

1512282 (Refugee) [2016] AATA 3676 (11 April 2016)

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division  
**CASE NUMBER:** 1512282  
**COUNTRY OF REFERENCE:** Lebanon  
**MEMBER:** Rodger Shanahan  
**DATE:** 11 April 2016  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicants Protection visas.

Statement made on 11 April 2016 at 9:03am

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be **citizens of Lebanon**, applied for the visas [in] January 2014 and the delegate refused to grant the visas [in] May 2014.
3. The matter was remitted to the Tribunal by the Federal Circuit Court because it was found that the tribunal failed to deal with a claim that the second- and third-named applicants would be traumatised were they to return to Lebanon.
4. The applicants appeared before the Tribunal by telephone on 9 March 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

### CLAIMS AND EVIDENCE

#### *PV Application*

5. The applicant claimed that she and her husband came to Australia [in] 2008 but because of civil unrest in Lebanon they got an extension on their visa. She divorced her husband in June 2013. They had unsuccessfully applied for a [different] visa for her [relative].
6. When this was declined they applied for a protection visa because of her ex-boyfriend in Lebanon called [Mr A]. When [Mr A] found that the applicant was married, he called the applicant's parents and threatened to kill the applicant. He also used to make these threats in person to her parents. Her parents called and cautioned her not to return to Lebanon.
7. Her husband left her after they had a long history of arguing. She had been in love with [Mr A] but her father had arranged her to marry [her husband]. She had [children] with [her husband]. If she returned to Lebanon she would have problems with [her husband's] family because they would blame her; the family would probably kill her. Her [children] would find it difficult to get married because she had no husband.
8. She claimed that divorced women and their children face traumatic experiences in Lebanon, such as fierce custody battles and serious financial problems if the husband doesn't pay the alimony. The religious courts often decide on the children's care without seeking the opinion of the mother.
9. As a divorced woman she would be harassed in Lebanon and she would feel vulnerable.

#### *Tribunal Hearing*

10. The applicant was advised that her postponement request had given no indication as to when she could attend a hearing, the Tribunal had attempted to contact the medical professionals on the numbers she had provided but neither was answered. She was asked whether she was able to attend the hearing by phone and she confirmed that she was. She was also asked whether her children had claims separate to her own and she claimed that they did not.
11. She claimed that if she returned to Lebanon she had no rights as a woman. Asked to be specific regarding what harm she claimed, she claimed that she would not have custody of her

children and was scared that the family of her ex-husband and community would either kill her or waste her life. She claimed that she was in a very bad psychological condition and was asked if she was under any mental health treatment. She claimed she had seen a therapist but didn't have Medicare so couldn't afford the treatment.

12. Asked if she had any record of this or if the person was a psychologist or psychiatrist and she claimed that she didn't know and had nothing documented. She was advised that if she wished to claim a mental health condition she would need some correspondence from a health professional. She claimed that she could ask the person for a letter for the one time she had been seen and was advised that she was free to do this.
13. She then claimed that a member of her or her former husband's family could kill her because she was divorced and this would bring shame on the family. If not killed she would be insulted and humiliated. The other claim was that the father or the father's family would be granted custody.
14. She didn't know where her former husband was as she was not in contact with her parents. She couldn't remember when she last saw her husband. Asked what were the circumstances when she last saw him, she claimed that she couldn't remember. She was reminded that it was important for her case to make a case for herself and if she continued to say she couldn't remember then it may be difficult for her to make her case. She claimed that previously she had haphazardly recalled dates and it had told against her.
15. Asked about her divorce, she claimed that he had not asked for custody of the children in Australia but he would in Lebanon. She didn't know if he was in Lebanon and had not inquired if he was as she wanted to relax. She got a divorce from the sheikh but couldn't remember his name; she went with her [relative] to what she thought was [Suburb 1]. It was a mosque and she thought the sheikh worked there.
16. They both wanted the divorce, were both there at the divorce but there was no discussion of money, property of the children. He had no property, and gave her no money. Asked if she had seen her husband since she claimed she hadn't and he hadn't asked to see the children. Asked if the divorce had been registered in Lebanon, she claimed that she wanted to but it takes a lot of time to do this in Lebanon and one needs connections and a lot of money. She has no right to ask for a divorce in Australia.
17. Asked if she had spoken to the Lebanese consulate in [Australia], she claimed that it hadn't occurred to her. She wasn't familiar with these things. It was put to her that she had told the Tribunal how difficult it was so she must have done some research. She claimed someone from Lebanon who was in the same position as her in Australia told her this information about it being difficult. She felt too weak and frail to do anything. She was asked how strong she needed to be to ring up the consulate to find how to do things. She claimed she was in despair.
18. The Tribunal said it needed to determine whether the applicant was actually divorced. The website said registering it cost less than \$100 and they were both in agreement for the alleged divorce so there should have been nothing stopping them from registering it. She claimed she had no rights, support or motivation to do anything. She was only interested in her [children's] welfare.
19. Asked what the Lebanese laws regarding custody of [children] from Sunni divorces was, she claimed that she didn't know what the law said but it all came down to bribes. It was put to her that it was reasonable that if she feared losing her children she would have some awareness of the Lebanese custody laws. She claimed she knew children went to the husband but didn't know from what age.

20. Asked why, if he was so interested in having them, he had not even tried to see them in Australia, she claimed she was scared of what he wanted to do and what he had planned in Lebanon. As a divorced woman in Lebanon, she claimed she had seen in the village brothers wanting to kill their divorced sisters and harass them. Her ex-husband had threatened her a while back when they lived together. She couldn't remember when he last threatened her; she could only remember snippets.
21. He tried to hit her but she pushed him away. She was asked if she had mentioned this previously but said previously she had been scared and afraid. It was put to her that she had not mentioned previously in her statement that her husband had threatened her physically. She claimed she hadn't been helped to prepare things. She also didn't feel comfortable telling people things and held back. She was advised again that it was up to her to make her case and if she raised issues for the first time here it may call into question their veracity.
22. Asked why members of her family would seek to hurt her, she claimed that she had a lot of [relatives] and all they understood was beating, killing and humiliating. A [relative] had fled because they had tried to kill her, and was now re-married and the family didn't know about her. She married a Christian and didn't know where she had fled to. This occurred about two years ago, but she had not mentioned it previously. She had only just recalled this now.
23. It was put to her that there was no country information that would indicate that divorced women were killed and why she believed this would occur to her. She claimed there were different traditions in Lebanon and many women were killed by their husbands or siblings. She would ask her migration agent to submit this evidence.
24. In [Australia] she lived with her [relatives] and people helped her and the children here and there. She had lived there for more than a year and before that she lived with a woman [Ms B] and stayed in [an] old room in the backyard. She was there for approximately three years. When she was divorced she lived at [Ms B's] house. Asked how long before her divorce she moved into [Ms B's] house she claimed that she moved into the house from the time she was divorced. Before that she lived in her [relative] [Mr C's] house in [another suburb].
25. Her husband had [other relatives are] also resident in Australia. Before [Mr C] she couldn't remember where she had lived. She had been through a blot in her life. She met [Ms B] in [a] shopping centre and lived in [a different suburb].
26. She was asked if she had bank accounts and said she had one with [a] bank and [an agency] paid money into it. She didn't use it any more as [the agency] no longer supported her. She didn't know why. Asked again, she claimed that once she had received her refusal they stopped it two weeks later. When the case was remitted she tried to get it re-started but they said her former husband could support her. She was asked to provide bank statements for the last two years or as long as it has been open and she said she would.
27. Asked why she couldn't move away from her village given she claimed that her [relative] had done the same thing. She claimed she had a man who could offer her protection but she didn't have education or work and couldn't survive. She would be harassed by men and women in any village she went to. Asked about moving to another city she claimed that she couldn't manage in a big city and couldn't work.
28. She claimed that the situation in Beirut was difficult because of the conflict within the government and they wouldn't be able to live. Asked how this would impact on her, she claimed that there was no government and she would have no rights. She was asked how she was able to survive in Australia with no work or education and she would have family to help in Lebanon. She claimed at least she knew her [children] were safe here.

29. She was asked about a former boyfriend called [Mr A] that she claimed had threatened to kill her in Lebanon, yet made no mention of him today. She claimed she had put him out of her mind as she didn't want to think of any dangers in Lebanon. Asked if she had any claims relating to [Mr A], she said she didn't know. Asked to say yes or no, she claimed she still feared harm from him.
30. She was advised about s 424AA and it was put to her that the person she claimed had granted her divorce was located in [suburb] yet the note she had submitted said the mosque was in [Suburb 1]. This and the lack of a registration of the divorce raised questions as to whether she was divorced at all, either religiously or legally. She claimed that didn't know the sheikh's whereabouts and he could have changed his workplace.
31. She felt too tired to register the divorce but if there was hope she may put the effort in. It was put to her that there had been two and a half years in which she could have registered it but hadn't. She was given the opportunity for [Sheikh D] to submit a statutory declaration outlining what occurred at the divorce and providing a telephone contact in order so the Tribunal may be able to give weight to the letter.
32. Also under s 424AA it was put to her that she had previously told the Tribunal that she feared harm from her family and that her father was fundamentalist and yet had put in her statement of claims that she came from a moderate family and this was inconsistent with respect to her oral and written testimony. She claimed that perhaps the migration agent had exaggerated but her father was really strict and had forced her into her marriage. Asked what her mother thought of the divorce, she claimed that her mother thought divorce brought shame onto the family. She was not talking at all to her family as she was not up to it psychologically.
33. It was also put to her that she claimed that she had lived in [Ms B's] house but had previously said she lived with [another person], which was potentially inconsistent. She claimed that [Ms B] was called [the other person's name]. Asked for any evidence that would prove she lived at this location during the period she said she had, she claimed that she may have some Immigration correspondence.

#### **CONSIDERATION OF CLAIMS AND EVIDENCE**

34. The applicant is [an age] year old Lebanese woman who claims she is divorced. The Tribunal has sighted her passport and accepts that she is a Lebanese citizen. She arrived in Australia on a [temporary] visa [in] February 2008 which was extended until [August] 2008. She applied for a waiver, was refused and appealed to the FMC – it was dismissed in July 2009. A subsequent protection visa application was refused, affirmed by the RRT and an appeal to the FMC was withdrawn [in] March 2011. Ministerial intervention was declined [in] July 2011 and a PV application allowed as per SZGIZ [in] January 2014. The PV application was refused and the decision affirmed by the RRT, but was remitted on appeal to the FCC [in] September 2015.
35. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth. Nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant. The second- and third-named applicants had no claims of their own and relied solely on their mother's claim as members of the same family unit.
36. I found the applicant's evidence regarding her claims to generally lack credibility. For reasons set out below I did not find the applicant to be a reliable or credible witness. I have taken into account the applicant's medical conditions and am satisfied that she was quite capable of giving evidence. The doctor's certificate asked for the hearing to be postponed saying that she suffered from [medical conditions] but no estimate of the postponement required was given.

The Tribunal attempted to contact the doctor however no calls were answered or message returned.

37. There was no history of such ailments in her file and she was given the option of attending the hearing via telephone which she accepted. She was given two breaks during the hearing. She was asked and agreed that she was capable of attending the hearing. I do not accept that any of the credibility concerns the Tribunal had regarding the applicant could be accounted for by medical reasons. Although she claimed that she had seen a therapist (qualifications unknown), she was offered the opportunity to provide evidence of this post-hearing but failed to do so.

#### *Divorce*

38. I am not satisfied that the applicant is divorced religiously or legally. She has offered only a piece of paper in support allegedly signed by [Sheikh D] in June 2013 at a [Suburb 1]. I am unable to lend it much weight in determining the veracity of her divorce claim.
39. The Tribunal attempted to contact the location at the numbers given however nobody answered. References to [Sheikh D] working at [suburb ] (2007)<sup>1</sup> and at [organisation] (2010)<sup>2</sup> can be found but none to the location in [Suburb 1] that appears to be a prayer hall run by [an] Association.<sup>3</sup>
40. Regardless, the applicant was given the opportunity to provide a statutory declaration post-hearing from [Sheikh D] outlining what he did regarding the divorce and what was discussed and agreed upon, as well as a contact number so the Tribunal could speak to him if required. No such document was provided post-hearing, simply another copy of the original letter.
41. The divorce has not been registered with the Lebanese consulate therefore the Lebanese government has no knowledge of the divorce and she remains legally married in the eyes of the government. I do not accept that the applicant had wanted to register the divorce but that it took a lot of time, connections and money. The Lebanese consulate website<sup>4</sup> has instructions and a form for notifying the government of the divorce, which can be done by either party. It costs AUD 79 for the whole process in Australia, although the consulate does recommend a lawyer for follow-up in Lebanon.
42. The website also notes that 'Lebanese nationals residing overseas are required by law to register any change in their civil status with the nearest Lebanese Mission as soon as possible.' The applicant's lack of action in doing this, or effort to find out the procedure, in the two and a half years since she was allegedly divorced further adds to my concerns that her lack of action in this regard is due to the fact that she is, in fact, not divorced.
43. Because I do not accept that she is not divorced, it follows that she would not lose custody of the children, would not be targeted or humiliated by his or her family or the community because she was a divorcee. It also follows that the second- and third-named applicants would not face traumatic experiences in Lebanon. For someone who claimed to be divorced and to risk losing custody of her children she didn't have much knowledge of Lebanese custody laws, which it is reasonable to think she would have paid close attention to. Even if she may have found the research difficult, she was staying with relatives who could easily have assisted her with it.
44. There are other reasons that I do not accept her claim to be divorced. Although she claimed to have her own bank account she failed to provide evidence of this via statements as requested of her in the time allocated to her post-hearing. I also do not accept her claim that her husband tried to assault her physically. She had not raised this previously and it is reasonable to believe

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

<sup>2</sup> [Information deleted].

<sup>3</sup> [Information deleted].

<sup>4</sup> <http://www.lebaneseconsulate.com.au/serviceFees/registration.shtml>

that it is the type of issue that would be included in protection visa claims, whether she had assistance in preparing them or not. I also note that the applicant used a migration agent in her correspondence with the Tribunal, which means that she had access to assistance if she required it.

45. She has also been inconsistent with her description of her family, and hence of the physical threat that they would pose to her. In her statement (folio 71) she claimed that she came from a 'moderate family' and always believed in the right of women to be free and independent. Yet in previous correspondence with the Tribunal she had described her late father as a 'fanatical fundamentalist Sunnite Muslim', while during the hearing she claimed that she had a lot of [relatives] who only understood beatings, killing and humiliation, neither of which is consistent with the type of moderate family she claimed that she came from in Lebanon.
46. I also do not accept that the applicant had a former boyfriend named [Mr A] who she feared harm from and whom her father didn't allow to marry in favour of [her husband]. She didn't raise this issue during the hearing until prompted and was vague when she did so. Although she claimed to fear harm from him she did not elaborate as to the type or reason for that harm. In her original claim she had stated that [Mr A] had threatened to kill her. This claim relies entirely on the applicant's oral testimony and the vagueness of the claim, along with the fact that I have found her to lack credibility as a witness means that I am not satisfied that a former boyfriend by the name of [Mr A] exists.
47. Having considered the applicant's evidence both individually and cumulatively, for the reasons set out above the Tribunal finds that the applicants do not have a well-founded fear of persecution for any Convention reason either now or in the reasonably foreseeable future.

#### *Complementary Protection*

48. Because I do not accept that the applicant has been divorced from her husband, that she would be physically harmed or humiliated in Lebanon because of it or that the second- and third-named applicants would experience traumatic events as a result, that her husband has threatened to with physical harm or that a former boyfriend in Lebanon called [Mr A] threatened to kill her, I am not satisfied that there are any substantial grounds for believing that there is a real risk of significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa).
49. Therefore, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Lebanon, there is a real risk that she will suffer significant harm.

#### **CONCLUDING PARAGRAPHS**

50. For the reasons given above the Tribunal is not satisfied that any of the applicants is a person in respect of whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

#### **DECISION**

51. The Tribunal affirms the decision not to grant the applicants Protection visas.

Signed by AustLII

Rodger Shanahan  
Member

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## **ATTACHMENT A – RELEVANT LAW**

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

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. 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').

4. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.