

**1113683 [2012] RRTA 611 (9 August 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1113683

**DIAC REFERENCE(S):** CLF2011/123818

**COUNTRY OF REFERENCE:** Stateless

**TRIBUNAL MEMBER:** Andrew Rozdilsky

**DATE:** 9 August 2012

**PLACE OF DECISION:** Sydney

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

## STATEMENT 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a stateless from Lebanon as his country of former habitual residence, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

16. 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 to 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').
17. 'Significant harm' for these purposes 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.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] July 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
21. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

### **Protection visa application**

22. The applicant was born in Nahar el Bared refugee camp in Lebanon. The applicant moved to Badawi refugee camp in 2007. The applicant claimed that when the family home in Badawi was destroyed, they moved back to Nahar el Bared.
23. The applicant referred to the security crackdown in 2008. The applicant claimed that he was detained in August 2008, tortured, and accused of aiding Palestinian militants.

24. The applicant claimed that residents were mistreated by the military and Lebanese intelligence. No protection was available, and people did not want to be drawn to the attention of the authorities.
25. The applicant fears severe restrictions on employment opportunities and that he would be unable to subsist. He fears arrest by the military.
26. The applicant claims that there is rising Islamic militancy inside the camps.

### **Delegate's decision**

27. The delegate accepted the applicant's detention, but found that it was routine and that the applicant was not targeted. The delegate noted that the applicant's brother also applied for a protection visa. The delegate found that there was no more chance of the applicant being targeted than any other Palestinian. The delegate found that the discrimination in employment that the applicant would face would not amount to persecution.

### **The Tribunal hearing**

28. The applicant testified that he first came to Australia as a student. He studied for nearly two and a half years. After finishing his diploma, he applied for a protection visa. He testified that his intentions were to remain permanently in Australia when he first arrived here.
29. The applicant testified that he would have no right to do anything if he were to return to Lebanon. He would be unable to get employment even with his degree as being Palestinian he is not welcomed.
30. The applicant testified that he fears the general populace in Lebanon and the security forces.
31. The applicant testified regarding being detained in Lebanon. His testimony was that he was detained in 2002 and 2008, and that he was stopped many times at checkpoints and delayed for varying periods of time, whilst travelling. He related mistreatment on one of these occasions, and the fact he was assaulted, and that his belongings were confiscated by army intelligence and that he was not allowed to contact his family. He is considered a high risk individual and can be detained at any checkpoint as a Palestinian. On other occasions, he was asked for his identification but nothing more happened. He testified things like this happened all the time.
32. The applicant was asked to comment on the delegate's finding that these events were random and routine. The applicant denied this.
33. He testified that he cannot find work because he is Palestinian.
34. The applicant testified that he is educated, and most Palestinians are not educated.
35. Having been in Australia has changed him. He is no longer afraid of authorities and has strong opinions regarding the need to stand up for rights and values in society. He feels the authorities in Lebanon have no right to stop him unless they have something against him.
36. He has had no involvement with the Palestinian community in Australia.
37. He will be treated differently being an educated Palestinian, and his world view has changed.

38. Regarding his delay in applying for a protection visa, the applicant claimed that he feared it would affect his ability to study if he applied. He maintained his fear of return to Lebanon. He further fears militants in the refugee camps because of his education, and that the camps have radicalised. .

### 39. **Documentary evidence**

The Canadian Immigration and Refugee Board provides the following recent information on the Treatment of Palestinian refugees in Lebanon: According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as of June 2011, there were 433,000 registered Palestinian refugees in Lebanon (UN n.d.c). UNRWA estimates that the number of Palestinian refugees actually residing in Lebanon is between 260,000 and 280,000 (ibid.). Sources indicate that Palestinian refugees make up approximately 10 percent of Lebanon's population (MRG July 2011, 224; The Palestine Chronicle 1 Apr. 2010).

UNRWA states that approximately 62 per cent of Lebanon's Palestinian refugee population lives in 12 camps, while the rest live in "gatherings" (UN n.d.c). These "gatherings" are unofficial settlements (ibid.). The UN's Integrated Regional Information Networks (IRIN) states that Palestinian refugees also live in cities and towns (UN 4 Oct. 2010).

Sources indicate that Lebanon has not ratified the 1951 Convention Relating to the Status of Refugees nor the 1967 Protocol (EU 25 May 2011, 5; UN 4 Oct. 2010). According to IRIN, this results in the absence of legislation or administrative practices that address the needs of refugees (ibid.).

### **Treatment of Palestinians**

The US Department of State indicates that there is "widespread and systematic discrimination" against Palestinian refugees in Lebanon (8 Apr.2011, 1). According to The Palestine Chronicle, an independent online newspaper that focuses on Palestine, Israel and the Middle East (The Palestine Chronicle n.d.), the former Foreign Minister of Lebanon, Dr. Ali Chami, stated that Palestinian refugees in Lebanon are "in complete misery and a very dire situation" (quoted in The Palestine Chronicle 1 Apr. 2011).

In correspondence with the Research Directorate, the President of the Lebanese Center for Human Rights (Centre libanais des droits humains, CLDH), a Lebanese non-political human rights organization that monitors the human rights situation, provides rehabilitation to victims of torture, and "fights against enforced disappearance, impunity, arbitrary detention, and racism," stated that Palestinian refugees should be considered "a vulnerable group" and indicated that they experience "discrimination and racism" (CLDH 5 Oct. 2011). The Associated Press (AP) corroborates that Palestinian refugees "face deep prejudice from many Lebanese" (17 Aug.2010).

According to the President of the CLDH, Palestinians are more at risk of "arbitrary detention," "torture," and "kidnapping" (5 Oct. 2011). The US Department of State corroborates that Palestinian refugees are arrested arbitrarily and detained by state security forces and rival Palestinian factions (8 Apr. 2011, 10). The President of the CLDH states that arbitrary detention is conducted by the Lebanese security and judiciary systems (CLDH 5 Oct. 2011). Also, according to the President, Palestinian refugees are unable to access free legal aid (ibid.). The President of the CLDH indicated that when a Palestinian refugee has completed a sentence or has been declared innocent, an arbitrary detention and investigation period by the general security service is conducted before he or she is released (ibid.). According to the European Commission, refugees subjected to arbitrary detention face "very poor conditions" (EU 25 May 2011). The US Committee for Refugees and Immigrants (USCRI) states that violence is common during interrogations, arrests, and in detention facilities (USCRI 2009). The USCRI also states that in October 2008, human rights organizations identified several Palestinian detainees who died in Lebanese custody either at the hands of guards, or due to negligence or lack of medical care (ibid).

When referring to torture, the President of the CLDH stated that Palestinians are generally treated "more harshly" than Lebanese citizens by security services due to reasons including "racism and discrimination," and the assumption, "often without basis," that the refugee collaborates with an armed group (CLDH 5 Oct. 2011).

In reference to kidnappings, the President of the CLDH stated that Palestinian refugees have been arrested and investigated by illegal armed groups in the refugee camps (ibid.). She specified that these kidnappings occur "without supervision of any official judiciary system" (ibid.).

In a keynote address to Exeter University, the Institute of Arab and Islamic Studies, and the European Centre for Palestine Studies, the Deputy Vice-Chancellor of UNRWA stated that "[i]n Lebanon, the refugees have experienced recurrent armed conflict and multiple displacements, most recently in 2007, and the specter of violence continues to stalk the twelve refugee camps" (quoted in States News Service 3 Dec. 2010). In 2007, a conflict between the Lebanese Army and a group called Fatah Al-Islam displaced 31,400 Palestinian refugees from the Nahr el-Bared refugee camp, and destroyed 85 percent of the camp (BADIL 2010, 21, 33).

Sources indicate that Palestinians do not have basic social and economic rights (The Palestine Chronicle 1 Apr. 2011), political rights (US 8 Apr.2011, 23), or civil rights (CLDH 5 Oct. 2011). The Palestine Chronicle states that according to a

delegation of British and European parliamentarians, Lebanon's position on Palestinian refugees is "woefully inadequate" (1 Apr. 2011).

## **Citizenship and Identity Documents**

Palestinian refugees are denied citizenship in Lebanon (MRG July 2011, 224; US 8 Apr. 2011, 20) and are considered to be foreign nationals (ibid.) or foreigners (BADIL 2009, 112; UN 2 Sept. 2010, para. 52). According to the US Department of State, Palestinian refugees receive "poorer treatment" than other foreign nationals (8 Apr. 2011, 20). The BADIL Resource Center for Palestinian Residency & Refugee Rights reports that only a "small number" of Palestinian refugees have acquired citizenship, mostly consisting of some Christian Palestinians "who were granted citizenship in the 1950s under the presidency of Camille Chamoun to keep the balance between Christians and Muslims in Lebanon" (BADIL 2009, 112, 139).

According to The Daily Star, a newspaper and online news source of Lebanese and regional news (The Daily Star n.d.), on 28 June 2011, Prime Minister Najib Miqati restated that Lebanon rejects the naturalization of Palestinian refugees (ibid. 29 June 2011). The US Department of State notes that there is discrimination in birth registration, as children born to Palestinian refugees are not registered, denying them citizenship and limiting their access to public services (8 Apr. 2011, 21, 27).

According to the US Department of State, citizenship is only passed on by the father (US 8 Apr. 2011, 22). A Lebanese woman cannot pass her citizenship on to her spouse or children (MRG July 2011, 225; UN 28 Oct. 2010, para. 10). Children from mixed marriages consisting of a Lebanese mother and a Palestinian father do not have citizenship rights and are therefore stateless when they cannot be registered under their father's citizenship (US 8 Apr. 2011, 22, 27). In August 2009, after civil society campaigning, the Minister of Interior submitted a draft law to Cabinet allowing for citizenship to be passed on by Lebanese women (UN 28 Oct. 2010, para. 10). While, as of 28 October 2010, the draft law was awaiting approval, government representatives and politicians have proposed that it should not apply to Lebanese women who are married to Palestinian men (ibid.). Information on the status of the draft law could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to BADIL, "[t]he right to residency and travel of Palestinian refugees in Lebanon is subject to arbitrary change, depending on political context" (BADIL 2009, 112). BADIL's Survey of Palestinian Refugees and Internally Displaced Persons for 2008-2009 states that the validity of residency and travel documents at the time of the report was as follows: Palestinian refugees who are registered with both UNRWA and the Department of Political Affairs and Refugees (DPAR) hold permanent residency cards and travel documents valid for five years. Those who are registered only with DPAR are issued the same residency card, but a different travel document (laissez-passer), which is valid for one year (ibid., 112). BADIL's residency and travel documents information is corroborated by the USCRI (USCRI 2009). However, BADIL also indicates that the laissez-passer, which is valid for one year is renewable up to three times (BADIL 2009, 112). BADIL also states that according to sources, due to fears that new revisions to the law may occur, Palestinians are reluctant to travel abroad as their return to Lebanon is uncertain (ibid.).

BADIL indicates that Palestinian refugees who are not registered with DPAR or UNRWA are considered as "non-ID Palestinians" (ibid.). Sources place the number of non-ID Palestinians between 3,000 (UN 4 Oct. 2010; US 8 Apr. 2011, 22) and 5,000 (AFP 5 Dec. 2009). The Star, a weekly English-language newspaper in Jordan (EMIS n.d.), reports that according to the Director of the Palestinian Union for Refugees, "[t]his group of refugees arrived to Lebanon after the 1967 exodus during which Israel invaded the West Bank and Gaza Strip, and after the events of Black September in 1970..." (14 Dec. 2009). Agence France-Presse (AFP) corroborates that the majority of non-ID Palestinians arrived in Lebanon in the 1970s when Jordan expelled thousands of Palestinians and the Palestine Liberation Organization (PLO) (AFP 5 Dec. 2009). AFP also reports that Lebanon only recognizes as refugees those Palestinians who arrived in Lebanon when the state of Israel was created in 1948 (ibid.).

According to AFP and BADIL, non-ID Palestinians are considered to be illegal by the Lebanese government (ibid.; BADIL 2009, 112). Further, The Star indicates that non-ID Palestinians have a "non-existing legal status," and the Director of the Palestinian Union for Refugees specifies that non-ID Palestinians are not given refugee status or even status as illegal aliens (The Star 14 Dec. 2009). Due to this non-existing legal status, non-ID Palestinians do not have the right to work (ibid.; AFP 5 Dec. 2009).

Non-ID Palestinians cannot access education (The Star 14 Dec. 2009; AFP 5 Dec. 2009) or medical services (ibid.). According to the Director of the Palestinian Union for Refugees, UNRWA "still failed to provide humanitarian living conditions to these people" (quoted in The Star 14 Dec. 2009). The US Department of State and AFP indicate that non-ID Palestinians were not eligible for receiving assistance from UNRWA (8 Apr. 2011, 22). Sources indicate that non-ID Palestinians are deprived of fundamental rights (US 8 Apr. 2011, 22; AFP 5 Dec. 2009; BADIL 2009, 112).

According to AFP, non-ID Palestinians are considered as foreigners even inside Palestinian refugee camps (AFP 5 Dec. 2009).

Children of non-ID Palestinians inherit their parents' status (AFP 5 Dec. 2009). This includes children born from Lebanese mothers and non-ID Palestinian fathers, who are born without citizenship and rights (ibid.), and children born from UNRWA refugee mothers and non-ID Palestinian fathers, who cannot acquire refugee status (US 8 Apr. 2011, 22). Although the

Lebanese authorities began issuing IDs for non-ID Palestinians in 2008, they are no longer valid (The Star 14 Dec. 2009), and the process was stopped in early 2009 (Human Rights Watch 24 Jan. 2011). According to the UN, the process of issuing IDs started again in 2010 (UN 2 Sept. 2010). In 2011, the Cairo Institute for Human Rights Studies (CIHRS) indicated that the process of issuing IDs was reinstated but that it is "very slow, inconsistent, and unsustainable" (CIHRS 25 Feb. 2011). The CIHRS also stated that there is a one-year expiry date for the IDs and "sometimes the process does not work" (ibid.).

## **Mobility Rights**

Sources indicate that freedom of movement for Palestinian refugees is restricted (US 8 Apr. 2011, 17; IPS 19 Nov. 2010; The Palestine Chronicle 1 Apr. 2011). Inter Press Service (IPS) reports that, according to Noam Chomsky, Professor at the Massachusetts Institute of Technology (MIT) (MIT n.d.), "Palestinians in Lebanon live encaged" (14 June 2010). The UN states that the camps in Southern Lebanon are "besieged and fenced" (UN 28 Oct. 2010, para. 31). The CIHRS indicates that "[t]he entry to, and exit from, the southern camps is subject to registration by the Lebanese army after 9 pm" (CIHRS 25 Feb. 2011). According to the CIHRS, foreigners visiting these camps, including "foreigners of Palestinian origin," need a military access permit (ibid.). However, the US Department of State indicates that Palestinians registered with the Ministry of Interior's DPAR, may travel to another part of the country if DPAR the Directorate approves "transfer of registration" for Palestinian refugees living in camps, which is usually approved (US 8 Apr. 2011, 17). According to the USCRI, Palestinian refugees who live in camps located north of the Litani river must obtain written permission before being allowed to travel south (USCRI 2009).

The US Department of State indicates that Palestinian refugees living near the Nahr el-Bared camp have permanent permits that must be shown at the Lebanese Armed Forces checkpoint in order to enter the area (US 8 Apr. 2011, 17). Similarly, the CIHRS states that since 2007, the Lebanese Army strictly controls the entry and exit of Palestinians to the [Nahr el-Bared] camp, including to the new camp - an area adjacent to the old camp area - where some refugees still live, and to which other refugees were displaced from the old camp area. (25 Feb. 2011).

The CIHRS also states that all Palestinian refugees and staff of humanitarian NGOs are required to produce a military permit to enter surroundings of the Nahr el Bared camp (25 Feb. 2011). According to The Daily Star, Nahr el-Bared camp has been under "strict military guard" since the conflict in 2007 (28 June 2010). IPS states that "[l]arge camps, such as Ain el-Helweh [also spelled Ein al Hilweh], Bedawi and Chatila, are guarded by the Lebanese military or police" (14 June 2010). The UN indicates that in 2009, the Lebanese army built a wall around the eastern side of Ain el-Helweh (UN 28 Oct. 2010, para. 31). On 19 November 2010, IPS reported that "most of the Palestinian camps are encircled by the Lebanese army" (19 Nov. 2010).

Sources indicate that non-ID Palestinians also do not have freedom of movement (The Star 14 Dec. 2009; US 8 Apr. 2011, 22; BADIL 2009, 112), and The Star reports that they cannot leave their camps (14 Dec. 2009).

According to Human Rights Watch, non-ID Palestinians faced "constant fear of arrest" (24 Jan. 2011). The Star reports on repeated arrests of and insults towards non-ID Palestinians at checkpoints (14 Dec. 2009).

## **Property Rights**

Palestinian refugees are prohibited from owning property (Human Rights Watch 24 Jan. 2011; US 8 Apr. 2011, 21; BADIL 2009, 115). Social Anthropologist, Are Knudsen (CMI n.d.), explains that after the 1969 decree, Palestinians were able to acquire limited property (up to 3,000m<sup>2</sup> in Beirut and 5,000m<sup>2</sup> elsewhere) (Knudsen 2009, 64). However, the 1969 decree was amended in 2001 (amendment No. 296, dated 3 April 2001) (ibid.), prohibiting ownership to "any person who does not hold citizenship from a recognized State or to any person where such ownership contravenes the provisions of the Constitution concerning naturalization" (CIHRS 25 Feb. 2011). The 2001 amendment also states that Palestinian refugees who had previously owned property before 2001 are not able to pass the property on to their children (Knudsen 2009, 65; US 8 Apr. 2011, 21), as the property of deceased Palestinian refugees is taken by the Lebanese government (BADIL 2009, 141). According to the US Department of State, these laws "do not explicitly target Palestinian refugees" (US 8 Apr. 2011, 21). However, according to Knudsen, "Palestinian refugees are the only foreigners not having a 'nationality of a recognized state'," and therefore the law "deliberately excluded Palestinians from owning, bequeathing, or even registering property" (Knudsen 2009, 65). In January 2011, Lebanon rejected UN Human Rights Council recommendations to allow Palestinians to own property (UN 12 Jan. 2011). According to the European Commission, by 25 May 2011, no progress had been made on the right of Palestinians to own property (EU 25 May 2011).

## **Social Services**

Palestinian refugees do not have access to social services in Lebanon, and rely on UNRWA to provide such services (US 8 Apr. 2011, 21; UN n.d.a). The Daily Star reports that UNRWA's funds have been "slashed" and its standards are falling "at an alarming rate" (29 Oct. 2010).

## **Health care**



Sources indicate that Palestinian refugees cannot access state medical facilities, and rely on UNRWA for health services (MRG July 2011, 224; US 8 Apr. 2011, 21; BADIL 2009, 115). According to an article published in the Palestine-Israel Journal of Politics, Economics and Culture, Lebanese hospitals often deny emergency services to Palestinian refugees (Ibrahim 2008, 86). Sources also state that 95 percent of Palestinian refugees do not have health insurance (MRG July 2011, 224-225; The Daily Star 28 Apr.2011; UN n.d.c).

UNRWA provides basic primary health care, and financially assists refugees with the cost of secondary hospital care and partial tertiary care (UN n.d).

a). According to UNRWA, the most pressing concern for refugees is the cost of hospitalization, as refugees usually cannot afford the cost of medical care and at times have to choose between not receiving medical treatment or "falling deeply into debt" (ibid.). UNRWA states that hospital care costs Palestinian refugees approximately \$1,228 per household every year, which is not affordable to these families (UN n.d.c). An assessment of UNRWA's health care illustrated that tertiary care was "poorly covered" by UNRWA (UN n.d.d). UNRWA states that they are unable to fully cover tertiary care treatments as they usually cost more than US\$10,000, but they are also "beyond the means of a population that suffers from endemic poverty and marginalization" (ibid.).

According to the International Crisis Group, the health care provided by UNRWA and other NGOs is affected by "substandard infrastructure and equipment" (19 Feb. 2009, 16). UNRWA indicates that there are only 5.5 hospital beds available for every 10,000 people (UN n.d.d). According to a Hamas official, Palestinian refugees stage regular sit-ins at UNRWA headquarters to protest the "shortage and decrease of UNRWA services of relief, health and education" (quoted in The Daily Star 28 Apr. 2011).

AFP indicates that non-ID Palestinians are unable to access public health care and health care services offered by UNRWA (AFP 5 Dec. 2009).

## **Education**

Sources indicate that Palestinian refugees are prohibited from accessing public education (MRG June 2011, 224; US 8 Apr. 2011, 21; UN 28 Oct. 2011, 7). According to the report of the working group on the Universal Period Review for Lebanon, in 2011, Lebanon rejected a recommendation to provide "free education to all children of refugees" (UN 12 Jan. 2011, para. 82.28).

UNRWA indicates that private education in Lebanon is usually not affordable to Palestinian refugees (UN 2011). Palestinian refugees rely on UNRWA schools for education (BADIL 2009, 114; US 8 Apr. 2011, 21). However, according to BADIL, access to high school and post-secondary education is "severely restricted," as UNRWA only has a "small number" of high schools and post-secondary training centres (BADIL 2009, 114). According to MRG, access to universities and vocational training centres is limited as there are quotas for foreign students in particular courses (MRG July 2011, 224).

The UN notes that there are low enrolment rates of Palestinian refugees in secondary education (UN 2 Sept. 2010, 10). Palestinian refugee children often drop out of school early in order to earn an income (BADIL 2009, 114; US 8 Apr. 2011, 21). Child labour exists on a "wide scale" in and around Palestinian refugee camps (UN 2 Sept. 2010, para. 40), and 18 percent of street children in Lebanon are Palestinian refugees (UN 28 Oct. 2010, para.37).

Non-ID Palestinians are unable to access education (The Star 14 Dec. 2009; AFP 5 Dec. 2009).

## **Employment**

Sources indicate that an amended labour law was passed in August 2010 (Human Rights Watch 24 Jan. 2011; MRG July 2011, 224; US 8 Apr. 2011, 21), and implementing decrees were signed in February 2011 (EU 25 May 2011, 5).

Sources state that the amended law:  
Allows Palestinian refugees to work legally (MRG July 2011, 224).

Permits registered Palestinian refugees to work in any job open to foreigners (EU 25 May 2011). According to the US Department of State, Palestinian refugees must be registered with the Lebanese government to benefit from provisions of the new law (8 Apr. 2011, 21). IRIN states that these jobs must be in the private sector (UN 4 Oct. 2010).

Removes fees for work permits (Human Rights Watch 24 Jan. 2011; EU 25 May 2011).

Provides limited social security benefits (ibid.).

Enables Palestinian refugees who contributed to the National Social Security Fund to claim end-of-service benefits (EU 25 May 2011).

Sources indicate that the August 2010 amendment is still inadequate due to the following reasons:

Palestinian refugees are still prohibited from working in certain professions (Human Rights Watch 24 Jan. 2011; EU 25 May 2011; MRG July 2011, 224). According to Human Rights Watch, Palestinian refugees are restricted from working in 25 professions that require syndicate membership, such as law, medicine and engineering (24 Jan. 2011). MRG indicates that Palestinian refugees are banned from working in more than 30 professions (July 2011, 224). The European Commission indicates that Palestinian refugees are still restricted from working in regulated professions (EU 25 May 2011, 5), while the US Department of State indicates that Palestinian refugees are still not allowed to work in certain unionized professions (8 Apr. 2011, 32).

Palestinian refugees are still prohibited from working in public sector jobs (UN 4 Oct. 2010; IPS 19 Nov. 2010).

Complex procedures exist to obtain work permits (EU 25 May 2011, 5; IPS 19 Nov. 2010).

Contracts with employers are still necessary in order to obtain a work permit, and employers likely will not issue contracts because they will be required to declare the wage paid and pay into social security (IPS 19 Nov. 2010).

MRG indicates that according to the UK's Guardian, before offering a job to a Palestinian, Lebanese employers must prove to the Ministry of Labour that no Lebanese national can do the job (MRG July 2011, 224).

The work permit system relies on "employer cooperation, a system that has previously relegated most Palestinians to black market labor" (Human Rights Watch 24 Jan. 2011).

Since they are not allowed to own property, Palestinians cannot run businesses or shops (IPS 19 Nov. 2010).

Although Palestinian refugees pay contributions, they are still not allowed to claim health and maternity benefits, as well as family indemnity (EU 25 May 2011; IPS 19 Nov. 2010).

Some professional associations require "reciprocity" agreements with a foreigner's home country before granting membership (AP 17 Aug. 2010).

Since Palestinians do not have a home country, they have historically been unable to access positions which require such reciprocity agreements (IPS 14 June 2010). Human Rights Watch indicates that the August 2010 amendments to the labour law exempt Palestinians from reciprocity agreements (Human Rights Watch 24 Jan. 2011). However, according to IPS, these new provisions have not been implemented in practice (19 Nov. 2010).

Sources place the unemployment rate of Palestinian refugees between 56 percent (UN n.d.c) and 60 percent (IPS 14 June 2010). According to IPS, some companies simply state that they do not hire Palestinians (IPS 14 June 2010). IPS also states that in 2009, Human Rights Watch statistics indicated that while 36,754 Ethiopians were granted work visas, 261 Palestinians received work visas (ibid.). Sources indicate that Palestinian refugees are underpaid (The Daily Star 29 Oct. 2010; IPS 14 June 2010), earning "significantly lower hourly wages" than their Lebanese counterparts (ibid.). The Daily Star reports that 40 percent of the Palestinian refugees who are working earn less than minimum wage (29 Oct. 2010). Some Palestinian refugees work in the informal sector (US 8 Apr. 2011; IPS 19 November 2010), and are forced to hide from officials because they are working illegally (ibid.). According to IPS, the other option for Palestinian refugees is to work in camps, but the labour market is limited and there are few opportunities for educated persons (ibid.). According to MRG, Palestinian refugees are denied access to "all but menial employment" (MRG July 2011).

As previously mentioned, non-ID Palestinians are not legally allowed to work (The Star 14 Dec. 2009; AFP 5 Dec. 2009), and some must live on the handouts they receive (ibid.).

According to the report of the working group on the Universal Period Review for Lebanon, in 2011, Lebanon rejected France's recommendation to "[l]ift the obstacles to employ Palestinian refugees" (UN 12 Jan. 2011, para. 82.28).

## **Living Conditions for Palestinian Refugees**

Sources indicate that "abject" or "deep" poverty exists in Palestinian refugee camps (Knudsen 2009, 51; UN n.d.b; BADIL 2009, 75). According to UNRWA, two of every three Palestinian refugees are poor (UN n.d.c), and compared to other countries where UNRWA is working, Lebanon has the highest number of Palestinian refugees living in "abject poverty" (UN n.d.

b). The UN states that the socio-economic conditions in all 12 refugee camps are "deplorable" (UN 2 Sept 2010, para. 45), while Knudsen calls the camps "urban slums" (Knudsen 2009, 51). According to sources, the refugee camps are overpopulated (UN n.d.b; US 8 Apr. 2011, 20), and the US Department of State indicates a prevalence of drugs, prostitution and crime (ibid.). The USCRI states that camps have "open sewers, polluted drinking water, and poor electrical wiring" (2009).

Refugee camps have poor housing conditions and do not have proper infrastructure (UN n.d.b). In addition, the Lebanese government has prohibited construction in the camps (BADIL 2009, 77; USCRI 2009), and has imposed restrictions on building materials and fines or penalties for attempting to build (The Palestine Chronicle 1 Apr. 2011). According to

UNRWA, 95 percent of all buildings and infrastructure was "destroyed or damaged beyond repair" in the Nahr el-Bared camp during the 2007 clashes between the Lebanese Army and Fatah Al-Islam (UN n.d.b). BADIL indicates that in 2009, municipal authorities stopped giving refugees from Nahr el-Bared building permits, and "many" people who were trying to rebuild their house "without a permit" received "violent threats" from the Lebanese army (BADIL 2010, 33). UNRWA states that many refugees from Nahr-el Bared are still displaced and are still living in temporary accommodations (UN n.d.c). UNRWA also indicates that in the other 11 refugee camps, 40 percent of accommodations "have water leaking through their roof and walls" (ibid.).

BADIL indicates that in Beddawi camp, near Nahr el-Bared, the Lebanese authorities are tightening security and building trenches around the camp (2010, 34). According to the UN, in order to move to different camps, refugees residing in camps must apply for permits (UN 2008), and BADIL states that there is a lack of alternative housing outside of camps (BADIL 2009, 66). The "gatherings" of Palestinian refugees that exist outside of camps do not receive some UNRWA services such as waste disposal (UN n.d.a).

UNRWA is also prohibited from constructing shelters or restoring the infrastructure of these "gatherings" (ibid.). The President of the CLDH indicates that there is a "poor security situation" in Palestinian refugee camps (CLDH 5 Oct. 2011). According to USCRI, in 2008, clashes between groups killed several Palestinians in the Ain el-Hilweh camp (USCRI 2009). The USCRI states that "Lebanese police typically do not enter Palestinian camps or provide security there" (ibid.). The US Department of State reports on clashes in 2010 between different Palestinian factions and foreign militias over control of the refugee camps (8 Apr. 2011, 20).

## **FINDINGS AND REASONS**

40. The applicant's claims are based on the Convention grounds of race, nationality and imputed political opinion. His case is essentially that as a Palestinian refugee in Lebanon he has and would be subjected to severe discrimination.
41. He claims that he will continue to be subjected to similar treatment and experience serious discrimination if he were to return to Lebanon.
42. The applicant travelled to Australia on a travel document issued to Palestinian refugees by the government of Lebanon. Having sighted this document at the hearing, the Tribunal accepts that the applicant is a stateless Palestinian born in Nahr el-Bared to Palestinian parents. The Tribunal finds that the applicant has no country of nationality and that his country of former habitual residence is Lebanon.
43. Article 1D of the Refugees Convention operates to exclude from the Convention persons presently receiving protection or assistance from a United Nations organ or agency other than the United Nations High Commissioner for Refugees (UNHCR). Article 1D states:
44. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations, other than the United Nations High Commission for Refugees, protection or assistance.
45. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.
46. The Full Federal Court in *MIMA v WABQ* (WABQ) held that the first paragraph of Article 1D applies to exclude a person from the Convention if the person belongs to a class of persons who were receiving protection or assistance from organs or agencies of the United Nations other than UNHCR as at 28 July 1951, the date when the Refugees Convention was signed, this being the time referred to by the words 'at present'. The relevant factual issue in relation to the first paragraph is whether the applicant belongs to the relevant class of persons. In the case of a stateless Palestinian applicant, if Palestinians as a group were as at 28 July

1951 receiving protection or assistance then the first paragraph applies. The Full Court in WABQ observed that the United Nations Conciliation Commission for Palestine (UNCCP) and the United Nations Relief and Works Agency (UNRWA) appeared to have been providing protection and/or assistance to Palestinians at the relevant time. Based on the documents submitted by the applicant, the Tribunal is satisfied that the applicant is registered with UNRWA.

47. If a person falls within the terms of the first paragraph, it is then necessary to consider if the second paragraph applies. The Full Court in WABQ held that the second paragraph is also concerned with a class of persons rather than individuals and that it is sufficient if either protection or assistance has ceased for any reason in respect of the class (without their position being definitively settled) for the second paragraph to apply. It will not be sufficient that protection or assistance has ceased in relation to an individual member of the class.
48. Whether protection or assistance has ceased in relation to the class of persons is a question of fact for the Tribunal to determine according to the material before it. In relation to a stateless Palestinian applicant, if it is found that either protection or assistance has ceased in relation to the class, the applicant is entitled to have his or her application for a protection visa determined according to the Convention definition in Article 1A(2): *WACG v MIMA* [2002] FCAFC 332. The Tribunal is of the view that the position of Palestinians has not been definitively settled and, based on the factual information before it, it finds that 'protection', which was provided only by the UNCCP, ceased in the early 1950s when the UNCCP reached the conclusion that it was unable to fulfil its mandate.
49. Accordingly, the applicant is not excluded from the operation of the Refugees Convention under Art. 1D. That said, the applicant will not automatically be deemed a 'refugee' under the Convention and his case must be assessed against Art. 1A(2).
50. Although at the hearing before the Tribunal the applicant's evidence was generally consistent with his written claims and oral evidence to the delegate, but the Tribunal had some concerns over apparent confusion relating to his detentions and/or being stopped at checkpoints. Upon reflection, however, the Tribunal, given that the applicant was stopped and held at checkpoints routinely is prepared to extend to the applicant the benefit of the doubt on this apparent confusion. His account of his experiences in Lebanon was generally straightforward and unembellished although there was some confusion which arose in the applicant's testimony. Overall, the Tribunal found him to be a truthful and credible witness.
51. The Tribunal accepts that the applicant's account of his own circumstances and those of similarly situated individuals, namely his siblings.
52. The sources consulted by the Tribunal confirm that following the fighting between armed members of the radical Fatah al-Islam and the Lebanese army in Tripoli and the nearby Nahr el-Bared camp in 2007, more than 20,000 Palestine refugees living in Nahr el-Bared camp and about 10,000 other Palestine refugees and Lebanese living in adjacent areas were forcibly displaced.
53. During the conflict, hundreds of Palestinian refugees were subjected to arbitrary arrest and detention under the pretext of their belonging to Fatah al-Islam and other fundamentalist groups. The majority of the arrests took place without proper judiciary order. All detainees were 'interrogate[ed]' after their arrest and denied legal representation while in military custody. Amnesty International reported on Palestinian civilians being threatened and abused

by soldiers at checkpoints on account of their identity following the eruption of the conflict. A 2008 Carnegie Endowment report on Fatah al-Islam also states that Lebanese security authorities arrested 227 people accused of belonging to the group in the aftermath of the Nahr al-bared conflict. According to Human Rights Watch (HRW), both the army and the Internal Security Forces had engaged in wanton harassment of innocent Palestinian civilians.

54. The sources consulted by the Tribunal point to the continuation of widespread, systematic discrimination against Palestinian refugees in Lebanon. Palestinians are subject to arbitrary arrest and detention by state security forces and are at greater risk of 'torture,' and 'kidnapping'. Violence is reportedly common during interrogations, arrests, and in detention facilities and Palestinians are generally treated more harshly than Lebanese citizens by security services due to reasons including racism and discrimination, and the assumption, 'often without basis,' that the refugee collaborates with an armed group.
55. Large camps, such as Ain el-Helweh, Baddawi and Chatila, are guarded by the Lebanese military or police. Other sources have reported that following the 2007 conflict the Lebanese army erected a barrier around the nearby Baddawi refugee camp because of 'security concerns'. The 'barrier' was designed 'to prevent smuggling and the infiltration of Islamic extremists into the camp'. A report from 2010 based on interviews with Palestinian residents of Nahr el Bared, Baddawi and Ein el Helweh camps, also notes that Palestinian refugees 'continue to be subjected to harsh and sometimes cruel treatment by the LAF and ISF, and they remain socially, economically and politically marginalised by the Government and people of Lebanon.
56. The Tribunal is satisfied that if the applicant were to return to Lebanon he will continue to reside in the camp. In the Tribunal's view, as a young Palestinian male, the applicant fits the profile of persons likely to be stopped, questioned, harassed and possibly mistreated for 'security' related reasons by soldiers minding the checkpoints. The Tribunal finds that there is a real chance that the applicant would face ill treatment and significant harassment if he were return to Lebanon now or in the reasonably foreseeable future. The Tribunal is satisfied that this treatment amounts to serious harm for the purposes of s.91R(1)(b) of the Act and that it will be directed at the applicant essentially and significantly for the reasons of his imputed political opinion. The Tribunal is satisfied that the applicant's Palestinian ethnicity and imputed political opinion are essential significant reasons for the persecution he fears.

On the basis of the information cited in relation to mobility rights of Palestinian refugees in Lebanon and having considered his circumstances as a whole, the Tribunal is satisfied that relocation to another camp or elsewhere within Lebanon is not reasonable. The Tribunal finds that the applicant has a well-founded fear of persecution for a Convention reason in Lebanon.

57. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of former habitual residence. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

## **CONCLUSIONS**

58. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention.

59. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria for the visa.

60. **DECISION**

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