

**1104223 [2011] RRTA 725 (25 August 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1104223

**DIAC REFERENCE:** CLF2011/10083

**COUNTRY OF REFERENCE:** Lebanon

**TRIBUNAL MEMBER:** Shahyar Roushan

**DATE:** 25 August 2011

**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, being a person to whom Australia has protection obligations under the Refugees Convention

## 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 and Citizenship 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 stateless and formerly resident in Lebanon, arrived in Australia on [date deleted under [s.431\(2\)](#) of the *Migration Act 1958* as this information may identify the applicant] June 2008 and applied to the Department of Immigration and Citizenship for the visa [in] January 2011. The delegate decided to refuse to grant the visa [in] April 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] May 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under [s.411\(1\)\(c\)](#) of the Act. The Tribunal finds that the applicant has made a valid application for review under [s.412](#) of the Act.

### RELEVANT LAW

6. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. [Section 36\(2\)\(a\)](#) of the Act 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 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in [Part 866](#) of Schedule 2 to the *Migration Regulations 1994*.

### Definition of 'refugee'

9. 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (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] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 48; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222clr1.html" class="autolink\_findacts">222 CLR 1, *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* [2003] HCA 71; (2003) 216 CLR 473.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. 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.

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

## **CLAIMS AND EVIDENCE**

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.

### **Application for a Protection Visa**

#### *The Application Form*

20. According to the information provided in the applicant's protection visa application, he was born in Tripoli, Lebanon in [month and year deleted: s.431(2)] He is stateless and of Palestinian ethnicity. He has completed 14 years of education and describes his profession before coming to Australia as 'student' He resided at Nahr el-Bared Camp for Palestinian Refugees (Nahr el-Bared) from birth until he came to Australia in June 2008.
21. In response to questions in relation to his reasons for claiming protection, the applicant made the claims detailed below.
22. He was born and brought up at Nahr el-Bared in north Lebanon He attended school in Nahr el-Bared and completed his secondary schooling in the Baddawi Camp for Palestinian Refugees (Baddawi). He lived with his parents and 12 siblings and 'half siblings' in a three bedroom house close to [mosque deleted: s.431(2)]. He resided at that location until the conflict between Fatah al-Islam and the Lebanese Armed Forces (LAF) broke out. After witnessing 'the destruction and terror of war', the applicant's father decided to leave the camp. The family first moved into [mosque deleted: s.431(2)] in Tripoli and after a few days moved to an orphanage. They were 'kicked out' of the orphanage and went to live in an area called [Suburb 1]. He remained there until he came to Australia [in] June 2008.
23. The applicant's brother [Mr A], a medical doctor, who used to work inside the camp, was arrested and 'tortured' by the Lebanese army intelligence after the war. He was accused of treating members of Fatah al-Islam. However, he was released a few days alter as it was his duty to treat injured people irrespective of their political affiliation.
24. In June 2008, the LAF summoned the applicant's brother, [Mr B]. He was detained for a few days and tortured. He is currently confined to camp. Subsequently, a few months ago, the applicant's other brother, [Mr C], [vocation deleted: s.431(2)], was returning to Lebanon when he was detained at the airport. He was transferred to the Lebanese army intelligence. He was detained for a few days, 'tortured' and interrogated in relation to his associate, movements and political affiliations.

25. About two weeks before the applicant submitted his protection visa application, the Lebanese army intelligence again detained his brother, [Mr B]. He was released after being torture. It was this incident that prompted the applicant to lodge a protection visa application as it seems that his family 'has become blacklisted by the intelligence and they would arrest and detain and torture any of us'.
26. In addition, the applicant has always wanted to study engineering and become an engineer. He is currently [studying] at a university in Sydney. However, as a Palestinian refugee in Lebanon, he would be unable to work as an engineer in Lebanon.
27. The applicant fears the Lebanese authorities, including the Lebanese army intelligence.
28. In support of his application, the applicant submitted a number of photographs depicting destroyed and damaged buildings. He also submitted a copy and translation of a letter from [name and position deleted: s.431(2)], giving the applicant's father and his family permission to 'enter the new camp and reside there' The letter states: ' [Mr B] has come forward to resolve his case'.

#### *Interview with the Delegate*

29. The applicant was interviewed by a delegate of the Minister [in] March 2011. The applicant provided an oral account of his experiences consistent with his written claims. He also provided the following additional information.
30. The applicant and his brothers were not affiliated with any political group. His brothers are professionals working as doctors and teachers. His father was a taxi driver, but is now retired.
31. In pursuing their studies, the applicant and his brothers were being supported by his maternal uncle, an engineer who works for [company deleted: s.431(2)].
32. The applicant and his family faced harassment whenever the family crossed checkpoints. His brother [Mr B] was accused of having interacted with Fatah al-Islam and detained on two separate occasions. On both occasions he was released through his maternal uncle's contacts. The applicant's other brother, [Mr C], was also detained at the airport after returning to Lebanon from the Gulf. His brothers are now confined to the camp. This is because previously whenever they left the camp they were harassed at checkpoints.
33. The applicant stated that he fears being arrested and detained at checkpoints like his brothers if he were to return to Lebanon. He cannot guarantee that his uncle will always be there to help him.

#### **Application for Review**

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

#### *The Hearing*

35. The applicant appeared before the Tribunal [in] August 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

36. The applicant was asked about the preparation of his application for a protection visa. He stated that he completed his application for a protection visa with the assistance of his migration agent. He confirmed the accuracy of the information contained in his form.
37. The applicant stated that he arrived in Australia [in] June 2008. He stated that he was born in [month and year deleted: s.431(2)] in Nahr el-Bared and resided in the camp until [a date in] May 2007, three days after the war between the LAF and Fatah al-Islam broke out. He then moved with his family to an orphanage in [suburb deleted: s.431(2)], Tripoli. He explained that his father was a friend of the owner of the orphanage and they were allowed to stay on the premises temporarily. The applicant and his family stayed at the orphanage for four or five months and subsequently moved to a rented apartment in [Suburb 1], Tripoli. After approximately 12 months, the applicant came to Australia. Following the applicant's departure, his family moved back to Nahr el-Bared. The family had to move back to Nahr el-Bared because his younger siblings could not attend school in [Suburb 1].
38. The applicant stated that both his parents are Palestinian. His biological mother passed away when he was [age deleted: s.431(2)] and his father subsequently married a Lebanese national. The applicant explained that a misunderstanding had occurred at the interview in relation to his uncle (his biological mother's brother). He explained that his uncle is of Palestinian ethnicity, but holds a US passport. He is not a Lebanese national.
39. The applicant stated that he has [Names and ages of siblings deleted: s.431(2)] are his biological siblings. [Names and ages deleted: s.431(2)] are his step siblings. [Name deleted: s.431(2)] resides in Germany, [name deleted: s.431(2)] is currently in in the UAE and [name deleted: s.431(2)] resides in Australia, having successfully applied for a protection visa. His parents and the rest of his siblings reside in Nahr el-Bared.
40. The applicant stated that he completed his primary and middle schooling in Nahr el-Bared and completed his secondary schooling in Baddawi in [year deleted: s.431(2)]. He then applied for a Student visa to come to Australia. He is supported in Australia by his uncle who resides in Saudi Arabia. The applicant's father was a taxi driver, but retired after the war. The family is being supported by the applicant's siblings. He stated that [Mr A] is a medical doctor, [Mr B] is a [vocation deleted: s.431(2)] and [Mr C] is a [vocation deleted: s.431(2)]. They all work inside the camp. While [Mr A] and [Mr B] reside in their own flats with their families, the applicant's parents and the rest of his siblings live in a flat inside the camp.
41. The applicant stated that he did not want to return to Lebanon because his brothers have been arrested in the past.
42. The applicant stated that [Mr A] was arrested soon after the family left the camp. He was detained for one day and accused of treating members of Fatah al-Islam. In 2008, [Mr B] was arrested for the first time. [Mr B] was accused of having a relationship with Fatah al-Islam and was detained for two or three days. [Mr B] was released only after his uncle, who knows many people in the government, intervened. He was arrested again six months ago for the reason of his perceived association with Fatah al-Islam. This time he was not asked to report to the authorities. Rather, the authorities came to the house and took him away. He was detained for four days.
43. The applicant stated that his brother [Mr C] was also arrested at the airport upon returning to Lebanon from the UAE in 2009. He was detained for about two days before his uncle

intervened to release him. He was arrested because of [Mr B]'s perceived association with Fatah al-Islam.

44. The applicant was asked why his brothers were subjected to the treatment he has described. He stated that the government employs informers who spy on Palestinian refugees. The informants are paid for information they provide to government agencies. He believes that either because of personal disputes or in order to obtain monetary benefits an informer may have filed a false report against his brother, implicating the family.
45. It was put to the applicant that it appeared that on every occasion his brothers have been detained for a short period of time and then released. He stated that they were fortunate that his uncle had the means and the connections to assist. However, his uncle's contacts are not guaranteed to remain in their current positions or the circumstances may change.
46. The Tribunal put to the applicant that while there are reports that Palestinian refugees have been detained, there have been no reports of ill-treatment of Palestinian men in recent months. He stated that recently the authorities entered the camp and mistreated anyone who owned a motorbike. His brother was accused of being associated with Fatah al-Islam and now the whole family is painted with the same brush.
47. The applicant stated that he is [studying] and he is concerned that he would be unable to find a job. His brothers work for Palestinians within the camp. What they earn is just sufficient for their day to day survival. Palestinians are not allowed to work as engineers.
48. The applicant's representative stated that the Lebanese security forces habitually mistreat detained Palestinians. There is no one to go or complain to. Torture and mistreatment are endemic in the culture of the security forces in Lebanon.
49. [In] August 2011, the applicant forwarded to the Tribunal a copy of the applicant's Personal identification Card for Palestinian Refugees in Lebanon and a copy of his family's UNRWA registration card. There was sufficient information in the card to suggest that the applicant is included in the card and registered with UNRWA.

## **FINDINGS AND REASONS**

50. The applicant's claims are based on the Convention grounds of race, nationality, imputed political opinion and membership of a particular social group. His case is essentially that during the war between the LAF and Fatah al-Islam in 2007, his family were displaced. He claims that since 2007 three of his brothers have been arrested and detained for the reason of interacting with or being perceived to be associated with Fatah al-Islam. The applicant claims that members of his family have been blacklisted and he fears being subjected to arrest, detention and mistreatment if he were to return to Lebanon.
51. 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 Lebanon to Palestinian parents. The applicant resided in Lebanon from birth until his departure from that country. His father, step mother and nine of his siblings continue to live in Lebanon. Based on the evidence before it, the Tribunal finds that the applicant has no country of nationality and that his country of former habitual residence is Lebanon.

52. 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:

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.

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.

53. 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 copy of a registration card submitted after the hearing, the Tribunal is satisfied that he applicant is registered with UNRWA.
54. 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. 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. 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).
55. At the hearing before the Tribunal the applicant’s evidence was wholly consistent with his written claims and oral evidence to the delegate. His account of his family’s experiences in Lebanon was straightforward and unembellished. Overall, the Tribunal found him to be a truthful and credible witness. The Tribunal accepts the applicant’s reasons for the delay in lodging his protection visa application and draws no adverse inferences on that basis.



56. The Tribunal accepts that the applicant's brother [Mr A] a medical doctor, was arrested and briefly detained after being accused of treating members of Fatah al-Islam. The Tribunal accepts that his brother [Mr B] was arrested and detained in 2008 as he was perceived to be affiliated with Fatah al-Islam. [Mr B] was detained again for the reason of his perceived association with the Fatah al-Islam. The Tribunal is prepared to accept that while [Mr B] was not, in fact, associated with Fatah al-Islam or any other militant group or militia, he may have been falsely accused of such association by informants motivated by personal disputes or monetary reward by the authorities. The Tribunal accepts that his brother [Mr C] was also detained following his return to Lebanon from the UAE and six months ago. The Tribunal is prepared to accept that [Mr C]'s detention may have been motivated by allegations levelled against [Mr B].
57. 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 (Internal Displacement Monitoring Centre (IDMC) 2008, *Lebanon: Displaced, again*, IDMC website 23 July [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8D8B19A96BDE25F1C125748F0051715D/\\$file/Lebanon+-+July+2008.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8D8B19A96BDE25F1C125748F0051715D/$file/Lebanon+-+July+2008.pdf)).
58. 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 (Joint NGO Submission to the Office of the High Commissioner for Human Rights on the occasion of the 9th session of the Universal Periodic Review 2010, 12 April 2010, <http://www.palhumanrights.org/rep/ENG/UPR%20Booklet%20-%20ENG.pdf>). 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 (<http://www.amnesty.org/en/library/asset/MDE18/010/2007/en/35eba2ba-d367-11dd-a329-2f46302a8cc6/mde180102007en.html>). 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 (Abdel-Latif, O. 2008, 'Lebanon's Sunni Islamists – A Growing Force', Carnegie Papers, Carnegie Endowment website, No. 6, January [http://www.carnegieendowment.org/files/CMEC6\\_abdellatif\\_lebanon\\_final.pdf](http://www.carnegieendowment.org/files/CMEC6_abdellatif_lebanon_final.pdf)). According to Human Rights Watch (HRW), both the army and the Internal Security Forces had engaged in wanton harassment of innocent Palestinian civilians (cited in [Muhammad Ali Khalidi](#) and [Diane Riskedahl](#), *The Road to Nahr al-Barid: Lebanese Political Discourse and Palestinian Civil Rights, Middle East Report (2007) Volume 37*).
59. More recently, HRW has reported that Palestinians from the Nahr al-Bared refugee camp continue to live in dire conditions. Reconstruction efforts have been delayed, and UN Relief and Work Agency reported the first set of rebuilt houses will not be delivered before March 2011. The Lebanese army restricts movement to the camp by maintaining checkpoints around it (HRW, [World Report 2011: Lebanon](#), <http://www.hrw.org/world-report-2011/lebanon>). The Lebanese army has maintained control over what remains of the camp, including its destroyed centre and heavily-damaged adjacent area, as well as the Palestinian refugee population that called Nahr al-Bared home. Access to the camp is only possible with special permits issued by the army's intelligence service (Ray Smith, Nahr al-Bared's economic

recovery hampered by military siege, Electronic Lebanon, 18 January 2010, <http://electronicintifada.net/v2/article11013.shtml>). Palestinians are subjected to mistreatment at military checkpoints cordoning the camp, which foment discord and disagreement between Palestinians and Lebanese (Sari Hanafi and Taylor Long, Governance, Governmentalities, and the State of Exception in the Palestinian Refugee Camps of Lebanon, *Journal of Refugee Studies* (2010) 23 (2): 134-159. Khalidi and Riskedahl have generally observed that ‘the justification traditionally given by Lebanese officialdom for the deplorable conditions of Palestinian refugees is that withholding civil rights ensures that their presence in Lebanon is temporary. The bugbear of resettlement or naturalization (*tawtin*) is regularly invoked in Lebanon to justify all manner of abuse against Palestinians’ (see Muhammad Ali Khalidi , Diane Riskedahl, *The Road to Nahr al-Barid: Lebanese Political Discourse and Palestinian Civil Rights*, Middle East Research and Information Project, Vol 37, Fall 2007).

60. In its 2010 [Country Reports on Human Rights Practices](#) in relation to Lebanon, the US Department of State reported that Palestinian refugees were subject to arbitrary arrest and detention by state security forces and rival Palestinian factions. The report also pointed to the continuation of widespread, systematic discrimination against Palestinian refugees in Lebanon (US Department of State 2010 Human Rights Report: Lebanon, Bureau of Democracy, Human Rights, and Labor, [2009 Country Reports on Human Rights Practices](#), 11 March).
61. On the basis of the information before it, the Tribunal cannot rule out the possibility of the applicant being subjected to brief periods of detention for the reason of his Palestinian ethnicity imputed political opinion or membership of the particular social group of his family.
62. On the basis of the evidence referred to above, the Tribunal is satisfied that there is a real chance that the applicant would face arrest, detention 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 Palestinian ethnicity, imputed political opinion and or membership of the particular social group of his family. The Tribunal is satisfied that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.
63. Having considered his circumstances as a whole, the Tribunal is satisfied that internal relocation within Lebanon is neither reasonable nor would it provide the applicant with means to escape the harm he fears.
64. The Tribunal is satisfied that the applicant has a well-founded fear of persecution for a Convention reason in Lebanon.
65. 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 (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* [2001] FCA 1332; (2001) 116 FCR 154).

## CONCLUSIONS

66. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

67. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the [Migration Act](#), being a person to whom Australia has protection obligations under the Refugees Convention.