

071727058 [2008] RRTA 117 (8 February 2008)

DECISION RECORD

RRT CASE NUMBER: 071727058

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Rosa Gagliardi

DATE DECISION SIGNED: 8 February 2008

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Lebanon arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights.

The applicant sought review of the delegate's decision and the Tribunal, differently constituted, affirmed the delegate's decision. The applicant sought review of the Tribunal's decision by the Federal Magistrates Court and the Court set aside the decision and remitted the matter to the Tribunal to be determined according to law.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The matter is now before the Tribunal pursuant to the order of the Federal Court.

RELEVANT LAW

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.

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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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.

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

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.

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.

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.

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.

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.

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

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages.

The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.

In making a decision in this matter, the Tribunal has had reference to the material located on the file of the Department as well as that located on the files of the Tribunal as summarised below:

- Statutory Declaration by the visa applicant, primarily declaring:

[Information has been amended in accordance with s.431 of the Migration Act as it may identify the applicant]

I am claiming persecution on the Convention related grounds of Religion and Implied Political Opinion.

I am a Lebanese national and have no other nationality or a right to enter or reside in another country.

I am currently single.

I am member of the Jehovah Witnesses. I was born into the Jehovah's Witness faith.

In Lebanon I am precluded from adhering to my faith in the manner which my religion requires.

There continues to exist a strong degree of hostilities towards members of our faith and our activities are legally prohibited by the Authorities. There is growing hostility from members of the mainstream faiths including from the Faith B and Faith A.

In light of the growing hostilities towards members of our faith, if I return to Lebanon I would find it necessary (as I have been forced to do so in the past) to practice my faith in an extremely covert manner. This would mean that I would find it necessary to refrain from practicing core tenants of our faith including proselytising and attending on a regular basis religious meetings.

Although I have managed in the past to avoid serious harm, the degree of religious restriction renders adherence to my faith untenable.

I have had to change my name to Name J in an effort of not being recognised as a Jehovah's Witness. If I use my real name, people would immediately suspect that I am either Jewish or a member of the Jehovah's Witness. In my professional life, I have had to openly deny my faith. If my true faith was revealed to my employers, I would be immediately dismissed from my work.

In light of the growing hostilities towards the Jehovah's Witness, there is a growing need for protection from the authorities. However, protection is not available, given the authorities attitude towards the Jehovah witness. This puts me in an extremely vulnerable position because I cannot rely on the authorities of my country for protection.

Members of my immediate family have had to adopt similar approaches to the manner in which they practice their faith. My family and I remain strongly committed to our faith, however, we are unable to practice our faith without fear of persecution at the hands of the authorities or the community at large.

I seek the opportunity to practice the core tenants of my faith without fear of retribution. Unlike the situation in Australia, this is clearly not possible in Lebanon. My family and I live in constant fear. We fear being identified as Jehovah's Witnesses. Members of our faith are imputed with an adverse political opinion as we are accused of being members of Faith C and of supporters of the state of Israel.

- Republic of Lebanon passport details for the visa applicant demonstrating that she was born in Place 1;
- Advance Medical Directive/Release for the visa applicant [information deleted s. 431].
- Decision of Tribunal as previously constituted affirming the Departmental decision not to grant the applicant a Protection (Class XA) visa;
- Statement from a Jehovah's Witnesses group in Place 2, signed by the group's service committee, stating:

[Information amended s.431]

This is to confirm that the Applicant is one of Jehovah's Witnesses and was baptized in Lebanon on date specified.

Since her arriving into Australia, she is continuing to show great support to the Congregation in attending the meetings regularly and participating in all aspects of the holy Christian field service [witnessing from door to door, making return visits etc...].

It was very hard for the Applicant to actually be doing the above mentioned Christian activities back in Lebanon, without feeling and experiencing prejudice and emotion distress. In fact, her name was picked on and was labelled a Jew name (She considers it as a Biblical name) since she is known as a Jehovah's Witness.

She was looking so much forward to the Christian freedom which is available under the Australian Laws that protect such freedom. That is why, as soon as she arrived into Australia, and although she was still jet lagged she went with her sibling's family to Place 3 by car, the very next day to attend an Assembly in large number of attendance, without feeling threatened...

- Extract Translation of A Report Written by Rhonda Assi entitled *Between the Maronite Christians and Baptist Christians What is Happening in Ajaltoun* translated by the visa applicant's relative, Relative I;
- Extract Translation from an article entitled *Towards an Islamic & Christian Frontline against Zionist*, by Sheik Dr Abdullah Hallak and translated by Relative I, stating, *inter alia*:

All Muslims and Christians shared a common fate against European Colonization, and against the Israeli being. They had Theological Knowledge to defeat the Jewish claims and the Zionist Christians who see the forming of Israel as a fulfilment to the Old Testament...ie...THE JEWS HAVE ARMED PROTESTANTS AND JEHOVAH'S WITNESSES to spread misleading religious myths.

- Further article translated by the visa applicant's relative drawing connections between being a Jehovah Witness and being considered a person of Faith C;
- Article submitted by the visa applicant regarding an attack on a Place of Worship in Place 4 by people of Faith B;
- Statement by the visa applicant's relative, Relative I, stating:

[Information amended s.431]

The latest news about the situation in Lebanon is frustrating and awful. Political and religious dividing is so deep and concerning to the point of a possibility of a civil war breaking out any minute, any time!!

Where does that leave Jehovah's Witnesses in Lebanon? In a very fragile position as usual. Since the ban that took place in the early 70s, we became an easy prey for mainstream religions that were deeply involved in heavy and deadly militias' fighting.

During the last events which took place in Lebanon, people became very hostile towards other individuals and very vicious towards our members. Every single community is divided in Lebanon even within the same religion. They are asking everyone to take a stand and to make it clear on which side they are. The Majority is looking for trouble. They search for people who do not support their views and don't hesitate to harm, injure, stab or even shoot them.

In Place 1, there were many clashes and serious incidents that inflicted injuries on people from all disputing sides. What about Jehovah's Witnesses? Now more than any other time, their life is in so much danger since we take no sides in the dispute. Everyone there has one or two oppositions except Jehovah's Witnesses who have been opposed and persecuted by everyone...

- Letter to the Tribunal by the former representatives of the visa applicant stating, *inter alia*:

[Information amended s.431]

We submit the following list of references, which supports our client's claims that her ability to practice her faith in an overt manner is severally restricted. We submit that in the past the applicant has had to hide her religious identity and practice her religion covertly. Her ability to proselytise her faith, a core obligation for the Jehovah's Witnesses has been severally

curtailed and she has not been able to covertly hold or attend meetings. We further submit that the only reason the applicant hid her religious identity and imposed severe restriction on her religious activities was her fear of harm.

Please refer to N06/53227 at page 11, which states as follows:-

Jehovah's Witnesses are not a recognised religion in Lebanon and they may not avail themselves of the benefits of official recognition such as electoral rights and tax exemptions. This unrecognised status also means Jehovah's Witnesses would be unable to legally perform marriages and divorce; and exercise authority over the personal matters such as child custody and inheritance. Jehovah's Witnesses cannot legally convene a public assembly for worship or other matters unless prior approval from the interior ministry is obtained. Although Jehovah's Witnesses are able to meet in private, their 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". They have problems distributing their publications in the community and are discouraged from proselytising by traditional attitudes and clerical statements. In addition, they experience a greater degree of suspicion in Lebanon due to their alleged association with which within the Arab world is a clear reference to Israel...

We submit that our client avoided serious harm in the past by curtailing her religious activity and all but abandoning the activities required of her as a member of the church. According to the evidence before the Tribunal, she did this to avoid harm but in so doing she was forced to abandon a significant aspect of her being. The effect on her resulted in a loss of spiritual well being and serious decline in her psychological state...

We submit that spreading the word and proselytising is an essential element and a core requirement of the Jehovah's Witness faith and any restrictions on her right to do so is an unacceptable restriction on the citizens to freely practise their religion. We further submit that in the current climate in Lebanon, if the applicant attempted to proselytise there is a real chance that she will suffer serious physical harm amounting to persecution.

Given the attitude of the state authorities (as reported in above independent evidence) to the Jehovah's Witnesses, they would not be willing or able to protect the applicants in the event that they complained of mistreatment, including assault, at the hands of private individuals or groups.

- Extract translation of an article from Lebanese Army Website entitled *The Arabic Security and the Problems of Israel's Spreading*, translated by the visa applicant's relative, Relative 1, stating, amongst other things, "They even set up Jewish preaching groups, and amongst these are Jehovah's Witnesses who succeeded in influencing Christian and Islamic people to adopt its teachings by means of temptations and offering assistance...";
- Country of Origin Research, Immigration and Refugee Board of Canada, Responses to Information Requests, *Lebanon: Treatment of Jehovah's Witnesses by the authorities and society in general, and protection offered (2005)*, dated 8 November 2005;

The following information on the situation of Jehovah's Witnesses in Lebanon was provided in 5 November 2005 correspondence sent to the Research Directorate by the General Counsel for Jehovah's Witnesses, whose office is in Patterson, NY.

On 27 January 1971, the Lebanon Council of Ministers banned the work of Jehovah's Witnesses and prohibited the dissemination of their literature, prompting an appeal to the Lebanon Supreme Court. In 1997, the ban was upheld by the Lebanon Supreme Court; a second appeal following the 1997 dismissal has still not been resolved.

There are approximately 3,500 Jehovah Witnesses and over 70 congregations in Lebanon. They 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 mat [...and] ministers of Jehovah Witnesses cannot perform legal marriage ceremonies. "Furthermore, civil marriage is not an option for Jehovah's Witnesses.

In 2000, a Lebanese court convicted two sons (one of whom is a Jehovah's Witness) for following Jehovah's Witnesses rites when burying their father rather than observing a state-sanctioned burial rite. "Since Jehovah's Witnesses have no legal recognition, they have no constitutional right to freedom of religion", was the court's ruling.

Information corroborating that provided by the General Counsel for Jehovah's Witnesses could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints...

- Statement from Person X, Congregation of Jehovah's Witnesses Group, undated, stating:

As a member of the Congregation of Jehovah's Witnesses, I was asked to provide some information regarding the importance of door to door preaching work and also about the situation of the Witnesses in Lebanon I would be pleased to provide the following information:

Door to door preaching work is vital to Jehovah's witnesses to the point that without it, the individual would be considered as an inactive publisher.

To follow the example of Jesus and his disciples by preaching from door to door to reach all people from all nations – Matthew 24:14; 28:19, 20.

As for the situation in Lebanon, our activity is under ban, and we are formally considered as an illegal Jewish organisation. It is almost fatal to be caught distributing our publications in the streets, from door to door.

As for the Applicant, her ministry record shows a significant increase of Christian activities in all areas like preaching from door to door, distribution magazines and attending and participating actively in the meetings (a few times a week) etc...It was impossible for the Applicant to perform all the above mentioned activities, back in Lebanon, without feeling threatened and fearing for her life. I can not emphasize enough how dangerous the situation is for Jehovah Witnesses back in Lebanon, Syria, Egypt, Iran, and Iraq etc...

- Extract from *Organized to do Jehovah's Will* submitted by the applicant, setting out the requirements of a Jehovah's Witnesses, including worshipping in the company of

others and the importance of “preaching the good news systematically from house to house”;

- Statement by the visa applicant, to the Tribunal, stating, amongst other things:

[Information amended s.431]

Prior to my previous evidence, I would like to briefly explain why I did not include a number of facts in my application and in evidence to the first RRT.

First of all, as I was born in the faith of Jehovah’s Witnesses I am accustomed not to express my concerns and fears that arise from bad experiences and incidents which confronted me on continuous basis due to my beliefs as a Jehovah’s Witness. Why? Because it has been banned since 1971 so I do not want to get myself or other fellow members into more trouble with the authorities and the society in general...

Secondly, the previous solicitor I had, told me that I do not have to go into great personal details. All what I had to mention was few incidents and the fact that I can not preach from door to door...

Now, here are some additional facts and hard times I had to encounter in Lebanon:

- (a) After being granted a visa, I wanted to leave Lebanon as soon as possible but I could not find an available reservation. Soon after, the Israeli-Hezbollah conflict begun. Lebanon was literally devastated and under siege and it was impossible to leave the country. The airport was closed. During the conflict, Relative III passed away. It was a very hard time for us. Soon after the ceasefire, I fled to Place 5 then to Place 6, an unusual dangerous and expensive route, with minimal luggage. But the aim was to leave no matter what, despite the Israeli threat to hit any commercial plane which uses Beirut airport.
- (b) Ever since I was at school and later university, I faced hard times and life threatening situations amongst students and colleagues due to my beliefs as a Jehovah’s Witness. I was constantly harassed because of my name and getting told: “how come your parents named you a Jewish name, [information deleted]”.
- (c) [Information deleted s.431].
- (d) [Information deleted s.431].
- (e) [Information deleted s.431].
- (f) Relative II was held at gunpoint in the village I was employed in, and the villagers know about me. This was because he/she was a Jehovah’s Witness. My application to transfer to another village was refused. [Information deleted s.431].
- (g) I am not sure if I have lost my job, and I don’t dare to ask.
- (h) As a professional, I was in a very dangerous situation because [information deleted s.431].
- (i) The number of working hours was reduced significantly, which meant less money to take home, [information deleted s.431].
- (j) [Information deleted s.431].

- (k) A political mob has often broken into the religious place where we meet, they have broken all the furniture and hurt people. And we had constant threatening graffiti on the walls, which forced us to abandon meetings.
 - (l) I am scared of going back and losing my life because, somehow back in Lebanon, people know that I applied for a refugee visa. My family was and still facing a great deal of problems from some officials and from the neighbourhood.
 - (m) Supporters of Faith F have harassed us on several occasions during the recent war, They broke into the house and threatened to kill the whole family.
 - (n) During the last war, we were interrogated by the Lebanese forces and were accused of being informers to Israel We had to abandon all our activities. After the war, and up till now there is enormous pressure on the witnesses.
 - (o) I will loose my life if I go preaching from door to door in Lebanon It is also deadly to try to distribute our magazines in the streets. Both of these two activities, beside many others, are vital aspects of our faith, and without them we are not really witnesses. This was bothering my conscience to a great deal. I was depressed and confused. But during my stay in Australia, the table has turned. I am totally a different person. I am very active in my ministry and I attend and participate actively in all the meetings and that brings a sense of joy and happiness and above all, feelings of security that my life is not threatened and clear conscience that I am pleasing God.
 - (p) The faith of Jehovah Witnesses is not only not recognised in Lebanon, but also IS BANNED SINCE 1971 according to the decree No.19/1 which was released by the council of ministers on 27/01/1971, and since had refused to cancel it once in the nineties and another time just recently. This means that we operate illegally in the country. So I am not only worried of not having a normal life, but more importantly of certainly loosing my freedom and likely my life for just being openly a Jehovah's Witness.
 - (q) During this year's presidential elections, all Christian sects in general are facing hardships and especially, Jehovah's Witnesses who face life threatening situations. Tens of thousands of Christians have fled Lebanon this year alone. So please do not send me back to a miserable and life threatening place. Please be assured of my genuine and not exaggerating fear, and I look forward to answer and queries you may have.
- Letter from Support Person XI, undated stating:

[Information amended s.431]

I was approached to provide some independent information in regards to the status of Jehovah's Witnesses in Lebanon since I am from a Lebanese background and familiar with such case.

As I mentioned above, my statement is an independent declaration because I am not one of Jehovah's Witness (I belong to a particular Christian sect in Lebanon), but since I am active in both the Australian and Lebanese communities and I often travel to Lebanon, I am familiar with backgrounds of people across the board.

I am aware of the fact that proselytising is very important to Jehovah's Witnesses and an essential part of their beliefs.

The work of Jehovah Witnesses is banned in Lebanon since 1971, and they are not allowed to meet or preach without facing hardship, persecution and life threatening situations. The

Witnesses could easily find themselves under attack and possible physical harm with no adequate protection from the government since they do not have a legal status in the country.

- Letter sent to the visa applicant by the Tribunal, pursuant to section 424A of the *Migration Act 1958* inviting comment on information the Tribunal considered would be the reason, or a part of the reason, for affirming the decision that is under review:

[Information has been amended in accordance with s.431]

The Tribunal has considered your claims in writing in your initial protection visa application as well as your evidence at a previous hearing with the Tribunal as previously constituted.

The Tribunal observes that your claims and the evidence provided by Relative II, both in writing and orally, were initially general in nature. At the subsequent hearing held on date specified, with a differently constituted Tribunal, you provided much more detailed and specific claims, such as being interrogated by the “Lebanese forces”. You also submitted an unsworn written statement, setting out details of specific incidents of harm you claim you endured in Lebanon due to your religious beliefs. In your letter, you stated:

Prior to adding to my previous evidence, I would like to briefly explain why I did not include a number of facts in my application and in evidence to the first RRT.

First of all, as I was born in the faith of Jehovah Witnesses I am accustomed not to express my concerns and fears that arise from bad experiences and incidents which confronted me on continuous basis due to my beliefs as a Jehovah’s Witness. Why? Because it has been banned since 1971 so I do not want to get myself or other fellow members into more trouble with the authorities and the society in general. When I went to the RRT earlier this year, I still held such a genuine fear considering the short time I had been in Australia prior to the tribunal. Ad to that, I did not have a good understanding of the Australian Judicial system that is fair and confidential which is not available to witnesses in Lebanon.

Secondly, the previous solicitor had, told me that I do not have to go into great personal details. All what I had to mention was a few incidents and the fact that I can not preach from door to door. He also told me to just answer each question very briefly without adding extra information. His explanation was that the Australian government knows about our situation in Lebanon, and the fact that he had won tens of similar witnesses cases. His expression was “It is a walk in the park”. He was very wrong.

This information is relevant to the review because the Tribunal may find that you are not a credible witness as, given the opportunity, you have now added a list of specific harm you claim you have endured in Lebanon due to your religious beliefs, in contrast to the previous more generalised and non specific claims, submitted by you. While the Tribunal has considered your claims that your previous solicitor advised you not to be specific at your previous hearing held, and that you found it difficult to state your claims, the Tribunal may find that you have now changed your evidence in order to enhance your claims and that as such you may not have a subjective fear of persecution and that the depth of your fear is limited and not well founded.

At the hearing you stated to the Tribunal that:

You were employed as a professional and that you had taken leave of absence to travel to Australia. You also stated that your relatives had been in contact with your place of employment but that you were not sure of your current status in terms of your employment. The Tribunal notes that in a letter to the Tribunal , you stated “I am not sure if I have lost my job, and I don’t dare ask”.

This information is relevant to the review because the Tribunal may find that you had a permanent position and may still do so as a professional and that you have not been prevented from earning a living (section 91R(2) of the *Migration Act 1958*) or systematically discriminated against or persecuted on the basis of your religion. The Tribunal may therefore

find that you may not have a subjective fear of persecution and that the depth of your fear is limited and not well founded.

Also during the hearing of the previous Tribunal you stated that during your university years you sometimes concealed the fact that you were a Jehovah's Witness because "Jehovah Witnesses were not popular" amongst Christians and Muslims. You also stated that you willingly referred to yourself as "Name J" rather than Name K not to draw attention to your Jehovah Witness faith, especially since the name Name K might have had Faith C connotations.

In your letter to the Tribunal, (page 2) you stated:

I was constantly harassed because of my name and getting told "how come your parents named you a Jewish name, [information deleted s.431]?" [Information deleted s.431] At hearing, you did not refer to the issue of hiding your identity from the university or society in general, instead stating that you were open about being a Jehovah Witness and that this was the reason you suffered discrimination at university.

This information is relevant to the review because the Tribunal may find that you are not a credible witness given that you have told the Tribunal as it was previously constituted that you sometimes did not reveal your identity to avoid discrimination, whereas when you appeared before the Tribunal, you stated that you were persecuted because of your identification with your Jehovah Witness faith. You also stated at the hearing of the previous Tribunal that your claimed persecutors wanted you to use the name "Name J" but that you refused to do so. Your written statement, is also contradictory in that it suggests that you did not voluntarily use the name 'Name J' to disguise your faith but that in fact others were forcing you to do so. The Tribunal may find therefore, that, you may not be a credible witness overall and that you may not have a well founded fear of persecution.

At a hearing you were asked to outline the particular instances of perceived persecution to which you were subjected in Lebanon. At the time, you responded that you were required to go from door to door and talk about religion and give people brochures. You stated that you were also asked to leave a certain village but you could not recall which, and that you "went to the car and left". You were asked whether you were physically harmed on this occasion and you stated "no". At the hearing of the previously constituted Tribunal, you stated instead that the authorities were called and that you ran away from them.

This information is relevant to the review because the Tribunal may find that your testimony about having been thrown out of a certain village when you were door knocking was vague and evasive and contradicts the information provided to the hearing of the previously constituted Tribunal. The Tribunal may find that you are not a reliable witness and that you may not have a subjective fear of harm.

At the hearing of the previous Tribunal, the Tribunal as it was previously constituted pointed out to you that your family household register, and which was part of the documents that you were required to submit to the Department of Immigration and Citizenship in order to be able to travel to Australia, stated your religion as "Faith B". You responded that because Jehovah Witnesses are not a recognised religion you are viewed by the authorities as a person of Faith B, being the family's original religion. You stated "we are Faith B basically". The Tribunal pointed out that your family stated on the register that you identified as a person of "Faith B". You responded that being Faith B was simply the family religion and that the authorities do not refer officially to Jehovah Witnesses and revert to the main family religion in official documents. The Tribunal pointed out that you also stated that you concealed your religion at school and that it was confused as to how you really did identify in terms of your faith.

This information is relevant to the review because the Tribunal may find that you are not being truthful about whether or not you identified as a person of Faith B or a Jehovah's

Witness in Lebanon This evidence may also cast doubt on whether in fact you and your family had converted to the Jehovah Witness faith and that you may not have a subjective fear of persecution.

At the hearing of the previous Tribunal, you stated that you were in a large hall worshipping and that a religious group came and attacked the menfolk including Relative II. You then stated at the hearing of the second Tribunal, that it was in fact persons of Faith F who came to the make-shift Hall to threaten the worshippers and bash Relative II. In your written statement and at the previous hearing you stated that it was the armed Lebanese militia and persons of Faith F that came to attack the members of your congregation and who bashed Relative II.

This information is relevant to the review because the Tribunal may find that your testimony between the hearing of the first Tribunal appears to have changed and is not consistent with that you gave at the second hearing, and as such, the Tribunal may find that you are not a reliable witness and that you may not have a well founded fear of persecution.

At the second hearing of the Tribunal Relative II stated that your parents were married in your hometown as reflected by documents submitted to the Department of Immigration and Citizenship. Relative II stated that they were married legally by a Faith B priest. Relative II agreed that this was the case but that the Faith B marriage was simply a cover. The Tribunal pointed out that in fact your parents would be shown legally to have been married as "Faith B" and that there appeared to be no reasonable explanation as to why a priest would fabricate a marriage to cover for people of another faith. Relative II then added that actually the priest was a family friend who enabled the marriage and that now it is not possible to fabricate such marriages because Jehovah Witnesses are required to marry in Turkey or in Cyprus.

This information is relevant to the review because the Tribunal may find that Relative II's testimony about your parent's marriage is not credible and that you and your family may in fact have never been baptised as Jehovah Witnesses. Consequently, the Tribunal may find that you do not have a subjective fear of persecution and that the depth of your fear is limited.

At the hearing of the first Tribunal, the Tribunal as it was then constituted pointed out to Relative II that his/her evidence was quite general and that he/she had not actually pointed to any instances of harm. Relative II responded that some years ago a few men threatened him/her with a firearm but "nothing happened". He/she also stated that in the early 1990's he/she was attending a prayer meeting held in a house and that a few people broke in and insulted the worshippers but Relative II was not aware as to the identity of the persons involved. Relative II claimed that "they" smashed things and people were beaten including Relative II. Then in the late 1970's when he/she was newly married he/she was attending a large prayer meeting and he/she was attacked and taken away for questioning to a "centre" where he/she was beaten. He/she stated that he/she did not know who the personalities were but he/she was certain that they were persons of Faith B. In terms of recent events, Relative II stated that he/she would not call it "threatening", but that the behaviour experienced was more by the way of verbal insults rather than actual harm. He/she stated that in the early 2000s "when war grew" his/her relative told him that he/she need not worry about going after his/her family any longer as Faith F would get rid of him/her and his/her family.

This information is relevant to the review because Relative II has not referred to any incidences of harm involving yourself or other members of your family due to your religious beliefs as Jehovah Witnesses. Furthermore, [information deleted s.431] As such the Tribunal may find that you are not a credible witness and that you may not have a subjective fear of persecution.

At the hearing of the first Tribunal, Relative II stated that the authorities do not in fact persecute Jehovah Witnesses and that it was more individuals who carried out insults and the

authorities would not protect you. At hearing of the second Tribunal you stated that the authorities *were* involved in the persecution of Jehovah Witnesses, and that all of society was involved.

This information is relevant to the review because the Tribunal may find that you are exaggerating the extent of the claimed persecution to which you state you and your family have been subjected to.

At the previous hearing, the Tribunal noted that you were granted a visa to come to Australia in sometime prior to your arrival and that this could mean that you did not fear for your life given the time that elapsed between the grant of your visa and your departure from Lebanon. [Information deleted s.431].

This information is relevant to the review because the Tribunal may find that had you genuinely feared for your life, you would have attempted to leave Lebanon instantly without waiting [information deleted s.431] The Tribunal may also find that as a consequence you may not have a subjective fear of persecution and the depth of your fear is limited. Furthermore, the Tribunal may find that you were able to retain a job without being persecuted in terms of being a professional who had a permanent job (section 91R(2) of the *Migration Act 1958*).

[Information deleted s.431]

[Information deleted s.431]

The Tribunal has had reference to country information regarding the situation for Jehovah Witnesses in Lebanon as it is presented in the U.S Dept of State 2006 Religious Freedom Report and in response to questions by the Tribunal to the Department of Foreign Affairs and Trade.

The U.S Department of State, International Religious Freedom Report 2006, Lebanon, released by the Bureau of Democracy, Human Rights, and Labor on 15 September 2006, states:

The constitution provides for absolute freedom of belief and guarantees 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 these rights; however, there were some restrictions, and the constitutional provision for apportioning political offices according to religious affiliation may be viewed as inherently discriminatory. There was no change in the status of respect for religious freedom during the reporting period. The status of religious freedom continued to be affected by the 1989 Ta'if Agreement that, in accordance with demographic developments in the country, mandated an increase in Muslim representation in Parliament so that it would be equal to the representation of the country's Christian community. In addition, the Ta'if Agreement, which concluded the country's fifteen-year civil war, endorsed the constitutional provision of appointing most senior government officials according to religious affiliation. This practice is operative in all three branches of government. The Ta'if Agreement also stipulated a cabinet with power equally allocated between Muslims and Christians. The political establishment has been reluctant to change this "confessional" system, because citizens perceive it as an element critical to the country's stability. *Some religious groups do not enjoy official recognition, such as Baha'is, Buddhists, Hindus, and unregistered Protestant Christian groups. They are disadvantaged under the law in that their members do not qualify for certain government positions, but they do not suffer discrimination in the practice of their faith. The generally amicable relationship among religious groups in society contributed to*

religious freedom. (Emphasis added). There were, however, periodic reports of tension between religious groups, attributable to competition for political power, and citizens continued to struggle with the legacy of a fifteen-year civil war that was fought largely along sectarian lines. Despite sectarian tensions caused by the competition for political power, churches, mosques, and other places of worship continued to exist side-by-side extending a centuries-long national heritage as a place of refuge for those fleeing religious intolerance. The U.S. government discusses religious freedom issues with the Government as part of its overall policy to promote human rights.

Section I. Religious Demography

The country, founded as a modern state in 1943, has an area of 4,035 square miles and a population of four million. Because parity among confessional groups remains a sensitive issue, a national census has not been conducted since 1932. However, according to three reputable demographic studies conducted over the past two years, 28-35 percent of the population was Sunni Muslim, 28-35 percent Shi'a Muslim, 25-39 percent Christian, and 5-6 percent Druze. Over the past sixty years, there has been a steady decline in the number of Christians as compared to Muslims, mostly through emigration of large numbers of the Christian Maronite community. There were also very small numbers of the Jews, Baha'is, Mormons, Buddhists, and Hindus. Of the eighteen officially recognized religious groups, four were Muslim, twelve Christian, one Druze, and one Jewish. The main branches of Islam were Shi'a and Sunni. The smallest Muslim communities were the Alawites and the Ismaili ("Sevener") Shi'a order. The Maronite community, by far the largest Christian group, has had a centuries-long affiliation with the Roman Catholic Church but has its own patriarch, liturgy, and ecclesiastical customs. The second largest Christian group is the Greek Orthodox Church, principally composed of ethnic Arabs who maintain a Greek-language liturgy. Other Christians were divided among Greek Catholics, Armenian Orthodox (Gregorians), Armenian Catholics, Syrian Orthodox (Jacobites), Syrian Catholics, Assyrians (Nestorians), Chaldeans, Copts, evangelicals (including Protestant groups such as the Baptists and Seventh-day Adventists), and Latins (Roman Catholic). The Druze, who refer to themselves as al-Muwahhideen, or "believers in one God," are concentrated in the rural, mountainous areas east and south of Beirut.

Divisions and rivalries between various groups date back many centuries, and while relationships between religious adherents of different confessions were generally amicable, group identity was highly significant in most aspects of cultural interaction. Foreign missionaries operating in the country, primarily from Catholic and evangelical Christian churches, operated missions, schools, hospitals, and places of worship.

Many persons fleeing religious mistreatment and discrimination in neighbouring states have immigrated to the country, including Kurds, Shi'a, and Chaldeans from Iraq, as well as Coptic Christians from Egypt and Sudan Precise figures were unavailable due to the lack of census data and the tendency of these groups to assimilate into the culture. (Emphasis mine).

Section II. Status of Religious Freedom

Legal/Policy Framework

The constitution provides for absolute freedom of religion and guarantees the freedom to practice all religious rites provided that public order is not disturbed. The constitution requires the state to respect all religions and denominations and guarantee respect for the personal status and religious interests of persons of every religious sect. The constitution declares equality of rights and duties for all citizens without discrimination or preference but stipulates a balance of power distributed among the major religious groups. The Government generally respected these rights; however, there were some

restrictions, and the constitutional provision for apportioning political offices according to religious affiliation may be viewed as inherently discriminatory. The Government permits recognized religious groups to exercise authority over matters pertaining to personal status, such as marriage, divorce, child custody, and inheritance. The "Twelver" Shi'a, Sunni, Christian, and Druze confessions have state-appointed, government-subsidized clerical courts that administer family and personal status law. The constitutional provision for the distribution of political power and positions according to the principle of religious representation is designed to prevent a dominant position being gained by any one confessional group. The "National Pact" of 1943 stipulates that the president, prime minister, and speaker of parliament be Maronite Christian, Sunni Muslim, and Shi'a Muslim, respectively. This distribution of political power functions at both the national and local levels of government. The 1989 Ta'if Agreement, which ended the country's fifteen-year civil war, reaffirmed this arrangement but, significantly, mandated increased Muslim representation in Parliament so that it would be equal to that of the Christian community, and reduced the power of the Christian Maronite presidency. The following holy days are considered national holidays: New Year, Armenian Christmas, Eid al-Adha, St. Maroun Day, Islamic New Year, Ashura, Good Friday, Easter (both Western and Eastern rites), the birth of the Prophet Muhammad, All Saints' Day, Feast of the Assumption, Eid al-Fitr, and Christmas. The Government also excuses Armenian public sector employees from work on St. Vartan Day. Formal recognition by the Government is a legal requirement for religious groups to conduct most religious activities. A group that seeks official recognition must submit a statement of its doctrine and moral principles for government review to ensure that such principles do not contradict popular values or the constitution. The group must ensure that the number of its adherents is sufficient to maintain its continuity. Alternatively, religious groups may apply for recognition through recognized religious groups. Official recognition conveys certain benefits, such as tax-exempt status and the right to apply the religion's codes to personal status matters. An individual may change religions if the head of the religious group the person wishes to join approves of this change. Citizens belonging to a faith not recognized by the Government are permitted to perform their religious rites freely; however, some rights may not be secure in that they fall outside the "confessional" system of allocating political power. For example, a Baha'i cannot run for Parliament as a Baha'i candidate because there is no seat allocated for the confession, nor could such an individual hold senior positions in the Government, as these are also allocated on a confessional basis. However, a number of members of unregistered religious groups are recorded under the recognized religions. For example, most Baha'is are registered under the Shi'a sect. As such, a member of the Baha'i community can run for office and fill a seat allocated to the Shi'a sect. Similarly, Mormons are registered under the Greek Orthodox faith. Government decisions on granting official recognition of religious groups do not appear to be arbitrary. The Government permits the publication in different languages of religious materials of every registered religion.

Restrictions on Religious Freedom

The 1989 Ta'if Agreement called for the eventual elimination of political sectarianism in favor of "expertise and competence;" however, little progress has been made in this regard. One notable exception is the Lebanese Armed Forces (LAF), which has significantly reduced the role of confessionalism in the appointment and promotion of officers and noncommissioned officers. The constitution provides that Christians and Muslims be represented equally in Parliament, the cabinet and high-level civil service positions, which include the ministry ranks of secretary general and director general. It also provides that these posts be distributed proportionally among the recognized religious groups. *Officially unrecognized groups such as Baha'is, Buddhists, Hindus, and some evangelical denominations, 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. Protestant evangelical churches are required to register with the Evangelical Synod, a non-governmental advisory group that*

represents those churches with the Government. It is self-governing and oversees religious matters for Protestant congregations. (Emphasis added) Representatives of some churches have 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. In February 2004 the Government denied a residency permit to the nonresident leader of a local Pentecostal community, who entered the country on a visitor's visa, and granted him seven days to depart the country. The Government informed him he needed to register as a religious worker and re-apply for a residency permit. He left the country as ordered, but was unable to return. He claimed he could not fulfil the requirement of registering as a religious worker because the head of the Evangelical Synod refused to register his congregation. In October 2004 the minister of labor ordered shops in the coastal city of Sidon to close on Fridays at the request of the predominantly Muslim Merchants' Association of Sidon. This order was reportedly only partially observed. Many families have relatives who belong to different religious communities and intermarriage is not uncommon; however, intermarriage is difficult to arrange in practice between members of some groups. Shari'a, which applies to personal status matters of Muslims, forbids the marriage of a non-Muslim male to a Muslim woman. Druze religious leaders will only perform marriages of Druze couples. There are no procedures for civil marriage; however, the Government recognizes civil marriage ceremonies performed outside the country. There are no legal barriers to proselytizing; however, traditional attitudes of the clerical establishment strongly discourage such activity. The respective sect's leadership councils make appointments to senior clerical posts. For example, the nomination of Sunni and Shi'a muftis is officially endorsed by the Government's Council of Ministers, and they receive monthly salaries from the Government. The Government appoints and pays the salaries of Muslim and Druze ecclesiastical judges. The leaders of other religious groups, such as Greek Orthodox and Roman Catholics, do not receive salaries from the Government. The Government does not require citizens' religious affiliations to be indicated on their passports; however, religious affiliation is encoded on national identity cards.

In most cases, religious groups administer their own family and personal status laws. Many of these laws discriminate against women. For example, Sunni inheritance law provides a son twice the inheritance of a daughter. Although Muslim men may divorce easily, Muslim women may do so only with the concurrence of their husbands. In 2003 the cabinet endorsed a draft law allowing the country to adopt a curriculum proposed by the Islamic Educational, Scientific, and Cultural Organization making Islamic culture the core of the educational curriculum at all levels in schools and universities. Following strong condemnation and opposition from a wide range of Christian figures, including the head of the Maronite Church, the Shi'ite speaker of parliament argued that the bill violated the spirit of the constitution. The Government withdrew the bill in late 2003. Article 473 of the Penal Code stipulates a maximum prison term of one year for anyone convicted of "blaspheming God publicly." There were no prosecutions reported under this law during the reporting period. Students and teachers found to be working while on tourist visas are deemed to have violated their visa status and are consequently deported. The same sanction applies to religious workers not working under the auspices of a government-registered religious organization. *There were no reports of religious prisoners or detainees during the reporting period* (Emphasis added).

Anti-Semitism

In 2003 Hizballah's Al-Manar television aired a Syrian-made, anti-Semitic mini-drama that it claimed to accurately portray the history of the Zionist movement. The station aired the inflammatory series Al-Shatat (The Diaspora) in daily segments during the Muslim holy month of Ramadan when television audiences peak. The Arab-Israeli conflict and Israel's former occupation of south Lebanon nurtured a strong antipathy for Israelis, and the country's

media sometimes referred to Israel as "the Jewish State" to avoid referring explicitly to Israel. During the reporting period, the Shi'a terrorist organization Hizballah, through its media outlets, regularly directed strong rhetoric against Israel and its Jewish population and characterized many events in the region as part of a "Zionist conspiracy." Moreover, anti-Semitic literature was published and distributed with the cooperation of Hizballah.

Forced Religious Conversion

There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

Improvements and Positive Developments in Respect for Religious Freedom

In October 2004, the outgoing minister of education yielded to years of pressure from Muslim leaders and ordered the closure of public schools on Fridays, the Islamic day of prayer. The decree stipulated that if students, teachers, and the neighbourhood religious authority agreed, a local public school could continue to operate on Fridays and close over the Saturday-Sunday weekend, which Christians generally prefer. The decree resulted in the recognition of Muslim sensibilities in those neighbourhoods where Muslims are the majority.

Section III. Societal Abuses and Discrimination

The generally amicable relationship among religious groups in society contributed to religious freedom; however, there were periodic reports of tension between religious groups during the reporting period, which may be attributed to political differences and the fact that citizens still struggled with the legacy of a fifteen-year civil war that was fought largely along religious lines. During the reporting period, several bombs were detonated in commercial areas of predominantly Christian neighbourhoods. Leaders of all religious denominations condemned the bombings, but responsibility had not been determined by the end of the reporting period. It was presumed that these bombings were acts of violence aimed at provoking religious tensions. In the months of March through May 2005, in the run-up to parliamentary elections, sectarian rhetoric steadily increased, culminating in a statement by the Maronite Bishops' Council that implied Muslim voters should not have a deciding voice in the election of Christian candidates. This statement by the council, as well as other politically motivated rhetoric from other religious groups, exacerbated sectarian tensions. On February 5, 2006, in the aftermath of the publication of controversial cartoons in Europe, a crowd of several thousand predominantly Sunni protestors staged a demonstration outside the Danish Consulate, situated in the mainly Christian neighbourhood of Achrafieh in downtown Beirut. The demonstration turned violent when protestors attempted to burn down the building housing the consulate and also attacked St. Maroun church (Maronite) and the St. Nicholas church (Greek Orthodox) causing slight material damage. Authorities arrested 441 persons, mostly for damage to the diplomatic facility. These cases were pending at the end of the reporting period. In 2003 a bomb exploded outside the home of a western Christian missionary in Tripoli, killing one person. A permanent search warrant remained in effect for the 2002 killing of an American citizen missionary affiliated with the Christian and Missionary Evangelical Alliance in Sidon, although the case was officially closed in April 2004. Investigations at the time of the killing suggested that Sunni extremists, possibly operating from the nearby Ain al-Hilweh Palestinian refugee camp, were responsible.

Section IV. U.S. Government Policy

The U.S. government actively promotes religious freedom issues with the Government as part of its overall policy in promoting human rights. The U.S. embassy advances this goal through

contacts at all levels of society, public remarks, embassy public diplomacy programs, and the funding of relevant projects. Embassy officers met regularly with leaders of religious communities and regularly discussed issues relating to religious freedom and tolerance. The embassy complained to the minister of foreign affairs and minister of information about the airing of anti-Semitic programs by Al-Manar television. The U.S. government supports the principles of the Ta'if Agreement and embassy staff regularly discuss the issue of sectarianism with political, religious, and civic leaders. In 2004 the embassy sent a member of the Islamic-Christian Dialogue Committee on a U.S. Department of State International Visitor Program to participate in an inter-faith program in the United States. Additionally, U.S.-funded programs in rural areas required civic participation, often involving villages of different religious backgrounds, with the aim of promoting cooperation between religious groups.

...

Below is a copy of the response provided by the Department of Foreign Affairs and Trade (DFAT) in relation to specific questions concerning the treatment of Jehovah Witnesses in Lebanon.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE COUNTRY INFORMATION REPORT NO. 06/17, 11 May 2006 entitled:

Situation of Jehovah's Witnesses in Lebanon, states:

BACKGROUND:

RRT Requests information regarding the situation for Jehovah's Witnesses in Lebanon.

QUESTIONS: [11.04.06]

Q.1. Please provide an update on the situation of Jehovah's Witnesses in Lebanon.

Q.2. Specifically, please discuss societal and government attitudes and address the levels of discrimination suffered by and restrictions placed upon the community and individual believers.

ANSWERS: [22.04.06]

A.1. The Lebanese Constitution extends freedom of belief to all Lebanese citizens. However, the Jehovah's Witness Sect (JWS) is not one of the 18 religious sects recognised under the Constitution. As all family/personal status law is covered solely through the confessional courts of the 18 recognised religious sects, JWs do not have a court dealing with personal status issues. They cannot, therefore, legally marry according to their faith in Lebanon. They can, however, travel to Cyprus, marry there and register their marriage with the Ministry of Interior on their return. This is a recognised and frequently followed process by Lebanese couples not wishing to marry in a religious ceremony. As we previously reported, associations 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 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. JWS men reportedly refuse to serve their national service as it goes against their beliefs. Any man refusing to undertake national service incurs a prison term equivalent to the period of national service and we heard several reports of JWs going to prison for this reason. National service was recently reduced from one year to six

months and next year will be abolished.

A.2. 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, and where the government and the judiciary are opaque and open to corruption, JWS could be more vulnerable to discrimination than those from recognised sects.

This information is relevant to the review because the Tribunal may find that the information demonstrates that while Jehovah Witnesses may generally and in an ad hoc fashion encounter some difficulties due to their religious beliefs, these difficulties do not amount to serious harm (section 91R(1)(b)), and systematic and discriminatory conduct (section 91R(1)(c) of the *Migration Act 1958*). Furthermore, the Tribunal may find that the Lebanese authorities and other religious groups have not specifically targeted Jehovah Witnesses for persecution and that while there are some restrictions on religious practice Jehovah Witnesses are not the centre of major conflict in Lebanese society. As such, the Tribunal may find that your claims of having been persecuted are exaggerated and that you may not be owed protection under the Convention.

At hearing and in earlier submissions to the Tribunal you have referred to several RRT cases where Jehovah Witnesses have been held to be refugees under the Convention, these cases being: N05/08151; N04/50180; N05/51086; N005/52116; and N0653227. At the hearing held on 15 October 2007 you requested copies of the country information used to support the findings that the applicants were indeed refugees. Below is a summary and analysis of the country information used by the Tribunal in several of the cases.

In relation to decision RRT N0653227, the Tribunal is of the opinion that the report by the Department of Foreign Affairs and Trade cited in RRT N0653227 does not support the applicant's claims of persecution on religious grounds notwithstanding the favourable decision in RRT N0653227. The information provided by DFAT was as follows:

A1. Lebanese constitution extends freedom of beliefs to all Lebanese citizens. The Jehovah's Witness sect (JWS) is not recognised in Lebanese legislation on confessional and personal status. Accordingly, a confessional court dealing with personal status issues does not exist for the JWS.

Persons seeking to change sects must petition a confessional court to effect the change. Although the sect is not banned, it follows that, without a JSW court to decide on petitions, they are no legally recognised JSW members in Lebanon.

Without legal recognition of the sect, the JWS cannot legally perform JWS marriages. There is no provision for civil marriage in Lebanon however it is not uncommon for Lebanese to have a civil marriage in Cyprus then register the marriage in Lebanon.

Associations 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... This shall be dissolved.' As the JWS is not recognised legally, it cannot legally convene a public assembly for worship or other matters unless it obtains prior approval from the interior ministry. We note also that the law 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’.

The JWS has had problems distributing the ‘The Watch Tower’ in the community due to allegations that the publication is ‘associated’ with ‘Zionist’ publishers. It is illegal to commit, through written material...Distributed to persons’, an ‘outrage against one of the creeds publicly professed’ or to ‘raise...Scorn against one of them’.

A2. Jehovah Witnesses may engage in private religious activity without harassment by Lebanese authorities – although refer to our comments on public assembly, above. Security agencies in Lebanon monitor the activities of religious groups and other community associations. *Agencies do not impede those activities if they are non-political, do not threaten state security and do not offend definitions of public morality* (Emphasis mine).

As the JWS claim 999 members in Lebanon in 1999, in 100 congregations, it is probably that the authorities allow such groups to operate in peace. A well informed observer of Lebanese religious institutions had not seen any evidence that authorities were persecuting JWS members in Lebanon (Emphasis mine).

We understand that most Jehovah’s Witnesses in Lebanon are from affluent backgrounds and that many are western-education.

The decision in RRT N0653227 decided in 2006 was also based in part on the following country information drawn from the US State Department’s ‘latest’ Religious Freedom Report:

The Constitution provides for freedom of religion, and the Government generally respects this right in practice; however, there are some restrictions. The Constitution provides for the free exercise of all religious rites with the caveat that public order not be disturbed. The Constitution also provides that the personal status and religious interests of citizens be respected. The Government permits recognized religions to exercise authority over matters pertaining to personal status such as marriage, divorce, child custody, and inheritance. The "Twelver" Shi'a, Sunni, Christian, and Druze each have state-appointed clerical bodies to administer family and personal status law through their own religious courts, which the Government subsidizes. There is no state religion; however, politics are based on the principle of religious representation, which has been applied to nearly all aspects of public life. The unwritten "National Pact" of 1943 stipulates that the President, the Prime Minister, and the Speaker of Parliament be a Maronite Christian, a Sunni Muslim, and a Shi'a Muslim, respectively. The 1989 Taif Accord, which ended the country's 15- year civil war, reaffirmed this arrangement but resulted in increased Muslim representation in Parliament and reduced the power of the Maronite President...

State recognition is a legal requirement for religious groups to conduct certain religious practices. A group that seeks official recognition must submit its dogma and moral principles for government review to ensure that such principles do not contradict popular values and the Constitution. The group must ensure that the number of its adherents is sufficient to maintain its continuity. Alternatively, religious groups may apply to obtain recognition through existing religious groups. Official recognition conveys certain benefits, such as tax-exempt status and the right to apply the religion's codes to personal status matters. An individual may change religions if the head of the religious group the person wishes to join approves of this change. Citizens belonging to a faith not recognized by the Government are permitted to perform their religious rites freely; however, their political rights are not secured. For example, a Baha'i cannot run for Parliament because there is not a seat allocated for this confession, neither can he/she secure a senior position in the Government as these are also allocated on a confessional basis. However, a number of religious faiths are recorded under

the existing recognized religions. For example, most Baha'i are registered under the Shi'a sect, and thus Baha'I can run for office to fill a seat allocated to the Shi'a sect. Similarly, Mormons are registered under the Greek Orthodox faith. Decisions on granting official recognition of religious groups do not appear to be arbitrary; in recent years, the Government has recognized such groups as the Alawites and the Copts...

Officially unrecognized groups such as Baha'is, Buddhists, Hindus, and some evangelical denominations 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 in the country. Protestant evangelical churches are required to register with the Evangelical Synod, which represents those churches to the Government. The Synod is a nongovernmental advisory body representing Protestant churches in the country. It is self-governing and oversees religious issues for the congregations. Representatives of some churches have complained that the Synod has refused to accept new members since 1975, thereby crippling their clergy's ability to minister to communities in accordance with their beliefs... Many families have relatives who belong to different religious communities, and intermarriage is not uncommon; however, intermarriage may be difficult to arrange in practice between members of some groups because there are no procedures for civil marriage. However, the Government recognizes civil ceremonies performed outside the country. There are no legal barriers to proselytizing; however, traditional attitudes and edicts of the clerical establishment strongly discourage such activity. The clerical establishments are appointed by the religious authorities to which they are affiliated. The nomination of the Sunni and Shi'a Muftis is officially endorsed by the Council of Ministers, and they receive monthly salaries from the Government. The Government does not require citizens' religious affiliations to be indicated on their passports; however, the Government requires that religious affiliation be encoded on national identity cards. Religious groups administer their own family and personal status laws. Many of these laws discriminate against women. For example, Sunni inheritance law provides a son twice the inheritance of a daughter. Although Muslim men may divorce easily, Muslim women may do so only with the concurrence of their husbands. In 2003, the Cabinet endorsed a draft law allowing the country to adopt a curriculum proposed by the Islamic Educational Scientific and Cultural Organization making Islamic culture the core of the educational curriculum at all levels in schools and universities. Following strong condemnation and opposition from a spectrum of Christian figures, including the head of the Maronite Church, the Shi'ite Speaker of Parliament argued that the bill in its spirit violated the Constitution. The Government subsequently withdrew the bill. Article 473 of the Penal Code stipulates that one who "blasphemes God publicly" may face imprisonment for up to 1 year. There were no prosecutions reported under this law during the reporting period...

The generally amicable relationship among religions in society contributed to religious freedom; however, there were periodic reports of friction between religious groups, which may be attributed to political or religious differences, and citizens still struggle with the legacy of a 15-year civil war fought largely along religious lines. Religious and political leaderships generally have maintained amicable relations in spite of their political differences. During the reporting period, there was intense sectarian rhetoric and the detonations of five bombs in commercial areas of predominantly Christian neighbourhoods in the run-up to parliamentary elections. Leaders of all religious denominations condemned the bombings. Most of the issues at stake concern political or development issues and each party or confession seeks to mobilize as much popular support as possible to obtain its goals. In the months of March through May, in the run-up to the parliamentary elections, sectarian rhetoric steadily increased, culminating in a statement by the Maronite Bishops' Council which implied that Muslim voters should not have a deciding voice in the election of Christian candidates. The statement by the Bishops' Council, as well as other politically motivated rhetoric, exacerbated sectarian tensions. *Unlike in the previous reporting period, there were no incidents of violence against religious persons.* (Emphasis added).

This information is relevant to the review because the Tribunal may find that there is limited information which would point to Jehovah's Witnesses being persecuted in Lebanon on the basis of their religion or political opinion. As such, the Tribunal may find that your claims to having been persecuted in Lebanon on the basis of your religion have been exaggerated and that as such, you are not owed protection under the Refugees Convention.

The visa applicant's previous adviser had also referred to the Tribunal's decision in RRT N04/50180 (15 March 2005) which also concerned Jehovah Witnesses in Lebanon. As in RRT N0653227, RRT No4/50180 relied on the report provided by DFAT. However, the Tribunal in RRT N04/50180 also noted:

Previously, the Australian Department of Foreign Affairs and Trade (DFAT) had advised on 18 June 1996 in cable BI1111) that:

“According to reliable legal source, the Jehovah's Witnesses are not legally authorised to proselytise in Lebanon, but they are not banned and that are not persecuted. Anecdotal evidence suggests that security forces will from time to time disrupt meetings organised by Jehovah's Witnesses, and harass those present; but, according to the legal source, most private meetings proceed without disturbance. In general, Jehovah's Witnesses are not well-regarded by the Christian church in Lebanon. The Maronite Church, in particular, takes a very dim view of their activities, and frequently inveighs against them from the pulpit. (We recently read a long article in 'l'orient-le jour', 7/6/96, based on information from an anonymous church source, condemning the Jehovah's Witnesses. However, the populace at large does not persecute Jehovah's Witnesses, even if it is not especially friendly towards them”.

The decision further noted that members of the sect are not generally free to meet, and that they face ill treatment in some parts of the country. But relevantly, it also went on to note that:

Two reports of the Canadian Documentation, Information and Research Branch, Immigration and Refugee Board present the following picture:

In LBN11803 of 1 October 1992 it is stated that:

“While Jehovah Witnesses have problems in all Arab countries, their problems are fewer in Lebanon. Because almost 50 percent of Lebanese are Christians, Jehovah Witnesses, who are considered to be Christians despite their peculiar interpretation of Christianity, are tolerated....

More significantly, the information relied on in RRT N04/50180 also states as follows:

And in a later report, LBN23784.e of 1 May 1996 it was stated that:

“According to a representative of the Canadian Branch of Jehovah Witnesses in Toronto, Jehovah Witnesses in Lebanon encounter no problems with authorities and “are not persecuted” (1 May 1996). The source added that Jehovah Witnesses do not encounter problems with Syrian forces or authorities in Lebanon (ibid). They are able to hold small meetings, although not with the higher profile they would permit themselves in Canada (ibid). The source noted, however, that Jehovah Witnesses are not able to distribute leaflets or publicly disseminate information (ibid)”.

Another Tribunal decision which was favourable to the applicant is RRT N05/52116 decided in November 2005. The Tribunal considers this decision to be of little value to the Tribunal, however, because the decision does not contain any direct information as such on Lebanon. The Tribunal notes the following observation from the decision:

“The Applicant’s adviser drew the Tribunal’s attention to independent country information cited in RRT cases N05/51364, N04/50180 and N04/51086 in particular about agencies in Lebanon functioning as “moral police”. This material includes the DFAT report referred to above. The adviser drew the Tribunal’s attention to findings in the above-cited RRT decisions to the effect that the information about the situation for Jehovah’s Witnesses in Lebanon was somewhat contradictory and called, at the very least, for caution. The Tribunal has had regard for the Lebanon chapter of the US Department of State’s Country Reports on Human Rights Practices for 2004 (Washington DC: US Department of State, February 2005) and also for the US Department of State’s International Religious Freedom Report 2004 relating to Lebanon”.

This information is relevant to the review because the Tribunal may find that while country information is somewhat contradictory about the restrictions imposed on Jehovah Witnesses in Lebanon, it overwhelmingly suggests that Jehovah Witnesses are not persecuted on the basis of their religion. Furthermore, the Tribunal notes that the Report by the US Department of State neither mentions the Jehovah’s Witnesses specifically nor provides any inference that members of the sect are subject to persecution. As such, the Tribunal may find that your claims of persecution have been exaggerated and that you may not have a subjective fear of persecution.

- Submission by the visa applicant’s representative in response to section 424A letter above, stating, *inter alia*:

[Information deleted s.431].

- Statutory Declaration by the visa applicant addressing inconsistencies in her testimony at the first hearing, with a differently constituted Tribunal, and the evidence provided by Relative II at that the previous hearing. The visa applicant highlights the areas where interpretation was not accurate and in addition provided a revision of the initial interpretation by a N.A.A.T.I Accredited Interpreter and Translator;
- Further Advance Medical Directive/Release signed by the visa applicant;
- *Herald Sun* article dated 25 November 2007, entitled *Lebanon on Brink – President Hands Control to the Army*;
- Statement from Support Person XII, stating:

[Information amended s.431]

Since the early 2000s I have been visiting the household in which the applicant lives with her family and extended family, to tutor her in English. I have now been there on several occasions and as a result have learned something about the various members of the family.

In the early 2000s I started a program of tutoring the applicant in English, and as a result have come to know her much better.

It was obvious from my first visit that family life is very important to all of them, including the applicant. She is very concerned about the danger in which her parents and siblings are living, very close to what has been a war zone, always at risk that shooting conflicts may spill into the small town in which the other members of the family are living. So they have all been very anxious and tense all year, at first because of the Israeli bombing of the country and the consequent disruption of ordinary civil services, and later during armed conflicts between rebels and government forces which has lasted several months in the neighbouring town, only about a few kilometres from the family’s home town.

The entire family is deeply involved in their Jehovah's Witness community and church, and its values are very important to them. The applicant attends church a few times weekly with the family and seems very keen to deepen her knowledge of its doctrines and values. I am sure she is a very sincere believer and entirely accepts their values.

She impresses me as a very modest young woman, always helpful towards her sibling in managing the household and her other relatives, for whom she very obviously cares a great deal. She is ever polite and well-mannered towards me and all other visitors (and there have been quite a number of them over the year since I started my weekly visits).

Relative I, has told me of the applicant's efforts to be accepted as a person with refugee status and the doubts cast on the sincerity with which she has expressed her acceptance of the beliefs of the Jehovah's Witness church. I am confident there is no basis for those doubts and she is entirely sincere and strongly committed to the values of the church.

I do not share the family's beliefs in any way. I am of Faith G, so this opinion is not coming from a person keen to defend someone from his own sect, but from an outsider with views on matters of religion radically different from theirs.

Evidence at hearing of the second Tribunal

The applicant stated that originally Relative II was Faith G and that he/she converted to Jehovah's Witnesses when he/she was young. She stated that Relative II had a large family, all living in the same village who strongly opposed his/her decision. She added that persons of Faith G were very strict Christians and most in the village belonged to this religion. She stated that Relative II's decision to convert was a dangerous decision because there was a lot of misunderstanding about Jehovah's Witnesses.

The visa applicant stated that Relative II faced many problems. In their family home there were several family members who were Jehovah's Witnesses. She stated that her sibling lived in Australia. She stated that they lived in the middle of the village and the villagers, particularly those in their street took this matter of conversion very seriously. She added that her family was marginalised by the people in the village who had not accepted Relative II decision to convert.

The Tribunal asked the visa applicant why Relative II had not attended her hearing to support her. The applicant stated that Relative II had prayed for her and there had been others who had attended at her previous hearing and she had not considered it necessary.

The Tribunal asked the visa applicant about the rationale behind the establishment of the Jehovah Witness faith and how it differed from other major Christian religions. The applicant stated that there were many elements about the Jehovah's Witness religion that differed to other religions as Jehovah Witness were the true students of the Holy Book.

The applicant stated that she was baptised a Jehovah's Witness at a young age. The Tribunal asked whether the visa applicant and her family had experienced any discrimination prior to her baptism due to her family's beliefs. The applicant stated that during that period there was extensive pressure on the whole family and the people living around them considered them to be persons of Faith C and this threatened their family life. She added that distant members of Relative II's family and other villagers had come to the home and threatened to kill them. [Information deleted s.431]. She stated that members of Faith H during the war period stood outside the house armed and threatened to kill the visa applicant unless she refrained from proselytising because she had been out that day propagating.

The applicant stated that Lebanon was a small place and it was not possible to move away as generally Jehovah's Witnesses are not embraced by other communities.

The Tribunal asked the visa applicant to be specific about any harm she claimed she and her family had experienced as a result of her religion and imputed political beliefs.

The applicant stated that the first incident that she could recall was that they were having a meeting in a hall and her family were all present. She stated that her family and others worshipped at a hall, undercover, on the premises of one of the worshipper's homes. She stated that people broke in with arms from the Lebanese forces and threatened them. She stated that they asked everyone to lie on the floor and took the men outside to punch them. Their meetings in this hall were discontinued given that their meeting place had been uncovered. The visa applicant stated that this had happened quite frequently and they had to discontinue their prayer meetings for a while. She added that every time there was civil disturbance in Lebanon, the Jehovah's Witnesses would be targeted. She stated that they could not take the injured to hospital or resort to the police as this would result in further trouble for her community.

[Information deleted s.431].

[Information deleted s.431]. The Tribunal confirmed that the visa applicant appeared to be saying that the danger to Jehovah Witnesses increased over time.

The Tribunal queried the visa applicant why her whole family had not accompanied her to Australia. The visa applicant stated that they would have been refused a visa had they all applied yet she was very worried about the safety of the remaining family members in Lebanon.

The Tribunal then returned to the matter of the incidents of serious harm that the visa applicant claimed had occurred to her and her family. The visa applicant stated that as referred to earlier in her testimony, Relative II had been severely bashed at their make-shift Kingdom Hall and thereafter the congregation did not meet again in this place for a while and they were forced to find another location to meet.

The visa applicant stated that these events had traumatized her and her siblings very much.

The visa applicant explained that she thought that it was members of Faith B who interrupted their meetings. The visa applicant stated that she was aware of an incident where members of Faith E were praying and they were set upon by these militia groups because the militias had considered that the group was a group of Jehovah's Witnesses. Not being afraid, Faith E members were open about the incident and complained via newspapers and raised awareness about the incident. The visa applicant stated that Jehovah Witnesses do not speak up when such acts of violence are committed for fear of being in further danger with the authorities.

The visa applicant stated that her religion was her life and that if she were to return to Lebanon she would continue to practice her faith, "and I am not going to change".

The Tribunal encouraged the visa applicant to speak further about any other incidents of harm that might have happened to her. The visa applicant responded that she had many difficulties because her name was Name K and this name was associated with Faith C. Her name seemed to prove that the Jehovah's Witnesses were indeed Faith C.

The visa applicant stated that she was abused at school by other students because of her name. [Information deleted s.431]. The visa applicant also stated that unless you belonged to a political party you could not go ahead. For example, she really wanted to study the chosen field but could not do so because she did not belong to a political party. As a Jehovah's Witness she was not permitted to belong to any political party. [Information deleted s.431].

The applicant stated that at the university she attended, there was a commemoration of a particular event. [Information deleted]. People saw her and accused her of being a Faith C and she was forced not to attend university for several weeks "until things died down" She stated that the event was traumatic and that she was threatened over this incident.

The applicant also stated that in an area in Place 7 Relative II was threatened that he/she would be killed. He/she was working in one of the houses in the area. There was a person carrying a gun who threatened him/her and Relative II was forced to leave the village and to discontinue his/her work there. The visa applicant stated that her posting then happened to be in Place 7 also and that she tried to ensure she would not be posted there because she considered she would also be under threat. The visa applicant stated that despite her protestations she ended up in Place 7 and she was frightened of the consequences. She was required to be escorted to and from work by a friend who did not hold extreme beliefs.

[Information deleted s.431].

The visa applicant stated that during the recent war with Israel her village had been bombarded. During this time she was out proselytizing and many Jehovah's Witnesses in the area had to attend the police station and were accused of being persons of Faith C Furthermore, the Jehovah Witnesses were being blamed for the bombardment in the area.

The visa applicant stated that many Christians were now fleeing Lebanon because they faced many difficulties and if the Christians in general were being persecuted, how much worse was it for Jehovah's Witnesses. The visa applicant stated that life in Lebanon had now become impossible, particularly as she was required to proselytize. The visa applicant stated that a principal aspect of her religion was to reach people and give them the "message".

The visa applicant explained that Faith H and Faith A in general in Lebanon were becoming increasingly hostile to Jehovah's Witnesses.

The visa applicant stated that the environment had become particularly tense in Lebanon with many people carrying arms. The Jehovah's Witnesses, were therefore, very vulnerable. Given that her religion required her to go from home to home, this placed her in a precarious and vulnerable situation. She stated that many villagers threw them out and there were villages where they simply could not go to preach. In one particular instance, she was with another person and a few people were waiting for them. When the person opened the door to them and saw that they were holding the books, he started to scream at them and abusing them and pushing them out. He followed them on the road and the people heard the screaming and came out of their houses to follow them. When they got into the car the villagers started to throw stones at them and they had to flee very quickly. This was not a one off situation, it occurred frequently and at any time she could fall victim to serious physical harm. As preaching was a key element of her religion and that she would continue to

proselytize, the visa applicant stated that there was a real risk that she could be seriously harmed, particularly as the authorities did not act to protect Jehovah's Witnesses.

The visa applicant stated that she was aware of an instance where a fellow Jehovah's Witness was shot at. Relative II was also going to lose his/her life but was saved by fellow preachers who were ready to take him/her away.

The visa applicant also expressed fear that the authorities may have found out that she had applied for a Protection Visa and she would be interrogated on return.

Further hearing held

A further hearing was held as the visa applicant made serious claims that the interpreter involved in the initial hearing with the Tribunal as it was previously constituted, earlier, had made errors that had affected her credibility adversely. The Tribunal stated that it had reviewed the independent translation of the initial hearing and accepts that serious errors were made and that it would not be reasonable or fair for the Tribunal to rely on the record of hearing in determining the visa applicant's claims. [Information deleted s.431].

[Information deleted s.431].

FINDINGS AND REASONS

The visa applicant's claims are that as a Jehovah Witness in Lebanon:

- There is serious hostility towards Jehovah Witnesses amounting to serious harm from the authorities and from members of the mainstream faiths, particularly by person of Faith B and Faith A;
- Relative II was bashed by Faith B militias who routinely stormed their clandestine place of worship;
- Relative II was threatened with a weapon and told to leave a village preventing him/her from working there;
- She was harassed and teased at school due to her religious background; [Information deleted s.431].
- She was harassed at university [information deleted];
- As a professional she was prevented from being given extra work due to her religious beliefs;
- She was compelled to change her name to Name J to avoid being recognized as a Jehovah's Witness and thereby a supporter of Israel;
- An integral part of her faith is proselytizing and distributing of publications and if she returned to Lebanon she would continue to practice overtly and covertly and attend regular religious meetings thereby attracting possible serious harm;

- She was threatened and chased by villagers throwing stones and forbidding her and other Jehovah's Witnesses from entering the village again;
- Ministers of Jehovah's Witnesses cannot perform legal marriage ceremonies and she would not be able to marry in Lebanon legally;
- Members of her faith are imputed with an adverse political opinion as they are accused of being persons of Faith C and supporting the state of Israel;
- The authorities are not able to protect her and her family from serious harm as the situation in Lebanon post the Hezbollah and Israeli war has become tense. Ordinary villagers are armed and the threat to her from preaching to door to door is enhanced; and
- With the recent rise of Islamic fundamentalism, her fears are heightened because there is a perception that Jehovah's Witnesses are linked to international Zionism.

The Tribunal has taken into account the testimony provided by third parties which strongly indicates that the visa applicant is a committed Jehovah's Witness as she has been engaged in door knocking to spread the message in the Holy Book as required by her faith in Australia. Third party evidence also strongly suggests that the visa applicant and her extended family in Australia are well established members of the faith and that the family worships regularly. The Tribunal also accepts that the visa applicant's knowledge of her faith as expressed during the Tribunal hearings was sound and the Tribunal has also placed considerable weight on Medical Directives signed in Australia [information deleted s.431]. In this respect, the Tribunal accepts that the visa applicant is a genuine Jehovah's Witness and that her actions in Australia have not been for the purposes of enhancing her claims in Australia [see sub section 91R(3)(b) of the *Migration Act 1958*].

The Tribunal found that at hearing the visa applicant's claims did suffer from a lack of detail and at times she provided little context for the occurrences she claimed occurred. Notwithstanding, however, the Tribunal accepts the visa applicant's claims that she and her family faced various forms of harassment, discrimination and physical intimidation due to their religious beliefs and imputed political opinion – both of which are Convention related. The issue for the Tribunal to determine is whether such conduct in respect of Jehovah's Witnesses in Lebanon constitutes serious harm. Sub sections 91R(1) and (2) of the *Migration Act 1958* provide guidance:

- (1) For the purposes of the application of this Act and the regulations to a particular to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:
 - (a) that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution; and
 - (b) the persecution involves serious harm to the person; and
 - (c) the persecution involves systematic and discriminatory conduct.
- (2) Without limited what is serious harm for the purposes of paragraph (1)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;

- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

The Convention also requires the visa applicant to have a well-founded fear of persecution. A fear of being persecuted is well-founded if there is a "real chance" of being persecuted. In *Chan v MIEA* Mason CJ observed that various expressions have been used in other jurisdictions to describe "well-founded fear" – "a reasonable degree of likelihood", "a real and substantial risk", "a reasonable possibility" and "a real chance". His Honour saw no significant difference in these expressions, but preferred the expression "a real chance" because it conveyed the notion of a substantial, as distinct from a remote chance, of persecution occurring and because it was an expression that had been explained and applied in Australia. The High Court has also emphasized that although the expression "real chance" clarifies the term "well-founded", it should not be used as a substitute. It is important to return to and apply the language of the Convention.

A "real chance" is a substantial chance, as distinct from a remote or far-fetched possibility; however, it may be well below a 50 per cent chance. According to Mason CJ in *Chan v MIEA*, the expression "a real chance":

... clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring. ... If an applicant establishes that there is a real chance of persecution, then his fear, assuming that he has such a fear, is well-founded, notwithstanding that there is less than a fifty per cent chance of persecution occurring. This interpretation fulfils the objects of the Convention in securing recognition of refugee status for those persons who have a legitimate or justified fear of persecution on political grounds if they are returned to their country of origin.

In the same case Dawson J stated:

.. a fear can be well-founded without any certainty, or even probability, that it will be realized. ... A real chance is one that is not remote, regardless of whether it is less or more than 50 per cent.

and Toohey J stated:

A 'real chance' ... does not weigh the prospects of persecution but, equally, it discounts what is remote or insubstantial.

Similarly, according to McHugh J:

[A] fear may be well-founded for the purpose of the Convention and Protocol even though persecution is unlikely to occur. ... an applicant for refugee status may have a well-founded fear of persecution even though there is only a 10 per cent chance that he will be ... persecuted. Obviously, a far-fetched possibility of persecution must be excluded.

Thus, as the High Court confirmed in *MIEA v Guo, Chan* establishes that a person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent. A fear may be well-founded for the purpose of the Convention even though persecution is unlikely to occur. The fact that an individual's claims of persecution may be plausible or credible is not enough to establish a real chance of persecution. In *Chan v MIEA*, Dawson J stated:

'Well-founded' must mean something more than plausible, for an applicant may have a plausible belief

which may be demonstrated, upon facts unknown to him or her, to have no foundation.

A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation. In *MIEA v Guo*, the Court said:

Conjecture or surmise has no part to play in determining whether a fear is well-founded. A fear is “well-founded” when there is a real substantial basis for it. As *Chan* shows, a substantial basis for a fear may exist even though there is far less than a 50 per cent chance that the object of the fear will eventuate. But no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.

There can be no set procedure in assessing whether there is a real chance of persecution. The process of establishing whether an applicant’s fear is well-founded will involve making findings of fact based on an assessment of the applicant’s claims and relevant country information, speculation as to the reasonably foreseeable future and a finding as to whether there is a real chance that persecution will occur. In most cases, determining what is likely to occur in the future will require findings as to what has occurred in the past. Such findings provide a rational basis from which to assess whether an applicant’s fear of being persecuted for a Convention reason is well-founded. The extent to which past events can be a guide to the future was explained in *Guo*’s case. As the High Court observed:

Past events are not a certain guide to the future, but in many areas of life proof that events have occurred often provides a reliable basis for determining the probability - high or low - of their recurrence.

Usually, therefore, in the process of determining the chance of something occurring in the future, conclusions will need to be formed concerning past events:

In many, if not most cases, determining what is likely to occur in the future will require findings as to what has occurred in the past because what has occurred in the past is likely to be the most reliable guide as to what will happen in the future. It is therefore ordinarily an integral part of the process of making a determination concerning the chance of something occurring in the future that conclusions are formed concerning past events.

Assessing what is likely to happen in the future on the basis of past events involves questions of degree. The Court in *Guo* explained:

The extent to which past events are a guide to the future depends on the degree of probability that they have occurred, the regularity with which and the conditions under which they have or probably have occurred and the likelihood that the introduction of new or other events may distort the cycle of regularity. In many cases, when the past has been evaluated, the probability that an event will occur may border on certainty. In other cases, the probability that an event will occur may be so low that, for practical purposes, it can be safely disregarded. In between these extremes, there are varying degrees of probability as to whether an event will or will not occur. But unless a person or tribunal attempts to determine what is likely to occur in the future in relation to a relevant field of inquiry, that person or tribunal has no rational basis for determining the chance of an event in that field occurring in the future.

If an applicant is relying on his or her own past experiences, then the logical starting point for the decision maker is whether the events happened as claimed, and if so, whether they constituted persecution for a Convention reason. Evidence that the applicant had been persecuted in the past would give powerful support to the conclusion that the claimed fear is well-founded. In *Chan*’s case the High Court observed that although the date of decision is the relevant date for assessing whether the Convention test is satisfied, the circumstances in which an applicant fled his or her country will ordinarily be the starting point in ascertaining

his or her present status. If at that time, the applicant satisfied the relevant test, the absence of any material or substantial change in circumstances, such as a new government, will point to a continuation of his or her original status.

While past events will often provide a reliable means of predicting future persecution that will not always be the case.

In terms of the visa applicant's past experiences, the Tribunal accepts that she and her family were physically intimidated because of their religion and imputed political opinion and were forced to conceal their identity as well as undertake their religious prayer sessions covertly. The Tribunal also accepts that the visa applicant and her family were placed at significant risk of harm by the act of proselytizing given that there is a rise recently in a fundamental Islamic movement in Lebanon and that the faith is not well viewed by the community at large, particularly by members of Faith B. The Tribunal also accepts that the visa applicant was disadvantaged in her education as well as in her workplace due to her religion and imputed political opinion because as a casual employee her hours were kept to a minimum and she was prevented from earning a reasonable living.

In considering the visa applicant's claims, the Tribunal has had regard to the cumulative effect of past experiences and the totality of the circumstances. An applicant may assert a number of past experiences, none of which by themselves would give rise to a well-founded fear of being persecuted, but considered together may well give rise to such fear. In *MILGEA v Che Guang Xiang*, unreported, Federal Court of Australia, Jenkinson, Spender & Lee JJ, 12 August 1994 at 17, the Court stated:

To establish whether there was a real, as opposed to fanciful, chance that Che would be subject to harassment, detention, interrogation, discrimination or be marked for disadvantage in future employment opportunities by reason of expression of political dissent, it was necessary to look at the totality of Che's circumstances.

Hence, depending upon the circumstances, the denial of fundamental human rights may constitute persecution within the meaning of s.91R(1)(b), as well as under the Convention. Furthermore, persecution is not limited to actual punishment for exercising such rights, but may take the form of a threat of punishment or a prohibition on the exercise of them. The Tribunal is satisfied that in the past the visa applicant was required to be discreet about where the religious prayer meetings were to be held and she was required to change her name so as not to be associated as a supporter of Israel – in essence she was required to suppress an aspect of her self and her faith as a direct result of her fear of persecution. The Tribunal observes that in the High Court case of *Appellant s395/2002 v MIMA* (2003) 216 CLR 473, their Honours McHugh & Kirby, held that in a particular case involving Bangladeshi homosexuals, the Tribunal had erred by failing to consider whether the need to act discreetly to avoid the threat of serious harm constituted persecution, and further, by failing to consider whether the appellants might suffer serious harm if members of the Bangladesh community discovered that they were homosexuals. The underlying principle of this case is that asylum seekers are not required, nor can they be expected, to take reasonable steps to avoid persecutory harm. This principle has been judicially considered and applied in relation to religion, political opinion, ethnicity and membership of a particular social group.

The Tribunal has considered the independent country information cited in the section 424A letter sent to the visa applicant, which states that the Jehovah's Witness religion is not recognized legally in Lebanon under the Constitution. The country information also

illustrates that Jehovah's Witnesses are discriminated against as they do not have a court dealing with personal status issues and cannot exercise control over such matters as child custody and inheritance. They therefore cannot legally marry according to their faith in Lebanon but must travel to Cyprus, for example, marry there and then register their marriage with the Ministry of Interior on their return. Nor can members of their faith convene for public assembly or worship without prior approval from the Interior Ministry. Associations not recognized in law are "reputed to be secret societies...which shall be dissolved". Although Jehovah's Witnesses are able to meet in private and the country information suggests that there are many Jehovah's Witness congregations, 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" [See Department of Foreign Affairs and Trade Country Information Report No.06/17, 11 May 2006: *Situation of Jehovah's Witnesses in Lebanon*]. The Tribunal accepts therefore that the Jehovah's Witnesses have difficulty distributing their publications in the community and are discouraged from proselytizing by attitudes in the community as well as Government and clerical statements. The Tribunal also accepts that the Witnesses experience a degree of suspicion due to their perceived association with Zionism and that with the increase of a fundamental Islamic movement in Lebanon, where Christians are fleeing by the thousands, they are placed at greater risk.

The Tribunal also accepts that religious groups in Lebanon have been critical of Jehovah's Witnesses and have preached against them. The Tribunal accepts that preaching or proselytizing which is intrinsic to the Jehovah's Witnesses practices, is not encouraged and that those engaged in this activity may face hostility and indeed serious physical harm.

The country information suggests that Jehovah's Witnesses could become the targets of harassment by the authorities and private individuals. The Tribunal also accepts the visa applicant's claims that Jehovah's Witnesses rarely report instances of serious harm against them as this would only highlight their activities and place them in danger from the authorities themselves. The Tribunal accepts, therefore, that Jehovah's Witnesses may be denied protection by the authorities due to their religion and the unrecognized status of that religion.

Having regard to the evidence above, the Tribunal finds that there is a real chance that the applicant may experience physical harassment, intimidation and other forms of abuse if she were to continue to overtly and covertly practise her religion in Lebanon now or in the reasonably foreseeable future. The Tribunal considers that such conduct towards the visa applicant constitutes serious harm within the meaning of s91R(1)(b) of the *Migration Act 1958* and that the applicant's religion and imputed political opinion is an essential and significant reason for the persecution which she fears.

The Tribunal also accepts the visa applicant's claims that she has been forced to curtail her proselytizing activities due to her fear of harm and that such self-imposed restriction on one's beliefs and practices for fear of harm in itself amounts to harm. The Tribunal also finds that the persecution which the applicant fears involves systematic and discriminatory conduct in that it is deliberate and intentional.

The Tribunal also finds that there is little evidence to suggest that it would be reasonable for the visa applicant to locate to another part of Lebanon where she might be able to avoid harm. The prevailing political environment and the authorities' attitudes towards Jehovah's

Witnesses generally, would mean that she would be unable to practise her religion freely without fear of harm.

The Tribunal received supplementary information from the visa applicant after this decision had been written. The Tribunal has taken the information into consideration and considers that it reinforces the Tribunal's findings above. As well as the material below, the applicant included examples of two recent decisions made by the Refugee Review Tribunal in Sydney remitting the Department's decisions – cases which were not materially different to that of the visa applicant. The information consists of:

- A letter from an organization in Place 8, confirming that the community of Witnesses in Lebanon do not have any legal rights and are forced to worship discreetly and that periodically, individuals who identify themselves as Jehovah's Witnesses.

CONCLUSIONS

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

DECISION

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

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

Sealing Officer's ID: ntreva