

**1304734 [2013] RRTA 724 (25 October 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1304734  
**DIAC REFERENCE(S):** CLF2012/231758  
**COUNTRY OF REFERENCE:** Lebanon  
**TRIBUNAL MEMBER:** R Mathlin  
**DATE:** 25 October 2013  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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

**STATEMENT OF DECISION AND REASONS**

**BACKGROUND**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Lebanon, arrived in Australia [in] November 2012 holding a sponsored visitor visa issued [in] October 2012. He applied to the Department

of Immigration for the protection visa on 20 November 2012 and the delegate refused to grant the visa on 15 March 2013.

3. The applicant has applied for protection on three bases, although all three have not been advanced at every stage of the application, or in a consistent way. First, he claims that he faces harm from Hezbollah and associated militias who are kidnapping and killing soldiers from the Lebanese Armed Forces (LAF). He claims that his army patrol was detained in Jabal Mohsen, Tripoli, by an Alawite militia and that he was personally threatened by an individual from that militia. Secondly, he claims that he faces serious harm because he will be prosecuted and detained for desertion because he did not return from his authorised leave in Australia. At the hearing he raised the new claim that it is against his principles to fight and kill people, and that being made to continue to serve in the LAF would also constitute serious or significant harm.

## **CLAIMS AND EVIDENCE**

### *Protection visa application*

4. The applicant is a single male in his early [age]. He is an Orthodox Christian. He provided one residential address in [Village 1], Alkoura, Lebanon for his entire life. He joined the Lebanese Armed Forces (LAF) [in] 2011. In the application he stated that he is qualified as an [occupation] and that he joined the army as an [occupation]. The applicant has [siblings] in Australia; his father is dead and his mother resides in Lebanon.
5. With his protection visa application the applicant submitted translations of his Military Card, apparently confirming his service in the military, although there is no date of issue on the card; a “leave permission” issued [in] 2012 authorising the applicant to travel to Australia for thirty days; a licence to carry a military weapon, issued [in] 2011; and a copy of pages from the Lebanese passport on which he travelled to Australia.

### *Visitors visa application*

6. The applicant’s visitor visa application was signed [in] September 2012. He sought to visit Australia from [November] to [December] 2012. He stated that he was a soldier in the army and provided a leave approval dated [in] 2012 authorising leave out of the country for a period of thirty days.
7. The visa was issued [in] October 2012.

### *Protection visa interview*

8. The applicant was interviewed by a delegate on 12 March 2013 and provided information essentially consistent with that provided in his written claims and at the hearing.
9. The delegate refused to grant the protection visa because she found that any penalty for desertion would be imposed under a law of general application and would therefore not be persecution. She found the applicant’s account of having been targeted by an Alawite militiaman not persuasive, and did not accept that he had a well-founded fear of persecution for this reason.

*Tribunal proceedings*

10. The applicant appeared before the Tribunal at a hearing held on 8 August 2013 and gave evidence with the assistance of an interpreter in the Arabic and English languages. The applicant was accompanied at the hearing by an assistant of the registered migration agent who has represented him at all stages of the application, and by several witnesses who gave oral or written evidence to the Tribunal.
11. The applicant said that he joined the LAF [in] 2011 because he was sporty and liked [sport]; he thought he could use these skills in the Army and enlisted at [an] academy<sup>1</sup>. The applicant underwent training at [location] for a couple of months at a time, and also did training at other Army centres, in other disciplines such as weapons. [In] 2012 he was sent for two months to a training centre at [Location 2], near Tripoli. Part of the training involved being sent out on patrols. [In] September 2012 they were sent from [Location 2] to [Location 3] and from there on a patrol along [a street]. At the entrance to Jabal Mohsen the patrol was surrounded on all sides by armed men. The applicant believes they were from an Alawite militia. The soldiers were ordered out of their vehicle and their (civilian) identity cards were checked. They were ordered to hand over their weapons but refused to do so and instead the weapons were collected by the commanding officer. The soldiers were blindfolded and taken into Jabal Mohsen. They were bashed and insulted for some hours while a prisoner exchange was negotiated. Upon their release they were taken by truck to [Location 3]. The applicant was granted permission to go and get something to eat. He took the opportunity to run away to his [relative]'s house in [location].
12. The applicant said that he ran away because he was scared. One of the militiamen who abducted the soldiers was a man with whom the applicant had a dispute on the beach near Tripoli in 2008; as a result of their argument about political issues the man had stabbed the applicant, inflicting minor injuries. The applicant said that this man recognised him and he had no doubt that he would not get out of that situation. When the applicant was released this man specifically threatened him. He grabbed the applicant's arm and said that today he had escaped; he said that the militia's issue was with the army not with the applicant, but from that day the applicant was involved with them, and with their issue. The applicant said that the man had seen his identity card. I noted that his identity card states he is from [town], which he stated is his birthplace, while his evidence was that he actually lived in [Village 1], Alkoura, where he and his family had always resided. I asked how the man would be able to find him, given that he had seen only his identity card. The applicant said that the man could start from where the applicant was born and then track him down using that information. The applicant said that they do not live far apart and if the man wanted to find him he could. The applicant said that the problem between them goes back to 2008. I noted that the applicant said that he had not seen the man between 2008 and 2012 and he had apparently not tried to track the applicant down over that time. The applicant said that this was so, but the man remembered him as soon as he saw him, and threatened him again. I said that I had difficulty accepting that there was a real chance that this would happen. I put to the applicant that the

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<sup>1</sup>[Source deleted].

militia in Jabal Mohsen appear to be preoccupied with the conflict in that area between armed Alawite and Sunni groups. In these circumstances it was difficult to imagine that this man would go out of his way to track the applicant down; it seemed doubtful that the man would be interested in pursuing the applicant on an individual basis. The applicant said that probably what makes the man keep chasing him until now is that he belongs to a militia that can do what it likes. I noted that Alawis from Jabal Mohsen claim that they cannot leave their area because they are surrounded by Sunni Muslim areas and said that in these circumstances it was hard to believe that the man would come looking for the applicant. The applicant said that it is not true that Alawis cannot leave Jabal Mohsen; he asked how they get their weapons and supplies if this is the case? He said that Hezbollah and Syria are behind them and asked what would they be afraid of?

13. The applicant said that he ran away because he did not feel safe and did not want to be in the army any more; the Army could not protect him and the activities he was engaged in were not what he had expected; he thought that he would be doing [training at the academy], which is not in a combat area. He never expected that he would be caught in the middle of battles between two sects.
14. I asked the applicant why he could not have sought leave to recover from the trauma of the abduction. He said that the LAF does not represent the government; it is comprised of hundreds of groups affiliated with different religious sects. He said that the army did nothing to protect them from mistreatment in Jabal Mohsen; in general he was badly treated during his military service, he was called names like “imbecile” and “animal” and these were the least harsh terms. He asked whether I really thought an army like this would give him leave to rest because he was tired. He cited an example where some friends of his were imprisoned after they returned fire on a sheikh and his escorts who had opened fire on them at a checkpoint. The sheikh was killed, and the applicant’s friends were imprisoned for defending themselves.
15. The applicant agreed that at the time of the Jabal Mohsen incident he had a document stating that a period of leave for overseas travel had been approved. I asked why he did not take this leave. The applicant’s evidence was confused but eventually he said that at the time of the Jabal Mohsen incident he did not know that his leave had been authorised so he did not ask to take it at that time. Later, when he did want to leave, the authorisation had expired. The applicant provided a long and complicated explanation of how he obtained the second leave approval, which he said was done with the assistance of his neighbour, a lawyer who worked in the Ministry of Defence. However, his evidence indicated that he only needed to use this contact because the document had to be issued on very short notice, as he had already booked his flight not knowing that the earlier approval had expired.
16. The applicant said that he could not remember when he applied for the visitor visa. When I pointed out that the application form was dated [in] September, he said “yes maybe”. I noted that the documents submitted with it had been translated at the end of August and the applicant agreed. He agreed that the visa was issued [in] October 2012. I noted that in the application he had stated that he intended to visit Australia between [November] and [December] 2012. He said that the travel agent picked the dates only because this was required for the form. The applicant simply knew that his training at [Location 2] would be over by then but had not definite period in mind.
17. The applicant finally agreed that he had applied for a visa to visit Australia and obtained all the necessary documents before the Jabal Mohsen incident. He said that he was not able to

travel, however, because he had not been physically given the leave approval, but agreed that he had formed the intention to travel before Jabal Mohsen.

18. The applicant said that he signed up for eighteen years' military service. He said that Christians are forced to enlist for this length of time, while Muslims can leave after four years because there is a numerical imbalance in the army between the religions. Because there are fewer Christians they receive three months training and are then eligible for permanency and all entitlements; because there are too many Muslims they are enlisted temporarily for four years and then they can leave or be dismissed.
19. The applicant said that after four days in hiding at his [relative]'s he was arrested by the military authorities. He was taken to [Location 3] Prison for five days. He said that he was charged with desertion and was detained pending further investigation. He was detained with soldiers from the Alawi and Shia sects. When they heard the applicant had been involved in the Jabal Mohsen incident they hit and tortured him. The applicant said that they knew about this because he mentioned it when they were chatting. They knew he had run away. They beat him because they thought he had taken sides with the LAF against the Alawite militia. He had to be removed by the military authorities into solitary confinement for his own safety. He said that he was released to complete his training at [Location 2]. He was given his final punishment which comprised the cancellation of three home leaves, and he was confined to barracks for seventeen days. He agreed that was the end of that matter.
20. The applicant's concerns now are that he has deserted again because he was given leave to travel to Australia for thirty days and he has overstayed that period.
21. I put to the applicant that any punishment for desertion would be administered under a law of general application, and would therefore ordinarily not be considered persecution.
22. The applicant said that the LAF is divided by sect. The Securite-Generale is controlled by Shias, who therefore control the airport. The applicant will be immediately identified on return to Lebanon. He will finish up in prison, then who knows what will happen to him. He could be bashed so severely that he is disabled. After his imprisonment he will be returned to the LAF to complete his service. Because he is a deserter he might not be sent back to [the Academy]. He might be sent to areas of conflict. This is contrary to his principles. He joined up because he is a sporty man; he thought the army would be a continuation of his experience in the field of sports, but it was not good for his skills at all. It is against his principles to kill people.
23. I put to the applicant that he must have been aware when he enlisted that he might have to serve in a conflict zone, and that this might involve fighting, killing and being killed. He said that he joined in an administrative area that has nothing to do with fighting and conflict. He just went to a place to do [sport] but they did not keep him there. He joined on a certain basis but was then required to do something else.
24. I noted that when he was in prison before the military authorities had taken steps to protect him when he was in danger from the other prisoners. He replied that that prison was small, but this time he would be in Roumieh Prison where people who have committed major crimes are detained; it is well known that prisoners are subjected to severe mistreatment there.

25. I put to the applicant that it is not in the interests of the LAF to have its soldiers beaten up by soldiers from other sects; it seemed likely that the military authorities would take reasonable measures to protect him during any period of imprisonment. The applicant said that Lebanon is different; the militias are more powerful than the army. When he was in prison for five days he was harmed by Alawite soldiers and ones who supported Hezbollah. He asked if a soldier from Hezbollah does something wrong who is going to stop him, Hezbollah is now the government. I put to the applicant that I do not accept that there are soldiers serving in the LAF who are with Hezbollah. The applicant said that there are. I put to the applicant that all sects are represented in the LAF and its head is a Maronite. I put to him that it is not in the interests of the LAF or the country for sectarian conflict to exist in the Army; the Army is considered to stand above sectarian conflict. I said that I had difficulty accepting, in these circumstances, that Shia and/or Alawite soldiers imprisoned in a military prison would be allowed to mistreat another soldier for religious or political reasons with impunity. The applicant asked who could prevent them or protect him. He said that the situation in Lebanon is anarchic. I put to the applicant that conditions might not be pleasant in a military prison, but nonetheless, I considered that the authorities would take reasonable steps to ensure that prisoners were not harmed. The applicant said that if he had reported the mistreatment during his previous detention to the person in charge of the prison he might have just said that the applicant should not have talked about his situation or should not have run away from the army. The applicant said that he has two friends who were sent to Sidon where they were killed in sectarian clashes. He said soldiers are not fighting for the liberation of Lebanon but in sectarian conflict. The applicant said that he does not want to return to the army once he is finished in prison. It is against his principles; he does not want to be involved in wars and be killed like his friends. According to his religion and his morality he does not want to kill anyone. I put to him that it was difficult to accept that someone who genuinely held these principles would have joined the army in the first place. He said that he wanted to be in the [academy]. I put to him that the LAF exists to defend the country; how could he join the army and not expect to fight and kill if there was a war? He said that the LAF is supposed to be defending Lebanon's borders, not to be deployed inside the country against the militia and the resistance operating inside the border areas.
26. The applicant said that his passport has now expired and he could face additional harm because of this. He cannot get it renewed at the Embassy here because he needs papers that he cannot get, such as his national identity document. He can't get the documents because military personnel are not allowed to get civilian documents.

**Evidence of the [applicant's brother]**

27. The applicant's brother stated that he has lived in Australia for over [number] years and during that time has returned to Lebanon on several occasions to see his mother. Most recently he visited in January 2013 for twenty days. He said that he is aware of the reasons for which the applicant seeks protection because the applicant has told him.
28. He said that the applicant is an ex-soldier; the LAF is divided between different sects. To the public the LAF looks united but people inside Lebanon know what the situation is. The things that have happened to his brother came from the group that controls Beirut airport so they will abduct him or kill him as soon as he lands. He confirmed that the group he is talking about is Hezbollah. I asked why Hezbollah would abduct or kill the applicant as soon as he lands. He said because he has defected and he is wanted by the army; his name is on a wanted list. I noted that the applicant has deserted from the army and asked why he would not simply receive the normal punishment under military regulations. The witness responded that it is

wrong to think the LAF is like any army. I noted that the applicant himself accepted that he would be punished under military discipline and did not suggest that he would be detained, abducted and killed on arrival at the airport. The witness replied that he had said the applicant would be abducted, not that he would be killed. He will be arrested and charged, but it will not be considered ordinary desertion because he was outside the country when it was in a state of war. I put to him that the applicant would still be subjected to the same punishment as anyone who breached military rules in this way. He said that the law is not worth anything in Lebanon, no one respects the law.

29. The witness said that on his most recent trip to Lebanon he stayed with his mother in the family home in [Village 1], Alkoura.
30. I asked the witness if he knew when the applicant decided not to return to Lebanon. He said that after the incident in Tripoli he was very keen to bring the applicant to Australia. I put to him that the applicant's evidence and the documents submitted with the visitor visa application showed that the application was prepared before the Jabal Mohsen incident. The witness said that he made the application and sent it to a travel agent in Lebanon; he does not know when the applicant signed it. I said that the applicant signed it [in] September 2012 and the documents submitted with the application were translated at the end of August. The witness said that after the incident in Tripoli he contacted the Department to expedite the application (consistent with applicant's evidence)

#### **Evidence of [Mr A]**

31. The witness said that he is a family friend of the applicant; he met him in Australia.
32. He gave evidence that in 1997 he was called up to do compulsory military service. He did not want to do it because of his personal principles. He said that he was called in many times. They tried to convince and scare him into doing military service; then he was imprisoned, tortured and bashed seven times. Each time he had to be taken by ambulance to hospital. They told him that for the sake of their country they would torture him until he died. Asked who tortured him he said that it was soldiers and officers, including the area commander; it took place in a military prison.
33. I asked whether he thought any aspect of his mistreatment was due to his religion or only to his refusal to do military service. He said that he thought it was both. He told them his beliefs did not allow him to carry arms.

#### **Additional evidence submitted after the hearing**

34. A statutory declaration was submitted made by [Mr B], who had attended the hearing as a witness but needed to leave before he could give oral evidence. His statutory declaration stated that he is a close friend of the applicant and can confirm everything he says is true. He has witnessed the things the applicant has claimed because he knows of many ex-military personnel these things have happened to. His father used to be a soldier who was killed in the war in Syria in 1976. He knows that LAF officers have no regard for soldiers serving under them and mercilessly expose them to danger. They put soldiers on the front line mercilessly and view them as disposable. He stated that defecting from such a cruel institution undoubtedly comes with severe consequences and tragic outcomes; it is vital that the applicant remains in Australia.

35. Two reports were submitted, one from the *Alakhbar* English language website, dated 4 October 2012, titled “Roumieh prison: Rule by the sword” discussing conditions in Roumieh prison which is stated to be controlled by Islamists from Fatah-al-Islam, a militant group involved in fighting with the LAF at Nahr el Barad refugee camp in 2007. Prison authorities are reported to be powerless to control the prisoners so they turn a blind eye to their abuses of other prisoners. The article quotes a FAI inmate saying that anyone who kills a soldier is honoured and treated well; the context of this comment is not clear. The other report by the Khiam Rehabilitation Centre for Victims of Torture discusses harsh conditions for prisoners in Roumieh.
36. In a submission the applicant’s adviser responded to concerns raised at the hearing. In response to my comment at the hearing that while there was information about the mistreatment of ordinary prisoners in Roumieh, there was no information pertaining to mistreatment or otherwise of military personnel held there for breaches of military discipline. The adviser wrote that such information would not be publicly available because serving soldiers would not be able to divulge details of any mistreatment they suffered in military detention for fear of worse repercussions; nonetheless, he said that “it is known” that such persecution of deserters occurs at Roumieh.
37. He noted that the reports submitted showed evidence of routine mistreatment of prisoners in Roumieh, and of sectarian rifts within the prison influenced by events outside. He argued that the applicant would be viewed as a target by security personnel for taking a moral stand against the actions of the army against civilians. He would also be targeted by Shia and Alawite prisoners because he would be seen as holding views contrary to the Syrian regime and Hezbollah. Even if the authorities wanted to protect the applicant this would not be possible given the overcrowding of the prison and their powerlessness to control the prisoners. The adviser noted that the article about the domination of Fatah al Islam inside Roumieh stated that Christian and Shia prisoners were forced to pay a levy to avoid harm.

## **RELEVANT LAW**

38. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the ‘refugee’ criterion, or on other ‘complementary protection’ grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

## **Section 499 Ministerial Direction**

39. 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* – to the extent that they are relevant to the decision under consideration.

## **Refugee criterion**

40. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as



amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), of which 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.

41. 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)). Examples of ‘serious harm’ are set out in 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 for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion.
42. 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. Where the state is willing but not able to provide protection, the fact that the authorities may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection<sup>2</sup>. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards<sup>3</sup>.
43. Whether an applicant is a person in respect of 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.

### **Complementary protection criterion**

44. A person found not to meet the refugee criterion in s.36(2)(a) may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).

### **FINDINGS AND REASONS**

#### *Country of reference*

45. Having seen the applicant’s passport and other identity documents, I accept that he is a national of Lebanon. His claims to protection will be assessed against Lebanon as his country of nationality for the purposes of the Refugees Convention, and as the receiving country for the purposes of the complementary protection provisions.

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<sup>2</sup> *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28].

<sup>3</sup> *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29].

### *Credibility*

46. I have concerns about the overall credibility of the applicant's evidence. His claims have changed over time, so that the claims put forward at the hearing are substantially different from those put forward in his primary application. In his primary application he stated that he had run away from Lebanon because he was threatened by Hezbollah militias and affiliated militias, as a soldier in the LAF. While he mentioned the personal enmity with the Alawite militiaman dating back to 2008, he did not claim that he feared ongoing harm from this individual, nor did he clearly relate his fear of Hezbollah to the Jabal Mohsen incident, although he did claim that he had been beaten by Shia and Alawi soldiers while he was detained following his desertion after the Jabal Mohsen incident.
47. At the hearing the applicant raised two new claims – that he will be imprisoned for desertion on return to Lebanon and that he will face additional harm during that imprisonment at the hands of Shia and Alawite detainees; and that his principles do not allow him to serve in the military so that if he were forced to do so on return this would also amount to persecution or significant harm.
48. The shifts in emphasis and the changing basis on which his claims have been expressed at different stages has led me to think that the applicant has changed his evidence in order to strengthen his claims, and that his evidence was not necessarily truthful. Moreover, his own evidence was that he had begun to arrange his travel to Australia before the incident in Jabal Mohsen and the other events which he now claims give rise to his need for protection. Many of his claims are not supported by evidence from independent sources, and the evidence of the witnesses was not always consistent with the applicant's. For example, his brother stated that the applicant would be subjected to mistreatment of a kind not claimed by the applicant himself, on return to Lebanon in relation to his claimed desertion, saying that he would be detained and abducted by Hezbollah on arrival. Much of the witnesses' evidence was based, in any event, on what they had been told by the applicant himself, so their statements that they believe him, or know what he is saying is true, is of limited usefulness and does not provide persuasive corroboration of the applicant's own evidence.

### **Refugee criteria**

49. With these concerns in mind, the applicant's claims are assessed as follows, on the basis that they were advanced at the Tribunal hearing.

#### *Fears of harm from militia groups*

50. The applicant claimed in his protection visa application that he will be harmed by Hezbollah and associated militias because he was a soldier with the LAF. At the protection interview and at the hearing his fears were more focussed on the harm he claims to fear from the member of the Alawite militia with whom he fought in 2008, and who he claims identified him again when he was detained with his army patrol in Jabal Mohsen in 2012.
51. I do not accept that the applicant has a well-founded fear of persecution on either basis.
52. An applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

‘There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.’

53. A fear will be ‘well-founded’ if there is a ‘real chance’ that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality. A ‘real chance’ is one that is not remote or insubstantial or a far-fetched possibility<sup>4</sup>. The evidence must indicate a real ground for believing that the applicant is at risk of persecution; a fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.<sup>5</sup>
54. Accepting that the applicant’s claims about his enmity with the Alawite man are true, on the basis of his evidence I do not accept that there is a real chance that the Alawite militiaman would track him down and locate him in order to harm him now or in the reasonably foreseeable future. I find that the threat allegedly made by the man that he would do so was an empty or idle threat, and that he did not intend to act upon it. I am not satisfied that there is a real chance that the man would be able to locate the applicant even if he wished to do so. As discussed at the hearing, the identity card seen by the man only stated the applicant’s place of birth, which is not the usual place of residence of the applicant and his family. Despite the applicant’s claim that he and the man lived “not far apart” and that there was ongoing enmity after the 2008 incident, the applicant’s evidence was that he had never seen the man again between the beach incident and the capture of the army patrol. I do not accept, based on this evidence, that there was ongoing enmity between the two men which indicates a real intention on the part of the Alawite man to inflict further serious harm on the applicant. I consider that had he held such an intention, it would have been possible for him to locate and harm the applicant between 2008 and 2012; or to seriously harm the applicant while his military patrol was under the control of the militia group in 2012. There is no credible evidence before me to suggest that the man has been seeking the applicant since the incident in 2012. Finally, given the country information about the situation of Alawite militia in Tripoli, I find that the man would scarcely be in a position to go in search of the applicant, even if he wanted to, and that there is no real chance that he would do so.
55. Most Alawites live in Jabal Mohsen, an area of some 4 square kilometers<sup>6</sup> surrounded by Sunni areas to the west (Bab al-Tabbaneh) and to the south (Ba’ear and Ebbeh).<sup>7</sup> The Alawite community is generally viewed as pro-Syrian and pro-Hezbollah, and the Bab al-Tabbaneh Sunni community is generally viewed as anti-Syrian. The Jabal Mohsen and Bab al-Tabbaneh neighbourhoods of Tripoli have a history of engaging in violence, which sporadically erupts into violent clashes between residents of the two areas. Clashes between Alawite and Sunni communities in Tripoli have increased, apparently because of the Sunni uprising in Syria. The clashes appear to have both political and sectarian elements. Reports of conflict in 2008

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<sup>4</sup> *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429.

<sup>5</sup> see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

<sup>6</sup> DIAC Country Information Service 2008, *Country Information Report No. 08/23 – CIS Request No. LBN9260 – Hizb al Arabi al Demokrati and Alawi Muslims*, (sourced from DFAT advice of 14 March 2008), 17 March.

<sup>7</sup> Kazimi, N 2008, ‘Sunnis and Alawites Clash in Northern Lebanon’, *Talisman Gate weblog*, 12 May <<http://talismangate.blogspot.com/2008/05/sunnis-and-alawites-clash-in-northern.html>

state that Alawis were beaten and robbed if they left Jabal Mohsen<sup>8</sup>. Alawis living or owning businesses in Sunni areas were reportedly forced to relocate to Jabal Mohsen.<sup>9</sup> In 2012 armed clashes between the communities erupted six times - in mid-February, three times in May, in early June and in late July. In July, several Alawi students were stabbed or kidnapped on their way from Jabal Mohsen into central Tripoli. Alawis describe a "siege" with shortages of basic foodstuffs sold at escalating prices<sup>10</sup>. Further violence broke out in December 2012<sup>11</sup> and in March 2013, which were halted when LAF maintained a ceasefire brokered between religious leaders<sup>12</sup>.

56. As discussed with the applicant at the hearing, I find that, in these circumstances, if the man who the applicant claims to fear is a member of an Alawite militia in Jabal Mohsen, his primary focus would be on the ongoing fighting between his militia and Sunni militia based in areas surrounding Jabal Mohsen. I do not accept that he would, now or in the reasonably foreseeable future, have the desire or the capacity to track down the applicant over an essentially personal vendetta.
57. While the applicant claimed in the written statement submitted with his protection visa application that Hezbollah is kidnaping and killing Lebanese soldiers and "throwing their bodies in different places", he provided no evidence in the hearing to support this assertion, which is not corroborated by independent evidence from any source, as far as I am aware<sup>13</sup>. Nor is there credible evidence before me to suggest that any Alawite militia group is pursuing individual LAF soldiers, or targeting the LAF.
58. The applicant did not himself claim to have been ever specifically harmed or threatened by Hezbollah, or members of Hezbollah in Lebanon (apart from the period when he claims he was detained for running away, which is dealt with below). I find that there is no real chance that the applicant would face harm from Hezbollah as an individual, for reason of his religion or political opinion, or a political opinion imputed to him; or as a member or former member of the LAF. I find that there is no real chance that he would be persecuted for any of these reasons by any militia group associated with Hezbollah, including any Alawite militia. Nor do I accept that there is a real chance that the applicant would face persecution resulting from the Jabal Mohsen incident, either from the Alawite militiaman acting alone, or from any militia group with which he is associated.

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<sup>8</sup> Blanford, N. 2008, 'Can Lebanon douse political fires?', *The Christian Science Monitor*, 26 June <http://www.csmonitor.com/World/Middle-East/2008/0626/p06s05-wome.html> – Accessed 27 September 2010

<sup>9</sup> Perry, T. 2008, 'Sectarian tension hangs over north Lebanon city', *Reuters*, 1 August <http://www.reuters.com/article/idUSL1708192> – Accessed 28 September 2010

<sup>10</sup> CX293098: LEBANON: Tripoli's Troubles to Come, Middle East Report Online, 13 August 2012, [http://www.merip.org/m\\_ero/mero081312](http://www.merip.org/m_ero/mero081312), accessed on 15 August, 2012

<sup>11</sup> Wood, J 2012, 'Sectarian Conflict Kills at Least 17 in Northern Lebanon in Spillover of Syrian Civil War', *New York Times*, 9 December <http://www.nytimes.com/2012/12/10/world/middleeast/syria-conflict-spills-over-to-northern-lebanon.html> Accessed 26 March 2013 ; Siddiq, N 2012, 'Five killed in sectarian clashes in Lebanon's Tripoli', *Reuters*, 6 December <http://www.reuters.com/article/2012/12/06/us-syria-crisis-tripoli-idUSBRE8B50FW20121206> Accessed 15 May 2013 ; 'Fatal sectarian clashes in Lebanon's Tripoli' 2012, *Al Jazeera*, 5 December <http://www.aljazeera.com/news/middleeast/2012/12/2012124152513238762.html> Accessed 15 May 2013 ; Al-Ali, M & Amrieh, A 2012, 'Death toll in Tripoli clashes reaches six', *The Daily Star*, 6 December <<http://www.dailystar.com.lb/News/Politics/2012/Dec-06/197432-death-toll-in-tripoli-clashes-reaches-six.ashx#axzz2T9PQELVT>> Accessed 15 May 2013

<sup>12</sup> <https://now.mmedia.me/lb/en/lebanonnews/tripoli-in-tense-clam-after-cease-fire>, accessed 22 May 2013.

<sup>13</sup> I have searched the Tribunal's databases and major human rights and media sources.

*Punishment for desertion*

59. The applicant claims that as a deserter from the LAF he faces serious harm on return, and in particular serious physical ill-treatment during the period of imprisonment which he claims would be the penalty for his desertion. His evidence suggested that he could face this additional harm both from the military authorities (as was asserted in the evidence of the witness Mr [A]), and from other soldiers, in particular soldiers who support Hezbollah and/ or Alawite and Shia soldiers.
60. It is not clear that the applicant is, in fact, a deserter. The applicant came to Australia on approved leave, which has expired. In my view, it is likely in these circumstances that he would be charged with the lesser offence of being “absent without leave” rather than with “desertion”. However, even if the applicant were to be charged and punished for the more serious offence of desertion, he acknowledged in his evidence that the “official” punishment for this breach of military law would be imposed on him under military laws or regulations which apply to everyone.
61. As to the likely punishment for desertion, DFAT advised in August 2013<sup>14</sup>:

Desertion from the Lebanese Armed Forces (LAF) is a military crime covered by the Military Judicial Law. The said law makes a distinction between deserters who remain in-country, and those who flee to a foreign country, as well as between cases of desertion in times of war and peace. Severe penalties are imposed for desertion to a foreign country, and in cases of desertion that occur during wartime. Penalties are also heavier for deserting officers than for privates.

Article 109 of the Military Judicial Law covers desertion to a foreign country, and is therefore applicable to the two cases detailed in RRT Country Information Request LBN42474. The article states that the private who crosses the Lebanese borders without permission or abandons his unit for a foreign country, is considered to have deserted the LAF after three days of absence without legal justification during peacetime and after one day of absence during wartime. Desertion is punishable by a sentence of two to five years imprisonment during peacetime and of up to ten years during wartime. Privates who: abandon a military zone or an area where a state of emergency is declared; steal military property (ammunition, weapon, animals, or uniforms); desert while on duty or in the face of rebels; or repeat the offence of desertion; also face the ten-year prison term.

...

Post did not come across any media reporting of cases where a sentence for desertion from the LAF was imposed. However post followed this up with a Colonel from the Strategic Security Branch, Directorate of Intelligence, LAF. The Colonel told post that deserters who return to Lebanon are arrested at the airport by General Security officers. The Military Tribunal's judgements are subsequently enforced and deserters are discharged from the LAF. Colonel Sleilati said that desertion was an internal issue, which explains why the enforcement of military judgements against deserters does not appear in the news.

62. I accept that this advice is accurate. I accept that on return to Lebanon the applicant may be arrested, charged with desertion and brought before a military tribunal. I accept that he may be sentenced to a term in prison, but I have insufficient information to determine how long

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<sup>14</sup> DFAT Report 1534, released to MRT/RRT 15 August 2013, LBN42474

this might be. In any event, I do not accept that this punishment or penalty constitutes Convention persecution.

63. It is well established that the non-discriminatory enforcement of a generally applicable law does not ordinarily constitute persecution for the purposes of the Convention<sup>15</sup>. I find that the Lebanese military laws and regulations, including the Military Judicial Law which is applicable to acts of desertion, are laws of general application to the extent that they apply to all members of the Lebanese armed forces. That such laws apply only to the members of the armed forces and not to the population generally does not serve to render the laws discriminatory in any relevant sense, in my view, although if I were wrong in this finding, I am satisfied that to the extent to which these laws do operate on a discriminatory basis, this is appropriate and adapted to achieving a legitimate purpose, which is to impose a code of behaviour and penalties for breaches of that code on members of the country's armed services<sup>16</sup>. As such, the laws can only relevantly be applied to members of the Lebanese armed forces.
64. The applicant did not claim, and I do not accept that he would be subjected to a harsher than usual penalty under these laws for any Convention reason. This finding is supported by expert evidence (in relation to soldiers facing disciplinary proceedings for being absent without leave, which I consider would apply equally to charges relating to other offences including desertion), stating that
- A soldier who went AWOL would be expected to face the normal disciplinary action that would be applied to any soldier in the LAF. His sect would not play a part in the punishment nor would his political affiliation (which, while not known would possibly be guessed) - a Sunni for example would be more likely to support March 14 bloc than any other grouping. In my opinion, low level enlisted personnel who went AWOL from the LAF would be treated for their charge only, regardless of their sect/political affiliation.<sup>17</sup>
65. I find that if he is charged, convicted and penalised for desertion, the process and any penalty will be administered pursuant to laws of general application, imposed in a non-discriminatory manner. Accordingly, this does not amount to Convention persecution.
66. The applicant claims that if convicted and sentenced to a prison term he will be subjected to serious harm including serious physical ill-treatment and possibly a threat to his life, as a result of torture and beatings. He claims that he will be subjected to this harm for the Convention reason of his religion, or a political opinion imputed to him, namely opposition to Hezbollah.
67. The applicant claims that when he was detained following his previous desertion, he was assaulted and tortured by Alawi and Shia inmates because he told them that he had been active in an operation against an Alawi militia, and had run away. His adviser submitted

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<sup>15</sup> *Applicant A v MIEA* (1997) 190 CLR 225 per McHugh J at 258 referring to *Yang v Carroll* (1994) 852 F Supp 460 at 467; *Chen Shi Hai v MIMA* (2000) 201 CLR 293

<sup>16</sup> *Applicant A v MIEA* (1997) 190 CLR 225, at 258 per McHugh J; *Chen Shi Hai* per Gleeson CJ, Gaudron, Gummow and Hayne JJ at [28]; *Appellant S395/2002 v MIMA* (2003) 216 CLR 473 per McHugh and Kirby JJ at [45].

<sup>17</sup> Shanahan, Rodger 2012, Email to RRT Country Advice 'RE: Lebanon Questions', Sydney (RRT ref: LBN39789), 13 January. Dr Shanahan is non-resident Fellow at the Lowy Institute for International Policy Institute.

reports about the situation in Roumieh Prison, stating that Christian prisoners are subjected to serious harm by Sunni inmates; and that prisoners who have killed soldiers (in circumstances which are not clear) are treated well.

68. The applicant's evidence about this issue was unsatisfactory. The evidence about the precise nature of the mistreatment he suffered when detained was vague; while he claimed to have been beaten and tortured, he did not provide specific details of the mistreatment he claims to have encountered. Moreover, it is not clear why the applicant would have told fellow prisoners, whose religious identity he must have known, the details of why he was detained, and this evidence seems implausible. Nonetheless, his evidence was clear that the prison authorities moved him to solitary confinement for his own protection once they became aware of his situation. The applicant claims that he would not be protected in the same way in the future because he will be detained in Roumieh Prison which is overcrowded, and where, according to the information provided by his adviser, the authorities are not in control. I do not accept, however, that the applicant would be detained in Roumieh Prison which, as is evident from the information provided by the applicant's adviser, is a general prison for criminals and those convicted or charged with security offences. I am satisfied that the applicant would be imprisoned in a military prison whose occupants would be soldiers who have been convicted under the Military Code for military offences. There is no evidence before me on the basis of which I am satisfied that the applicant would, while in a military prison, be subjected to serious harm amounting to persecution on a discriminatory basis for any Convention reason including his religion or imputed political opinion, including any political opinion imputed to him as a deserter, or because of his membership of any particular social group comprised of "deserters from the army". In any event, given his evidence about his past circumstances, I find that the military authorities would take steps to protect the applicant, as they did before, from violence directed at him by other prisoners. Information relied on in the delegate's decision, which was discussed in broad terms with the applicant at the hearing<sup>18</sup>, indicates that the LAF takes pains to preserve its status as a neutral institution untainted by sectarian differences. In the light of this information, and given the past conduct of the military authorities which I find represented reasonable measures to protect the applicant from harm, I do not accept that the LAF would permit systematic serious ill-treatment of serving soldiers for reason of their religion or political opinion.
69. In these circumstances, I find that any punishment the applicant may face as a consequence of not returning to Lebanon and to his army service within the period allowed by his leave would not amount to Convention persecution; and I am not satisfied that the applicant would be subjected to any additional serious harm amounting to persecution, in relation to which state protection would not be available, during the course of any imprisonment imposed as a legal consequence of his actions.

#### *Concerns about military service*

70. While the applicant gave evidence at the hearing that it is against his principles to serve in the army I consider that this evidence was self-serving and an attempt by the applicant to portray

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<sup>18</sup> CX17658:Lebanon's internal security forces in a politicised state of transition, *Mideast Monitor*, December 2008, 7 January 2009; CX297776, Lebanon army deploys in Beirut and Tripoli, BBC, 23 October 2012; Syrian War Tests Unity of Military in Lebanon, New York Times, [http://www.nytimes.com/2012/08/30/world/middleeast/syrian-war-tests-unity-of-military-in-lebanon.html?pagewanted=all&\\_r=0&pagewanted=print](http://www.nytimes.com/2012/08/30/world/middleeast/syrian-war-tests-unity-of-military-in-lebanon.html?pagewanted=all&_r=0&pagewanted=print), accessed 23 October 2013; Centre for Strategic and International Studies, *The Lebanese Armed Forces: Challenges and opportunities in post-Syria Lebanon*, 10 February 2009, [http://csis.org/files/media/isis/pubs/090210\\_lafsecurity.pdf](http://csis.org/files/media/isis/pubs/090210_lafsecurity.pdf), accessed 23 October 2013.

himself as a conscientious objector. I do not accept that the applicant is a conscientious objector, or that he would be perceived as one by the military authorities. When I put to the applicant that it was difficult to accept that, as a person who had voluntarily enlisted in the army, he was opposed to killing for religious or other reasons, he said that he had signed up for the [particular] Unit not expecting that he would have to fight or kill people. I do not accept that this is true. The information available about the [particular] Command (which I accept as reliable although it comes from Wikipedia) indicates that it is a regular part of the Army which may be engaged in combat. I do not accept that the applicant could have enlisted in the LAF expecting to be able to choose to serve exclusively in the [particular] Command. Nor do I accept that the applicant could have assumed that the role of this unit, or his role within it, would be confined to [doing certain activities] or instructing others in [this activity]. I find that when the applicant joined the [particular] Command he must have been aware that he was joining the LAF and that he might be called upon to fight and to kill, as any other soldier might. I do not accept that at the time when he joined the LAF he had any conscientious objection to military service.

71. While it is possible that a person who voluntarily enlisted in the army could undergo experiences during military service that could turn him or her into a person conscientiously opposed to war or killing on moral or ethical grounds, there is no credible evidence that this happened in the case of the applicant. While he has claimed that the type of service required of him was not what he expected; and said that he does not believe that the LAF should be used in sectarian disputes between Lebanese nationals, I do not accept that he could have been unaware when he enlisted that it was highly likely that the LAF would be engaged in such activity. There are many instances of the LAF being required to intervene in sectarian or political clashes among Lebanese citizens, including in the Alawite/Sunni violence in Tripoli, as detailed above. I do not accept that the applicant could have been unaware of the possibility that he would be required to serve in such circumstances, or that he had any fundamental or conscientious objection to doing so when he enlisted, or that he does so now.
72. I do not accept that the applicant is a conscientious objector. I do not accept that conscientious objection to being engaged in the military plays any part in his reasons for having deserted from the LAF. I do not accept that the applicant would be regarded as a conscientious objector and subjected to any discriminatory or unusual penalty for this reason should he return to Lebanon. Nor do I accept that, if the applicant were obliged to serve out his term of service in the military (although I note that the advice from DFAT referred to above indicates that a convicted deserter would be dishonourably discharged anyway), this would amount to persecution on the basis that it would conflict with any genuinely held conscientious objection to doing so.
73. I am not satisfied that the applicant has a well-founded fear of persecution for any of the reasons advanced. I am not therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention and he does not satisfy the criterion set out in s.36(2)(a).

### **Complementary protection provisions**

74. Having decided that the applicant is not a refugee, I have considered whether he is entitled to complementary protection. As noted above, this requires that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm. “Significant harm” is exhaustively defined in s.36(2A): s.5(1). A person will suffer



significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. Cruel or inhuman treatment or punishment, degrading treatment or punishment, and torture, are further defined in s.5(1) of the Act.

75. Torture is defined as an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for one of five purposes: for the purpose of obtaining from the person or a third person information or a confession; for the purpose of punishing the person for an act which they or a third person committed or is suspected of having committed; for the purpose of intimidating or coercing the person or a third person; for any purpose related to one of those purposes; or for any reason based on discrimination that is inconsistent with the Articles of the International Covenant on Civil and Political Rights (the ICCPR). Torture does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR.
76. Cruel or inhuman treatment or punishment is defined to mean an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person, or pain or suffering, whether physical or mental, is inflicted on a person, so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature. The pain or suffering must be intentionally inflicted. Cruel or inhuman treatment or punishment does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.
77. Degrading treatment or punishment is defined to mean an act or omission which causes, and is intended to cause, extreme humiliation which is unreasonable. Degrading treatment or punishment does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one that causes, and is intended cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.
78. The applicant has not raised any additional specific claims in relation to the complementary protection provisions other than those matters already considered in relation to the Refugee Criterion.

*Is there a real risk of harm from Alawite man?*

79. In *MIAC v SZORB*, the Full Federal Court held that the “real risk” test in the complementary protection provisions imposes the same standard as the “real chance” test applicable to the assessment of “well-founded fear” in the Refugees Convention definition.<sup>19</sup> In relation to the risk of harm the applicant claims to face from the Alawite man, I have found, for the reasons discussed above, that there is no real chance that he will be subjected to such harm. On the basis of the evidence before me, and for the same reasons which are set out above, I do not

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<sup>19</sup> *MIAC v SZORB* [2013] FCAFC 33 (Lander, Besanko, Gordon, Flick and Jagot JJ, 20 March 2013) per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342]. See also *MZYXS v MIAC* [2013] FMCA 13 (Riethmuller FM, 31 January 2013).

accept that there is a real risk that the applicant will suffer serious harm from the Alawite man arising from the same circumstances. On the basis of the evidence before me, there are therefore not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon there is a real risk that he will suffer significant harm from the Alawite man who he claims has threatened him with harm.

*Is there a real risk of harm from Hezbollah?*

80. As discussed above, the applicant has provided no evidence to support the claim put forward in his protection visa application, but which was not specifically pursued before the Tribunal, that he faces a real risk of significant harm from Hezbollah because he is a soldier in the LAF. For the reasons discussed above, I do not accept that there is a real risk that the applicant would be targeted and subjected to significant harm by Hezbollah in connection with the encounter with the Alawite militia or because of the applicant's enmity with an Alawite militiaman. There is no credible evidence suggesting that Hezbollah targets members or former members of the LAF, or that there is a real risk that Hezbollah or its members would target the applicant for any reason. In these circumstances, there is no credible evidence before me upon which I am satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm from Hezbollah if he returns to Lebanon.
81. The claim that he may be harmed by Hezbollah in the context of consequences that he may face for deserting from the army is dealt with below.

*Is imprisonment for a military offence significant harm?*

82. The applicant claims that he will be charged with desertion and if convicted will face a prison term. Independent evidence indicates that, if convicted on a charge of desertion, the applicant could face imprisonment for a number of years.
83. There is no credible evidence before me to suggest that, if convicted of desertion, there is a real risk that the applicant would be arbitrarily deprived of life or that the death penalty would be carried out on him. There is also no credible evidence to suggest that there is a real risk that, during imprisonment, the applicant would be subjected to torture, as defined; to cruel or inhuman treatment or punishment, as defined; or to degrading treatment or punishment, as defined. There is no evidence to suggest, and I find that there is no real risk that the applicant would be subjected to any harm in prison in excess of or in addition to consequences that are inherent in or incidental to lawful sanctions, namely the punishment imposed on him for breach of the military judicial code, which are not inconsistent with the ICCPR.

*Is there a real risk of poor conditions or additional mistreatment during imprisonment that would constitute significant harm?*

84. The applicant has provided information pertaining to conditions in Roumieh Prison, a prison run by the ISF in which criminals and persons convicted of security related offences are detained. I consider the possibility that the applicant would be detained in this prison to be remote. I am satisfied that the applicant would be detained in a military prison run by the military for soldiers convicted of offences committed under the military code. While there is evidence of poor conditions in ordinary prisons in Lebanon, there is no evidence before me to

indicate that conditions in military prisons are similar, or that conditions in military prisons are so poor that merely to be imprisoned in one of them would give rise to a real risk of significant harm, as defined. Nor is there any credible evidence before me which provides substantial grounds for believing that there is a real risk that the applicant would be subjected to mistreatment, while imprisoned, that would constitute significant harm, as defined. While I accept that the witness, Mr [A], was seriously mistreated in military detention, I consider that his circumstances were so different that I cannot draw from his evidence any conclusions about what might happen to the applicant. Mr [A] was a conscientious objector, and his experiences took place many years ago. As noted above, I do not accept that the applicant is a conscientious objector, or that he would be regarded as one. There is no reason arising from the evidence about the applicant's circumstances to support a finding that there is a real risk that he would be subjected to additional punishment or mistreatment during detention that would constitute significant harm.

85. The applicant claims that while in prison he will suffer beatings, torture and ill-treatment from other inmates and from the military authorities. He claims to have been assaulted and mistreated by other prisoners when he was detained [in] 2012 when he told them that he had been involved in an action involving an Alawite militia. Even if this evidence were accepted, I do not accept that there is a real risk that any prisoners with whom the applicant might be detained in the future would be aware of the applicant's history, so I do not accept that there is a real risk that the applicant would be subjected to harm in future arising from these circumstances. The applicant also stated that the authorities took steps to protect him by removing him from the other prisoners. In these circumstances, I am satisfied that if there were any risk to the applicant from other inmates, he could obtain from an authority of the country – that is, the military authorities responsible for the prison - protection such that there would not be a real risk that he would suffer significant harm<sup>20</sup>.

*Risk of harm as a member of the LAF*

86. As noted above, country information indicates that a deserter would be dishonourably discharged from the military. There is also information indicating that LAF members can resign at any time, although they may not receive a pension or other entitlements unless they have served for a specified period<sup>21</sup>. In these circumstances, it is doubtful that the applicant would be required to serve in the LAF on return to Lebanon. Even if he was, I do not accept that there is a real risk that he would suffer significant harm by virtue of being required to continue to serve in the LAF. As discussed at the hearing, and as set out above, I do not accept that serving in the LAF contravenes any religious, moral or ethical principles genuinely held by the applicant. While there is some risk that, as a serving soldier, he may be subjected to some kind of significant harm in the course of his duties, I am not satisfied on the basis of the available evidence that the risk of such harm occurring is real, rather than remote or insubstantial. In my view, there are not substantial grounds for believing that there is a real risk that the applicant will suffer significant harm as a necessary and foreseeable consequence of being returned to Lebanon, if he were required to complete his military service.

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<sup>20</sup> S.36(2B) of the Act.

<sup>21</sup> CX296661, LBN13897, The Lebanese Armed Forces, DFAT, 8 October 2012.

## **CONCLUSION**

87. For the reasons given above, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
88. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), I have considered the alternative criterion in s.36(2)(aa), but I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
89. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

## **DECISION**

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

R Mathlin  
Member