

071454724 [2007] RRTA 200 (30 August 2007)

DECISION RECORD

RRT CASE NUMBER: 071454724

DIAC REFERENCE(S): CLF2007/51688

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Namoi Dougall

DATE DECISION SIGNED: 30 August 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**

1. 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 section 65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be Palestinian born in 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.
3. 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.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under section 411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under section 412 of the Act.

RELEVANT LAW

6. Under section 65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

8. 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'

9. 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:

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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

11. 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.

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

13. Second, an applicant must fear persecution. Under section 91R(1) of the Act persecution must involve "serious harm" to the applicant (section 91R(1)(b)), and systematic and discriminatory conduct (section 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: section 91R(2) of the Act. While the examples in section 91R(2) provide an indication as to the type and level of harm that would meet the "serious harm" test, it is important to note that they are not exhaustive. 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.

14. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

16. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: section 91R(1)(a) of the Act.

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is

made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has the following documents:

T1 – Tribunal case file, 071454724, folio numbered 1-84.

D1 – Department case file, CLF2007/51688, folio numbered 1-65.

D2 – Department sponsored visitor visa case file, unfolioed.

21. Evidence was given at the hearing by the applicant. A summary of the evidence on the files, including from: the Department's Movement Records and Integrated Client Services Environment (ICSE) databases; material referred to in the delegate's decision; other material available to the Tribunal from a range of sources; and the oral evidence follows.

22. The applicant applied for a subclass 679 sponsored visa which was refused by a delegate. The Migration Review Tribunal (MRT) remitted the matter to Department after the MRT held 2 hearings. The applicant was granted a subclass 679 visa which the applicant appears not to have used to travel to Australia.

23. [Further details of the applicant's various other visa applications have been deleted].

24. The applicant lodged a protection visa application (the application) which was refused by the delegate. The applicant currently holds a bridging E visa.

25. In the application the applicant stated that he was born in Beirut in Lebanon. He also stated that he belonged to the Palestinian ethnic group and his religion was Muslim. The applicant stated that his citizenship at birth and his current citizenship was Palestinian. The applicant also stated that the country of his former habitual residence was Lebanon. Provided with the application was a copy of the details pages of the applicant's Document De Voyage our les Refugies Palestiniens issued by the Republic of Lebanon (the travel document). In the application the applicant stated that the travel document was valid until a date in the mid 2000's.

26. In the application the applicant gave the details of the addresses where he lived in Lebanon.

27. At the hearing the applicant stated that his address in Lebanon, prior to coming to Australia, was in the south of Lebanon. The applicant was asked if it was a Palestinian refugee camp and he stated that it was not a refugee camp and that it is more crowded for Palestinians outside the camps. The Tribunal

asked if it was part of a particular refugee camp and he stated no, but it is near another camp, about ten minutes by car. He described it as the worse camp.

28. In the application the applicant stated that he had a total of 13 years education. His qualification was stated to be in a particular trade.

29. The applicant stated the details of his past employment.

30. Subsequently the applicant completed a personal particulars for character assessment (form 80) which clarified the periods of his employment. He had worked in his particular trade for a number of years, and had been unemployed since the mid 2000's.

31. At the hearing the applicant stated where his employer was located. He also stated that he worked in Lebanon illegally as Palestinians cannot work for big companies. He stated that he did not become unemployed, a couple of months after he came to Australia his employment stopped automatically.

32. The applicant set out details of his family in the application. He stated that he had one relative in Australia. He also stated that a number of his close family reside in Lebanon, whilst three siblings reside in other overseas countries.

33. The applicant set out details of his travel outside of Lebanon in the application. He travelled twice to a third country in the early 2000's and he also travelled to a fourth country in the mid 2000's. The applicant in the form 80 stated that he went to the fourth country for a number of months.

34. At the hearing the applicant confirmed that he had been trying to come to Australia since his first application in the early 2000's. He stated that he applied as one of his relative's and their ex-spouse were fighting as he was using drugs. The applicant stated that he is the one who looks after his relative as he is close to them. The applicant stated that his relative divorced their ex-spouse in Lebanon. The Tribunal asked why he did not come to Australia when he was originally granted a visitor visa. He stated that he could not as he was refused. He went to the Embassy where his passport was kept and he was told that they needed to conduct checks. He believed his relative's ex-spouse may have said something so his background was checked for 2 years before he was granted a visa. The Tribunal asked how long his passport was held and the applicant stated that he did get his passport back as he visited a sibling in the third country. However, he was told when he returned to Lebanon he should deliver his passport to the Embassy. The Tribunal referred to the applicant's statement in his application that he visited the third country to look for work. The applicant stated that he went on a visitor visa and while there he looked for work.

35. In the application the applicant claimed that he left Lebanon to visit his relative who was passing through a difficult time with their ex-spouse and a particular incident had occurred. He wanted to support his relative. He also claimed that he wanted to have a better life than he had back in Lebanon as a

Palestinian. The applicant claimed that he may be harmed or mistreated by the Lebanese Government and his relative's ex-spouse if he returned to Lebanon.

36. In the application the applicant claimed that if he returns to Lebanon he is afraid that his relative's ex-spouse will harm him because when the incident occurred the applicant was the only one who provided support to his relative. The ex-spouse threatened the applicant a couple of times on the phone because the ex-spouse is not allowed back into Australia and is waiting for the applicant to return to Lebanon. The applicant claimed that the ex-spouse is a Lebanese citizen and that: *give [the ex-spouse] a lot of power to do so in Lebanon.*

37. In the subclass 679 application it stated that the purpose of the applicant's visit to Australia was to provide support to his relative as the relative is suffering from depression. The applicant's relative provided to the MRT a copy of a document relating to this. Also provided to the MRT was a copy of a Statement made at a Police Station. In relation to the depression, the applicant's relative provided to the MRT as part of the subclass 679 application reports from a Doctor which stated that the applicant's relative is suffering from depression. Also provided was a letter from a particular department, stating that the applicant's relative is in an emotional state of hopelessness, isolation and depression due to being a victim of these circumstances. A report from another Doctor stated that the applicant's relative is under her care for treatment of severe depression. The MRT recorded in its decision the evidence hearing at hearing as follows:

38. [details deleted]

39. At the hearing the applicant stated that by the time he arrived in Australia his relative was divorced and in Lebanon. The Tribunal asked, if his relative was in Lebanon what was the point of him coming to Australia. The applicant stated that his relative was alone in Australia. The family lost an elder sibling in an overseas country and his relative became distressed, could not sleep, and rang the family in the middle of the night. The relative felt that in Lebanon nothing could be done for the relative's child and it was felt that if the relative fought in Australia that the child could be returned.

40. The applicant also stated that while he and his relative were in Lebanon, his relative wanted to see their child so he drove the relative to see their child at his school. The teachers notified the police. The police came to see the applicant. The ex-spouse telephoned the applicant and told him not to go near his nephew. The ex-spouse threatened the applicant with his relative who he claimed was in a position of power and had people under him. The ex-spouse stated that he could hurt the applicant through his relative. The applicant stated that he asked others about this person and they told the applicant that the ex-spouse's relative had power. The ex-spouse also stated that the applicant will never get to Australia. The threats against the applicant were made in person and over the phone. The ex-spouse would say if the applicant supported his relative then he will destroy the applicant's life. When the applicant was in Australia, the ex-spouse would say to one of the

applicant's relative in Lebanon that the applicant supported her relative so they went further through the courts, however, the applicant will return and 'you will see'. The applicant also stated that 'you will see' has so many meanings in it.

41. The applicant stated at the hearing that his relative started proceedings in Lebanon to get custody of the child but the ex-spouse is rich and has managed to keep delaying matters. His relative did have access visits and saw the child at the relative's relative's home. However, when the matter is before the courts the ex-spouse stated that his relative could only see the child if they sign the papers and the relative can only see the child at the house. The applicant stated that the ex-spouse was a Sunni Muslim but became a Shi'a to help get custody of the child. As a Shi'a the ex-spouse could get custody after two years while the Suni's believed that the child was the mother's for nine years. The applicant stated at the hearing that his relative had told him recently that they had won the custody case but could not find the child. The Tribunal was subsequently provided with a document in Arabic which the applicant stated was the custody decision of the Islamic Court in Lebanon and about the ex-spouse converting to Shi'a.

42. The applicant claimed in the application that the authorities in Lebanon cannot and will not protect him if he returns as they do not care or could not be bothered to protect a Palestinian. At the hearing the applicant stated that when the Syrians were in Lebanon there was more freedom for Palestinians. There use to be a Syrian checkpoint near his home to protect the Palestinians.

43. The Tribunal asked the applicant how his relative could stay in Lebanon and he could not. He stated that his relative has an Australian passport. If you are foreign and something happens you can go. As he is a Palestinian he will be held for awhile but his relatives with overseas passports are let go. He stated that there is no respect for Palestinians. At checkpoints his passport is thrown at him. He confirmed at the hearing he has not been arrested although he has been questioned at checkpoints. He confirmed that he has not been beaten up or physically harassed by the security forces. He stated he has his own life studying, working and playing sport. He confirmed that the ex-spouse in Lebanon did not physically harass him. When asked what makes the applicant think the ex-spouse will physically harass him if he returns, the applicant stated that the ex-spouse will do it as his relative and he had done so much. He also stated the government will harass him. From the airport to his area the government will check his passport. Sometimes they leave him at the check points for half and hour or an hour. His Lebanese friends will go through but he will have to wait.

44. At the hearing the Tribunal referred to country information which indicated that inside the Palestinian camps it was Palestinians who controlled security. The Tribunal asked if that was the case why the applicant thought that the ex-spouse would be able to affect him inside the camp. The applicant stated that he does not live inside the camp, his area is crowded by Palestinians but it is outside the camp and was open until now, however, now there are two Lebanese army checkpoints near his home. There is no active Palestinian

group in his area. The United Nations are not worried about the Palestinians in camps but they are worried about the Palestinians in his area. He also stated that when something happens between the Palestinians and the Lebanese involving guns at the camp near him, it affects him as he will be stopped at checkpoints and abused.

45. The applicant also claimed in the application that as a Palestinian living in Lebanon he had no civil rights, no rights of ownership and no work rights. He claimed that Palestinians living in Lebanon are the worst treated of all Palestinians living in Arab countries. They had no rights and cannot even own their own house they live in. He also stated that Palestinians are prevented from working in many occupations (about 70 occupations). He claimed that he worked in Lebanon before coming to Australia but it was illegal and he will never have an opportunity to find a job without breaking the law. At the hearing the Tribunal referred to the applicant having worked when he was in Lebanon. He stated that he worked but it was illegal. The Tribunal referred to him stating he had employment in his visitor visa application and that the applicant stated that he can get work. The Tribunal referred the applicant to what may be considered serious harm as set out in the Act. In particular in relation to the denial to earn a livelihood and that the denial must threaten the person's capacity to subsist. The Tribunal stated that the applicant's employment indicated that he had the capacity to subsist.

46. The applicant was sent by the Tribunal an invitation to attend a hearing to give evidence and present oral arguments. The applicant requested that the hearing be postponed for a period as he was waiting on some paperwork that was coming from Lebanon.

47. A hearing was later held and what was stated at the hearing is discussed above.

48. After the decision was signed, the Tribunal received from the applicant a DVD which contained a copy of the documentary "Out of Place - Out of Time". The Tribunal has considered the information contained in the documentary, however, that information does not change the Tribunal's decision.

COUNTRY INFORMATION

Work rights

49. Lebanon does not afford Palestinian refugees a special or separate legal status. Lebanese law treats them under the category of foreigners. Those registered with both the United Nations Relief and Works Agency (UNRWA) and the General Directorate of the Department of Affairs of the Palestinian Refugees in Lebanon (DAPR) are eligible for a permanent identification/residency card, a renewable travel document valid for five years, and are considered legal residents of the country (Sulieman, J. 2006, *Marginalised Community: The case of Palestinian Refugees in Lebanon*,

Development Research Centre on Migration, Globalisation and Poverty website, April, pp.14-15

http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf – Accessed 17 July 2007). The status of Palestinians as foreigners affects their rights with regard to work and social welfare. J. Sulieman, in an April 2006 study made available on the Development Research Centre on Migration, Globalisation and Poverty website, details both their legal rights to work and social security, and the effect of these in practice in the following way:

In their capacity as foreigners under Lebanese law, Palestinian refugees' right to work and to social security has been regulated by Decree No. 17561 of 18/9/1962. This decree incorporates three restrictive principles with regard to the right of Palestinian refugees to work and employment in Lebanon: a) obtaining of a work permit; b) national preference; c) reciprocity of rights and obligations. Article (25) of this decree states that: 'A foreigner, other than an artist, is prohibited from carrying in Lebanon any work or occupation unless permitted to do so by the Ministry of Labour and Social Affairs under valid laws and regulations'. Additionally, Article 17 of the same decree directly refers to the national preference principle, as it states that: 'The work permit shall be cancelled at any time, if it is revealed that any document is incorrect or as may be required in the interest of Lebanese labour'. Further, according to Article 9 of the same decree, the Minister of Labour is entitled to enumerate and list the jobs and trades that are restricted to Lebanese nationals and to yearly update the list in line with the needs arising in the Lebanese labour market. For instance, on 15 December 1995, the Minister of Labour, Asa'ad Hardan, issued a Ministerial Decision No. 621/1 in which he enumerated a list of about 50 jobs, trades and independent professions in the private sector which would prefer nationals. The list is long and includes both manual and clerical jobs in administration and banking, laboratories and pharmacies, electronics, mechanics and maintenance, teaching, also included the jobs of concierge, guard dyer, cook, butler and hairdresser, as well as other independent professions in the private sector like trade business (all categories), engineering (all categories), patisserie, printing and publishing and car maintenance ...

... In the aftermath of former Prime Minister Rafiq Al-Hariri's assassination in February 2005, Lebanon has witnessed a 'positive' atmosphere with regard to Palestinian civil rights in the sense that the deliberately forgotten issue of refugees can now be approached in a more rational manner. In June 2005, Lebanon's Minister of Labour, Trad Hamadeh, issued a Ministry Memorandum No. 67/1, permitting Palestinian refugees who were born in Lebanon and registered with DAPR to work legally in manual and clerical jobs previously unavailable to them, but the ban on Palestinians seeking professional employment has remained in place. When asked about these limitations Minister Hamadeh replied: 'Permitting the Palestinians to work in all fields and without any specific permits is not part of my prerogatives'. He said these decisions need the approval of the Parliament.

(Sulieman, J. 2006, *Marginalised Community: The case of Palestinian Refugees in Lebanon*, Development Research Centre on Migration, Globalisation and Poverty website, April, pp.15-17
http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf – Accessed 17 July 2007)

50. The RRT, Country Research & Library Services Section put a number of questions to the Public Information Officer of UNRWA in Beirut. A response to the questions was provided to the Tribunal. The UNRWA officer stated that the responses were 'given by our legal consultant'. Relevant to work rights the question and response were:

3. What are the current legal rights of Palestinians living in Lebanon, particularly in relation to working? Is the occupation of [details deleted] one of the occupations that a Palestinian cannot work in, in Lebanon?

Palestinians used to be prevented from working in many fields but lately a ministerial decision cancelled this prohibition and they can work except in specific professions such as lawyers, engineers and doctors. [Details deleted] is one of the occupations that a Palestinian can work in Lebanon.

Other rights

51. The rights of Palestinians in other areas are restricted in Lebanon. Lebanese legislation effectively negates all rights to Palestinians to own and inherit property.

(Amnesty International 2003, *Lebanon – Economic and Social Rights of Palestinian Refugees*, 22 December, MDE 18/017/2003 <http://web.amnesty.org/library/index/ENGMDE180172003> – Accessed 18 July 2007; and Sulieman, J. 2006, *Marginalised Community: The case of Palestinian Refugees in Lebanon*, Development Research Centre on Migration, Globalisation and Poverty website, April, pp.18-19 http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf – Accessed 17 July 2007).

52. Access to health services is limited to those provided by the UNRWA, as Palestinian refugees have no access to those of the Lebanese government. Students do have the ability to attend government schools and the Lebanese University, though with regard to the former their enrolment is restricted to the ten per cent of places reserved for foreigners.

(Sulieman, J. 2006, *Marginalised Community: The case of Palestinian Refugees in Lebanon*, Development Research Centre on Migration, Globalisation and Poverty website, April, p. 20 http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf – Accessed 17 July 2007).

State protection

53. A Department of Foreign Affairs and Trade (DFAT) report from July 2004 gives some details on the general procedures to be followed by a victim of crime who wants to approach the police. In the context of the case of someone who is a victim of a crime committed by a Syrian national in

Lebanon (at a time when the Syrian presence in Lebanon still existed, prior to April 2005), DFAT indicated that:

...By law, for offences committed within the past 24 hours, the police are required to take a statement from the victim. If the police refuse, the victim can go to an office of the General Prosecutor and insist that a statement is taken. Once 24 hours has elapsed, the victim has to go to an office of the General Prosecutor and submit his/her complaint in writing in order to obtain follow up action.

In practice statements are not always taken, usually when the police do not regard the crime as serious or if the victim can not provide enough details to permit follow-up. Women often have a harder time convincing the police of a crime's seriousness than men. Domestic violence allegations are particularly likely to be ignored, but a woman who goes alone to a police station to report some other type of crime (ie unaccompanied by a male relative) may also not be taken seriously

(Department of Foreign Affairs and Trade 2004, *DFAT Report 312 – Lebanon: RRT Information Request: LBN16846*, 13 August 2004)

54. The US Department of State, DFAT, the United Nations, and the International Crisis Group, indicate that responsibility for enforcing laws, conducting arrests and referring cases to the judiciary lies with the Internal Security Forces (ISF) within the Ministry of the Interior. The ISF's ability to carry out these responsibilities is currently affected by limited resources and the general instability of the country, following the assassination of the Prime Minister Rafik Hariri in February 2005, the withdrawal of Syrian security and intelligence in April 2005, and the Israeli-Hezbollah conflict in July-August 2006. This situation is such that in some instances ordinary citizens are looking to their sectarian communities for protection. Nonetheless, since 2005 the Lebanese government has attempted to improve the effectiveness of the judiciary and police by securing overseas material assistance and expertise and, following the end of the Israeli-Hezbollah hostilities in August 2006, doubling the size of its security forces. Units of the ISF were most recently involved in taking initial actions, beginning on 19 May 2007, against militants based in the Nahr al-Barid refugee camp in Tripoli before escalation of resistance required intervention by the Lebanese army (on the role of the ISF see US Department of State 2007, *Country Reports on Human Rights Practices for 2006 - Lebanon*, 6 March; and 'Lebanon: General Directorate of Internal Security Forces -State Security Service' (undated), GlobalSecurity.org website <http://www.globalsecurity.org/intell/world/lebanon/dgisf.htm> – Accessed 26 April 2007; on the "limited resources" of the ISF and limitations of the security forces in general, see March 2007 DFAT report in DIAC Country Information Service 2007, *Country Information Report No.07/29 – Lebanon: Alawi Muslim Member Of Syrian Ba'ath Party In Lebanon*, (sourced from DFAT advice of 12 March 2007), 16 March 2007; and International Crisis Group 2005, *Lebanon: Managing the gathering storm*, Middle East Report No 48, 5 December, pp.25-26; for how ordinary citizens are looking to their sectarian communities for protection see International Crisis Group 2005, *Lebanon: Managing the gathering storm*, Middle East Report No 48, 5 December 2005, p. 6; and Khalaf, R & Ghattas, K. 2005 'Political limbo fuels

fear of militia revival in Lebanon', *The Financial Times* website, 11 April 2005 <http://www.ft.com/cms/s/b7ac2be8-aabb-11d9-98d7-00000e2511c8.html> – Accessed 27 April 2007; and on the expansion of the ISF see 'Gemayel's assassination fans the flames in Lebanon' 2007, *Jane's Islamic Affairs Analyst*, 1 January 2007; on the ISF's initial involvement against militants involved in the current crisis in Tripoli's Nahr al-Barid refugee camp, see Quilty, J. 2007, 'The Collateral Damage of Lebanese Sovereignty', *The Middle East Report* online website, 18 June 2007 <http://www.merip.org/mero/mero061807.html> – Accessed 1 August 2007).

55. As stated above a response to a number of questions put by the Tribunal was received from the Public Information Officer of UNRWA in Beirut. The UNRWA officer stated that the responses were 'given by our legal consultant'. The questions and responses in relation to state protection were as follows:

1. Is the address, [details deleted], located in a Palestinian camp in Lebanon?

This address is not inside a Palestinian camp.

2. If so, what is the current security situation in this Palestinian camp or area?

It is similar to the situation that prevails anywhere else in Lebanon...

5. If a Palestinian is threatened or harmed by a Lebanese citizen can he approach Lebanese authorities, especially the police and receive assistance?

A Palestinian can receive assistance from the police as long as the incident does not happen inside a Palestinian camp which is the case if he is harmed by a Lebanese.

56. Two wide-ranging reports on the general situation of Palestinians in Lebanon include information on protection to Palestinians offered by the Lebanese legal system but do not refer to the police. These reports were published in 2001 and 1998. The first, a December 2001 Netherlands Delegation submission to the Council of the European Union, is based on information provided by Netherlands diplomatic representatives in Beirut and various persons and organisations contacted by them, including the Attorney-General. These sources indicate that in cases of disputes outside camps, Palestinians have access to legal protection equivalent to Lebanese nationals, though are restricted in this because of discrimination and financial resources. One source, the Centre for Strategic Studies, Research and Documentation (CSSRD) in Beirut, offered a contrary opinion:

Legal process

To our knowledge, the legal system does not structurally treat Palestinians any worse than other nationals, even though a degree of discrimination is claimed in a number of cases.

Access to legal representation is, however, more difficult for Palestinians owing to their generally limited financial resources. Those who are unable to pay for legal counsel themselves are assigned a lawyer. Palestinians may apply for financial legal aid from the Legal Aid Commission of the Lebanese Law Society. In almost all criminal cases reported to the Commission, Palestinians are defended by Lebanese lawyers. Palestinians are not allowed to practise legal professions. Officially, Palestinians, like Lebanese, can turn to the Lebanese authorities for (legal) protection in the event of problems. However, this does not apply to disputes which occur in the refugee camps themselves. According to the Lebanese Attorney-General, equal treatment exists in practice. According to the Centre for Strategic Studies, Research and Documentation (CSSRD) in Beirut, Palestinians cannot obtain such protection "...as no-one would listen to them". Palestinian inhabitants of the camps near the capital are said to be an exception.

(Netherlands Delegation 2001, *Country report on Palestinians in Lebanon*, United Nations High Commissioner for Refugees website, p.50 October 2001 <http://www.unhcr.org/home/RSDCOI/3df0b9214.pdf> – Accessed 27 July 2007)

Hostilities between Palestinians and security forces

57. Several sources attest to an increasing hostility against Palestinians from Lebanese society and security forces. As recently as July 2007, DFAT provided the following information on relations between Palestinians and Lebanese security forces:

Palestinians in Lebanon are more likely to be arrested, detained and harassed by Lebanese security forces than Lebanese citizens. (Syrian forces withdrew from Lebanon in 2005). Once arrested or detained they are less likely to receive adequate legal representation. If they are not carrying the correct identity papers they will be imprisoned (for up to 60 days) until they can prove that they have a legal right of residence in Lebanon. The current security situation has meant a dramatic increase in checkpoints, which in turn has led to increased arrests.

Palestinian refugee camps in Lebanon are controlled by Palestinian political and militia groups. Rival Palestinian groups operating inside the camps sometimes pressure, harass or detain other Palestinians within the camps in order to achieve their objectives. Inside some camps there are regular battles between rival groups. Under a 1969 Arab League Agreement – widely reported but not sighted by post – Lebanese security forces have agreed not to enter Palestinian refugee camps in Lebanon. (This agreement has recently been abrogated in Nahr al Bared Camp in north Lebanon, with fighting between the Lebanese Army and terrorist group Fatah al Islam)

(DIAC Country Information Service 2007, *Country Information Report No. 07/59 – Lebanon: Entry and residency rights*, (sourced from DFAT advice 6 July 2007), 6 July 2007).

58. Palestinians interviewed recently in relation to the events in the Nahr al-Bared refugee camp near Tripoli refer to their fear of the Lebanese security forces and the legal system. In April 2007, the head of the Popular Committee

of the Naher al-Bared camp refers to the increasing hostility from Lebanese society and Palestinian apprehensions of the judicial system

Hundreds of young Palestinians have no work and many more are afraid of working outside the camp as they feel increasingly maligned by Lebanese society.

The result has compounded an already fragile economy and further pressured a society suffering from mass unemployment, poor basic health services and an increasing sense of isolation from their Lebanese hosts.

“Hundreds of young Palestinians have no work and many more are afraid of working outside the camp as they feel increasingly maligned by Lebanese society,” said Abu Marwan, head of the Naher al-Bared Popular Committee, run by the secular Palestinian Liberation Organisation (PLO), of which Fatah is the dominant organisation.

“Since the assassination of [former Prime Minister Rafik] Hariri and the accusations against Palestinians, we have become more cautious. You can go to court as a witness and end up a suspect,” he said.

(‘Cash-strapped Palestinians see livelihoods decimated by security crisis’ 2007, *Irinnews* website, 22 April 2007).

FINDINGS AND REASONS

59. The Tribunal accepts that the applicant is a Palestinian and stateless. The applicant resided in Lebanon from birth until he entered Australia. The Tribunal, therefore, finds that Lebanon is the applicant’s country of former habitual residence and has assessed his claims against Lebanon as his country of reference.

60. The Tribunal found the applicant to be a credible witness.

Work and other rights

61. The applicant is qualified as a tradesman and stated in his application that he had worked in that trade for a number of years, although he claims that his employment was illegal. The country information quoted above indicates that there is still discrimination against Palestinians in relation to work rights. However, since the issue of the Ministry Memorandum No. 67/12005 in June 2005 there appears to have been an improvement as the Memorandum permits Palestinian refugees, who were born in Lebanon and registered with DAPR, to work legally in manual and clerical jobs previously unavailable to them. The response from Public Information Officer of UNRWA in Beirut indicates that, the applicant’s profession is one of the occupations that a Palestinian can work in, in Lebanon. Even without the response from UNRWA the applicant’s own evidence is that he has worked for a number of years and that he only ceased to be employed because he came to Australia. The Tribunal accepts the applicant’s evidence that he has worked as in his trade for a number of years, despite the work being illegal, and finds accordingly. The Tribunal also finds

that the applicant had not been denied the capacity to subsist as he had the capacity to earn a livelihood and had not suffered serious harm for this reason. The applicant still has the capacity to earn a livelihood as he is qualified as a tradesman and his ability to work legally as a Palestinian has improved since June 2005 due to the Ministry Memorandum referred to above. On the evidence and for the above reasons the Tribunal finds that the applicant, if he returns to Lebanon, will not in the reasonably foreseeable future be denied the capacity to subsist as he has the capacity to earn a livelihood and he will not suffer serious harm, for this reason.

62. The country information quoted above confirmed the applicant's claims that as a Palestinian he cannot own or inherit property. Although this is discrimination it is not serious harm and the Tribunal finds accordingly.

Threats and State protection

63. The Tribunal found the applicant's claims that he has been threatened by his relative's ex-spouse to be credible in light of the information on the Department and Tribunal files relating to his visitor visa application and what the applicant stated at the hearing. However, the threats arise out of a difficult family matter involving the applicant's relative's divorce from a Lebanese ex-spouse and the efforts made to obtain custody of a child of the relationship. The threats are a criminal matter and were not made for a Convention reason. Therefore, the Tribunal finds that these circumstances do not amount to persecution for a Convention reason.

64. The applicant has stated that if he returns to Lebanon the ex-spouse will carry out the threat of 'you will see', as his relative has taken the custody matter before the courts further, and has now been granted custody of the son. The applicant also stated that his relative cannot find their son. The High Court in *VBAO v MIMIA [2006] HCA 60; (2006) 231 ALR 544* stated in obiter dicta, that 'threat' means a likelihood of harm, and not simply a communication of an intention of harm and that a decision maker is to decide that risk of future harm, not the risk of future communications. The Tribunal has found the applicant's evidence that he was threatened in the past by the ex-spouse to be credible. Further, the ex-spouse may threaten the applicant in the future but similar to what the Tribunal stated above these future threats would be a criminal matter and would not be made for a Convention reason. Similar to the Tribunal's findings made above, the Tribunal also finds that these circumstances do not amount to persecution for a Convention reason. Further, the applicant's evidence as to the ex-spouse's threats as to what will occur in the future, if he returns to Lebanon, are vague and lacking in detail and consist of the ex-spouse stating 'you will see'. The Tribunal finds that, if the applicant returns to Lebanon there is no real chance that the applicant will face, from the ex-spouse, anything more than a verbal threat, as has happened in the past, in the reasonably foreseeable future.

65. As well as claims relating to threats made by his relative's ex-spouse the applicant has also claimed that he will not get protection from the Lebanese authorities as they do not care or cannot be bother to protect

Palestinians. The Tribunal has made findings that there is no real chance that the applicant will, if he returns to Lebanon, face from the ex-spouse's any more than a verbal threat as has occurred in the past, in the reasonably foreseeable future. However, if the ex-spouse's threats became more serious or the ex-spouse attempted to or harmed the applicant, the independent country information, particularly the responses from UNRWA, suggests that the applicant can seek police assistance so long as an incident occurs outside of a Palestinian camp. There is some contrary evidence from CSSRD, however, the CSSRD comments, quoted above, relate to criminal cases where a Palestinian is an accused and the incident occurred inside a camp.

66. The applicant's own evidence is that his home is in a Palestinian area which is outside one of the Palestinian camps and the Tribunal finds accordingly. Therefore, on the evidence particularly the country information, the Tribunal finds that the applicant would be able to obtain the assistance from the police, that is state protection, in relation to the ex-spouse attempting to or carrying out the threats.

Hostilities between Palestinians and security forces

67. The applicant claimed that if he returns to Lebanon he will be harmed or mistreated by the Lebanese government. Some of the applicant's claims in relation to this are dealt with above. However, at the hearing the applicant claimed that he has been questioned and held at checkpoints while his Lebanese friend or relatives from overseas have been allowed to travel through. He also claimed that he has been abused at checkpoints for being a Palestinian and his passport has been thrown at him. He also stated that he has not been physically harassed by Lebanese security forces. The conduct at the checkpoints is discriminatory and harassment which delayed the applicant going to play sport or his work but it is not significant nor is it so serious as to be a threat to the applicant's life or liberty nor did it prevent him from going to his sport or his work. As such the Tribunal finds that the applicant has not suffered persecution involving serious harm in relation to this claim.

68. The applicant has been in Australia since the mid 2000's and much has happened in Lebanon in relation to the security situation. The country information quoted above refers to an increase in arrests due to the increase in checkpoints and that Palestinians can be detained if they do not carry correct identity documents. They also refer to an increase in hostilities between Palestinians and Lebanese security forces. However, the increase in hostilities has occurred mainly in the North where there has been fighting between the Lebanese army and the terrorist group Fatah el Islam. The applicant's evidence is that although he has been questioned and held up at checkpoints he has not been detained which indicates that he carries the correct identification documents and it may be expected that he will do so in the future. Further, his home is in the South of Lebanon, not in the North of Lebanon where the most recent hostilities have occurred. Therefore, on the above findings and reasons the Tribunal finds that if the applicant returns to Lebanon he will not suffer serious harm in the reasonably foreseeable future.

69. In the Tribunal's view there is no plausible evidence before it that the applicant has suffered persecution in Lebanon because of his race, religion, political opinion or his membership of a particular social group or for any other Convention reason. Nor, in the Tribunal's view, does the evidence establish that there is a real chance that the applicant will suffer persecution for a Convention reason either now or in the reasonably foreseeable future if he returns to Lebanon. Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well founded fear of persecution for a Convention reason if he returns to Lebanon in the foreseeable future.

70. The Tribunal notes that the question could arise as to whether the applicant might be excluded by Article 1D of the Convention, which operates to exclude stateless Palestinians in certain circumstances. The Tribunal notes that on one view, a person covered by the second paragraph of Article 1D is *ipso facto* entitled to be considered a refugee under the Convention, but this view has not been accepted in Australia: see *WACG v MIMA* [2002] FCAFA332; *WAED v MIMA* [2002] FCAFC 333; *WAEI v MIMA* [2002] FCAFC 334 and *WACH v MIMA* [2002] FCAFC 338, read with *MIMA v WABQ* [2002] FCAFC 329; (2002) 121 FCR 251. As the Tribunal has found that the applicant does not satisfy Article 1A(2), it is not necessary to reach a concluded view as to whether he is also excluded by Article 1D.

CONCLUSIONS

71. 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 section 36(2)(a) for a protection visa.

DECISION

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