

1417248 (Refugee) [2016] AATA 3539 (15 March 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1417248
<b>COUNTRY OF REFERENCE:</b>	Lebanon
<b>MEMBER:</b>	Chris Thwaites
<b>DATE:</b>	15 March 2016
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.

Statement made on 15 March 2016 at 8:32am

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)<sup>1</sup>.
2. The applicants, who claim to be citizens of Lebanon, applied for the visas [in] July 2013 and the delegate refused to grant the visas [in] September 2014.
3. On 20 October 2014 the applicants applied to the Tribunal to review that decision.

### CONSIDERATION OF CLAIMS AND EVIDENCE

4. The Tribunal has before it the Department's file relating to the applicants' protection visa application and the Tribunal's file relating to the review application. The Tribunal has also had consideration of the written submission and attached media reports from the applicants' [daughter] provided to the Tribunal.
5. The applicants each completed a Part C of the visa application forms indicating they wished to submit their own claims for protection. In the section in the forms about reasons for claiming protection, both applicants state "We are facing attack against our community. My life will be in danger, if send back". They also both state that they fear they will be killed or made permanently disabled, and indicate they believe the rules and rulers are not powerful enough to protect them if they return to Lebanon, and refer to an attached letter.
6. The applicants provided similar letters to the Department claiming they came to Australia to visit their son and his family including their grandchildren. In summary the letters indicate the applicants have applied for protection visas as the situation in Lebanon has worsened and they fear for their safety if they were to return. They note that just before leaving Lebanon to visit Australia a long term friend, a next door neighbour, was shot in front of their building and passed away because no one could attend him, and since arriving in Australia the situation has worsened, and resulted in the destruction of their home and has made the area unliveable. The applicants refer to major incidents that occurred to them prior to coming to Australia, included being shot at in their bedroom, the bullet just barely missing their son's head, running to find shelter in another building, experiencing flashbacks, being taken from [a vehicle] and slapped and spat on by old friends of the Sunni religion, and being showered by bullets while attending a funeral. The applicants also note the idea of returning and living in fear and instability is very depressing and frightening and traumatising. The applicants also provided affidavits with similar content.
7. [In] September 2014 the delegate refused the application for protection visas because, based on country information, the delegate was satisfied the applicants could relocate within Lebanon.
8. On 20 October 2014 the applicants applied to the Tribunal for review that decision.
9. On 20 October 2014 the Tribunal also received a written submission from the applicants' [daughter]. In summary the submission addresses the issue of relocation, stating relocation is not feasible for her parents because they lived in an area where the standard of living is low compared to other areas, making it possible for them to survive and pay minimal amounts of rent. Moving would mean paying about five times more rent than they would pay in their current area. [Their daughter] submits the applicants' age and having no contacts

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<sup>1</sup> The relevant law is attached to this Statement of Decision and Reasons

with anyone in authority means it would not be possible for them to find employment, and the country information indicating Alawites are able to relocate safely is not entirely true. [Their daughter] attached an article detailing Alawites being targeted outside the area of [Town 1]. [She] states her mother suffers from [a medical condition] and her father suffers from [a different medical condition]. When her parents first came to Australia their conditions were out of control and slowly, with the safe living in Australia, their health has improved. She submits that sending them back will deteriorate their health, and that by itself is a danger to their lives. In relation to government protection [the applicants' daughter] states the army does intervene when the situation heats up, but they often fail to protect the innocent, and that is also mentioned in the articles attached to her submission. [She] also attached photographs of her parents' home showing the damage recently sustained.

10. The applicants appeared before the Tribunal on 22 February 2016 to give evidence and present arguments. The Tribunal also received oral evidence from [the applicants' daughter], and [the applicants' son]. Both migrated to Australia on spouse visas and are now settled in Australia with families of their own. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
11. At the hearing the applicants submitted a number of letters of support including a letter from the Mayor of [their town] [Mr A], and its English translation certifying that the applicants' family home was partially destroyed and had become uninhabitable because of the security events in [three neighbourhoods]. The applicants also provided a letter from [Nurse B] a [Health Service 1] refugee nurse, indicating both the applicants are clients of [a specialist unit of their service] and are currently seeing a doctor on a regular basis. She also states the first named applicant is also engaged with a physiotherapist and is on the psychologist appointment waitlist. The applicants also provided a letter in support from [Doctor C], general practitioner, [from the specialist health unit], outlining the first named applicant's current medical conditions and noting the seriousness and the chronic nature of his medical conditions leads the practitioner to be of the opinion that the first named applicant will be unable to find suitable employment and requires immediate and sustained financial support to avoid deterioration in his physical and mental health. The applicants also provided a letter from [Doctor D], a [specialist] of [another health service], noting the first named applicant is currently being treated at the clinic for [several medical conditions]. [Doctor D] gives an opinion that the first named applicant is unlikely to find suitable employment over the next few months in view of his current health issues.
12. The applicants also provided copies of a number of online media articles in relation to violence in Lebanon including a Daily Star article dated 17 February 2016 in relation to explosions in North Lebanon and south of Beirut, and other articles relating to army intervention in heavy clashes in al Saadiyat, Hezbollah attacks in Shebaa Farms, as well as a copy of the Human Rights Watch World Report 2015 on Lebanon.
13. The Tribunal has had the advantage of more evidence than was before the delegate. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

## **FINDINGS AND REASONS**

### **Nationality**



14. On the basis of the applicants' consistent information provided to the Department and Tribunal about their place of birth and citizenship of Lebanon, and the applicants' Lebanese passports produced at the hearing, the Tribunal finds that the applicants are nationals of Lebanon. There is nothing in the evidence before the Tribunal to suggest that the applicants have a right to enter and reside in any country other than Lebanon. Therefore the Tribunal finds that the applicants are not excluded from Australia's protection by subsection 36(3) of the Act. As the Tribunal has found that the applicants are nationals of Lebanon, the Tribunal also finds that Lebanon is the applicant's "receiving country" for the purposes of s.36(2)(aa).

### **Refugee Convention**

15. During the hearing the Tribunal questioned the applicants about their religions, backgrounds, relationship history, education and employment history, family composition as well as their experience of discrimination and violence in Lebanon, particularly the violence they experienced just prior to their arrival in Australia in 2013, as well as their knowledge of what has occurred since they left Lebanon. Their oral evidence about the events in Lebanon and Tripoli are consistent with the general source country information and the most recent Department of Foreign Affairs and Trade (DFAT) Country Information Report on Lebanon dated 18 December 2015.
16. The Tribunal found the applicants straightforward, open, and responsive to all its questions. The applicants gave thoughtful and consistent oral evidence which had the depth and detail and flexibility of knowledge drawn from lived experience. Their children also gave persuasive oral evidence that was consistent with the evidence provided by their parents.
17. The Tribunal found the applicants and their children to be honest and persuasive in their evidence. The Tribunal finds the applicants are witnesses of truth, and the Tribunal is satisfied they have told the Tribunal the truth in relation to critical aspects of their claims.
18. On the basis of the consistent and persuasive oral evidence from the applicants and their children, supported by the documents provided in support of the application, the Tribunal makes the following findings.
19. The first named applicant is Alawite and the second named applicant is Sunni by religion, although their religions are inherited from their families and upbringing rather than based in strict daily practice. The applicants are married and their interfaith/sect marriage has been the cause of some tension and distance with their extended family. The applicants lived in their rented family apartment in the [Town 1] area of Tripoli for over 25 years. The applicants have four children, all adults. Two children (the witnesses) migrated to Australia via spouse visas many years ago and are now settled and have children of their own. The applicants' other two children, one [of whom] lived in [Country 1] and has now moved to [Country 2] with [their own] family, and [the other child] has recently finished [university] education and lives in Beirut.
20. The Tribunal accepts the applicants experienced discrimination and violence and were shot at in their home and in their neighbourhood a number of times over the years prior to arriving in Australia. This occurred as the relationships between the Alawite and Sunni communities deteriorated and tensions escalated into violence and armed attacks. The Tribunal accepts the applicants have fled their home and neighbourhood and city a number of times to avoid the violence, sometimes to their [child] in [Country 1] (who no longer lives there). The Tribunal accepts that the applicants' apartment and their apartment building has been a target of a number of gunfire assaults. The Tribunal accepts the applicants, as well as one son who was visiting, have been nearly hit by bullets while in the apartment, and that their home has been damaged a number of times by bullets, and that the applicants have had to hide in the stairwell of the building or flee the building in order to avoid ongoing gunfire. The

Tribunal accepts the applicants' neighbour and close friend was shot and died, and that the first named applicant was abused and assaulted when he tried to flee the neighbourhood in [a vehicle], and that he and mourners at [a family] funeral had to shelter when gunfire was sprayed in their direction.

21. The Tribunal accepts that the applicants' home has been further damaged since they left Lebanon and that it is no longer habitable. This finding is supported by the letter from [Mr A] and the photographs provided by the applicants.
22. The Tribunal finds that the first named applicant started his working life as [an occupation], but his last 10 years of employment was for [an Alawite agency] in the office [duties], and that he retired when he turned [age] years old and received a one-off social compensation payment based on his salary and years of employment of [amount] Lebanese lira. The applicants' oral information in relation to this is consistent with general source country information about the aged retirement system in Lebanon. The Tribunal accepts that after the first named applicant retired and received his social compensation payment the applicants no longer had an independent source of income. The Tribunal accepts the applicants spent the money on repairs to their home, as well as unexpected costs associated with the second named applicant's [surgery] undertaken just prior to them leaving Lebanon.
23. The Tribunal accepts the rent the applicants paid for their apartment was very low by current market standards and set at US\$[amount] a year. This was based on their long-term tenancy, the location of the apartment, and government regulations about rent control for long-term tenants. The Tribunal accepts the applicants had initially planned that their retirement would be financed with the help of their children in Australia (their other two children are not in a financial position to contribute) based on their low cost of living, given their rental arrangements and the cost of living in [Town 1].
24. The Tribunal accepts the applicants fear returning to Lebanon due to the ongoing discrimination and violence in Lebanon, and more specifically the violence in the [Town 1] area where their apartment is located.
25. Based on the DFAT report discussed with the applicants during the hearing, the Tribunal accepts that there has been a reduction of violent incidents between the Alawite and Sunni communities since April 2014, and that Tripoli is now broadly stable, though vulnerable to outbreaks of renewed violence. The Tribunal also accepts the DFAT assessment that Alawites living in [Town 1] are at a moderate risk of violence, given the long history of sectarian violence in the area.
26. While the violent incidents have reduced, the Tribunal accepts there remains a real chance the applicants would suffer serious harm if they returned to their home in [Town 1], now or in the reasonably foreseeable future. The Tribunal finds the applicants' fear of persecution in the local area of their home in [Town 1] is well founded.
27. During the hearing the Tribunal discussed with the applicants and their children whether the applicants could relocate within Lebanon to an area where they would be safe from harm. The applicants raised their concern about being able to afford to relocate to a safer area within Lebanon. On questioning, the applicants noted that due to their long term tenancy and location in [Town 1], their current rent was very low in relation to current market rentals, and that living expenses in [Town 1] were also low given the location. They also noted they no longer had medical insurance since the first named applicant retired and that they had paid a large amount of money for the second named applicant's surgery prior to coming to Australia. The applicants estimated current rental costs in safer neighbourhoods outside [Town 1] or in Beirut would be many times what they currently pay, in the region of \$600 to

\$800 USD a month, and that the increased costs of rent and living and medical expenses would be unaffordable for them, even with financial help from their children.

28. The Tribunal also discussed with the applicants the possibility of moving to Beirut where [one child] lived. The applicant raised their concerns about their financial capacity, noting Beirut was more expensive than Tripoli, and that their [child] was sharing a single room with [their spouse] and was not in a financial position to assist.
29. [The applicants' daughter] and [son] both told the Tribunal that while they were willing to assist their parents with money and support, their ability to assist was limited due to their own families' expenses. While the applicants' children gave no sense that they would abandon their parents or would not try their very best to help them, the Tribunal accepts their capacity to financially support their parents is limited.
30. The Tribunal accepts that given the applicants' age and medical conditions they are unable to work to financially support themselves, and the Tribunal accepts the applicants are wholly reliant on their children for financial support. The Tribunal accepts the applicants' children living in [Country 2] and Beirut are unable to assist their parents financially. The Tribunal accepts that the applicants' children living in Australia are able to assist their parents in a limited capacity, but are unable to provide the entire ongoing living and medical expenses of their parents if they relocated their home inside Lebanon. Taking all the circumstances into account, the Tribunal finds that, in the applicants' particular circumstances, relocation within Lebanon is not reasonable, in the sense of practicable.
31. The Tribunal accepts the applicants have experienced discrimination and violence in the past due to the first named applicant's Alawite religion and an imputed Alawite religion to the second named applicant, given their marriage and the area where they lived being predominantly an Alawite community. The Tribunal accepts that their religion or imputed religion is the essential and significant reason for the persecution as required by paragraph 91R(1)(a) of the Act. The Tribunal also finds that the harm the applicants' fear involves 'serious harm' as it amounts to a threat to their lives, and significant physical harassment and significant physical ill-treatment as listed in paragraph 91R(2), and as required by paragraph 91R(1)(b) of the Act. The Tribunal also finds that the persecution which the applicants fear involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c).
32. Harm from non-State agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, which the Tribunal accepts in this matter it is, and the State is unable to provide adequate protection against the harm.
33. As noted above, based on oral evidence and the country information before it, the Tribunal accepts there remains a real chance the applicants would suffer serious harm if they returned to their home in [Town 1], now or in the reasonably foreseeable future. While the Tribunal notes violent incidents between the Alawite and Sunni communities have reduced, the Tribunal also accepts the area remains vulnerable to outbreaks of renewed violence. The Tribunal accepts the State has been unable to protect the applicants in the past, and it finds the State's ability to protect them is limited and there is not an appropriate level of protection to which the applicants are entitled to expect under international standards, in their local area in Tripoli.
34. While the Tribunal accepts the applicants' fear of harm is focussed on the violence in their neighbourhood in [Town 1], and accepts those particular circumstances are localised to that particular area, the Tribunal also finds that in the applicants' particular circumstances, relocation within Lebanon is not reasonable, in the sense of practicable.



35. As such the Tribunal finds the applicants have a well-founded fear of persecution for a Convention reason in their local area and that relocation is not reasonable in their particular circumstances.
36. The Tribunal is satisfied that the applicants are persons in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a).

**DECISION**

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

Chris Thwaites  
Member

15 March 2016

## ATTACHMENT: RELEVANT LAW

38. 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 of the same class.

### Refugee criterion

39. 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).
40. 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.
41. 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.
42. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
43. 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.
44. 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.
45. 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.



46. 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.
47. 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.
48. 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**

49. 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').
50. '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.
51. 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**

52. 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.