requires that the decision maker be satisfied that the applicant has a well-founded fear of persecution in her country of nationality for one of five Convention stipulated reasons¹; and section 36(2)(aa) (the complementary protection criterion), which requires 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 that she will suffer significant harm².
21. 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.

MY FINDINGS

22. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.
23. The Tribunal accepts that the applicant is genuinely in fear of harm if she returns to Lebanon. The applicant gave her evidence in a forthright manner even when it was clearly distressing to her. The Tribunal is satisfied that the applicant was truthful at the hearing and that her claims have been consistently presented in her earlier protection visa application and to the

¹ See Article 1A(2) of the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees. 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, and the High Court has considered the Convention definition of a refugee in a number of cases - See *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.

²'Significant harm' is exhaustively defined in s.36(2A) and s.5(1) of the Act.

Tribunal. The personal statements provided by the applicant made by members of her family and by officials in her District in Lebanon are also consistent with the evidence provided by the applicant.

24. The Tribunal accepts that the harm feared by the applicant is serious physical harm. Her husband, on her evidence, beat her, assaulted her, humiliated her before her family and her community, and forced her out of her home on several occasions. Her husband has refused to agree to a separation or divorce and the applicant fears that the abuse and ill treatment will continue if she returns to Lebanon. These types of harm are clearly serious enough to amount to persecution.
25. The Tribunal accepts that there is a real chance of the harm feared being inflicted on the applicant.
26. First, her husband has previously inflicted serious harm on the applicant and there is no reason why, having threatened to do so again, he would not be capable of doing so in the future.
27. Second, the evidence by the applicant and her daughter, and the other persons providing statements, indicates that the level of harm has increased in recent years with her husband's second marriage, including with his refusal to agree to an amicable divorce.
28. Third, the applicant's evidence, and that of her daughter, of threats against the applicant since she left Lebanon suggests an escalation in the seriousness of the threats by her husband and indicates that his intention to harm the applicant has not lessened with time or distance.
29. Fourth, the independent information supports the applicant's claims of the likelihood of violence within the family, for "honour" reasons, or in relation to domestic (partner) violence. The Tribunal has examined what independent information there is available on the question of violence in Lebanon against women by their domestic partners. Given the private, indeed secretive, nature of such incidents, there is very little such information. There are no official statistics on domestic violence in Lebanon and it is very difficult, according to a Lebanese NGO (KAFA (Enough) Violence and Exploitation), to obtain statistics, but both KAFA and the United Nations Country Team in Lebanon report that rates of domestic violence in Lebanon are "high", estimated to affect 75 per cent of women at some point in their lives³. An article in *Al-Raida*, the journal of the Institute for Women's Studies in the Arab World, contends that "in Lebanon violence against women, especially related to sex and domestic battery, remains highly linked to honor"⁴. According to Human Rights Watch, KAFA reported 66 cases of honour crimes between 1999 and 2007⁵. However, a 2007 news article in the Beirut-based *Daily Star* states that although official statistics do not exist, estimates put the number of honour killings in Lebanon at about one a week⁶.

³ British Broadcasting Corporation (BBC). 3 December 2009. Natalia Antelava. "Lebanon's Hidden Problem of Domestic Abuse." <<http://news.bbc.co.uk/2/hi/8392475.stm>> *The Daily Star* [Beirut]. 7 December 2009. Dalila Mahdawi. "Pleas to End Domestic Violence Fall on Deaf Ears." <<http://www.dailystar.com.lb/News/Local-News/Dec/07/Pleas-to-end-domestic-violence-fall-on-deaf-ears.ashx#axzz1ZkOGozKY>>

⁴ *The Daily Star* 18 October 2007. Caroline Anning. "Domestic Violence Remains Hidden in Shadow of Tradition." <<http://www.dailystar.com.lb/News/Politics/Oct/18/Domestic-violence-remains-hidden-in-shadow-of-tradition.ashx#axzz1ZkOGozKY>>

⁵ Human Rights Watch. 11 August 2011. "Lebanon: Law Reform Targets." <http://www.ecoi.net/local_link/200143/304744_en.html> (ecoi.net)

⁶ *The Daily Star* 18 October 2007, op cit

30. The Tribunal is satisfied that the applicant is a member of a particular social group, which matches the parameters identified by the majority of the High Court in *MIMA v Khawar*⁷. The Tribunal finds that the essential and significant reason for the harm feared is the applicant's membership of that particular social group.
31. Accordingly, the Tribunal is satisfied that the applicant faces a real chance of harm amounting to persecution for a Convention reason if she were to return to Lebanon.
32. The Tribunal has considered whether the applicant is able to access effective protection from the State, given that the agent of persecution is not a State agent. In Lebanon, according to the information available to the Tribunal, State intervention in private matters such as domestic violence is seen to violate 'the sanctity of the home',⁸ and to threaten the patriarchal authority in the family.⁹ According to Lebanese women's rights group KAFA, prosecution for domestic violence is rare.¹⁰ In addition, the punishments handed out to perpetrators of honour crimes are lenient.¹¹ The lack of protection offered to domestic violence victims under Lebanese law is exacerbated by the fact that the police often fail to report domestic violence cases. Although police may record violent incidents against women, their reports often do not identify the perpetrator.¹² In most cases, allegations of domestic violence are ignored by the police,¹³ and the victims are instructed to sort out their problems at home.¹⁴ The lack of a specific law relating to family violence, and the perception that such incidents are a family matter, informs the reluctance of the police to intervene.¹⁵ In addition, hospitals often report cases of abuse as 'home accidents' without making any further investigations¹⁶.
33. The Tribunal accepts the applicant's evidence that her attempt to obtain protection, by the local police, was unsuccessful. This evidence is consistent with the independent information examined above. The Tribunal is satisfied that the applicant is unable to access effective State protection.

⁷ (2002) 210 CLR 1. In that case, Gleeson CJ found that it was open to the Tribunal to determine that 'women in Pakistan' were a particular social group. McHugh and Gummow JJ held that it was open to the Tribunal to determine that there was a social group in Pakistan comprising, at its narrowest, 'married women living in a household which did not include a male blood relation to whom the woman might look for protection against violence by members of the household'.

⁸ Clark, S. 2008, 'Lebanese women still vulnerable to violence', *The Daily Star*, 9 June http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=92895

⁹ Human Rights Watch 2011, 'Lebanon: Enact Family Violence Bill to Protect Women', UNHCR Refworld website, 6 July <http://www.unhcr.org/refworld/docid/4e327fd2.html>

¹⁰ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

¹¹ Safa, O. 2010, *Countries at the Crossroads 2010: Country Report – Lebanon*, Freedom House website <http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=191>

¹² 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247>

¹³ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

¹⁴ 'Liberal Lebanese women suffer under outdated laws' 2008, *Agence France Presse (AFP)*, 7 March <http://www.nahamet.com/domino/tn/Newsdesk.nsf/0/0B134D5B4DC1C6D0C2257405000EC229?OpenDocument>

¹⁵ 'Domestic violence remains hidden in shadow of tradition' 2007, *The Daily Star*, 18 October http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=86044

¹⁶ 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247>

34. The Tribunal has considered whether the applicant is able to relocate within Lebanon in order to avoid persecution.
35. The Tribunal notes that the applicant has travelled to Australia, which suggests she is capable of relocating and living in places other than her family home in Lebanon.
36. Against this, the Tribunal has taken into account that the applicant has never lived anywhere in Lebanon except her family home, and that other than her trips to Australia to stay with her daughter she has not otherwise travelled outside of Lebanon.
37. The applicant has never been employed in Lebanon, and she is not currently employed in Australia.
38. The applicant's financial resources are extremely limited and she relies entirely on her daughter in Australia for financial support and accommodation. She does not have any direct family elsewhere in Lebanon with whom she is able to live, her family in Tripoli are the wife and children of her father's second wife, and both her own parents are deceased. The occasions on which she attempted to live away from her husband's abuse were short term and not sustainable for the long term.
39. The applicant's psychological health must be considered fragile, based on her evidence and her obvious distress during the hearing, which would erode her capacity to live independently elsewhere in Lebanon.
40. The Tribunal is satisfied that, even if it were possible for the applicant to relocate within Lebanon to escape harm by her husband, it would be unreasonable to expect her to do so.

CONCLUSIONS

41. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

42. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Ruth Cheetham
Member