

060840806 [2007] RRTA 45 (4 January 2007)

DECISION RECORD

RRT CASE NUMBER: 060840806

DIMA REFERENCE(S): CLF2001/31260 CLF2004/31334

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Ms Christine Long

DATE DECISION SIGNED: 4 January 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant and his wife Protection (Class AZ) visas under section 65 of the *Migration Act 1958* (the Act).

The applicants, who are citizens of Lebanon, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for Protection (Class AZ) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.

The matter is now before the Tribunal.

RELEVANT LAW

Under subsection 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.

Section 36(2) of the Act, as in force before 1 October 2001, provided that a criterion for a Protection (Class AZ) 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 Refugees Convention as amended by the Refugees Protocol. (Amendments to subsection 36(2) introduced on 1 October 2001 do not apply to the present applications.) ‘Refugees Convention’ and ‘Refugees Protocol’ are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class AZ) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994. Under those provisions, family members are derivatively entitled to a protection visa on the alternative basis that they are members of the same family unit as an applicant who is found to be a refugee: *Munkayilar v MIMA* (1998) 49 ALD 588 at 592-593, *Mijoljevic v MIMA* [1999] FCA 834 at [14]-[18], *Dranichnikov v MIMA* (2001) 109 FCR 397 at [22]-[23], *MIMA v Shtjefni* [2001] FCA 1323 at [17].) However, all applicants must satisfy the remaining criteria.

Definition of ‘refugee’

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under subsection 91R(1) of the Act persecution must involve “serious harm” to the applicant (para.91R(1)(b)), and systematic and discriminatory conduct (para.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: subsection 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.

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.

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: para.91R(1)(a) of the Act.

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.

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.

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

The Tribunal has before it the Department's file relating to the applicant and his wife, including the delegate's decision record. The Tribunal also has had regard to the material referred to in the delegate's decision. The Tribunal also has before it the applicant's application to this Tribunal for review.

In the protection visa application the male applicant states that he was born in Beirut and speaks reads and writes Arabic and English. He states that he is Lebanese Christian. He indicates that he was married in Lebanon. He states that he was a tradesman prior to coming to Australia and worked in an office in Beirut for about eight years. He indicates that he lived at the same address in Lebanon from the mid 1990s. He indicates that he travelled to Australia using a passport in his name issued in Beirut in the previous year. His visa was issued in Beirut in the month prior to his departure. He states that he left his country legally with the assistance of a neighbour in Beirut and that he obtained his passport with the assistance of a friend who worked in the government. The applicant states that his parents and siblings live in Lebanon.

In his application for protection visa the male applicant states that he left his country because he feared persecution there. He states that if he returns to Lebanon he will be caught, questioned, detained and persecuted. He states that the Lebanese Security forces and the Syrian Intelligence and their supporters will harm him. He said that he was a senior officer and had a significant role in General Aoun's group in Lebanon and was detained and mistreated on a number of occasions. He states that he will be at risk of persecution because of his high profile with this group. He states that he cannot get protection from the harm that he fears in Lebanon because of the Syrian occupation and intervention in Lebanon. He said that he also could not return to Lebanon because of his health and depression problems.

The applicant sent the Department a further statement in support of his application. He states that on a particular date he was kidnapped by three people from the Lebanese authorities while he was distributing leaflets against the Lebanese authorities and the Syrian forces in Lebanon. He states that he was held for several days and questioned about his role within General Aoun's group. The applicant states that in the following month while he was sleeping at his friend's house in the mountains, unknown people came to his house looking for him and threatened his parents; this was because he had an important role in General Aoun's group and was responsible for distributing leaflets against the Lebanese authority and the Syrian forces. The applicant says that he was targeted by the Lebanese authority. The applicant states that Syrian Forces present in Lebanon target anti Syrian activists. The applicant states that he paid money to a friend in government to get his passport so that he would avoid suspicion and investigation from the authority and only people with criminal records are unable to obtain their passport. In Lebanon anything can be done and obtained with money. The applicant said that he was able to leave Lebanon without harm as he had the assistance of a person who worked for a particular organisation.

In his statement the applicant said that he did not lodge his application for protection sooner after he arrived in Australia because he was still afraid and could not decide what was best for him.

On the Department file there are letters received at the Minister's Office in support of the applicant's application and consideration of his case by the Minister under section 417 of the Act. There is a letter from the applicant stating that he and his wife now have a child born in Australia; the child's birth certificate is attached. The statement states that the applicant was employed by General Aoun prior to coming to Australia as his wife's relative (Relative A) was employed at a particular location. He (Relative A) was killed with his two siblings. He states, "Since I came to Australia the Syrian services are looking for me". There is also on the file a translation of a document described as from a person called Person B, together with his position description, dated a number of months after the applicant arrived in Australia. This letter states that the applicant was a member of a specific section in the Lebanese army during the period General Aoun was governing. It states that he fought during the liberation war against the occupying Syrian Army and lost martyred relatives. The letter states that at a particular time many years ago relatives of his wife were killed by the occupying Syrians and a particular relative of his wife's was killed during the war with the occupying Syrians. The letter says that the applicant is wanted by the Syrian Intelligence and the Lebanese Intelligence because of his activities against the Syrian occupation and his demand for Lebanese sovereignty. There is also a statement dated several weeks before this letter saying that three named persons were martyred in two particular years.

On the Departmental file there is also a letter described as from Organisation C, dated the year after the applicant departed Lebanon, which states that the writer/s of the letter, Person B and Person D, was/were contacted by a military person, Person E who was with General Aoun in Paris and he asked that the applicant be assisted because his wife's relatives were killed by the Syrian Army when General Aoun was sent from Lebanon to Paris. It is stated that the applicant and his family were "good supporters of General Aoun". It is stated that the Syrians called to the applicant's house more than once to ask about the applicant.

There is a further letter from Person E on the Departmental file in support of the applicant's application to the Minister. The dated letter is stamped "[Organisation F], [specific section]". The writer, described as holding an official position, states that the applicant is well known to the section and himself. It states that the applicant's relatives were killed by the invading Syrian Army during its invasion of Lebanon. The applicant's wife's relatives were soldiers in the Lebanese Army and were captured and executed. Also another of the applicant's relatives was killed in a bomb explosion in the 1970s. It is stated that the Syrian Regime terrorises Lebanese citizens through its secret service, the Lebanese Army Intelligence and the Hezbollah militia. There is a climate of fear and intimidation caused by the presence of these organisations and people are leaving Lebanon for the sanctuary of other countries. The return of the applicant to Lebanon would mean danger for him and his family.

The applicant's wife made an application for protection visa as a member of the family unit who did not have his/her own claims to be a refugee

The male applicant only made an application for review of the delegate's decision to the Tribunal. In his application for review the applicant makes no new claims. He attaches a dated statement which states that the application for protection visa form allows little room to answer complicated questions and that there has been no intention on his part to avoid answering questions, that there is confusion and contradiction in the delegate's decision and

that he does not know the names of the persons involved in the incidents, that the omission of details by him can be rectified by questioning at an interview and that the delegate was/is careless in referring to his “return to [Country Z]”.

The applicant attended a hearing.

The applicant produced to the Tribunal a copy of the letter described as from Person B. The applicant faxed to the Tribunal a letter from a social worker stating that the applicant and his wife have been receiving support at the hospital following the birth of their child. It states that the applicant spoke at length about his current stress arising from the uncertainty of his immigration status and that during discussions the family spoke of their persecution in Lebanon as a result of their religious beliefs and the applicant’s position in the military. A copy of the birth certificate of the applicant’s child was also sent to the Tribunal.

The applicant and his wife appeared again before the Tribunal to give evidence and present arguments. The applicant’s child was also present. The Tribunal was assisted by an interpreter in the Arabic/Lebanese language. The applicants produced their passports to the Tribunal and a copy was placed on their Tribunal file.

In answer to questions from the Tribunal the applicant stated that a long time ago he had another passport prior to the one he used to come to Australia. He said that he had never left his country before his current trip to Australia. He agreed that his passport was issued in Lebanon on a particular date. He said that he had renewed his passport. He said that he was a member of a specific organisation obtained his passport because Movement and he thought he was in danger. He wanted to run from his country and that is why he got his passport. The Tribunal asked him what happened at that particular time to cause him to want to leave his country. He said he was with General Aoun and had duties as “sons of the country”. The country was “under occupation” and “we were persecuted”. The applicant said that they were attacked and prevented from speaking their minds and being free. He said that they were persecuted by militias/Hezbollah and the government and those who collaborated with Syria to persecute people, especially Christian people, in his country.

The applicant said that just before he came to Australia he worked as a tradesman with his father at an office for 7 to 8 years. He then he joined General Aoun and implemented difficult missions. He was working with his father just before he came to Australia but because of the war there was hardly any work. The Tribunal asked the applicant when he was involved with the missions with the general. He said that he joined the call to support Aoun in the late 1980s and was involved in the war against Hezbollah and Syria. This went on for a year. He was not a soldier in the Army but he answered the call for support as a reserve. After that war erupted. He said that there has been a war for 15 years. The applicant agreed that just before he came to Australia he supported his family and himself from the money he earned in his employment, as a tradesman; he said that he earned the money from working and spent it for living expenses.

The applicant said that just before he came to Australia he lived in the family home in Beirut where he had lived all his life. He said that there had been a bombing there. The applicant said that his father passed away several years ago but his siblings are still living in Lebanon “in this sad situation like everyone else”. He has other relatives who are back in Lebanon.

The applicant said that he chose to come to Australia in particular because his relative has been in Australia for 30 years. He also knew Australia respects people from all walks of life.

The applicant said that he married just before he came to Australia. He made the decision not to return to Lebanon before applying to get his visa; when he applied for it he decided to leave if he got the visa.

The Tribunal asked the applicant what happened which prompted him to get his passport. The applicant said that they came to his place many times and told him to stop what he was doing. They said that they saw pamphlets distributed. These people were from an Islamic group/Hezbollah in army dress and they used to detain people. His mother became scared for him. He was detained on a specific date. He also went to the mountains in the following month and "they came". The Tribunal asked the applicant whether he claimed anything else happened to him apart from the incident when he was detained and the incident when he went to the mountains. The applicant said that he did not want to wait until something else happened. The applicant confirmed that these people were threatening him because of his support for Aoun. The applicant said that he first became a supporter of Aoun in the late 1980s and supported him for two years. After this he was involved with the party for two more years; they were located in a particular location and used to co ordinate demonstrations, observe those movements targeting them. He named others he claims were involved. The Tribunal asked the applicant how much time he spent supporting the party. The applicant said that he was working but he left when he was called and joined them. He said that he spent a week and a month in a particular year. The following year he co ordinated the distribution of pamphlets and discussed the risks facing the country with various departments. He said also they were in contact with a specific location and can name high profile people with whom he was involved; some died and some disappeared.

The applicant said that Aoun went into exile from Lebanon in 1990.

The Tribunal asked the applicant whether he experienced any other incidents apart from the incidents that he had mentioned that had occurred in consecutive months of a particular year. He said "many times the Syrian intelligence tried to approach us". The Tribunal asked him what actually happened to him. He said there was a lot of movement and activities although Aoun was in exile and he himself supported the party. The Tribunal asked the applicant what else he did to support the party apart from looking after the pamphlets/leaflets and organising demonstrations. He said that they had a lot of activities monitoring their enemies and those opposing them; they had to monitor how to defend themselves if the Syrian collaborators came. The Tribunal asked the applicant again whether anything else happened to him apart from the two incidents he claimed occurred in a particular year. The applicant said that he felt he was under close surveillance. The Tribunal asked the applicant how many times he was questioned and detained in his country. He said two times and once in the mountains. He said that the government asked for him twice; they came in unmarked cars. He was detained in a particular year and after that pressure was put on him. He said that people were kidnapped and detained and no one can bring them back. They were put in prison in Syria which he named; over 500 Lebanese people were incarcerated and one of these was a Lebanese chief.

The Tribunal asked the applicant why he obtained his passport when he did given that the incidents that he described occurred in the following year. He said that the movement/group was well known and gave problems to Hezbollah and he knew it was coming. He said that he bribed people to get his passport and knew people who issued passports in the Department of General Security so that it was not hard for him to get a passport. He said that there is corruption in the country so that even a dead man can vote. The Tribunal asked the applicant why he needed to bribe someone to get his passport; he had said that he had a passport before

the current one. He said that it was important for him not to let “them” know that he was getting a passport and that he did not apply for it himself. He had a passport a long time ago.

The Tribunal asked the applicant whether he had any difficulties leaving his country. He said he knew a senior military person as he was a neighbour and worked with him so that he helped him when he left the country. The Tribunal asked him why he needed help. He agreed he had a genuine passport with his correct name and photograph included therein. He said that his friend helped him through at the airport so that he avoided the inspection of his documents. He said that he told the Tribunal previously that he got help exiting his country. The Tribunal asked the applicant why he needed to pay a bribe to get his passport when he obtained it. He said that he wanted to get it as soon as possible and did not want to be questioned. He said he wanted to keep his passport as a precaution. He said that his passport is 100% legitimate and that he was not subject to criminal investigation. The Tribunal queried why then he needed at that time to pay a bribe. He said that otherwise he would be tormented as there is corruption in Lebanon.

The Tribunal told the applicant that it had some concerns about his claims; he claims that he was persecuted but he was living and working in Nepal supporting himself and although he says he had two incidents in a particular year nothing else appears to have happened to him. The applicant then said that he used to sleep at a friend’s house and took precautions even when he was asleep. He said that he was not alone and was supported by others. He said that he had no fixed address.

The Tribunal asked the applicant why he would fear harm in his country if he were to return there now. The applicant said that he is more fearful now. The Tribunal asked him why he feared harm given that according to the country information it had General Aoun had returned from exile to Lebanon and had a number of seats in Parliament. The applicant said that if he returned to Lebanon he would not support Aoun now as Aoun is now “with Hezbollah” and he (the applicant) does not support terrorism. The Tribunal asked the applicant why there would be a problem for him if he returned to Lebanon given that he had left Lebanon because he supported Aoun and that now Aoun had returned there. The applicant said that there is no guarantee the he (Aoun) wont be assassinated. The Tribunal asked him why he would be afraid of harm in Lebanon given the greatly changed political situation in Lebanon. The applicant nodded his agreement to the Tribunal’s statement that the political situation had changed in Lebanon since he had left there but said that his country is a dangerous place and with a blink of an eye there could be a coup d’etat.

The applicant said that he will be persecuted if he returns to his country because he is a Maronite Christian. He said that the suburb he lives in has many Maronite Christians but is close to an area full of Shiite Muslims and there are atrocities going on every day. He is afraid of harm from Hezbollah, Syrians and Iran. The Tribunal pointed out to the applicant that he had said that his family members were still living in his suburb in the family home in Lebanon. The applicant agreed but said that they are not comfortable and are living on their nerves’ they want to flee. The applicant said that he has a young son and his wife is an orphan. She knows he will be involved in politics if they return. The Tribunal asked the applicant how many Christians were living in his suburb/area in Lebanon. He said he did not know but agreed that most of the families living in that area where his family are living are Maronite Christians. He said that his family members live there but they are not party members. He said that his father died because of the anger he felt as a result of provocation from Shiite neighbours. The Tribunal asked the applicant whether the Shiite community lived there previously when he lived in Lebanon. He agreed they did. The Tribunal asked the

applicant how he claimed that things were different now. The applicant said that they had been displaced during the war and now they are back seeking revenge. He said that all these people are armed and even the Army cannot question them or talk to them. He said they do not pay tax and it is “a rotten country”. The Tribunal asked the applicant whether he agreed that there were many Christians in Beirut and the applicant said that was correct but they were not involved with the party.

The Tribunal asked the applicant what he thinks will happen to him if he returns to Lebanon. He said that he will live like “them” and no one knows when the situation will explode. The Tribunal asked him whether he was concerned about the general security situation in his country or was he concerned about what might happen to him specifically. He said that if he returns Hezbollah will seek revenge on a personal level against him. The Tribunal asked him why he thinks Hezbollah will target him if he returns. The applicant said that Hezbollah do not target small elements but seek out the “big bosses”. They will target him because he fought against them and was a responsible leader with a local network.

The applicant said that his wife suffered in Lebanon as she has lost her relatives; she is stressed and affected psychologically. The applicant said that he met his wife in Beirut in the late 1980s.

The Tribunal asked the applicant about the three letters that he had submitted in support of his claims; it asked the applicant how those letters came to be written. The applicant said that when he came to Australia he asked about who was the head of a specific organisation. He was put in contact with Person B. He explained his situation and his wife’s situation to that person and he said that he would speak for them. He said that he would send the letter/s with the seal of the organisation. The applicant agreed that he gave the writers of the letters, that is Person B and Person D, the details included in the letters but he also said that they knew about him themselves. The Tribunal asked the applicant how these people knew about him and he said that “we are holders of membership in the [organisation]” and they know about him from Lebanon. He said that when he met Person B he knew who he (the applicant) was and he knew the names and locations and head officials. The Tribunal asked the applicant if he knew these people in Lebanon and he said he did not because they fled and have been in Australia for about 30 or 40 years. He said that he knew Person E in Lebanon. He then said that he knew a particular official and he was on good terms with Person E and were both “influential”. He said that have his membership ID and know names. He said that the danger was when Syria invaded they took files and used this information. He said this was in 1990.

The applicant said that he cannot live in Beirut as there personal revenge is sought against him and Beirut is full of Shiites. He is a member of Aoun’s movement but they are affiliated with Hezbollah now and “have become against us”. Hezbollah are in the South and in the valley. In North Lebanon the ex prime Minister the head of the party that supports Syria will hand him to Hezbollah.

The Tribunal spoke with the applicant’s wife. She said that she first met the applicant in the late 1980s and he worked as a tradesman. He said that he had a network and was involved in demonstrations against Syria. She said that he told her about this and she observed it also. She said that he had leaflets and had meetings with members but she did not join in the activities as she is a woman. The Tribunal asked the female applicant what she had observed her husband doing in support of his party. She said sometimes she was at his place and members dropped by and talked. She said she was not active in the movement but fully supported them. Her three relatives were killed and she told the Tribunal about the

circumstances of the death of her relatives. The applicant's wife agreed that she married her husband shortly before they came to Australia. She said that he told her before they were married that the danger was getting greater. He told her to get a passport which she did. She did not have a passport before. She got her own passport and did not have any trouble getting her visa or her passport. She said that it is easy to get a visa. The Tribunal asked her if she knew what happened to her husband in Lebanon to cause him to leave. She said that on a specific date they took him for several days and did not return him. She was not there when they took him. The Tribunal asked the applicant why then they obtained the passports in a stated year if this happened in the following year. She said that he had a feeling this would happen because he talks about freedom and liberty. The Tribunal asked her whether she knew of any other incidents that happened to her husband in Lebanon. She said that he used to be subjected to many things but he was clever and ran away. Once there was an incident when he spent in a village and his mother warned him not to return. The Tribunal asked the applicant's wife whether she knew of any other incidents that happened to her husband while he was in Lebanon. She said that he was subject to many other things but the incidents recounted affected them and they remember them. The Tribunal asked her whether she knew what the other things were and she said that she was not with him but someone in his position would be subjected to many things. She said that he supported the Free National Movement headed by General Aoun.

The applicant's wife said that she does not want to return to Lebanon as she does not want to have the same destiny as her mother and does not want her son to grow up as an orphan.

COUNTRY INFORMATION

The Tribunal consulted the following independent country information.

Country Reports on Human Rights Practices Lebanon 2005 released 8 March 2006 state-

Lebanon is a parliamentary republic of 4.5 million citizens in which the president is a Maronite Christian, the prime minister a Sunni Muslim, and the speaker of the chamber of deputies a Shi'a Muslim. President Emile Lahoud was elected in 1998 and his term was due to expire in November 2004; however, in September 2004, the Syrian regime pressured parliamentarians to pass a constitutional amendment that extended President Lahoud's term until November 2007. That coerced decision set off a chain of political events that led to massive demonstrations following former prime minister Rafiq al-Hariri's February 14 assassination, the eventual withdrawal of Syrian military forces from the country in April, parliamentary elections in May and June, and in July the first Lebanese government formed without Syrian control in nearly 30 years. The chamber of deputies (Majlis al-Nuwab) consists of 128 deputies, equally divided between Christian and Muslim representatives. According to international observers, the May-June elections for the chamber of deputies were considered generally free and fair, although most political observers considered the boundaries of the electoral districts to be unfair. The elections resulted in a new, pro-independence majority in the parliament opposed to Syrian interference in the country. That majority used Lebanon's constitutional process to select Fouad Siniora as prime minister in July, reflecting the growing support for Lebanese freedom and democracy.

.....The security forces consist of the Lebanese Armed Forces (LAF) under the Ministry of Defense, which may arrest and detain suspects on national security grounds; the Internal Security Forces (ISF) under the Ministry of the Interior (MOI), which enforce laws, conduct searches and arrests, and refer cases to the judiciary; and the State Security Apparatus, which

reports to the prime minister and the SG under the MOI, both of which collect information on groups deemed a possible threat to state security.

While the constitution provides for an independent judiciary, in practice the judiciary was subject to political pressure, particularly in the appointments of key prosecutors and investigating magistrates.....The judicial system consists of a Constitutional Council to determine the constitutionality of newly adopted laws upon the request of 10 members of parliament; the regular civilian courts; the Military Court, which tries cases involving military personnel and civilians in security-related issues; and the Judicial Council, which tries national security cases. Additionally, there are tribunals of the various religious affiliations, which adjudicate matters of personal status, including marriage, divorce, inheritance, and child custody (see section 5). The religious Shari'a courts are often used by both the Shi'a and Sunni religious communities to determine family legal matters. There are also religious courts in the various Christian sects, Druze, and Jewish communities, but these tribunals are restricted to family legal matters.

.....The aftermath of the February 14 assassination of Rafiq al-Hariri led to significant progress in eliminating political and security influence over the judiciary. Civil rights groups were encouraged by the September appointment of respected, qualified judges to the Higher Judicial Council, which has primary responsibility for disciplining judges and ensuring judicial independence.

The Report on implementation of Security Council Resolution 1559, October 2005 , prepared by Special UN Envoy, Terje Roed-Larson, dated October 2005 states-

I. Introduction

1. The present report is my second semi-annual report to the Security Council on the implementation of resolution 1559 (2004), pursuant to the request of the Security Council, expressed in a presidential statement issued on 19 October 2004 (S/PRST/2004/36) that I continue to report on the implementation of the resolution to the Council every six months.

2. Resolution 1559 (2004), adopted by the Security Council on 2 September 2004 (S/RES/1559), reiterated the Council's strong support for the territorial integrity, sovereignty, and political independence of Lebanon. The resolution called upon all parties concerned to cooperate fully and urgently with the Security Council for the full implementation of this and all relevant resolutions concerning the restoration of the territorial integrity, full sovereignty, and political independence of Lebanon. It also defined a number of operational requirements, among them:

(a) the withdrawal of all remaining foreign forces from Lebanon;

(b) the disbanding and disarmament of all Lebanese and non-Lebanese militias;

(c) the extension of the control of the Government of Lebanon over all Lebanese territory; and

(d) strict respect of the sovereignty, territorial integrity, unity, and political independence of Lebanon under the sole and exclusive authority of the Government of Lebanon throughout Lebanon.

In the resolution, the Council also declared its support for a free and fair electoral process in Lebanon's then upcoming presidential election, conducted according to Lebanese constitutional rules devised without foreign interference or influence.

3. In my first report to the Council on 1 October 2004 (S/2004/777), I concluded that the requirements set out in the resolution had not been met. My second report, the first semi-annual report on the implementation of resolution 1559 (S/2005/272), stated that as of 26 April 2005, the parties concerned had made significant and noticeable progress towards implementing some of the provisions contained in the resolution, although the requirements of resolution 1559 (2004) had not yet been met.

4. Since my last report to the Council of 26 April 2005, the parties concerned have made considerable further progress towards the implementation of resolution 1559 (2004). A number of operational requirements derived from resolution 1559 (2004) have been met, among them the withdrawal of Syrian forces from Lebanon and the conduct of free and fair legislative elections.

Others remain to be implemented, particularly the disbanding and disarming of Lebanese and non-Lebanese militias, the extension of government control throughout all of Lebanon and the full restoration and strict respect for the sovereignty, unity, territorial integrity and political independence of Lebanon, most notably through the establishment of normal diplomatic relations and the demarcation of borders between the Syrian Arab Republic and the Lebanese Republic.

II. Background

5. In the six months since my last report of 26 April 2005 (S/2005/272), the situation in Lebanon has remained volatile. There have been a number of worrying developments affecting the stability of Lebanon, particularly in the form of terrorist acts and the illegal transfer of arms and people across the borders into Lebanon.

6. On 2 June 2005, on 21 June 2005, and on 25 September, respectively, several prominent Lebanese figures were targeted by car bombs in Beirut, which killed Samir Qassir and George Hawi and left May Chidiac severely injured. A further assassination attempt was carried out against Lebanon's Minister of Defense, Elias Murr, on 12 July 2005, which left one person dead and several, including the Minister, injured. Further bombings took place on 22 July 2005, on 23 August 2005, and on 16 September 2005 and left one person dead as well as numerous injured.

7. The Security Council unequivocally and strongly condemned these bombings and the continuation of political assassinations and other terrorist acts in Lebanon in presidential statements released on 7 June 2005 (S/PRST/2005/22) and 22 June 2005 (S/PRST/2005/26) as well as in a press statements released by the President of the Security Council on 12 July 2005 and on 28 September 2005; I also condemned in the strongest possible terms the assassinations of Mr. Qassir and Mr. Hawi and the attempted assassinations of Mr. Murr and Ms. Chidiac. In repeated statements, I urged the Lebanese authorities to bring promptly to justice the perpetrators and instigators of these terrorist attacks. As a result of such acts, numerous Lebanese political leaders have chosen to spend prolonged periods of time abroad, for fear for their lives.

8. On 7 May, Gen. Michel Aoun returned after 14 years in exile and formed the Free Patriotic Movement (FPM) to participate in the legislative elections that began on 29 May 2005 and concluded after four rounds on 19 June 2005. The elections resulted in a clear victory of a coalition of the Future Movement led by Saad Hariri and the Progressive Socialist Party led by Walid Jumblatt, which gained 72 seats. An alliance of the Amal party and Hizbullah gained 35 seats, and the Free Patriotic Movement led by Michel Aoun won 21 seats in the 128-strong parliament.

9. A new government was formed after intense discussions and negotiations between the political parties and President Lahoud, and not without difficulty, on 19 July by Prime Minister Fouad Seniora, a former Finance Minister who belongs to the Future Movement. Mr. Seniora's cabinet consists of 24 members, including 15 from the Future Movement and five representing the Shiite alliance that includes Hezbollah. For the first time, a member of Hezbollah, Mohammed Fneish, obtained a ministerial portfolio as Water and Energy Minister. On 31 July, the new government passed the parliamentary vote of confidence comfortably. Earlier, on 18 July, the newly elected parliament had also approved a motion to pardon Samir Geagea, leader of the Lebanese Forces, who had spent the past 11 years incarcerated....

....The verification team conducted a broad range of consultations and meetings, including with senior Lebanese political figures and security officials, as well as with Syrian security officials. It noted the changing relationship between Lebanon and Syria and that close historical and even family ties as well as the climate of fear, suspicion and rumor prevailing in Lebanon had to be taken into account when assessing reports and rumors of continuing Syrian intelligence activity in Lebanon. The team reported that numerous sources, including ministers, former ministers and security officials, told it that in their view Syrian intelligence activity was taking place in Lebanon. It assessed that there were some credible reports of Syrian intelligence activity, but that most were exaggerated. The team also assessed that it was possible that some Syrian intelligence officers made a few fleeting visits to Lebanon after their withdrawal, and that it was probable that Syrian intelligence officers made telephone calls to maintain networks of contacts, bolster their influence and subtly manipulate the political environment. However, the extent and purpose of any such activity is difficult to assess. The verification team concluded that, in particular, telephone call activities in the context of the Lebanese elections were not widespread and did not appear to have had a significant impact on the elections.

20. Overall, the team corroborated its earlier conclusion, that there was no remaining visible or significant Syrian intelligence presence or activity in Lebanon, though the distinctly close historical and other ties between both countries also had to be taken into account when assessing possibly ongoing influence of Syrian intelligence in Lebanon.

The Tribunal also consulted the Fourth semi-annual report of the UN Secretary-General to the Security Council on the implementation of Security Council resolution 1559 dated 19 October 2006 which states that Lebanon has witnessed severe deterioration and prolonged instability. It refers to issues still on the agenda for Lebanon being the Lebanese presidency and the arms of Hezbollah, "amidst an increasing tense political climate both domestically and with regard to Lebanese-Syrian relations".

FINDINGS AND REASONS

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under para.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under section 412 of the Act.

Essentially the applicant claims that he left Lebanon and fears to return there because he will be harmed by members of Hezbollah, Syrian intelligence, and Lebanese authorities/intelligence because of his political opinion and activities, including his activities against the Syrian occupation and his demand for Lebanese sovereignty. He claims that he was/is a member of the Free National Movement under the leadership of General Aoun, was high profile with the group and was a leader of a local network of the party/movement which carried out activities against Lebanese authority and Syrian forces. He also claims that he will

be harmed by Shiite Muslims and others because he is a Maronite Christian as well as being a member of the political movement. He also claims that he fears harm from Iran. Implicit in his claims is that he cannot get protection in his country from the harm he fears. The applicant has also claimed he cannot return to his country as he is suffering health and depression problems.

The Tribunal accepts that: "applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule." The Tribunal also accepts that: "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt". (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para. 196). However, the Handbook also states (at para 203): "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".

It is for the Tribunal not only to consider inconsistencies but also to determine what evidence it finds credible (Nicholson J. in *Chen Xin He v MIEA*, 23 November, 1995 (unreported) at p.11). The Tribunal does not have to accept uncritically all statements and allegations made by an applicant. (Beaumont J in *Randhawa v MIEA*, 124 ALR 265 at p.278). "The mere fact that a person claims fear of persecution for reasons of political opinion does not establish either the genuineness of the asserted fear or that it is well-founded or that it is for reasons of political opinion.[it is] for the Applicant to persuade the reviewing decision-maker that all of the statutory elements are made out." (*MIEA v Guo and Anor* (1997) 144ALR 567 at 596).

Having regard to the country information that it has consulted and also the applicant's evidence, the Tribunal accepts that the current political and security situation in Lebanon remains volatile and unsettled and that acts of terrorism and violence, involving Hezbollah and others, continue in Lebanon. It also accepts Syrian intelligence elements may still be present in Lebanon. It further accepts that there is ongoing conflict between Muslim groups, including Shiite Muslims, on the one hand and Christians on the other hand, in Lebanon. Clearly however the Tribunal must determine whether the applicant before it has a genuine fear founded upon a real chance of persecution for a Convention reason if he returns to his country.

The applicant produced his passport to the Tribunal at the hearing and the Tribunal accepts that he is a Lebanese national and is who says he is. It also accepts and finds that he is a Maronite Christian as he claims. It also finds that he worked as a tradesman in an office in Lebanon for many years prior to coming to Australia and earned his living from that business.

The Tribunal does not accept that the applicant left Lebanon because he was persecuted and feared/fears further persecution in his country as he claims for the reasons he claims. Although the Tribunal accepts that he was a member of the political movement that he claims to have belonged to which was led by General Aoun and accepts that he supported General Aoun in 1988 and 1989 and later supported the party it does not accept as true that he was a leader of a local network/a high profile or prominent member of the party until his departure and for that reason was detained and sought out by Syrian intelligence, Lebanese intelligence/authorities and/or Hezbollah/militias or anyone else at any time in Lebanon. The applicant told the Tribunal that he was working as a tradesman with his father at an office for

many years until he came to Australia and his wife confirmed he was working as a tradesman although she added that he was involved with a “network” demonstrating against Syria. Although the applicant said that there was hardly any work he told the Tribunal that he supported himself in Lebanon from his earnings from his work as a tradesman spending what he earned on living expenses. When the Tribunal then queried how much time he spent working with the party the applicant said that he was working but he left work when he was called and “joined them”. When the Tribunal asked him when he did this he said he spent a week and a month in a particular year being involved in the war/doing missions against Hezbollah and Syria.

In the Tribunal’s view the applicant’s evidence that he was supporting himself working as a tradesman in an office in Beirut for many years prior to his coming to Australia is not consistent with his claims that he left Lebanon because he was persecuted as a prominent/high profile member, or local leader, of a political party/movement in Beirut. In the Tribunal’s view this evidence is not consistent with his claims that he was detained/questioned at a specific time or looked for as he claims in the following month, or at any other times, and was staying away from his home to avoid harm. Also, apart from the incidents he claims occurred in the two consecutive months, neither he, nor his wife, gave any specific details when asked by the Tribunal about further incidents that happened to him even though he claims he was prominently involved with the movement, including as a leader, between particular years. Both the applicant and his wife gave general answers only when asked by the Tribunal about further incidents. Also it is clear that the applicant and his wife obtained their passports in the year prior to their departure according to the details in those passports which were produced to the Tribunal. This was before the specific incidents they claim occurred in the following year. The Tribunal does not accept as plausible the explanation given by the applicant, and his wife as to why they obtained passports in that particular year, namely that the danger was increasing for the applicant in that year for the reasons that he claims; the evidence is that the applicant had lived and worked in Beirut for many years, including during the time that General Aoun went into exile in 1990 as he told the Tribunal, and there is no credible evidence before the Tribunal that anything happened to the applicant during that time. The Tribunal does not accept as true the applicant’s claims that he was questioned/detained looked for by Syrian/Lebanese intelligence/authorities or anyone else in Lebanon at any time for the reasons that he claims. The Tribunal does not accept as true that the applicant had to pay a bribe/get assistance from someone he knew to obtain his passport in the year that he did and later to leave the country. Also, to the extent that the applicant is claiming it, the Tribunal does not accept as true that the applicant was avoiding harm in his country by staying away from his home. The Tribunal finds that these claims were invented by the applicant to assist his application for protection.

The applicant told the Tribunal that he will no longer support General Aoun in the future if he returns to his country because General Aoun is aligned with Hezbollah. The Tribunal does not accept that the applicant would face harm in Lebanon if he returned there because he was a member of Aoun’s group in the past. Country information referred to above, which was discussed with the applicant at the hearing, confirms that General Aoun himself has returned to Lebanon and has a number of seats in Parliament. Given that the Tribunal does not accept that the applicant was a leader/prominent member of Aoun’s group in the past it does not accept as plausible that the applicant would be harmed by anyone opposed to General Aoun. Nor does the Tribunal accept as plausible the applicant’s claim that Aoun’s party/movement itself would now be against the applicant and harm him because General Aoun is now aligned with Hezbollah.

Country information consulted by the Tribunal makes it clear that the political situation has changed significantly in Lebanon since the applicant left his country in the year that he did; this was discussed with the applicant at the hearing. The applicant claims that things will be worse for him now if he returns. The Tribunal accepts that although Syrian forces have left Lebanon and a new government has formed political elements from whom the applicant claims to fear harm are still present in Lebanon, including Hezbollah and Syrian intelligence elements. As the Tribunal has found that the applicant was not persecuted by these elements/groups when he was in his country prior to his coming to Australia it does not accept that he will be persecuted by them if he returns to Lebanon because of his political opinion/imputed political opinion. It finds that things will be no different for the applicant if he returns to his country than they were before he left Lebanon.

The applicant also claims that he will face harm if he returns to his country because of his religion. Although the Tribunal accepts the applicant's evidence that there is conflict between Muslims and Christians in his country, including in the vicinity of the area where he lived/lives, and that this conflict is escalating because of the political/security situation, there is no credible evidence that the applicant will face serious harm for the purposes of the Convention because of his religion if he returns to Lebanon. The applicant agreed that there most of the families in his area in Beirut are Christian and that his family members continue to live in the family home in his area. The applicant himself lived in this area and worked in Beirut for many years before he came to Australia. There is no credible evidence before the Tribunal that things will be different for the applicant because of his religion if he returns to Lebanon. Given that the Tribunal has found that the applicant was not a leader or high profile or a prominent member of General Aoun's movement in Lebanon the Tribunal does not accept as plausible that the applicant will be targeted by Muslims because he is Christian due to his prior political background/profile.

Given that the Tribunal considers that the applicant has given untruthful evidence to the Tribunal it does not consider that the letters submitted by the applicant in support of his claims provide reliable evidence of the facts in those letters. The Tribunal finds that those letters were written by persons without first hand knowledge of what happened to the applicant in his country.

The applicant has in the past made a general claim that he cannot return to his country because he is suffering health and depression problems. There is no plausible evidence before the Tribunal to support this claim. The Tribunal is satisfied that the applicant was well capable of giving his evidence before the Tribunal and was not hindered in any way from doing so by health or other problems.

In the Tribunal's view there is no plausible evidence before it that the applicant has suffered or will suffer persecution for a Convention reason, including because of his religion, his political opinion, or his imputed political opinion from Hezbollah, Syrian intelligence, Lebanese intelligence/authorities, Iran, Muslims or anyone else in his country either now or in the reasonably foreseeable future if he returns to Lebanon. Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well-founded fear of persecution in Lebanon within the meaning of the Convention.

CONCLUSION

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as

amended by the Refugees Protocol. Therefore the applicant does not satisfy the criterion set out in subsection 36(2) for a protection visa.

DECISION

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

<p>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 <i>Migration Act 1958</i>. PRRRNM</p>
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