

071410995 [2007] RRTA 139 (9 July 2007)

DECISION RECORD

RRT CASE NUMBER: 071410995

DIAC REFERENCE(S): CLF2007/38475

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Kira Raif

DATE DECISION SIGNED: 9 July 2007

PLACE OF DECISION: Sydney

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

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 his review rights by letter.

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 applicant applied to the Tribunal for review of the delegate's decision. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

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 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 documentary material before the Tribunal is contained in Tribunal case files 071410995 and the Departmental case file CLF2007/38475. 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.

Primary application

According to the Protection Visa application the applicant is a male born on a stated date in Village V, Lebanon. He has completed a stated number of years of schooling. He listed his occupation as self-employed in various fields. He stated how long he resided at the same address in his village, that he is married and has children. The applicant stated he speaks, reads and writes Arabic, and other languages and that he is a Jehovah's Witness.

When making the application, the applicant made the following claims:

- He is claiming persecution on the Convention grounds of religion and implied political belief.
- He was born into a Christian Orthodox faith and was baptised into Jehovah's Witness faith in Year 1. He was appointed as a Senior Officer in Year 2 and continued to occupy this position until Year 3. As a Jehovah's Witness, he is expected to attend prayer meetings, engage in door to door preaching and distribute religious material. As a Senior Officer his responsibility extends further, including looking after the affairs of his congregation and providing religious training.
- In his village his family had been identified as Jehovah's witnesses. He and his family are despised by the neighbours who are mainly hardline Orthodox Christians and Moslems. He has been threatened on numerous occasions by his neighbours and during preaching activities he often encountered harassment and physical violence. They had been effectively treated as outcasts.
- Members of the Christian clergy in the village had on many occasions singled his family out for particular criticism, warning their congregation not to deal or have anything to do with them.
- Over the past few years he has been facing increasing hostility from members of his village. Relocating to another village or area is not a viable option because they would face the same degree of hostility wherever they relocate to.
- In his village he runs a trade store. However, due to the fact that he has been identified as Jehovah's Witness, customers increasingly avoid doing business with the applicant. This has had a significant impact on his ability to earn a living.

- The Christian clergy rhetoric is mainly responsible for the increase in community hostility towards the applicant and substantial decrease in his business activity. The clergy often warn their partitioners against dealing with the applicant, even in business.
- The applicant's property, including business assets, have been attacked on numerous occasions in the past few years. The form of attacks includes destruction of work carried out. This would result in further costly repairs being undertaken.
- In Year 3 the applicant decided to resign from his duties as a Senior Officer of the Church. This decision was based purely on his inability to continue to undertake core religious duties because of the increasing threat to his safety.
- He remains deeply committed to his faith but he has no option but to effectively abandon its practise in an effort to guarantee his safety. Adherence to his faith is not possible if he continues to curtain core religious activities such as preaching and refraining from participating in religious meetings.
- Practising his faith in a covert manner will only expose him to further risk of harm. The only viable option in guaranteeing his safety is to refrain altogether from practising his faith.
- He cannot rely on authorities for protection at times when he is attacked by individuals. This makes his position particularly vulnerable. He fears seeking protection of the police because they will not intervene to offer protection and in most cases will only detain the applicant on charges of disturbing the peace or conducting unauthorised public meetings.
- They are not officially recognised by the government as a religion, instead they are attributed with political belief. The recent Hezbollah – Israeli conflict has further brought adverse attention to members of the faith who are treated as enemies of the state and supporters of Israel because of their refusal to join the Lebanese military. They are not permitted to legally marry under the Jehovah's Witness rites, or to bury their dead. Both his children had to travel overseas in order to be married under the civil law.

The applicant provided a copy of his passport and ID card with the application.

The Department's file contains notes relating to the applicant's application for a particular type of visa. These indicate that the applicant provided evidence of being self-employed in a particular trading field for many years and claimed to earn a stated monthly income. He provided evidence of his bank account showing the closing balance. He stated that he wished to travel to Australia for a period of some months to visit a family member.

Application for review

When applying for review the applicant did not provide additional written material to the Tribunal.

The Tribunal wrote to the applicant pursuant to s 424A of the Act inviting the applicant's comment on information which the Tribunal considered may be a reason or part of the reason

for affirming the decision under review. The Tribunal's correspondence referred to the information provided by the applicant in his visitor visa application, noted above. This was said to be relevant as it may cause the Tribunal to reject the applicant's claim that he and his family were hassled by the villagers and had difficulties with business and also to the assessment of the applicant's credibility. The Tribunal also requested the applicant, pursuant to s 424 of the Act, to provide information describing his involvement in Jehovah's Witness activities in Australia.

The applicant responded by stating that he was self-employed however in light of the fact that he is a Jehovah's Witness, customers deliberately avoided dealing with him. The applicant subsequently provided a statement to the Tribunal from an Australian Congregation of Jehovah's Witnesses which confirms that the applicant is one of the Witnesses and was baptised in Lebanon in Year 1, since arriving in Australia he had been involved in meetings and field service and he was also serving as a Senior Officer in the congregation. The statement indicates that it was hard for the applicant to do these activities in Lebanon without feeling and experiencing prejudice and emotional distress and he faced hard times within the community since he was known to be a Jehovah's Witness.

The Tribunal received a further submission from the review applicant's representative. The representative referred the Tribunal to a number of other decisions made by the Tribunal, differently constituted, in which, the representative submits, the Tribunal found that the information about the situation of Jehovah's Witnesses in Lebanon was contradictory. The representative notes that such information indicates that the Jehovah's Witnesses are not legally recognised as a religious group and are required to seek permission from the Minister of the Interior before gatherings are held. Without such permissions the gatherings are technically illegal. The literature and publications of Jehovah's Witnesses are not allowed to be distributed or publicly disseminated and proselytising is not allowed. The representative submits that state security agencies monitor religious activity and community groups and in 1996 the Interior Minister announced that Jehovah's Witnesses was being investigated as a Zionist organisation, suspected of causing problems in some areas of Lebanon. The evidence suggests that the Jehovah's Witnesses have been rejected by Lebanon's 18 Christian and Muslim sects and the information identifies religious and national groups which are opposed to Jehovah's Witnesses and Jehovah's Witnesses may be mistreated by these groups in the areas controlled by such groups.

The representative notes that in these decisions the Tribunal made a common finding that they were satisfied in light of independent evidence that members of Jehovah's Witnesses are in a vulnerable position in Lebanon and without legal recognition most of their activities are illegal, including proselyting, which is a fundamental part of the faith. Further, the Tribunal had found in the past that the investigations into Jehovah's Witnesses may not have concluded and that members of the Jehovah's Witnesses cannot rely on state authorities for protection when they complain of mistreatment, including assault, at the hand of private individual groups. The representative refers to a decision of the Tribunal in which the Tribunal confirmed the existence of the moral police, which is responsible for investigating activities of those considered a threat to the moral fabric of the Lebanese society.

The representative submits that the applicant continues to be strongly committed to his faith as he has been in the past. If he were to return to Lebanon, he would feel it necessary to continue to practise his religion, although this practice would need to remain covert and restricted, as it has been in the past. Even if the applicant chose to practice his faith in that manner, he faces a real prospect of being at least arrested and detained.

The representative submits that the independent evidence confirms that there continues to exist a degree of hostility toward Jehovah's Witnesses and their activities are strongly discouraged if not legally prohibited by the clergy and authorities. In light of the growing hostility toward Jehovah's Witnesses, there is also a growing need to seek the protection of the authorities and, given the general attitude of the authorities toward Jehovah's Witnesses, the degree of vulnerability would arise most profoundly when the applicant may seek to rely on the authorities for protection.

Hearing

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 his registered migration agent. The applicant's oral evidence is summarised below.

The applicant confirmed that the contents of his statement and all other information provided to the Department of Immigration and the Tribunal were true and correct and that he did not wish to change anything. He confirmed that he understood the content of the declaration he provided with the application.

The applicant said what level of schooling he completed and holds a Certificate. He has not completed any other formal studies. The applicant said what work he had done, what he traded in and for how long. He said that the company is still operating and is now managed by a family member. The applicant said that his wife, children and their families as well as his siblings reside in Lebanon. In Australia he has other family members.

The applicant said that in Lebanon he lived at one address in Village V, North Lebanon for most of his life. He lived in a building which was owned by him. The applicant said that he has not worked in Australia.

The applicant said that prior to coming to Australia he visited other countries and the dates of his travel are written on the forms.

The Tribunal invited the applicant to speak about the persecution he fears due to his religion and imputed political opinion. The applicant said that his problem is religious and not political. He was born Orthodox and in the first [number of] years he learned the religion of Jehovah's Witnesses. The Tribunal asked the applicant why he learned Jehovah's Witness religion if he was born in the Orthodox family. The applicant said that he was not satisfied with the religion and the teachings of the Orthodox Church so he wanted to find the real religion from the Bible, he wanted to study what the Bible had to say. He studied by himself and with others. He said that there were other Jehovah's Witness in the area. They were forbidden to study publicly and they studied in their homes. In accordance with the Bible teaching and with the help of the publication and with discussion with others and through the study the applicant became impressed by that religion and had faith in it and he believed that it was a true religion, so he was baptised in that religion in Year 1.

The Tribunal asked the applicant why he thought it was the true religion as opposed to the Orthodox religion in which he was born. The applicant said that he reached that point after the meetings and the teachings of others. The applicant said that after the teachings and the readings of the Holy Bible and the explanations that were given to him by Jehovah's Witnesses, he thought that this religion was the correct one. He said that there were many

different ways – for example the Bible states in Matthew 14 and in Romans 10 and other Scriptures that it is most important to preach the good news of the Kingdom of God. The applicant saw that in the Bible and believed it.

The applicant said that after he was baptised in Year 1 he was preaching in his area. He said that the majority of people had a negative reaction. A few people may hear the preaching, but many were offended. He said that the Orthodox Church targets the Jehovah's Witnesses to get them back to the Church and they refuse Jehovah's Witnesses, they ask the followers to refrain from hearing them and to act negatively against them, not to hear the teachings. They were forbidden by law to give out literature to people because the law of the country does not recognise Jehovah's Witnesses as a religion. The majority of people think they are Jewish as the names are similar and it was difficult to make people understand that they were not Jewish. The Church tried to bring the Witnesses back and to discourage them.

The Tribunal asked the applicant whether the situation was the same since Year 1 when he was baptised. The applicant said that the situation was the same but it was deteriorating year after year. The Tribunal asked the applicant why he thought that was the case. The applicant said that they use all kinds of things to discourage them – for example they have forbidden marriages. The religious system in Lebanon only allows the recognised religions to sign the marriage certificates and as Jehovah's Witnesses are not recognised by the government, they would have to obtain a certificate in an Orthodox Church which refused them. The only way to obtain the certificate is to spend money to travel to another country which recognises civil marriages to obtain the certificate and to have it recognised in Lebanon. When this method did not work, they tried other methods.

The Tribunal again asked the applicant why he thought the situation became worse since Year 1. The applicant said that his children were married and they had to go through this process, he had to spend a large sum of money to solve this problem. They were not discouraged, so they next tried to fight them with a cemetery. They obtained the government order to close the family cemetery because they were Jehovah's Witnesses. He stated the years this took place. He has documents showing that this order was obtained. He tried to have the cemetery re-opened through the government office but since the religious system was so powerful, they refused his appeal. The applicant provided a copy of the letter he wrote, requesting that the cemetery be reopened and showing that his request was refused. He tried to see the governor who closed the cemetery and he was given only a few minutes. The applicant was told plainly that the governor had no problem with him but the problem was with the Archbishop. The applicant was told that he should discuss the problem with the Archbishop and if the Archbishop agreed, the cemetery would be re-opened. The applicant could not speak to the Archbishop who wanted him to return to the Church.

The Tribunal asked the applicant if the other Jehovah's Witnesses in the area were experiencing similar problems. The applicant said that the cemetery was donated by his relative, R, and he mentioned that all other Jehovah's Witnesses should be buried in it. It was registered as a Jehovah's Witness cemetery so when it was closed, it was closed in the face of all other Jehovah's Witnesses.

The Tribunal asked the applicant whether other Jehovah's Witnesses were experiencing similar problems when proselytising. The applicant said that they were. The Tribunal again asked the applicant why he thought the problem escalated in recent years. The applicant said that there was no problem in the past but some years ago a new religious leader was elected and he wanted to protect his people from becoming Jehovah's Witnesses, he wanted to stop

Jehovah's Witness by all means, so he obtained the order from the Governor. This was not normal because President El-Hariri ruled that cemeteries were sacred and the President ordered that nothing should be done to the cemeteries. The applicant showed an order from the President forbidding interfering with the cemeteries but he said that in their case it was ignored.

The Tribunal asked the applicant whether there were any special incidents in recent years that caused him more concern than the events in the past decades. The applicant said that a few years ago a young man attacked him and beat him. He went to a police station to make a complaint. He did not identify himself as a Jehovah's Witness. They took his name and sent the police to investigate and the police went to see the man with other people. The man agreed that he beat the applicant. The others spoke to the police and the police told the applicant that they would close the case and forget about the matter. The applicant asked that the record be made but the police officer said that he would then detain him. The applicant said that from the experience of his friend, he got the message. He knew that he would not get anything and he accepted it. The Tribunal asked the applicant why he thought this happened due to his religious beliefs. The applicant said that according to his knowledge, in a normal situation when somebody complains of an attack, the police investigates the case and takes action. The policeman told him before that he would punish the offender but he did not punish the offender, who confessed, but instead punished the applicant.

The Tribunal again asked the applicant why he thought it was due to his religious beliefs. The applicant said they were sure that the police had instructions from higher authorities that if there is any dispute between Jehovah's Witness and others, they must not take the side of a Jehovah's Witness. The Tribunal asked the applicant how the police knew that the applicant was a Jehovah's Witness. The applicant said that the people who spoke to the police officer were religious members and they spoke to the police.

The Tribunal asked the applicant about the business he was running. The applicant said that before the new religious person was appointed in the area, he was doing well and his business was doing well. After the new religious leader was appointed, he started telling his group not to co-operate and not to do any business with the applicant and his business was getting worse and worse until he started losing money. That religious person was appointed many years ago. At that time the applicant's capital was considerable and when he applied for the visa, his capital was substantially less and he lost a large sum over a number of years. He can provide copies of his bank statements. The Tribunal asked the applicant why he thought this was due to his religious beliefs. The applicant said that they wanted him to return to the Church, they were putting pressure on him but he would not go back to the church.

The applicant said when the attack on him had taken place. It was in between his trips overseas. The Tribunal asked the applicant why, if the business was going badly for the past number of years and if he was attacked, he was able to travel overseas temporarily and why he returned to Lebanon. The applicant said on what basis he went and he did not have a mind to reside in those countries or to stay there. He was there temporarily and to visit friends. He was also hoping that the situation may change and that religious hostility may change or decrease and the political system may change, so that he was hopeful. The Tribunal asked the applicant at what point he realised that it would not change or that he would have to leave the country. The applicant said that he came to Australia to visit and in the early part during his stay here he saw more good things that they did not have in Lebanon. He saw the religious freedom that people enjoyed and the protection of humans and even birds. He said that the situation in Lebanon now was bad for Jehovah's Witnesses and for the whole society. There

is war in an area that is close to his village and they must go through that area when they go to the city.

The Tribunal asked the applicant whether he intended to apply for a protection visa when he came to Australia. He said that when he came to Australia, he did not know anything about Australia. He was trying to investigate where he could find a place where he could protect his freedom of religion and freedom of work and to protect his life which is in danger. His life is in danger not because of the Orthodox. The Orthodox are exerting pressure and the persecution but there is no risk to life. The problem is that theirs is a small village in a surrounding area which has been abandoned by the government. The surrounding area and his small village are on the border of a nearby country. There are Muslims in the village and the surrounding areas and among the Muslims there are extremist groups. These groups have branded the applicant as a Jew and according to their belief, they must kill a Jew to go to paradise.

The Tribunal asked the applicant why he was identified as a Jew. He said that he had preached there and they threw him out from the village, forbidding him to return. The Tribunal pointed out that the applicant had been preaching for a long time. The applicant said that the extremist groups have not existed before. Now the population is fully armed. The Tribunal asked the applicant why he thought he specifically was a target and why he was a target now and not in the past. The applicant said that they are all a target. He said that he is more of a target because he was a Senior Officer before but he resigned a number of years ago because he was afraid. He could not preach openly as he was afraid of being attacked.

The Tribunal asked the applicant when was the last time he visited the village where there were Muslim extremists. The applicant said that he is unable to go there now but they know him. The last time he was there was many years ago. The Tribunal asked the applicant if he thought he was identified as a Jew and was a target for many years and he continued to reside in the same address for that period, they could have contacted him or done something to him. The applicant said that he cannot afford to buy another place. He said that they could have killed him but they are waiting for confusion or a demonstration, that way nothing would happen to them. He experienced many wars and during the wars the police run away. These people are armed and can do whatever they want during the wartime. The Tribunal pointed out that according to the applicant's own evidence, the police would not protect him and would not take his side. The Tribunal asked the applicant why these groups could not harm him now if they wanted to. The applicant said that they could harm him at any time but if they harmed him during the peaceful time, there may be a small case. But if there is confusion when he is killed, nobody would do anything to them.

The Tribunal noted that there was a war in Lebanon last year. The Tribunal asked the applicant why he thought nothing happened to him at the time. The applicant said that he was hiding in a house. They asked for him and his wife told them that they did not know where he was. They took the car keys and left. The Tribunal asked the applicant why he did not mention this in his earlier claims. The applicant said that he wanted to clarify this. He did state earlier that his area was surrounded by Muslim fanatics and that he was fearful. The Tribunal mentioned that the applicant had not mentioned either the attack on him or the fact that he was hiding. He said that he is clarifying it now.

The applicant said that every time there was a conflict in Lebanon, he would be in hiding. His business would be closed at the time. He is not happy to be rich as it is a risk to life.

The applicant said that his spouse and children are also Jehovah's Witnesses. The Tribunal noted that the applicant said that the fundamentalists approached his wife. The Tribunal asked the applicant why his wife and children were not hiding. The applicant said that they only attack men and not women. His children were not as active so they were not under so much risk. He is at a greater risk because he is one of the first Witnesses and they consider him to be the one who poisoned the children and gave them the idea that they should not fight Israel. One police officer said to him that if he wanted to be a Jehovah's Witness, he could do that privately but not to express himself. In the recent past he was almost dead spiritually as he could not preach or attend meetings or teach people.

The Tribunal asked the applicant why he thought he was more active and more in danger than his children if he was no longer preaching and no longer attending meetings and he had given up being a Senior Officer. The applicant said that they did not know, only the congregation knew. The applicant said that once he was charged with being a Jew, this was always the case. As they did not join the army, the policeman told him that they were discouraging people from fighting Israel, he said that they were not patriotic and that he should live in Israel. The applicant said that he was prohibited from talking to the young people, which is his duty. He was deprived of his right to choose religion.

The Tribunal noted its concerns, in particular the fact that the applicant had been a Jehovah's Witness for a long time and he had been active teaching and preaching. He had been living in the same area. He had described one attack but he had travelled overseas since that attack. He had not been able to explain why the situation was now different to what it was before. The applicant said that he never had a chance. If he had a chance to leave the country in the past, he would have done so. The Tribunal noted that the applicant travelled to other countries. The applicant said that there is freedom of religion in the first country but it is a war-torn country and there is racial discrimination and he could have been attacked there as a white man. He could not operate a business there because the situation there was not good. In the second country he did not seek asylum because he would not be able to live there as he does not speak that language and it would be difficult to live there and to operate a business. In case of a third country they speak another language. He was not able to work there and obtain work there. He did not choose Australia before he came here. When he first arrived here, he found that there is a possibility to work here and to take care of his family. People speak the same language and he has a base here, his family and there is a spiritual base of Jehovah's Witnesses who could help him to raise capital. There is religious freedom here. There is no Kingdom Hall in Lebanon, they were afraid all the time and many were closed.

The Tribunal noted that the applicant appeared to have been guided by employment prospects in deciding not to remain in other countries and this seemed inconsistent with his claims that he was fearful for his life due to being a Jehovah's Witness. The applicant said that there were many reasons. He cannot work as an employee as he is normally self-employed and he had no base in any of the three countries. There is also danger in the first country. He does not speak the language of the second country and although there is freedom of religion, he cannot stay there without work and he cannot ask for a job as he had been self-employed his whole life and he could not raise the capital. In Australia there are people who had agreed to help him raise the capital and there is enough religious freedom. Here they could go door to door which they could not do in Lebanon.

The applicant's adviser stated the years that the applicant went to those other countries. The applicant said that he went to the second country before he was beaten by a man. Since then he resigned his activities and that is why his life was spared. The Tribunal asked the applicant

why this would change if he returned to Lebanon. The applicant said that the general condition in Lebanon is worse and if there is even a small war, they would take the chance.

The Tribunal asked the applicant where he was hiding. The applicant said that he went from place to place. He stayed with friends and relatives and went to other towns. The Tribunal asked the applicant whether he thought he was a target because of his past activities or because of his present activities which are not as significant as they were in the past. The applicant said that the risk is there all the time. He is not certain that he would be killed, but the risk is there and he would not risk his life. The Tribunal repeated its question. The applicant said that the risk from the extremists is there all the time, including from his previous activities. They are not concerned about his current activities as they do not know about them. They think that there is one Jewish man in the town and he is afraid. As far as the Orthodox Church is concerned, he is not concerned with being killed, but the state is persecuting him in other ways that he mentioned before. He intends to continue his activities because he would be spiritually dead otherwise. The Tribunal pointed out that he had not actively participated in these activities in the past. The applicant said that he was very cautious, it was not his choice.

The Tribunal asked the applicant if all Jehovah's Witnesses in his area were branded as Jews or Jewish supporters. The applicant agreed. The Tribunal asked the applicant if all other Witnesses were hiding when there is a conflict. The applicant said that whoever had a chance would hide. One person was killed while he was hiding. The Tribunal again asked the applicant why his spouse and children were not in hiding if they were also Jehovah's Witnesses if they could be classified as Jews or Jewish supporters. The applicant said that maybe they did not want to hide, it is their decision. He cannot force them. The Tribunal asked the applicant if he had taken any steps to enable his family to hide. The applicant said that his children are adults and he cannot instruct them what to do. He said that he also cannot force his spouse. He said that mostly the men are subjected to harm and not the women.

The Tribunal noted that it was odd that the applicant felt that he was at risk as a Jehovah's Witness because he was perceived to be Jewish or a Jewish sympathiser and went into hiding while his family remained at the area, one of his children continued to run the business and his wife lived in the family home. The applicant said that anybody who was able to hide had done so. The Tribunal noted that his family had not done that. He said that his wife was not at risk as a woman and his children decided that they did not want to hide. He wished that they would all be together but it is only his wish.

The Tribunal asked the applicant when the Jehovah's Witness were founded. He said that were founded in 1879 founded by Charles Taze Russel. The headquarters are located in Brooklyn. The applicant said that the Jehovah's Witnesses believes that the Kingdom of God will be established by Jesus. 144,000 people will ascend with Jesus and unlimited number of people will survive on earth which will turn to Paradise. The applicant said that the Witnesses celebrate only one festival of Jesus' death. He spoke of the activities and beliefs of Jehovah's Witnesses.

The Tribunal asked the applicant whether he had been involved in any Jehovah's Witnesses activities since coming to Australia. He said yes, but not much because he is not in a position to participate actively because he is a foreigner, he does not know the country well, he does not have a car. He has to ask brothers or sisters to take him to meetings. He travels among his family members and when there is a congregation nearby, he goes there. He said that he had attended many meetings since coming to Australia, he attended several congregations. The

applicant's representative noted that a letter from an Elder would be forthcoming. The applicant said that he had also engaged in teaching in Australia. He said that they normally go door to door, they identify themselves as Witnesses and discuss the teachings and offer publications.

The Tribunal asked the applicant whether there had been any other direct attacks upon him in addition to the bashing he described. The applicant said that when Syria was occupying the country, the religious leaders through the secret agents gave the files and explained that he was a Jehovah's Witness and a Jew and now he cannot go to Syria, otherwise he would be detained. The applicant said that he was threatened and he stopped his activities in order to keep himself safe. He did not stand against them.

The Tribunal asked the applicant whether his children engaged in teaching. The applicant said that they were not very active. The Tribunal noted that it was part of their belief. The applicant said that they had not done so because they were afraid. The applicant said that there is a special direction from the headquarters not to resist or dispute anybody as this may cause the cessation of all activities. The applicant said that his wife was involved in the same way. The women speak about religion during their gatherings and their meetings. Also when they try to preach, they try to speak to one or two people at a time because if they speak to a group it would be inconvenient.

The Tribunal asked the applicant whether he had applied for a visa to travel to Australia previously or whether he had previously been in Australia. He said that he had not. He said that he previously did not have any idea about Australia but since his family member is here, he wanted to visit Australia and visit his family member and because the situation in Lebanon is difficult politically, financially and religiously, he decided to visit Australia. He said that his family member had been in Australia for many years. The Tribunal asked the applicant why he had not made any attempts to travel to Australia over the years if he faced persecution or discrimination in his country for that period. The applicant said that he used to love his country and would be happy if the authorities were civil and not religious. If the situation would improve and there was freedom of religion and if they would be protected by law he would accept it and stay there. There is no protection of the law. The Tribunal noted that according to the applicant, the religious leader was appointed about ten years ago and since then the situation deteriorated. The Tribunal asked the applicant why he had not taken any steps to travel to Australia in that time. The applicant said that his main thought was that Australia was isolated and far and when somebody goes to Australia, one disappears. Also when his family member was living in Australia, he used to visit them in Lebanon regularly, so that he did not give the applicant the thought about visiting Australia. The Tribunal asked the applicant why he did not take any steps to leave the country irrespective of how far Australia was if he was fearful for his life and safety. The applicant said that he did not know anything about Australia, it was something unknown and hard to decide. Even when he first came, he did not make up his mind to apply for the protection visa or to stay but after he arrived in Australia and saw the religious freedom, this made him decide to apply for protection. The main point that encouraged him to apply for the protection visa was that the existence of the law and observance of the law and there were equal opportunities for everyone and there was religious freedom. The Tribunal asked the applicant if he was suggesting that he was not fearful for his life when he left Lebanon. He said that he knew that he was at risk but he did not know that he would have the chance to remain in Australia. He said that when he first came, he did not have the intention to remain in Australia but after he

saw the Australian life and laws, this helped him to make the decision. He said that he was at risk and the danger was there all the time, but he did not think there was a choice.

The applicant said that he is in a desperate situation spiritually and he made the decision that if his application is rejected and he returns to Lebanon, he would go back to his activities and he would be active there. Although he would take the risk, he believes that the future life in Paradise is preferable to his current life, so he prefers to die than to be spiritually dead. The Apostles gave up his life and he would do the same.

The applicant's representative indicated that the applicant may have misunderstood the Tribunal's question about his intention on coming to Australia. The Tribunal asked the applicant whether he intended to apply for protection when he left Lebanon. The applicant said that he had the idea of the intention when he left Lebanon but it would depend on how he would feel when he came to Australia because he did not know about it before. If he had the information or the complete idea about the situation in Australia, he would have made the decision when he was in Lebanon but he made the decision after he arrived. The applicant said that his family member in Australia is not a Jehovah's Witness although he studied before.

The applicant's representative submitted that the applicant was not aware whether there was religious freedom in Australia and could not make the decision whether to seek asylum before he travelled to Australia, he had to study a particular country before making the decision. The applicant said that none of his family in Australia are Jehovah's Witnesses. He said that his family member studied as a Jehovah's Witness in Australia. The Tribunal pointed out that if his family member had studied in Australia, he could have some knowledge about the treatment of Jehovah's Witnesses in Australia and could have discussed it with the applicant during one of his regular visits to Lebanon. The applicant said that they had not discussed it. The Tribunal asked the applicant why that was the case if he wished to leave Lebanon and live in a country where there was freedom of religion. The applicant said that the relationship between them was not very strong. They did not discuss this because his family member is not very interested in spiritual things and he did not take up the religion and that is why the applicant avoided any religious discussions with his family member. The applicant said that his other relatives were previously Jehovah's Witnesses but one of them was dismissed from the group and that is the main point why he had not discussed religion with his family member.

The applicant's representative submitted that the applicant had to significantly reduce his religious activities in order to preserve his life and had he carried out his activities in the manner required by his faith, he would risk his life. He managed to keep safe by not practising his religion in the manner required by his faith and that constitutes a denial of human rights. The representative also referred to the deteriorating situation in Lebanon, the threats from Fatha-Islam who are opposed to Jews and that implies that Jehovah's Witnesses are at a greater risks than they were in the past. If the applicant had curbed his religious activities in the past, he would have to cease entirely in order to avoid confrontation with this groups. The Jehovah's Witnesses are recognised or accused of having links with international Zionism and that has been circulated in publications in Lebanon and this puts them at a greater risk than existed in the past.

The applicant presented his Blood Directive card which indicates his objection to blood transfusions.

Evidence from other sources

The Jehovah's Witnesses was formed in the USA in the 1870's. In the early 1870's, a rather inconspicuous Bible study group began in Allegheny, Pennsylvania, U.S.A., which is now a part of Pittsburgh. Charles Taze Russell was the prime mover of the group. In July 1879, the first issue of the magazine *Zion's Watch Tower and Herald of Christ's Presence* appeared. By 1880 scores of congregations had spread from that one small Bible study into nearby states. In 1881 *Zion's Watch Tower Tract Society* was formed, and in 1884 it was incorporated, with Russell as president. The Society's name was later changed to *Watch Tower Bible and Tract Society*. Many were witnessing from house to house offering Bible literature. Fifty persons were doing this full time in 1888—now the average number worldwide is about 700,000.¹

In advice received from Department of Foreign Affairs and Trade (DFAT) on 11 May 2006, it is stated that, according to “a contact at the Interior Ministry, [Jehovah's Witnesses] may be vulnerable to ‘hassle’ from the security forces if, for example, someone held a grudge”. DFAT also advised at this time that: “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”. According to the *Ya Libnan* website, compulsory military service was abolished on 10 February 2007 following a vote in parliament in January 2005.

A recent DFAT report states the following with respect to the position of Jehovah's Witnesses in Lebanon:

- 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.
- ...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.
- 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

¹ ‘Their Modern Development and Growth’ 2000, Watch Tower Website, http://www.watchtower.org/e/jt/article_02.htm - Accessed 14 March 2007

Christians regard JWs as heretics and Christian contacts advise that Maronite priests regularly preach against the JWS.

- In a society where ‘contacts’ and family affiliations with people in power hold greater sway than legal processes, JWs could be more vulnerable to discrimination than those from recognised sects.²

According to the Jehovah’s Witnesses Worldwide 2005 Report, there were 3,585 Witnesses in Lebanon.³

According to a 1996 report in *Al-Awasef*, the Jehovah’s Witnesses are located in Southern Lebanon and conduct missionary activities by utilising Lebanese media and concentrate their campaign on poor students. The same report further states that “in 1965, the Arab League banned ‘The Jehovah’s Witnesses’ Organisation because it was evident that it has connections with international Zionism and works in the interest of Israel”.⁴

The US Department of State International Religious Freedom Report of 2006 argued that some evangelical denominations “are disadvantaged under the [Lebanese] law because legally they may not marry, divorce or inherit property in the country”. The report further states that:

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.⁵

According to the Immigration and Refugee Board of Canada Country of Origin Research Response LBN43573FE of 8 November 2005:

There are approximately 3,500 Jehovah’s 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.” ..Since Jehovah’s Witnesses are not officially recognized, they face certain problems: “They are usually discriminated against in divorce and custody cases involving a non-Witness marriage mate [. . . and] ministers of Jehovah’s Witnesses cannot perform legal marriage ceremonies.” Furthermore, civil marriage is not an option for Jehovah’s Witnesses.⁶

² Department of Foreign Affairs and Trade 2006, *DFAT Report 483 – Lebanon: Jehovah’s Witnesses : RRT Information Request LBN30096* , 11 May; Raad, O. 2007, ‘No more Mandatory Military Service in Lebanon’, Ya Libnan website, 12 February

³ http://www.watchtower.org/statistics/worldwide_report.htm

⁴ ‘The Jehovah’s Witnesses in Lebanon’ 1996, *Al-Awasef* , 22 June

⁵ US Department of State 2006, *International Religious Freedom Report for 2006 – Lebanon*, September

⁶ Immigration and Refugee Board of Canada 2005, *LBN43573FE – Lebanon: Treatment of Jehovah’s Witnesses by the authorities and society general, and protection offered (2005)* , 8 November

FINDINGS AND REASONS

The applicant travelled to Australia on a valid Lebanese passport and claims to be a national of Lebanon. The Tribunal accepts that the applicant is a national of Lebanon and has assessed his claims against Lebanon as his country of nationality.

The Tribunal found that the applicant has displayed a thorough knowledge about the history and the principles of his faith and he was able to speak in considerable detail about the doctrines of Jehovah's Witnesses. The Tribunal also acknowledges the letter from the Australian Congregation of Jehovah's Witnesses. On the basis of this information and the applicant's oral evidence the Tribunal accepts that the applicant is a Jehovah's Witness. The Tribunal accepts that the applicant was baptised in Year 1 and that he acted as a Senior Officer in his congregation in Lebanon and also in Australia. The Tribunal accepts that if the applicant returns to Lebanon now or in the reasonably foreseeable future, he will engage in the activities intrinsic to his faith, including preaching, prayers, attending gatherings for religious worship, distribution of written materials, etc.

The Tribunal has considered the independent country information cited above. The Tribunal accepts, having regard to such information, that the applicant had experienced certain restrictions with respect to religious practice in Lebanon. The Tribunal accepts that Jehovah's Witnesses are not recognised under the Constitution of Lebanon and that they are unable to legally marry or convene for religious activities. The Tribunal also accepts the applicant's evidence that a Jehovah's Witnesses cemetery had been closed and that such closure may have been effected for the reason of religion. 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 proselytising, which is a part of the Jehovah's Witnesses' practices, is not encouraged and that those engaged in this activity are considered troublemakers and face hostility.

However, the country information also suggests that, despite these limitations, there are no instances of Jehovah's Witnesses being imprisoned for proselytising or that the Jehovah's Witnesses are, in practice, prevented from practicing their faith. Indeed, Jehovah's Witnesses have 70 congregations in Lebanon with a membership of some three and a half thousand and, as was cited above, DFAT has advised that "in practice. . .the JWS are left in peace to assemble and worship". Thus, while the Tribunal accepts that the practising Jehovah's Witnesses face discrimination and possibly harm of the nature described in the independent country information above due to their religion, the Tribunal finds that such harm does not amount to 'serious harm' as required by s. 91R(1)(b). As the applicant would have been able to continue to practice his religion, the Tribunal does not accept that giving up his position as a Senior Officer in the congregation amounted to serious harm. In reaching this finding the Tribunal has considered and accepted the various restrictions placed upon Jehovah's Witnesses and considered these both singularly and cumulatively.

The Tribunal also accepts that the applicant's business may have been adversely affected and the Tribunal is prepared to accept that this was due to the applicant's religion. However the Tribunal considers it noteworthy that despite this, the applicant had been able to operate his business and to acquire significant funds, as evidenced in his application for his visa. The Tribunal does not accept that the applicant had been denied capacity to earn a livelihood or that his capacity to subsist had been threatened. The Tribunal finds that any deterioration in the applicant's business activities or financial circumstances does not amount to 'serious harm'.

The Tribunal has considered the submissions made with regard to the difficulties faced by the applicant in practising his faith. The Tribunal finds that the applicant's religious duty of witnessing his faith requires him, of necessity, to come into constant contact with people who may resent, and feel hostile towards the applicant. However, even with the religious tensions that exist in Lebanon, the Tribunal finds significant that there are no reports of serious harm coming to Jehovah Witnesses as they practise their faith. The Tribunal accepts that there are reports of occasional local instances of opposition, but there is no evidence that any such difficulties are so widespread as to prevent the applicant from practising his faith or constitute a real chance that serious harm might befall the applicant in the foreseeable future.

The Tribunal has considered the applicant's claim that he has been perceived as being associated with Jews and Zionism. Despite that the applicant admitted that he had not suffered any harm in recent years despite his continuous residence at one address. The Tribunal does not accept that this was due to the fundamentalists awaiting a conflict so as to harm the applicant without arousing the interest of the authorities. The Tribunal is of the view that if there was any intention to physically harm the applicant, such harm could have been carried out, both in peaceful times and during past conflicts. The Tribunal does not accept that the applicant was in hiding during every conflict in the past as his claims on this issue had been very vague. The Tribunal also considers it significant that the applicant's family, including his children, did not hide despite also being known as practising Jehovah's Witnesses. The applicant's claim was that he was identified as a Jew or a Jewish supporter due to him being a Jehovah's Witness and, irrespective of his and one of his children's level of practice, such association would also be made with respect to the applicant's child. It follows that the Tribunal does not accept that there is a real chance that any such identification will lead to the applicant suffering serious harm if he returns to Lebanon now or in the foreseeable future.

The applicant stated that Jehovah's Witnesses are treated as enemies of the state because of their refusal to serve in the army. The applicant also stated that he was not concerned about army service at his age and the country information suggests that compulsory military service was abolished in early 2007. The Tribunal finds that there is no real chance that the applicant will face persecution due to his refusal to serve in the army.

The applicant stated that he is unable to travel to a nearby country because he is a Jehovah's Witness. The Tribunal does not accept that the inability to visit a nearby country constitutes, in the applicant's case, serious harm.

The Tribunal accepts the representative's submission that there have been Tribunal decisions in the past that have set aside primary decisions relating to Jehovah's Witnesses in Lebanon. The Tribunal must consider each case on its merits and does not consider itself bound by such decisions.

For the sake of completeness, the Tribunal also notes that it does not accept that the applicant has a genuine fear of persecution in Lebanon. The Tribunal finds it significant that the applicant had travelled overseas in the past, both before and after the attack on him in recent years. When asked for the reasons why he had not made attempts to remain in other countries, the applicant spoke of financial difficulties in establishing himself in another country. The Tribunal does not consider this to be an action of one who has a genuine fear of serious harm. Further, the applicant stated that his family member had been residing in Australia for many years and that his family member had studied the religion and may have some knowledge about its practice in Australia, yet the applicant stated that he had not

discussed the position of Jehovah's Witnesses in Australia with his family member despite his regular visits in Lebanon. Neither had the applicant made any attempt to travel to Australia in previous years. The Tribunal also does not consider this to be an action of one who has a genuine fear of persecution. The Tribunal finds that the applicant did not have a well-founded fear of persecution in Lebanon.

Having considered the applicant's claims singularly and cumulatively, the Tribunal finds that there is no real chance that the applicant will face persecution if he returns to Lebanon now or in the reasonably foreseeable future, due to his religion (real or imputed) or political opinion (real or imputed) or for any other Convention reason.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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