

**0909520 [2010] RRTA 156 (10 March 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0909520

**DIAC REFERENCE(S):** CLF2009/102535

**COUNTRY OF REFERENCE:** Lebanon

**TRIBUNAL MEMBER:** Adolfo Gentile

**DATE:** 10 March 2010

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons 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 decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Lebanon, arrived in Australia [in] July 2009 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] July 2009. The delegate decided to refuse to grant the visas [in] November 2009 and notified the applicants of the decision and their review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] December 2009 for review of the delegate's decisions.
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 applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. 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'

10. 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.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. 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.

17. 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.
18. 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.
19. 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**

20. The Tribunal has before it the Department's file relating to the applicants. 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.
21. The applicants appeared before the Tribunal [in] February 2010 to give evidence and present arguments. The Tribunal also received oral evidence from the second applicant, [name deleted: s.431(2)] and [Persons A, B, C and D]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
22. The applicants were represented in relation to the review by their registered migration agent.
23. For convenience, the Tribunal will refer to the first-named applicant as 'the applicant'.
24. The applicant's claims were outlined in answer to the relevant questions on the Protection Visa application form and were accurately summarised by the delegate as follows:

She fears returning because of her religion as a Jehovah's Witness (JW);

Applicant one was born a Sunni Muslim but converted to being a JW in [year] She is at particular risk from Islamic fundamentalists because she was a Muslim and has converted to the JW faith;

Since her husband's death in [year] it is more dangerous for applicant one to practice her faith as she has no male protection;

It is a requirement of the JW religion that followers preach to non-believers. Applicant one is particularly at risk when preaching about her faith. In 2004 she was chased by a group of people after preaching. Again in October 2008 she was pursued by the male occupant of a household in [town]. In March 2009 she was threatened with physical violence while preaching in [Village A]; and

Applicant one fears she will be harmed by fundamentalist Muslims and the Lebanese authorities.

25. At the Tribunal hearing the applicant indicated that her mother is looking after her other children in Lebanon and that her brother-in-law is the guardian of the children. She said she was baptised as a Jehovah's Witness (JW) in [the early 1980s] (although a letter from the [Village A] Congregation of Jehovah's Witnesses, dated [in] September 2009, states that she was baptised [in the mid-1980s]) and her father in [the 1960s] She was married in [the late 1980s] She married without a ceremony and a Maronite priest was paid some money to register the marriage as JWs cannot register marriages.
26. She was asked why she claimed that she had converted from Islam and she replied that the family was regarded as Muslim; when she applied for an ID card they wrote Muslim married to a Maronite man. When asked how she had been practising her faith she stated that she goes to meetings regularly in small halls in small numbers, because they are afraid that something might happen. She is a regular attendee to two meetings a week, plus she engaged in 'spreading the word', teaching children and studying the Bible. She does all these things in fear.
27. Two prominent incidents which happened to her are emblematic: in 2004 six people followed them down the street and started throwing stones, this was in [Village A]. In 2008 she received threats to leave the village and not come back; the village in question was [Village B] and in both these cases they were out spreading the word. The applicant also stated that her mother was hit once in the face. She started proselytising since she was very young, maybe when she was 10 years old.
28. Asked whether she reported these incidents to the police, she answered in the negative, saying they are of a different religion and the government does not protect JWs; they are not popular with the army. Asked what she thought would happen to her on return, she stated she would live the same life as before in fear; since she has converted from Islam, they can kill her.
29. The Tribunal asked her to elaborate on the claims about being associated with Zionists. She stated that they are told that they are associated with Zionism because they worship the same god as the Jews. They are also called a variety of names.
30. The Tribunal put to the applicant that there is an absence of reports which support the claims that JWs are being persecuted in Lebanon. She stated that they are not being persecuted; people do not like them and she does not feel safe and secure.
31. The Tribunal put to the applicant that it had not been able to find information to support the view that JWs are in increasing danger in Lebanon. She responded that there are people who are fanatics and the number of these people could be spreading and they could kill JWs. If Fatah had succeeded in its campaign this may have happened.
32. The Tribunal asked the applicant to elaborate on her claims relating to her lack of male support. She stated that women rely on a man's support and she feels without support. Her brothers are outside the country. She needs protection for her children; people are aggressive towards them because they are JW, especially at school, if they do not attend a ceremony, for example.

33. The applicant was asked why, under her claimed circumstances, she took two months after she was given a visa to leave for Australia. She said she would have loved to leave sooner but she had a job looking after someone and she had to wait until her replacement was appointed and had to train her. She was asked why she had not brought her children with her. She stated that in 2007 she tried to come with her children but her application was rejected.
34. The applicant was asked whether she had anything else to add and she stated that in Lebanon she was always in fear, when they spread the word, the children lived in fear: they were not happy to spread the word of Jehovah; here they practise their religion in freedom; her daughter recently distributed some magazines and she enjoys doing this in Australia.
35. The Tribunal then heard from the applicant's daughter [name deleted: s.431(2)], who is [age deleted: s.431(2)]. She stated that she was exposed to some persecution in Lebanon; that at school they made her carry the flag; her friends used to mock her; the neighbours told their kids not to play with them; they did not like to go out and spread the word; they were afraid of being hit and that something might happen to them; their relatives did not come to visit very often because they are JW's; if one did not participate in the school festivals the teacher would deduct marks.
36. The Tribunal then heard from [Person A] the applicant's brother. He stated that he had left Lebanon 2.5 years ago. The whole family is JW and they faced persecution. His brother [details deleted: s.431(2)] is now in Canada where he has been accepted as a refugee. He himself faced many incidents because he is a JW. He stated that on the day of the [details deleted: s.431(2)] accident where the applicant's husband [was killed] [details deleted: s.431(2)] he went to the hospital to get her husband's body and found that the villagers had taken the body to bury it according to the Maronite rites. It was very hard for them as he had said he wanted to be buried as a JW. They forced his family to go to the Church for his funeral. Three years ago the priest attacked his step-mother: no one came to help; he had been told when spreading the word, why are you preaching? –it is against the law.
37. The Tribunal then heard from [Person B] the applicant's other brother. He stated that he has been in Australia since 2002. He said that what he has experienced is the same as his sister. Since her husband passed away he applied for her to come to visit but they did not allow her to come. The children suffer at school. In Lebanon she does not have the freedom which she has here.
38. The Tribunal then heard from [Person C] an elder of the congregation. He wished to attest that the applicant has been attending the meetings in their congregation and doing her duty as a practitioner since August last year.
39. The Tribunal then heard from [Person D], another elder. He confirmed that the applicant and her daughter have been spreading the word in the last six months. He has some background knowledge of her husband [details deleted: s.431(2)]. The husband's parents did not approve of JW's; they gave them a hard time; his parents pushed her to give up the body; later on they accused her of stealing it and burying it according to the JW faith; if she goes back she will face hard times with the in-laws and in the neighbourhood.

40. [In] February 2010 the Tribunal received a submission from the applicants' adviser drawing the Tribunal's attention to 8 other decisions by Tribunal members where they found that the applicant did face a real risk of persecution. The submission cites various findings of the different tribunals.

## **FINDINGS AND REASONS**

41. Applicant one is [age deleted: s.431(2)] from Lebanon. Applicant two is her [age deleted: s.431(2)] daughter. They travelled to Australia on valid Lebanese passports issued in their own names and Australian Class TR subclass 676 (Tourist) visas. In light of this evidence the Tribunal accepts that they are citizens of Lebanon and will consider their claims against that country.
42. Applicant 2 had not filled in form C of the Protection Visa application form, indicating that she did not have claims of her own to advance. However, at the hearing she put forward her own claims under the Convention. The Tribunal, given the similarity in the claims of both mother and daughter will consider their claims together.
43. The claims that applicant 1 is at differential risk because she is a convert from Islam is not accepted by the Tribunal. The applicant has indicated that she was born in [year deleted: s.431(2)] and baptised in [a year in the 1980s], depending on the source of that information; her father had been a JW since [the 1960s]. The age of baptism is consonant with JW practices as indicated on their website. The applicant has claimed adherence to this religion and does not describe a process of converting. She stated that she was 10 years old when she started accompanying people to 'spread the word'; she has not reported any adverse incident during her life in Lebanon ([years deleted: s.431(2)]) which could be attributed to her 'conversion' from Islam. Under these circumstances, the Tribunal finds that the applicant was not and was not seen as, a convert from Islam.
44. Applicant one has indicated that since the age of 10 she has engaged in the compulsory proselytising required by her religion; she further indicates that she attends meetings twice a week and teaches children and studies the Bible as required. The instances of harm which have been adduced to the Tribunal consist of general shunning by some people; by six people following them down the street in [Village A] and starting to throw stones (in 2004); and being told, in 2008, by some people in another village, not to show their face again. The other incident was the difficulties with her in-laws over the burial of her husband's body.
45. Applicant 2 complained of being teased and being made to participate in school activities which are not permitted by her religion.
46. The Tribunal found the applicants and their witnesses to be credible witnesses. The applicants have displayed a thorough knowledge about the principles of their faith (with due concessions made for the younger applicant). On the basis of this information, the Tribunal accepts that the applicants are JWs and that they have commitment to their faith. The Tribunal accepts that the applicants have engaged in religious activities intrinsic to their faith while residing in Lebanon and in Australia and it also accepts that if the applicants return to Lebanon, they will continue to engage in these activities, including spreading the word, prayers and attending gatherings for religious worship.

The Tribunal accepts that the adverse events which they have described actually occurred and that these are only examples of more numerous and similar incidents to which they have been subjected in the past.

### *Country Information*

47. The most recent International Religious Freedom Report, by the US Department of State (published 26 October 2009) for Lebanon, notes the following:

The Constitution provides for freedom of religion and the freedom to practice all religious rites, provided that the public order is not disturbed. The Constitution declares equality of rights and duties for all citizens without discrimination or preference but establishes a balance of power among the major religious groups. The Government generally respected religious rights; however, there were some restrictions, and the constitutional provision for apportioning political offices according to religious affiliation may be viewed as discriminatory.

There was no change in the status of respect for religious freedom by the Government during the period covered by this report, and government policy continued to contribute to the generally free practice of religion. At the same time, the Government took some steps to improve religious freedom, including the Ministry of Interior's February 11, 2009 circular, allowing citizens to remove their religious affiliations encoded on national identity cards.

There were periodic reports of societal abuses or discrimination based on religious affiliation, belief, or practice. There was tension among religious groups, attributable to competition for political power, and citizens continued to struggle along sectarian lines with the legacy of a 15-year civil war (1975-90). Despite tensions generated by the competition for political power, places of worship of every confession continued to exist side by side, extending a centuries-long national heritage as a place of refuge for those fleeing religious intolerance....

Some religious groups do not enjoy official recognition, such as Baha'is, Buddhists, Hindus, and unregistered Protestant Christian groups. These groups are disadvantaged under the law in that their members do not qualify for certain government positions, but they are permitted to perform their religious rites freely...

Unrecognized groups may own property and assemble for worship without government interference; however, they are disadvantaged under the law because legally they may not marry, divorce, or inherit property in the country. Therefore, these religious groups may choose to register as part of other known religious organizations. For example, Protestant evangelical churches are required to register with the Evangelical Synod, a nongovernmental advisory group that represents those churches with the Government. It is self-governing and oversees religious matters for Protestant congregations. Representatives of some churches complained that the Synod has refused to accept new Protestant groups into its membership since 1975, thereby crippling their clergy's ability to minister to the members of those communities...

There are no legal barriers to proselytizing; however, traditional attitudes of the clerical establishment strongly discourage such activity...

During the reporting period, there were examples of Maronite religious leaders attempting to prevent evangelical Christians from proselytizing to other Christians and Druze religious figures hindering Maronite missionary efforts.



48. The Department of Foreign Affairs (DFAT) prepared a report in response to a request by the Refugee Review Tribunal on the status of Jehovah's Witnesses in Lebanon in May 2006. The report includes the following comments:

[A]ssociations not recognised in law or which have "failed to acquaint the public authorities" with their existence, membership and aims are "reputed to be secret societies ... which shall be dissolved". The JWS [Jehovah's Witnesses] cannot legally convene for public assembly or worship without prior approval from the Interior Ministry. The law also prohibits assembly "in a place open to the public" for groups of three or more persons "for the purpose of committing an offence" or for twenty or more persons "whose attitude is likely to offend public peace" In practice, however, the JWS are left in peace to assemble and worship. However, as advised by a contact at the Interior Ministry, they may be vulnerable to "hassle" from the security forces if, for example, someone held a grudge...

Societal attitudes towards the JWS vary. In general, JWS proselytising is not welcomed amongst the population. In Lebanon, with its history of civil war and delicate religious balance, attempts to convert people to alternate faiths are frowned upon and are considered "trouble making" by the security authorities. However, we are not aware of any cases where such proselytising has resulted in criminal action being taken against JWs. Maronite Christians regard JWs as heretics and Christian contacts advise that Maronite priests regularly preach against the JWS.

In a society where 'contacts' and family affiliations with people in power hold greater sway than legal processes, JWs could be more vulnerable to discrimination than those from recognised sects. (Department of Foreign Affairs and Trade 2006, *DFAT Report 483 – Lebanon: Jehovah's Witnesses: RRT Information Request LBN30096*, 11 May).

49. According to a Report by the Immigration and Refugee Board of Canada, Jehovah's Witnesses

"are able to enjoy a degree of freedom of movement and to worship discreetly. Even so, we consistently learn of individual instances of harassment and intimidation by local authorities." For example, the police have prohibited congregations from meeting for worship. In March 1997, following the Supreme Court's decision to uphold the ban, the Lebanese authorities closed three Kingdom Halls (houses of worship).

Since Jehovah's Witnesses are not officially recognized, they face certain problems: "They are usually discriminated against in divorce and custody cases involving a non-Witness marriage mate [ . . . and] ministers of Jehovah's Witnesses cannot perform legal marriage ceremonies." Furthermore, civil marriage is not an option for Jehovah's Witnesses. (Immigration and Refugee Board of Canada 2005, *LBN43573FE – Lebanon: Treatment of Jehovah's Witnesses by the authorities and society general, and protection offered (2005)*, 8 November).

50. In the past, Jehovah's Witnesses have been accused of having connections with international Zionism and of working in the interests of Israel ('The Jehovah's Witnesses in Lebanon' 1996, *Al-Awasef*, 22 June).

51. According to the Jehovah's Witnesses website, in relation to the duty to proselytise:

Jesus told his followers to "make disciples of people of all the nations," and he set the example by "journeying from city to city and from village to village, preaching and declaring the good news of the kingdom of God." The apostle Paul taught in public places, in the marketplace, and from house to house. We follow their example. Other religions have acknowledged the Christian obligation to preach in public places and from house to house, although this is often left to a limited group of missionaries or

clergy to fulfill.—Matthew 24:14; 28:19, 20; Luke 8:1; Acts 20:20.(www.jw-media.org/beliefs)

52. The Tribunal has taken into account the country information which is sometimes contradictory but which generally indicates that JW's, because they are not officially recognised in Lebanon, are vulnerable to manifestations of hostility by individuals and groups in Lebanese society, including the official churches. The country information confirms that Jehovah's Witnesses are discriminated against in a number of ways, and while they are not seriously harmed by the authorities, or prevented from practising their religion by them, they are also not protected by the State from those who might wish to harm them or prevent them from the full and open practice of their beliefs. The Tribunal accepts that JW's are unable to legally marry. JW's cannot legally convene a public assembly for worship or other matters unless prior approval from the interior Ministry is obtained. Although JW's are able to meet in private and people continue to engage in worship and other religious activities, the meetings may technically fall under the purview of laws prohibiting assembly "in a place open to the public" for groups of three or more persons "for the purpose of committing an offence" or for twenty or more persons "whose attitude is likely to offend public peace". The Tribunal therefore accepts that JW's have problems distributing their publications in the community and are discouraged from proselytising by traditional attitudes as well as government and clerical statements. The Tribunal also accepts that they experience a degree of suspicion due to their perceived association with Zionism. The Tribunal accepts that religious groups in Lebanon have been critical of Jehovah's Witnesses and have preached against them. The Tribunal accepts that preaching or proselytising, which is a part of the JW's' practices, is not encouraged and that those engaged in this activity may be considered troublemakers and face hostility. The Tribunal accepts, having regard to such information, that the applicants have experienced certain restrictions with respect to their religious practice in Lebanon.
53. In light of the above evidence, the Tribunal finds that there is a real chance that the applicants may experience physical harassment, intimidation and other forms of abuse if they were to continue to overtly practise their religion in Lebanon and the Tribunal finds this to constitute serious harm. The Tribunal also accepts the applicants' evidence that their level of religious involvement in Lebanon was accompanied by fear of harm. The Tribunal finds that the harm feared by the applicants amounts to serious harm within the meaning of s.91R(1)(b) of the Act and that the applicants' religion is an essential and significant reason for the persecution which they fear. The Tribunal also finds that the persecution which the applicants fear involves systematic and discriminatory conduct in that it is deliberate or intentional and involves selective harassment for a Convention reason (religion). There is no evidence before the Tribunal that the applicants may be able to avoid persecution by relocating within Lebanon.
54. Given the continuing harassment of the applicants in the past, the restrictions on their religious practice, and the lack of protection available to them from the Lebanese authorities, the Tribunal finds that there is a real chance that they will be persecuted for the Convention reason of religion, now or in the reasonably foreseeable future, should they return to Lebanon. The Tribunal thus finds that their fear of persecution is well-founded.

## CONCLUSIONS

55. The Tribunal is satisfied that each of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such visas, provided they satisfy the remaining criteria.

## DECISION

56. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. AGIBSO