1311707 [2014] RRTA 101 (10 February 2014)

DECISION RECORD

RRT CASE NUMBER:	1311707
COUNTRY OF REFERENCE:	Lebanon
TRIBUNAL MEMBER:	Rowena Irish
DATE:	10 February 2014
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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

STATEMENT OF DECISION AND REASONS

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).

CLAIMS AND EVIDENCE

2. The applicant claims to fear returning to Lebanon because he has been targeted by Sunni fanatics as a result of his friendship with Alawis from Jabal Mohsen. He was kidnapped and beaten by them and accused of selling arms to the Alawis. As a result he fled to Australia where his [siblings] live.

3. The applicant was born [in] Lebanon. He claims to be a citizen of Lebanon and not to have citizenship of, or a right to enter or reside in, any other country. He had six years education in Lebanon and worked [in Trade 1] in Tripoli. He has [siblings] in Lebanon. He has [siblings] in Australia and at the time of the hearing his mother was also in Australia having arrived on a visitor visa and lodged an application for permanent residency (possibly [another] visa).

4. The applicant arrived in Australia [in] December 2012 on a sponsored family visitor visa. He had previously travelled to Australia in 2004 and 2010. He applied to the Department of Immigration for the protection visa [in] December 2012. He was interviewed by the delegate [in] April 2013. The Tribunal has listened to a recording of that interview and refers to it where relevant below. The delegate refused to grant the visa [in] July 2013.

5. The applicant appeared before the Tribunal [in] January 2014 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A and Mr B]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

6. Following the hearing [in] January 2014 the Tribunal sent the applicant a letter pursuant to s.424A inviting him to comment on or respond to certain information. A copy of the letter is on the Tribunal file. [In] February 2014 the Tribunal received a written response to the invitation, which is referred to where relevant below.

FINDINGS AND REASONS

7. The law upon which the findings below are based is set out in Attachment 1.

8. On the basis of the applicant's Republique Libanaise passport, which was presented at the hearing, the Tribunal finds that the applicant is a citizen of Lebanon. There is nothing in the evidence before the Tribunal to suggest that the applicant has a right to enter and reside in any country other than Lebanon. Therefore the Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act. As the Tribunal has found that the applicant is a national of Lebanon, the Tribunal also finds that Lebanon is the applicant's "receiving country" for the purposes of s.36(2)(aa).

9. The Tribunal had a number of concerns about the applicant's evidence which leads it to find that he is not a credible witness. These concerns are discussed below.

10. **First,** the applicant claims to have been abducted by fanatical Sunnis as a result of his friendship with Alawis from Jabal Mohsen. However the applicant's evidence in relation to the claimed abduction was inconsistent with his previous claims and unpersuasive. The applicant stated at the hearing that he was driving home from work when he stopped at [night] to buy [food]. He parked his car and got out. All of a sudden he saw four people surrounding him. They told him not to open his mouth and one of them opened the car from the back. As he was getting in one of them hit him on the back of the head knocking him unconscious. Three of them were in the car with him and one had a car of their own. They then drove him to [Location 2] around 15 minutes away. He was unconscious the entire time and only woke when he was on the ground [Location 2] and they poured water on him. They interrogated him and held him for about an hour. After they left he walked for about eight minutes back to his car.

11. The applicant stated that there was one person in the back seat with him and two people sitting in the front. When the Tribunal asked how he could have known this if he was unconscious for the entire time he claimed that one of the people was going to sit next to him and he saw the other turning around to go in the front. He stated that none of the men were in the car when he was getting into it. The Tribunal does not accept that he would be able to accurately describe where the men were sitting in the car if he was knocked unconscious while getting into the car and at the time he was getting in there was no one else in the car. The Tribunal found the applicant's explanation to be unpersuasive.

12. Furthermore, the Tribunal found the claim that his car was parked an eight minute walk away from where he was interrogated to be unpersuasive. The applicant claims he was unconscious throughout the car trip and only awoke on the ground in [Location 2]. The Tribunal has concerns about the claim that the men would drive him to an area where they had to carry him a long distance while he was unconscious. This would have involved a great effort for the men to carry him such a distance. When this was put to the applicant at the hearing he claimed that they did this because they were concerned that they would be seen from the road. The Tribunal did not find this persuasive as it appears to the Tribunal that they would have either interrogated him closer to the car or have driven him to a different location where they did not have to carry such a heavy weight for such a long distance.

13. The applicant's evidence to the Tribunal was also inconsistent with his written claims. In the applicant's written claims he stated that:

> I was kidnapped on my way home on [date]/11/12 and questioned about my work and involvement in hiding some Alwai people and my support for the Syrian Alwai in Lebanon….
>
> The people who detained me took my car, blindfolded me and started to question me about many issues…. I have seen doctors in Lebanon and I will be providing medical evidence if the Department want to request such. I know now that my car was taken away, my job is gone…
>
> …the whereabouts of my car is unknown and the cash I had in my pocket was taken.

14. However the applicant's account of the abduction provided to the Tribunal at the hearing was inconsistent with the above claims in a number of respects.

- The applicant stated at the hearing that he was not blindfolded at any stage during the abduction. The applicant stated that he did not know why it said this in his statement.

- The applicant stated at the hearing that he was not robbed and no cash was taken. He denied stating that it was taken, in his written claims.

- He also stated at the hearing that his car was not taken by the Sunnis who abducted him and that he sold his car after coming to Australia. The applicant claimed that there was no inconsistency in his evidence in relation to this and that his car was taken temporarily by the abductors while they were driving him to [Location 2]. The Tribunal does not accept that this is what his written statement refers to. The Tribunal considers that his written claims are clearly implying that his car was taken permanently by the abductors.

- His evidence to the Tribunal also did not suggest that he was accused of being involved in hiding Alawis but rather that he was accused of supplying arms to them. When asked what he was interrogated about he stated that it was mainly about the weapons, why he is giving them bullets and arms, where he was buying the weapons from and how much money he was giving them. He stated that he was not asked about anything else.

15. **Second,** the applicant's evidence in relation to whether he sought medical treatment as a result of the abduction was also inconsistent with his evidence at the Departmental interview and with the evidence provided by his brother at the Tribunal hearing.

16. At the Tribunal hearing the applicant stated that after the abduction he went to the chemist who gave him a tranquiliser to calm him down. Then a couple of days after the incident he went to the doctor because of severe pains in his stomach and vomiting. The doctor gave him an injection which did not work so he went back again to the medical centre where he was given another injection which helped. This appears to the Tribunal to be inconsistent with the applicant's evidence at the Departmental interview. The delegate asked the applicant whether he had gone to a hospital or medical centre and the applicant stated that he had not. The delegate said that he had sustained a head injury and was unconscious and asked why the applicant did not think that he should go to a doctor. The applicant stated that he woke up after it. He did not refer to having attended a doctor at a medical centre a couple of days after being abducted because of severe stomach pain and vomiting.

17. When this was put to the applicant in the s.424A letter he did not provide an explanation directly for the inconsistency but stated that he was tired during the interview, he had difficulties with the Egyptian interpreter and his answers may not have been clear or consistent. He stated that there is only a pharmacy in the village and that anyone who is sick or has an accident goes to the pharmacist. This appears to be inconsistent with his evidence to the Tribunal that after he went to the pharmacist he also went to a "hospital". He stated that it is not a big hospital, you could call it a medical centre. It also appears to be inconsistent with independent evidence about the existence of a public hospital in [the applicant's hometown]. The Tribunal considers that the applicant's evidence in relation to what medical treatment he received is

inconsistent and that these inconsistencies cannot be explained by his tiredness at the Departmental interview or the interpreter. The Tribunal considers that if the applicant had received medical treatment from a doctor or medical centre he would have referred to during the discussion with the delegate.

18. The applicant's evidence was also inconsistent with [Mr B]'s evidence at the hearing. At the hearing [Mr B] stated that the applicant did not go to a doctor or a hospital but just went to the chemist for treatment of his injuries. When this discussed with the applicant at the hearing he stated that the chemist is a doctor and he did not tell his [siblings] about going to get the injections because he was in extreme pain. The Tribunal found it unpersuasive that the applicant would have told [Mr B] that he went to the pharmacist but not that he saw a doctor and required injections for extreme pain. When this information was put to the applicant in the s.424A letter he stated that they refer to the pharmacist as a doctor and there was no inconsistency between their evidence. The Tribunal does not except this explanation. In the applicant's evidence to the Tribunal he clearly distinguished between going to the pharmacist or chemist and later going to the doctor at the medical centre or hospital. The Tribunal considers that their evidence was inconsistent and this raises concerns for the Tribunal about the truthfulness of the evidence.

19. **Third,** the applicant's and [Mr A's and Mr B's] evidence in relation to who he told what to and when about the abduction was so inconsistent that it raises concerns for the Tribunal that the claims have been fabricated.

- [Mr A] stated that he did not know anything about the applicant's difficulties in Lebanon until a few weeks after he arrived in Australia when the applicant told him. He stated that he was not aware that the applicant was having any difficulties in Lebanon before the applicant left Lebanon. He also stated that the applicant made the decision to stay in Australia permanently after coming to Australia.

- [Mr B] stated that he first found out about the abduction when he spoke directly with the applicant about it the day after the abduction and he then told the applicant's other [siblings] in Australia who also spoke to the applicant directly.

- The applicant stated that his mother told [Mr A] about the abduction two days after it occurred and the applicant then spoke directly to [Mr A] about it. The applicant stated that [Mr A and Mr B] about the abduction and the applicant did not speak directly to [Mr B] about the abduction. The applicant also stated that he decided to come permanently to Australia after he spoke with his [siblings] from Lebanon about the abduction and they told him to come to Australia.

20. When this was put to the applicant at the hearing he stated that his mother would tell him that his [sibling] rang but the applicant was asleep and maybe his mother got the names mixed up. The Tribunal does not accept this explanation as it does not explain why the applicant stated that he had spoken directly with [Mr A] and not spoken with [Mr B]. It also does not explain the inconsistencies between [Mr A's and Mr B's] evidence. The applicant had no comment on this. When this information was put to the applicant in the s.424A letter he stated that he accepts that the responses were inconsistent but they may have been a result of the applicant's shocked and traumatized state. The Tribunal does not accept that this explains the inconsistencies as the evidence of [Mr A and Mr B] was also inconsistent. The Tribunal does not accept that

it was possible for [Mr B] to have told [Mr A] about the abduction if [Mr A] knew nothing about the applicant's difficulties before the applicant came to Australia. The applicant's claimed abduction is a very serious and significant event and the Tribunal would expect [Mr A] to be able to accurately recall whether he knew about it before the applicant arrived in Australia. The conflicting evidence of the applicant and [Mr A and Mr B] suggests to the Tribunal that they have colluded in fabricating the claims.

21. **Fourth,** the applicant and [Mr B]'s evidence was inconsistent in relation to how the applicant went to the airport. The applicant claimed that his brother in law drove him to the airport at night time because his brother in law is an army officer and therefore the applicant felt safe with him. However [Mr B] stated that a friend from the neighbourhood took the applicant to the airport. When this inconsistency was raised with the applicant he claimed that [Mr A and Mr B] were not told about the arrangement. However when the inconsistency was raised with [Mr B] at the hearing he claimed that he had just forgotten that this was the arrangement. When this was put to the applicant in the s.424A letter he claimed that his brother in law took him to the airport and he did not tell [Mr A and Mr B] this over the phone so they assumed that his neighbour was taking him. If this was correct then the Tribunal would have expected [Mr B] to have referred to this when it was raised with him at the hearing rather than stating that he had merely forgotten that the brother in law took the applicant to the airport.

22. **Fifth,** the applicant claimed at the hearing that he had been receiving threats from the Salafists prior to his abduction. He stated that he received three threats before the abduction. The first was three weeks before the abduction. They would threaten him not to pass through the mountain and that they did not want to see his friends here. However the applicant did not refer to any such threats in his written claims or at the Departmental interview. When this was put to him in the s.424A letter he stated that he did not refer to the threats at the Departmental interview because he was not asked about them and he was still traumatised at that time. The Tribunal considers that if the applicant had been receiving threats prior to his abduction he would have referred to these at some point in his written claims or his Departmental interview.

23. Furthermore, the applicant's evidence in relation to the threats was inconsistent. When the Tribunal asked if he took the threats seriously he stated that he did and he told his mother and siblings in both Australia and Lebanon about them. However when the Tribunal asked why he continued to go to Jabal Mohsen if he was receiving such threats he then stated that he did not give them much importance and he had not understood the Tribunal's previous questioning about this. The Tribunal found his evidence to be unconvincing.

24. **Sixth,** as discussed with the applicant the country information does not support the applicant's claims. The Tribunal accepts that the country information (including DFAT's Thematic Information Report, 18 December 2013, *Sectarian Violence in Lebanon*) indicates that Tripoli neighbourhoods of Jabal Mohsen, a mainly Alawite area, and Bab al-Tabbaneh, a Sunni district, have a long-standing feud, which sporadically erupts into violent clashes between residents of the two areas. There is a long history of hostilities and animosity between Sunnis and Alawis in these areas, who "fought fiercely" during the civil war in the 1980s.[1] The Alawite community is

[1] See Macleod, H. 2008, 'Tripoli's Perfect Storm', *Sunday Herald*, 16 August, http://www.sundayherald.com/international/shinternational/display.var.2427200.0.0.php

generally viewed as pro-Syrian, and the Bab al-Tabbaneh Sunni community is generally viewed as anti-Syrian. The Tribunal accepts that political and sectarian tensions are high in the area and the sporadic outbreaks of fighting result in people from both sides being killed and injured.[2] However there are also reports of co-operation between residents of the two districts and of efforts to increase interaction between the two communities.[3]

25. The April 2013 article in *The Daily Star* indicates that residents of Jabal Mohsen and Bab al-Tabbaneh 'often go to work together; their children go to the same schools and they sometimes intermarry'. There are also 'several initiatives that aim to bridge gaps and create opportunities for dialogue between residents living in Bab al-Tabbaneh and Jabal Mohsen'. Initiatives include TEDxAzmiStreet events, where speakers and their audience discuss solutions to Tripoli's challenges, and an online community named *We Love Tripoli* which began as a Facebook group of youths from different religious and political backgrounds, and became a non-government organisation (NGO).[4]

26. There are other reports of co-operation between residents of Jabal Mohsen and Bab al-Tabbaneh. A report in *The Daily Star* from October 2013 refers to Alawite rappers from Jabal Mohsen and Sunni break-dancers from Bab al-Tabbaneh being among a wide range of people involved in a collaborative project between 'all but a few of Tripoli's hip-hop crews (most comprising people under 25 years)'.[5]

27. In April 2013, *The Daily Star* also reported that the head of the Disabled Forum in North Lebanon had said that 'several organizations from Jabal Mohsen and Bab al-Tabbaneh' were major participants in the preparations for a peace march in Tripoli organised by civil society groups. An Alawite community activist who was a member of the Tripoli Municipal Council said that 'several groups from Jabal Mohsen, a majority-Alawite area, would take part'.[6] More than 3,000 people are reported to have taken part in the peace march in Tripoli.[7]

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[2] Amrieh, A, 'Security Forces Quell Tripoli Clashes', *The Daily Star*, 4 June 2012, http://www.dailystar.com.lb/News/Politics/2012/Jun-04/175608-security-forces-quell-tripoli-clashes.ashx#axzz1wsgrwact; 'Hairi: Tripoli Clashes Are A Syrian Plot to Set Lebanon on Fire', *Naharnet*, 4 June 2012, http://www.naharnet.com/stories/en/42395-hariri-tripoli-clashes-are-a-syrian-plot-to-set-lebanon-on-fire; 'Five killed in sectarian clashes in Lebanon's Tripoli', *BBC News*, 14 May 2012, http://www.bbc.co.uk/news/world-europe-18057407.

[3] See for example: Habli, A. 2013, 'The Tripoli I know is one that seeks reconciliation', *The Daily Star*, 22 April <http://www.dailystar.com.lb/Opinion/Commentary/2013/Apr-22/214566-the-tripoli-i-know-is-one-that-seeks-reconciliation.ashx#axzz2WcCF0rwJ> Accessed 21 June 2013; Amrieh, A. 2013, 'Tripoli groups to rally Sunday against violence; Tripoli organizes Sunday march', *The Daily Star*, 20 April

[4] Habli, A 2013, 'The Tripoli I know is one that seeks reconciliation', *The Daily Star*, 22 April <http://www.dailystar.com.lb/Opinion/Commentary/2013/Apr-22/214566-the-tripoli-i-know-is-one-that-seeks-reconciliation.ashx#axzz2WcCF0rwJ> Accessed 21 June 2013

[5] Rainey, V 2013, 'Tripoli's anti-sectarian rappers step up', *The Daily Star*, 18 October <http://www.dailystar.com.lb/Culture/Performance/2013/Oct-18/234894-tripolis-anti-sectarian-rappers-step-up.ashx#axzz2k8oXjHA9> Accessed 11 November 2013

[6] Amrieh, A. 2013, 'Tripoli groups to rally Sunday against violence; Tripoli organizes Sunday march', *The Daily Star*, 20 April

[7] Amrieh, A. 2013, 'Several thousand join march through Tripoli streets for peace; Thousands march for peace in Tripoli', *The Daily Star*, 22 April

28. A December 2012 article indicates that Jabal Mohsen and Bab al-Tabbaneh 'are not two communities completely sealed off from one another; social, familial and business bonds remain, although several seem to snap with each new round of clashes'.[8]

29. The above country information suggests that interactions and ties between the Sunni and Alawite communities are relatively common and would be unlikely to result in a person being targeted merely on the basis of a friendship. When this was put to the applicant he claimed that he was targeted because the Salafists thought that he was providing arms to the Alawites because they had seen him going hunting with his two Alawite friends. He stated that they would do this every [week]. This does not appear to be consistent with his written statement which suggests that he was abducted merely on the basis of his friendship with many Alawite customers and that it was only after the questioning by the Salafists that they decided he was supporting them. There is no reference to them seeing him hunting or accusing him of supplying arms. He states in his written claims:

> I was kidnapped on my way home on [date]/11/12 and questioned about my work and involvement in hiding some Alwai people and my support for the Syrian Alwai in Lebanon.
>
> I was working for [someone] from 1997 and made many Alwai friends because I have no political involvement but a friendly way and quality of service [in Trade 1] where people become very close to me….
>
> The people who detained me took my car, blindfolded me and started to question me about many issues. Once I admitted to them that I know many people from Jabel Mohsen and I respect them as my family, they became wild to me because they made a decision that I support them.

30. The Tribunal considers that if the primary reason for the applicant's abduction was in fact that he was seen hunting with two Alawite friends, then he would have referred to this in his written claims. Furthermore, the Tribunal would expect that the Salafists would have already formed the view that he supported the Alawites based on those observations rather than as a result of his admission that he respects Alawites as family. The changing nature of the applicant's claims raises concerns for the Tribunal about the truthfulness of those claims.

31. Having considered these concerns and the applicant's explanations for them, on a cumulative basis they lead the Tribunal to find that the applicant is not a credible witness. The Tribunal does not consider that the applicant's stress, depression or medication could explain the significant inconsistencies and problems with his evidence. The Tribunal has considered the evidence of [Mr A and Mr B]. However, as discussed above, the Tribunal is not satisfied that they were truthful in their evidence as it appeared that they were colluding with the applicant to fabricate the claims. Therefore the Tribunal has placed little weight on their evidence in support of the applicant's claims.

32. The Tribunal is willing to accept that [in Trade 1] the applicant had Alawite customers who he was friendly with. However, the Tribunal is not satisfied that he was abducted as a result of those friendships, that he was threatened or attacked as a result of this, that

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[8] Farrell, S 2012, 'Life between bouts of violence', *Now*, 21 December <https://now.mmedia.me/lb/en/reportsfeatures/life_between_bouts_of_violence> Accessed 26 March 2013 (CISNET Lebanon CX305264)

he has been accused of providing arms to Alawites or that he fled to Australia because of any fear of harm from Salafists. The country information does not suggest that he would be targeted if he returned to Lebanon because he is friends with Alawites. The Tribunal is not satisfied that there is a real chance that the applicant would be harmed for this or any other Convention reason if he was to return to Lebanon now or in the reasonably foreseeable future.

33. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

34. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). For the reasons set out above, the Tribunal is not satisfied that there is a real chance that the applicant would be harmed as a result of his friendship with Alawites if he was to return to Lebanon. In *MIAC v SZQRB*, The Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition.[9] Therefore, for the reasons discussed above the Tribunal is not satisfied that there is a real risk that the applicant will be harmed in Lebanon for his friendship with Alawites. The applicant has not claimed that he would be harmed for any other reason. Therefore the Tribunal is not satisfied that there are 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 will suffer significant harm. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

35. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Rowena Irish
Member

[9] *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagott JJ at [297], Flick J at [342].

ATTACHMENT 1 - RELEVANT LAW

1. 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.

Refugee criterion

2. 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).

3. 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.

4. 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.

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

6. 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)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. 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.

7. 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.

8. 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.

9. 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 '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.

10. 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.

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

Complementary protection criterion

12. 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').

13. '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.

14. 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.

Section 499 Ministerial Direction

15. 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. The Tribunal has considered DFAT's Thematic Information Report, 18 December 2013, *Sectarian Violence in Lebanon* where relevant to the applicant's circumstances.