

071201197 [2007] RRTA 75 (2 May 2007)

DECISION RECORD

RRT CASE NUMBER: 071201197

DIAC REFERENCE(S): CLF2006/129421 CLF2006/141434

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Ron Witton

DATE DECISION SIGNED: 2 May 2007

PLACE OF DECISION: Sydney

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 is 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 dated the same date.

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 (Class XA) 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 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 also received oral evidence from several witnesses as described below.

The applicant was represented in relation to the review by his registered migration agent.

The earlier decision record sets out the evidence before the primary decision maker as follows:

On [date] the applicant arrived in Australia on a [valid] visa subclass [description] and departed on [date].

On [date] the applicant was granted a [further] visa subclass [description]. On [date] he arrived in Australia.

On [date] his visa was cancelled under S116 (1) (B) of the 1958 Migration Act, as he was found working in breach of his visa condition [description of breach].

On [date] he was granted a Bridging visa Subclass [description], which was valid until [date].

On [date] the applicant applied for a protection visa. The applicant's claims for protection are in summary as follows:

The applicant is a [stated age] male citizen of Lebanon. He came from a very conservative [religious] family who resided in [location], a region renowned for its conservative views. He fears persecution on the ground of belonging to a Particular Social Group, that is being homosexual.

He has constantly tried to conceal his sexual orientation for fear of retribution by his family and other people, as homosexuality is still not accepted in Lebanon. Those who are accused of being homosexuals are persecuted and considered outcasts. The mere discussion of homosexuality is considered taboo.

Some people suspect that he is homosexual because of his placid nature. During his military service [for a period of years], he was fearful for his safety and was constantly forced to deny that he was homosexual. Other conscripts used to abuse him mentally and physically but he feared complaining to his superiors.

At the age of [teen years] he started to feel that he was attracted to other males. But he was denied the opportunity of maintaining a relationship with other males because of fear that he would be discovered.

At his age as the family expected him to get married he was constantly under pressure to meet girls but he never maintained a serious relationship, hoping that he would have an opportunity to leave Lebanon.

His adult life was characterised by fear. He was constantly under threat of physical harassment. On a number of occasions he suffered from physical violence by people who suspected that he was homosexual. He was forced to conceal his homosexuality in order to avoid harm.

He cannot rely on the authorities for protection because in Lebanon homosexuality is not accepted. The police conduct a campaign of rounding up suspected homosexuals.

He did not come from a privileged social class who has the capacity to enjoy more freedom in Lebanon. He fears being killed by his immediate family and relatives.

He has told his [family member] in Australia that he is gay. His [family member] has advised him to keep this aspect of his life secret because he is concerned about guarding the family honour. He does not want him to tell his wife and children because they will not allow him to remain living with them.

His [family member] has encouraged him to seek psychological treatment. He is currently receiving treatment by a Consultant psychiatrist.

Prior to the hearing the Tribunal received reports attesting to the applicant's homosexuality from:

- A professional person, who holds a B.A., P.G. Dip in Rehabilitation Counselling; Master of Counselling
- Person A, a Training and Volunteer Coordinator for the Gay and lesbian Counselling Service of NSW
- Person B, a Founding Member of Beit el Hob, a "Sydney-based social and support group for those of Middle-Eastern backgrounds that identify as lesbian, gay, bisexual, transgender or queer".

At the hearing the applicant heard oral evidence from the applicant, his family member, Person B and Person A. The latter two witnesses made themselves available to speak to their written statements attesting to the homosexuality of the applicant and the physical harm that homosexuals can face in Lebanon from those who are affronted by homosexuality.

The applicant expressed fear of physical harm, and perhaps even death, from a senior family member, S, who is religiously very conservative. His family member in independent evidence confirmed that the applicant would face the wrath of S. They stated further that due to the close family networks in Lebanon, S would be able to find the applicant wherever he might relocate in Lebanon. The applicant also expressed fear from other conservative people in Lebanon who might wish to harm him because of his sexual orientation.

Independent evidence

The situation for homosexuals in Lebanon

The situation of homosexuals in Lebanon has only in the past five to six years begun to receive general attention and be discussed at the public level. One gay advocacy body has been established in this time, Helem, and newspaper articles on the situation of homosexuals with regard to family rejection, ill treatment from police, and general societal discrimination

have also appeared in newspapers such as *The Daily Star*. The Lebanese legislature retains one article in its penal code which is open to use against homosexuals. Recent conflict in Lebanon and internal political instability currently hampers the ability of Helem and other human rights advocates to lobby for political change to improve the situation of homosexuals.

According to Helem, the homosexual community is:

...increasingly visible in Lebanon and sometimes tolerated, mainly in Beirut where a vibrant underground gay scene is concentrated, where a few sympathetic articles have been published and where some rare and daring public statements have been made. However, this timid tolerance neither applies to most Lebanese households, Christian and Moslem alike, nor rules out the ever-roaming threat of state persecution which regularly enforces article 534 of the penal code all over the country ('Interpretation of Homosexuality in Lebanese Society' (undated) Helem website, <http://www.helem.net/page.zn?id=1> – Accessed 13 March 2007).

A 2005 *BBC News* article similarly points to greater discussion of homosexuality in Lebanon in recent years: "Homosexuality in Lebanon is no longer on the fringes of society or confined to an underworld of nightclubs and exclusive gatherings. It is now the subject of daily discussions in the country" (Torbey, C. 2005 'Lebanon's gays struggle with law', *BBC News* website, 29 August http://news.bbc.co.uk/2/hi/middle_east/4154664.stm – Accessed 12 March 2007). The level of visibility of the gay community in Lebanon can be gauged by the fact that the first gay representation in a general public event occurred just five years ago, when ten gay people displayed the rainbow flag while participating in an anti-war demonstration on March 2002 in Beirut. One participant in the march, when asked if he feared being harassed, said: "Absolutely not. We have a right to unite and reveal our identity just like the others" ('Pride and war protests mix in Mexico and Lebanon', 2003, *Gay.com* website, 25 March <http://www.globalgayz.com/lebanon-news.html#article2> – Accessed 14 March 2007).

The sole gay advocacy body Helem has been operating since 2004-2005 and its website address is <http://www.helem.net/>. The organisation is supported financially by overseas bodies but also gets "support from a number of politicians but only informally because religion is still very powerful in Lebanon and politics ruled by sectarianism", according to Helem's director George Azzi (Ghattas, K. 2006 'Landmark meeting for gay Lebanese' *BBC News* website, 26 May http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/5019908.stm – Accessed 14 March 2007). A November 2006 article from *The Daily Star* newspaper indicated that until last year's Lebanese-Israeli conflict, Helem's aim was greater legal and political rights for the homosexual community which it saw as especially appropriate within a wider Lebanese political context calling for 'freedom and democracy' which followed the Cedar revolution. Since the conflict with Israel and the resultant internal political instabilities, the organisation has seen little hope in such goals and is currently limiting its work to counselling and health services for the homosexual community (Austin, P. 2006 'Gay and lesbian advocacy group lowers political profile amid growing tensions on national scene' *The Daily Star*, sourced from the *Gaymiddleeast* website, 22 November <http://www.gaymiddleeast.com/news/article124.html> - Accessed 14 March 2007).

Article 534 of the Lebanese Penal Code:

While it does not use the term homosexuality, *Article 534* makes illegal the act which sources translate variously as “unnatural sexual intercourse”, “all physical contact and union against nature”, or “penetrative sex against nature”, and which is punishable by up to one years imprisonment (‘Lebanese Law and Practice’ (undated), Helem website, <http://www.helem.net/page.zn?id=4> – Accessed 13 March 2007; ‘Lebanon’s homosexual community speaks out’ 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – Accessed 13 March 2007; ‘Lebanon: Homosexuals still facing discrimination’ 2005, Tayyor.org website, 8 December http://www.tayyar.org/tayyar/articles.php?article_id=8462&type=news – Accessed 14 March 2007). The Helem website points to two direct instances of the *Article* being used to arrest homosexuals: that of a Mount Lebanon Inquisition Judge in January 2004 who issued an “arrest warrant” for two gay males, and the “arrest” of two lesbians by the Mount Lebanon Public Prosecution Office in August 2002 (‘Lebanese Law and Practice’ (undated), Helem website, <http://www.helem.net/page.zn?id=4> – Accessed 13 March 2007). However, the head of Helem, George Azzi, indicated in a 2005 *BBC News* article that the progression to trial and prosecution of a homosexual under *Article 534* has not occurred “for a long time” (Torbey, C. 2005 ‘Lebanon’s gays struggle with law’, *BBC News* website, 29 August http://news.bbc.co.uk/2/hi/middle_east/4154664.stm – Accessed 12 March 2007). The rarity of prosecution in Lebanon is confirmed by a lawyer from the Lebanese Human Rights organisation *Hurriyyat Khassa* or Private Liberties, while at the same time pointing to the further case of “many young men” who were charged under the Penal Code in 2003:

Of course, our lawyers do not hesitate to defend people for practicing homosexuality without covering it up under another issue. However, it is rare that we are solicited for such cases, as homosexual practices are **rarely prosecuted by themselves**. They are generally prosecuted when there is some other crime, or the homosexual act involves a minor, or there are some other special circumstances. One of the cases we have addressed involved Hizballah, whose security forces arrested many young men for same-sex sexual acts in 2003 and delivered them to the Lebanese police. **The men were charged under the current penal code, which penalizes “unnatural” copulation with up to one year of imprisonment. They were released shortly afterward and, as yet, no hearing date has been set** (‘We Invite People to Think the Unthinkable – An Interview with Nizar Saghieh about gay/human rights in Lebanon’, 2004, *Middle East Report*, sourced from Global Gayz website, March <http://www.globalgayz.com/lebanon-news.html#article4> – Accessed 13 March 2007).

While implementation of *Article 534* to the extent of prosecution is rare, various sources point to the secondary and perhaps main effect of the *Article*. This is that it makes homosexuals hesitant to seek recourse to, or protection from, the police for things like theft or harassment due to the fear that they will themselves be arrested. This use of the *Article* occurs together with blackmail by the police according to a 2005 *BBC News* article:

Blackmail

Azzi admits that no homosexual has been tried and sentenced under article 534 for a long time, but he complains **the law is easily exploited, including by the police**.

“The mere existence of this article weakens gay people and strips them of legal protection enjoyed by other citizens,” he says.

Since it makes them outlaws, he explains, it also means they cannot turn to the police or sue anyone when their rights are violated.

“A number of people, including police, **use this article to blackmail gays by asking for money or using violence or insults knowing full well that it will cost them nothing at all to do so.**” (Torbey, C. 2005 ‘Lebanon’s gays struggle with law’, *BBC News* website, 29 August http://news.bbc.co.uk/2/hi/middle_east/4154664.stm – Accessed 12 March 2007).

A second 2005 news article, from the Tayoor.org website of the Lebanese Free Patriotic Movement (FPM) political party, also refers to this secondary effect of the *Article*:

Problems with the law

According to gay rights activists, the main obstacle faced by Lebanon’s gay community is article 534 of the Lebanese penal code, which declares “penetrative sex against nature” to be a crime punishable by up to a year in jail.

“From the start, one of our main aims has been the removal of article 534,” said Mounir [a member of Helem], although “the article is seldom used these days”.

However, “while the legal system may not implement the article today, it could tomorrow,” he said.

Jail time aside, **article 534 makes homosexuals vulnerable to abuse in other ways.**

One such Lebanese man, for example, recounted a shake-down **by police who threatened to arrest him if he did not pay them money and give him the names of other homosexuals.**

“The problem in Lebanon isn’t so much with society, although there’s still a lot of ignorance,” said Nadim who works as a photographer. **“The problem is the state. If I get beaten up and go to the police, I could be jailed for being gay, not my attackers.”**

On 12 November, police raided the “Acid” nightclub in Beirut, widely known as a hangout for homosexuals, arresting eleven people. While most were released the same night, three of them remained in custody for three days before being released.

A week later, police raided another popular club among the ostracised community. While several club goers were checked for possession of drugs, however, no arrests were made.

Although a parliamentary subcommittee is reportedly considering the amendment of article 534, along with other laws relating to sexual offences, Mounir entertains little hope of real legislative change, at least in the short term.

“There was a proposal to adjust the law, but it was withdrawn without reason,” he said. **“I suppose the issue of gay rights is still too sensitive for public figures to stand up for.”** (‘Lebanon: Homosexuals still facing discrimination’ 2005, Tayyor.org website, 8 December http://www.tayyar.org/tayyar/articles.php?article_id=8462&type=news – Accessed 14 March 2007).

Treatment of homosexuals by police and security authorities:

Beside the role which *Article 534* plays in the treatment of homosexuals by Lebanese police and security officials, reactions from these officials ranges from indifference and sympathy to verbal or physical abuse. The head of Halem indicated in 2005 that arrests of homosexuals

have occurred based purely on personal appearance and demeanour, and that during their detainment homosexuals “usually suffer verbal abuse and beatings and are forced to take degrading ‘medical’ anal examination when they are arrested” (‘Lebanon’s homosexual community speaks out’ 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – Accessed 13 March 2007). In one case involving a young gay man left with a bruised face and bloody nose by four young men while crossing Sassine Square in east Beirut in April 2005 and who then immediately filed charges, “the police only made fun of my shaved legs...They noted down everything, but never acted” (‘Lebanon: homosexuals still facing discrimination’ 2005, Tayyar.org website, 8 December http://www.tayyar.org/tayyar/articles.php?article_id=8462&type=news – Accessed 14 March 2007).

After physical abuse and threats from his family, another gay man named Ali who turned to the police in 2003 to seek redress described their response as follows:

That turned out to be a mistake. Far from investigating Ali’s allegations, the officers mocked him when he told them what caused the argument. When he became indignant, he says, they **started slapping him.**

The real surprise, albeit a pleasant one, came a few days later when **one of the officers called him to apologize.**

“He said he had no choice because the others would’ve turned on him,” Ali says. “He’s not gay, but he said he had nothing against me and kept saying he was sorry. What could I say? Of course I forgave him.” (Sirois, M. 2003, ‘Gays and lesbians face uphill battle for acceptance: Coming out of the proverbial ‘closet’ can be a painful experience - literally’ *The Daily Star*, sourced from the Lebanonwire website, 9 July <http://www.lebanonwire.com/0307/03070907DS.asp> – Accessed 14 March 2007).

The undated *Law Enforcement Practices* page on the Helem website reports that security officials also keep records of homosexuals, making them further vulnerable to police corruption. A commander of the vice squad in Hbeich is reported as admitting in an interview with a local magazine that records of lesbian, gay, bisexual and transgender (LGBT) persons are kept by his officials and that these people and the places where they meet are “under close surveillance”. At the same time, those arrested also reportedly cooperated with police from a fear of prosecution and in order to avoid:

...their sexual orientation made public since their full first name and their last name’s initial are published in police reports which are released to the press. Proof of their prosecution also outlives their indictment by being noted down in their legal records, thus reducing their chances to find employment in public service or the private sector.

In one case at least, it has been reported that a gay man paid a bribe to have any mention of his sexual orientation erased from his criminal record. Extortion of gay men by security agents has also occurred, especially in cruising areas. Moreover, state agents are only lenient with an LGBT person if he or she has connections or if his or her family has a certain social status (‘Law Enforcement Practices’ (undated), Helem website, <http://www.helem.net/page.zn?id=3> – Accessed 14 March 2007).

Current police treatment can also be highly inconsistent in relation to the homosexual community, something that was shown at a conference organised by Helem for the

International Day against Homophobia in May 2006. While police were stationed outside the hotel on the opening day where the conference took place to ensure safety to the event and its participants, a day after the conference police visited the offices of Helem, and then on a further two occasions, most probably in response to negative reactions in the media to the conference event (Ghattas, K. 2006 'Landmark meeting for gay Lebanese' *BBC News* website, 26 May

http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/5019908.stm – Accessed 14 March 2007; Austin, P. 2006 'Gay and lesbian advocacy group lowers political profile amid growing tensions on national scene' *The Daily Star*, sourced from the Gaymiddleeast website, 22 November <http://www.gaymiddleeast.com/news/article124.html> – Accessed 14 March 2007). It was on the occasion of the conference that a Beirut city councillor called for the Lebanese government to ban associations like Helem which seek to promote homosexual and transgender activities in Lebanon. The councillor went on to file a petition seeking to prosecute Helem. The latter petition was rejected by the attorney general's office which "ruled that the group's operation of an office and a website did not constitute an offence" ('Lebanon: Gay 'activities' should be banned, say Beirut councillor' 2006, Gaymiddleeast website, 30 May <http://www.gaymiddleeast.com/news/article101.html> – Accessed 14 March 2007; 'Lebanon Denies Approving Nudist Beaches, Gay Rights Group' 2006, Gaymiddleeast website, 18 June <http://www.gaymiddleeast.com/news/article105.html> – Accessed 14 March 2007).

The Daily Star newspaper reported in 2005 that according to an unnamed source from the Lebanese Internal Security Forces, its official position was to ignore homosexuals until such time that their behaviour becomes public and "does not affect public morals" ('Lebanon's homosexual community speaks out' 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – Accessed 13 March 2007). Some further information on the treatment by police and security authorities of homosexuals can be found in 2004 research undertaken by the Immigration and Refugee Board of Canada (Immigration and Refugee Board of Canada 2004, *LBN43030.E - Lebanon: Update to LBN38524.E of 1 March 2002 on the treatment of homosexuals by the authorities and the population; legal status of homosexuals*, 13 October).

Treatment of homosexuals by family and society generally:

Individuals report violent reactions from family members upon their homosexuality becoming known, especially when from conservative families. No reports were found for individuals from Maronite Christian backgrounds. A twenty-one year old man from a conservative Shia family reported in 2006 that upon gaining knowledge of his homosexuality two brothers kidnapped him at gunpoint and held him hostage for two weeks in the family home: "It was their honor in the garbage", the gay man said (Gorani, H. 2006, 'Struggle for gay rights in the Middle East' CNN.com website, 2 June <http://www.cnn.com/2006/WORLD/meast/06/02/ime.gorani/> – Accessed 14 March 2007). Fear of a strong reaction from his conservative family is reported by a twenty-seven year old male in 2005, while at the same time pointing to his further fear of societal harassment and workplace discrimination:

In a country that enjoys a rather relaxed attitude toward issues concerning sex – at least, compared to the other, more conservative countries of the region – Lebanese homosexuals still suffer from **prejudice and discrimination**. "A day does not go by where I don't have to deal with people who point me out and call me names," said Danny (not his real name), a 27-

year-old architect who recently moved back to Lebanon after finishing his studies at a reputable European university.

Danny said he was open about his sexuality in Europe, but has been forced to keep a low profile in Lebanon mainly for two reasons: **a non-tolerant society, and fear of his parents' reaction.**

"Being gay in Lebanon is very hard," he said. "I come from a **highly conservative family, and if my parents knew about my sexuality it would be devastating for the both of us,**" he said in a low, shaky tone. "I don't want to ever think about their reaction if they knew." Danny added that he has never tried to be open with any of his friends about his sexuality, saying he preferred to stay "in the closet" for the time being.

"I can never consider being open about my sexuality over here," he said, explaining it might cause him **a lot of trouble, especially at work.**

"I have seen how colleagues at work react when they encounter a person who they suspect is gay," he said. "They avoid him as if he has a disease, and even **harass** him sometimes."

He said he had experienced situations like that himself. "Sometimes when I am out clubbing, I get **harassed** simply because I look gayish," he said in a bitter tone.

"Even if a person is different, it does not give people the right to hassle him," Danny said, emphasizing that Lebanese society has yet to learn to accept the "other." ('Lebanon's homosexual community speaks out' 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – Accessed 13 March 2007).

The Daily Star reported the case of a teacher called Ali in July 2003. The reaction of his family was particularly violent as it involved the threat of being shot:

Then there is "Ali," a teacher. When his father and his brothers confronted him with their "suspicions" that he was gay, he refused to lie.

He echoes a common refrain: "I just wanted them to accept me."

That was not to be, and Ali suffered a brutal beating that cost him three teeth and several bruises. When he tried to patch things up, one of his brothers "**threatened to shoot me. No, he promised to shoot me. 'You've got a week,'** he told me.

"That was enough," he adds. "I went straight to the police to tell them what happened." (Sirois, M. 2003, 'Gays and lesbians face uphill battle for acceptance: Coming out of the proverbial 'closet' can be a painful experience - literally' *The Daily Star*, sourced from the Lebanonwire website, 9 July <http://www.lebanonwire.com/0307/03070907DS.asp> – Accessed 14 March 2007).

In contrast to the above three cases, one member from the Halem organisation indicated in 2005 unproblematic reactions from society at large and from his immediate family and friends:

...Lebanese homosexuals note that 'gay-bashing' is relatively uncommon in Lebanon, compared to other Arab countries.

“Generally speaking, the Lebanese are quite tolerant,” said Mounir, a member of the Beirut-based gay rights group Helem. “As long as you don’t provoke them, they won’t easily take offence.”

“I’ve always been open about my sexuality,” Mounir added. **“My family and friends know I’m gay and I’ve never had any problems. The Lebanese gay community has a problem with political and religious leaders, not the people.”** (‘Lebanon: Homosexuals still facing discrimination’ 2005, Tayyar.org website, 8 December http://www.tayyar.org/tayyar/articles.php?article_id=8462&type=news – Accessed 14 March 2007).

FINDINGS AND REASONS

The applicant is seeking a review of the Department's decision to refuse his application for a protection visa on the Convention ground of his fear of being persecuted for reason of his membership of a particular social group, namely homosexuals in Lebanon.

The Tribunal found the applicant and the witnesses that also gave evidence to have been credible and accepts their evidence. The Tribunal finds on the basis of this oral evidence, and documentary evidence also submitted, that the applicant is a homosexual. The Tribunal accepts his evidence that he fears that he will be harmed for reason of his homosexuality by either his senior family member, S, or by homophobic elements in Lebanese society. The Tribunal accepts the independent evidence cited above that in such a case he could not expect protection from the authorities should he return to Lebanon given the homophobic attitudes prevalent in the police and reflected in the law in Lebanon.

The Tribunal accepts that being gay or homosexual in Lebanon makes the applicant a member of a particular social group under the Convention. Homosexual members of a particular society may form a ‘particular social group’ for the purposes of the Refugees Convention if they are perceived in that society to have characteristics or attributes that unite them as a group and distinguish them from society as a whole (see *Applicant A*, referred to above, per McHugh J at 265). Homosexuals have been consistently accepted by the Tribunal as constituting a particular social group. Independent evidence available to the Tribunal, as set out above, indicates that there is an identifiable homosexual community in Lebanon which forms a cognisable social group within that country. In particular, the societal prejudice against homosexuals in Lebanon indicates that not only do they share a certain characteristic - their sexual orientation - but this element makes them a cognisable group within Lebanese society. Moreover, the independent evidence indicates that it is generally accepted and that the Lebanese criminal code contains provisions that recognise and criminalise homosexual conduct.

The Tribunal has considered the independent evidence cited above. For men who are homosexual in their sexual orientation, there would appear to be very little public acceptance or support, and they are forced to live in a situation of extreme vulnerability. The Tribunal accepts that members of the Lebanese police would evidence prevailing feelings of hostility towards homosexuals and that being so, the Tribunal finds that homosexuals, such as the applicant, could not expect that they could turn to the police for protection in the face of community hostility and threats.

The Tribunal is satisfied the applicant could not safely relocate within Lebanon and that the situation of real chance of serious harm for gay men in Lebanon pertains to the whole country.

In the light of the above evidence and findings, the Tribunal finds that the applicant would face a real chance of serious harm in Lebanon because of his homosexuality.

In the light of the evidence before it, the Tribunal finds that the applicant has a well-founded fear of persecution for a Convention based reason.

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 or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR