

1418945 (Refugee) [2016] AATA 4027 (23 June 2016)

**DECISION RECORD**

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1418945
<b>COUNTRY OF REFERENCE:</b>	Lebanon
<b>MEMBER:</b>	Shahyar Roushan
<b>DATE:</b>	23 June 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 23 June 2016 at 12:34pm

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant is [age] years old and a citizen of Lebanon. He arrived in Australia [in] September 2011 on a [temporary] visa. He applied to the Department of Immigration (the Department) for a Protection (protection) visa [in] November 2013.
3. The applicant essentially claims that he is of Jewish descent and although he was 'registered' as a Sunni Muslim, he 'covertly' practised the Jewish faith. He would like to practise his faith openly and fears harm from both Sunni Salafists and Shias of Hezbollah.
4. The issues in this case are whether the applicant has a well-founded fear of persecution for one or more of the five reasons set out in the Refugees Convention in Lebanon and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm.

### CONSIDERATION OF CLAIMS AND EVIDENCE

#### Protection Visa Application

5. In a statement attached to his application for a protection visa, the applicant made the following claims:
6. He was born in [his home town] and resided in [City 1], north Lebanon. His Jewish name is [Applicant's Jewish name]. At the time of his birth he was registered as a Sunni Moslem. He is, however, of Jewish descent and 'covertly practiced' the Jewish faith while residing in Lebanon.
7. His mother [and siblings] continue to reside in [City 1]. His father is currently working in [another country] as [an occupation]. He has been working [there] for the past [number] years.
8. His [specified ancestor] was a [Country 1] national who had been a member of [a Country 1 agency]. He was assigned to Lebanon prior to the outbreak of the First World War. His name was [ancestor's name].
9. [Afterwards], he stayed in Lebanon, marrying his [wife], who was a Maronite Christian.
10. During that period, there was a small Jewish community in Lebanon, consisting of approximately 22,000. They had a synagogue in Beirut ([name]). However, after the establishment of the state of Israel most Jews in Lebanon fled due to prevailing local hostility.
11. The applicant's [specified ancestor] remained in Lebanon and raised a family. Given the increasing animosity toward the Jewish population, his grandfather elected to register his religion as Sunni.
12. The applicant's father 'covertly' remains an adherent of the Jewish faith but, like his father, he has continued to overtly claim to be a Sunni Moslem.

13. The applicant's mother and grandmother also have Jewish ancestry from [another country]. He has close relatives in [several different countries] with whom he maintains contact. His family name, [family name], is 'universally' recognised as a Jewish name.
14. The applicant's family has been 'forced to identify as Muslims in order to conceal their Jewish ancestry'. Such active concealment included attending the Muslim mosque and undertaking other strictly Islamic practices, to which he objects.
15. The applicant 'ascribes' to Judaism and objects to being forced to abide by, or live as, a Muslim. He is no longer content with maintaining the same covert life style. He wants his children to practice their Jewish faith freely and without fear.
16. It would not be possible for him to openly practice his Jewish faith due to anti-Semitism in Lebanon, which has been further fuelled by extremism. Sunni salafis and Hezbollah are both 'sworn enemies of Israel and the Jewish people'. In addition, Lebanon has remained in a state of conflict with Israel since 1948.
17. Given the prevailing antagonism towards Jewish people and the state of Israel, he would be forced to continue to conceal his 'true religious identity'. His 'indifferent attitude' towards Islam would be obvious to other Muslims through his reluctance to fast or attend the mosque.
18. If he were to be identified as a person of Jewish ancestry or as a practising Jew, he will face 'severe discrimination in the work place which will impact on [his] ability to subsist'. No Lebanese employer would want to be associated with him.
19. Relocation to other parts of Lebanon would not be reasonable because of the 'pervasiveness of religious intolerance and the lack of protection' offered by the Lebanese authorities.

#### *The Interview*

20. The applicant was invited to attend an interview with a delegate of the Minister [in] March 2014. Where relevant the applicant's oral evidence to the delegate is discussed below under reasons and findings.

#### *The Delegate's Decision*

21. The delegate refused to grant the visa [in] October 2014. The delegate noted that at the interview the applicant had provided a reasonably detailed and generally consistent account of his family's origin in Lebanon; and demonstrated a basic level of knowledge about the Jewish community in Beirut. The delegate also noted that the applicant had provided a reasonable explanation for his reluctance to publicly assert a Jewish identity in Lebanon. However, the delegate placed weight on the fact that the applicant only began attending Synagogue in Australia in late 2013, around the time that he had lodged his application for a protection visa and more than a year after he had arrived in Australia. The delegate was also concerned that the applicant had failed to produce any evidence of his attendance and engagement with the Jewish community in Australia. The delegate further noted that at the interview the applicant demonstrated a scant knowledge of Kosher diet, Bar Mitzvah, Hukkah and Passover. The delegate was not satisfied that the applicant demonstrated a level of knowledge or participation in the Jewish religion would be expected of someone in his particular circumstances. The delegate was not satisfied that the applicant has sought to assert his identity as a Jew in either Lebanon or Australia. He was not satisfied that the applicant has sought to give expression to his family's Jewish heritage. He did not accept that the applicant has Jewish ancestry or that he practices Judaism.

## **Application for Review**

22. The applicant was represented in relation to the review by his registered migration agent.

### *Pre-Hearing Submissions*

23. In a Statutory declaration submitted in support of his application for review, the applicant stated:
24. His family name, [family name], is 'historically and universally' known to have Jewish roots. His father is a direct descendent of a Jewish [Country 1] immigrant who had settled in Lebanon during the First World War. His [specified ancestor] was a member of [a Country 1 agency]. He was posted to Lebanon during World War 1. After the War he remained in Lebanon and married a Christian Maronite.
25. During the first Arab Israeli War, his [grandfather] registered himself as a Muslim to avoid persecution as a Jew. His grandfather had a prosperous [business] which he was determined to keep. At that time laws had been introduced imposing restrictions on business ownership for Jews. As a result many Jews fled Lebanon.
26. After the applicant's father was born, he was registered as a Muslim and named [father's name]. His father married the applicant's mother, who was born to a Muslim father and a Christian Mother. After the marriage, the applicant's mother secretly converted to Judaism.
27. The applicant and his siblings were brought up with limited Jewish knowledge and practiced their faith in a limited way. However, 'externally' they protected the family by identifying themselves as Muslims.
28. Due to persistent animosity towards Jewish people and Israel, they had no choice but to continue to pretend to be Muslims.
29. Currently, there are no registered Jews in Lebanon 'except the Rabi'. However, there are approximately two hundred individuals who identify themselves as having a Jewish heritage. Like his family, in order to survive in Lebanon, they have opted to officially register their religion as either Christian or Muslim.
30. He has traced a number of distant Jewish relatives who are currently in Australia including [distant relatives' names]. He has also managed to trace two other deceased relatives, [deceased relatives names], as well as distant relatives in [several different countries]. He has made personal contact with them on his Facebook.
31. In Australia, the applicant has been attending [a] Synagogue in [a suburb], as well as [another] Synagogue, in [another suburb]. He mostly attends the Synagogue prayers on Friday night and sometimes Saturday mornings.
32. Due to the fact that his mother was not born Jewish, he is required to undergo 'official conversion to Judaism'. He is currently undertaking this process. Synagogue officials, including [Rabi A] and [another Rabi] have confirmed his Jewish ancestry but have deemed it necessary that he undergoes the official conversion process.

### *The Hearing*

33. The applicant appeared before the Tribunal on 31 March 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the

Arabic and English languages. The representative attended the Tribunal hearing. Where relevant, the applicant's oral evidence to the Tribunal is discussed below.

34. Following the hearing, the applicant submitted a number of supporting letters and statements, which have been referred to below.

### **The Relevant Law**

35. The criteria for a protection visa are set out in s.36 of the Act and 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 of the same class.
36. 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).
37. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
  - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
38. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
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 – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **Analysis, Findings and Reasons**

40. For the following reasons, the Tribunal has concluded that the decision under review should be remitted for reconsideration.
41. Throughout the process, the applicant has provided his evidence in a straightforward, unembellished and generally consistent manner.

42. The Tribunal is prepared to accept the applicant's account of his family history. The Tribunal accepts the applicant's evidence that his surname is a Jewish surname. The Tribunal accepts that the applicant's [specified ancestor] arrived in Lebanon during [time period] and married the [his wife], who came from a Christian Maronite family. The Tribunal accepts that the applicant's [specified ancestor] established himself as a successful businessman in Lebanon, and after the establishment of the state of Israel and the growing hostility in Lebanon towards the Jewish people, he decided to nominally change his religion and move to northern Lebanon, away from the south where the Palestinian refugee population was concentrated. The Tribunal accepts the applicant's evidence that, whilst his grandfather and his father remained Muslim in name, they strongly identified with their Jewish faith and practised Judaism in strict privacy at their homes. This was due to their fear of being harmed should the broader community become aware of their Jewish race or faith.
43. The Tribunal accepts that the applicant practised Judaism and learned the basic principles of the faith through his father. The Tribunal accepts that the applicant's father had entrusted the applicant with the task of guarding the family's Jewish heritage when he travelled overseas for work purposes. The applicant's demonstrated knowledge of Judaism at the Departmental interview and the Tribunal hearing appeared to be rudimentary. However, having regard to the fact that his family did not practise their faith openly and freely, choosing to conceal any manifestation of their Jewish identity to the outside world, it is not entirely surprising that the applicant's knowledge of his faith is somewhat deficient. The Tribunal also notes that, in his oral evidence to the Department and the Tribunal, the applicant spoke with passion and conviction about his beliefs, heritage and identity. The Tribunal found his evidence persuasive.
44. According to Jewish law, a child born to a Jewish mother or an adult who has converted to Judaism is considered a Jew.<sup>1</sup> The applicant has claimed that his mother converted to Judaism before he was born in a home-based, private and clandestine ceremony. The applicant, however, has been unable to provide any further information or evidence to substantiate this claim. The applicant has claimed, and the Tribunal accepts, that his inability to provide evidence that his mother is Jewish had prevented those he had approached in the Jewish community, including [Rabi A], [from Jewish Organisation 1], and Rabbi [name] of the [name] Synagogue, to recognise him as Jewish. Instead, he was advised that it was open to him to undergo conversion, a process which he embarked upon not long before he appeared before the Tribunal to give oral evidence.
45. Whilst the Tribunal harboured concerns in relation to the applicant's delay in starting the process of conversion, the Tribunal accepts that the applicant's own convictions about his identity, combined with his superficial understanding of the fundamentals of the Jewish faith, had made it difficult for him to accept the only way for him to be recognised as Jewish was to convert. Nevertheless, he has come to accept this view and has now embarked on the process of converting. In accepting these claims, the Tribunal has given weight to a letter of support from [Rabi A], dated [in] April 2016 and submitted in support of the application for review. [Rabi A] states:

... [The applicant] came to [Jewish Organisation 1] 'approximately 2 ½ years ago'. He wanted to certify his status as a Jew which he believes he is. Unfortunately as of yet we could not establish any evidence of his mother's side as it seems all documents pointing to his possible Jewishness in the family were destroyed. In case, there is no movement in that direction he would like to become a candidate for Giyur.

I haven't noticed anything in [the applicant] that would make me doubt his sincerity and we'll leave up to [Committee] to make their own fair assessment.

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<sup>1</sup> Weiner, R, Judaism: Who Is A Jew?,  
<http://www.jewishvirtuallibrary.org/jsource/Judaism/whojew1.html>.

46. In a separate letter, [Rabi A's] [relative], [Mr A] states that he had met the applicant approximately a year ago. He has had numerous conversations with him and they have communicated online. [Mr A] states that the applicant has begun to actively engage with his Jewish heritage in Australia and has kept [Mr A] updated 'regarding his visits to Synagogues, conversations with rabbis and his desire to live an active Jewish life'. [Mr A] states: 'my impression of [the applicant] is that he is sincere and genuine in his self-identification as a Jewish person and his desire to connect with Judaism'.
47. The country information before the Tribunal indicates that the Lebanese government and the Israelis are officially considered enemy states after nearly 70 years of complicated border relations and war. Lebanese citizens are prohibited from speaking to Israelis, though there is no law against speaking to the Lebanese Jewish population.<sup>2</sup> According to an AI-Monitor article, only about 200 Jewish believers remain in Lebanon. They practise their faith in the privacy of their homes because 'they are afraid of a reaction by individuals, who do not understand their religion is not synonymous with the State of Israel'. Negative sentiments about Jews and Israel were widespread in Lebanon across all religious communities. Data from a Pew Global Attitudes survey conducted in May 2005 in Lebanon showed that no one in their sample, Muslim, Christian, Druze, or otherwise, said they had a favourable view of Jews.<sup>3</sup>
48. The Bureau of Democracy, Human Rights and Labor *International Religious Freedom Report* for 2012 stated:
- Hizballah party members directed strong rhetoric against Israel, with which the country remained in a state of war. In a February 16 speech, the Hizballah party secretary general described the "the Zionist scheme" as a threat to the entire region and the cause of "all the agonies of the Palestinian people inside and outside Palestine." "We must confront and topple it," he said, "Every resistance fighter in this region, especially in the neighboring countries, is defending the entire nation by resisting the Zionists."
49. The same report for 2014 stressed that anti-Semitic rhetoric in the media was common.<sup>4</sup> The country information before the Tribunal also points to increasing radicalisation and commission of acts of violence amongst Sunni groups in some parts of Lebanon, including the north.<sup>5</sup>
50. The Tribunal accepts that the applicant identifies as a Jew and has a strong desire to connect with Judaism. He is currently undergoing conversion in Australia and will continue to

<sup>2</sup> Gallagher, A, Lebanon's Last Synagogue, 18 May 2015,

<http://www.usnews.com/news/articles/2015/05/18/lebanons-last-synagogue>.

<sup>3</sup> Wike, R and Horowitz, J, Lebanon's Muslims: Relatively Secular and Pro-Christian but Support for Terrorism and Anti-Semitism are Widespread, Pew Research Centre, , 26 July 2006,

<http://www.pewresearch.org/2006/07/26/lebanons-muslims-relatively-secular-and-prochristian/>.

<sup>4</sup> US Department of State, the Bureau of Democracy, Human Rights and Labor *International Religious Freedom Report* for 2014,

<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2014&dliid=238466#wrapper>.

<sup>5</sup> See, for example, *The Daily Star*, Police monitored Tripoli militants for 10 days before shootout, 10 April 2015, <http://www.dailystar.com.lb/News/Lebanon-News/2015/Apr-10/293996-notorious-lebanon-militant-osama-mansour-killed-in-tripoli-shootout.ashx>; *The Daily Star*, Tripoli attack on Army raises fears of return to violence, 1 July 2014, <http://www.dailystar.com.lb/News/Lebanon-News/2014/Jul-01/262226-bomb-near-lebanese-army-patrol-in-tripoli.ashx>; and Rowell, A, The Free Lebanese Army?, *NOW Lebanon*, 27 August 2012, [https://now.mmedia.me/lb/en/reports/features/the\\_free\\_lebanese\\_army](https://now.mmedia.me/lb/en/reports/features/the_free_lebanese_army). Luca, AM, Sectarian conflict and Sunni Islamic radicalization in Tripoli, Lebanon (thesis submitted in fulfilment of the requirements for the degree of Master of Arts in International Affairs, Lebanese American University) August 2015, [https://www.academia.edu/17461718/Sectarian\\_conflict\\_and\\_Sunni\\_Islamic\\_radicalization\\_in\\_Tripoli\\_Lebanon](https://www.academia.edu/17461718/Sectarian_conflict_and_Sunni_Islamic_radicalization_in_Tripoli_Lebanon).

identify with, and assert, his Jewish heritage. The Tribunal is of the view that, in the context of the prevailing hostile attitudes towards Israel and, by association, Jews, amongst the Lebanese population, fuelled by, more generally, notoriously deep-rooted historical animosities associated with the Arab–Israeli conflict, the applicant would place himself in a highly vulnerable position should he assert his Jewish identity in Lebanon. The Tribunal is also of the view that any decision by the applicant to repress his Jewish identity or to refrain from practising the Jewish faith in Lebanon would be due to fear of harm.

51. In light of the evidence before the Tribunal and the applicant's individual circumstances, the Tribunal accepts that there is a real chance that the applicant would suffer serious harm at the hands of the Muslim groups, both Sunni and Shia, and members of the public in Lebanon. The Tribunal accepts that the only way that the applicant would be able to avoid this harm would be to modify his behaviour and not to practice his religion in the way that he feels that he should. The Tribunal, however, cannot require a protection visa applicant to take steps to avoid persecution. In *Applicant S395/2002 v MIMIA* [2003] HCA 71, Justices McHugh and Kirby held:

The purpose of the Convention is to protect the individuals of every country from persecution on the grounds identified in the Convention whenever their governments wish to inflict, or are powerless to prevent, that persecution. Persecution covers many forms of harm ranging from physical harm to the loss of intangibles, from death and torture to State sponsored or condoned discrimination in social life and employment...but persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the person affected must take steps - reasonable or otherwise - to avoid offending the wishes of the persecutors. Nor would it give protection to members of many a "particular social group" if it were a condition of protection that its members hide their membership or modify some attribute or characteristic of the group to avoid persecution.

52. The Tribunal is not satisfied that effective state protection against the harm which the applicant fears is available to him if he were to return to Lebanon. The Tribunal is not satisfied that the applicant could avoid the persecution which he fears by internally relocating. The Tribunal is not satisfied that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality, Lebanon.
53. The Tribunal finds that the persecution which the applicant fears involves 'serious harm' as required by s.91R(1)(b) of the Act in that it involves significant physical harassment or ill-treatment. The Tribunal finds that the applicant's religion is the essential and significant reason for the persecution which he fears, as required by s.91R(1)(a) of the Act, and that the persecution which he fears involves systematic and discriminatory conduct, as required by s.91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason, namely his religion. The Tribunal accepts that the applicant has a well-founded fear of persecution because of his religion.
54. For the reasons given above, the Tribunal is satisfied that the applicant is a person with respect to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

## **DECISION**

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



Signed by AustLII

Shahyar Roushan  
Senior Member

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