

**1314184 [2014] RRTA 281 (7 April 2014)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1314184  
**COUNTRY OF REFERENCE:** Lebanon  
**TRIBUNAL MEMBER:** Rodger Shanahan  
**DATE:** 7 April 2014  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a **citizen of Lebanon**, applied to the Department of Immigration for the visa [in] March 2013 and the delegate refused to grant the visa [in] September 2013.
3. The applicant appeared before the Tribunal [in] April 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

### CLAIMS AND EVIDENCE

#### *Protection Visa Application*

4. The applicant is [a] single Lebanese Sunni male. He claimed that he had joined the Syrian Ba'th party and was the youngest member who attended rallies and events. He feared that he would be killed by anti-Ba'th groups if he returned to Lebanon. He had been subject to harassment and threats by members of the Future Movement.
5. He claimed that he was shot at while traveling to and from work, was followed by cars, and his mother had advised him that dangerous people came looking for him. Because of these pressures he decided to leave the Ba'th party and politics.
6. Since then his mother had received calls from anti-Ba'th groups where threats were made against him.

#### *RRT Hearing*

7. The applicant was asked about the photos in his application and he claimed they were of Ba'th party fighters. He was not in any of the photos as he was [Official 1]; these photos were in the offices. He claimed he and his family would be harmed by the Ba'th Party unless he returned to Lebanon, but now that he knew things about the party things were more dangerous.
8. He had this fear from the time of Wissam al-Hassan's assassination when the Army began questioning him. The assassination was on 19 November 2012 and he was questioned [some days later in] November. It was put to him that al-Hassan died on 19 October and he claimed that it was 19 November. He also feared having to re-join the Ba'th Party and do the filthy things that they did. He had no other claims.
9. His father died in 2004 when he was [a child] and over the years he came into the orbit of Ba'thists in Tripoli. They had been at school with him and some Ba'thists tried to convince him to join them. He did so in 2005/06 when he was [still young]. After this they told him they had headquarters in Tripoli and Beirut. He was offered a job in [a suburb] in Beirut and he went there for six years until he came to Australia.

10. The activities were about helping people in need and how to control certain areas in Lebanon. They then began to speak about the situation of the civil war in Syria and how to stop it spreading into Lebanon. The dangers increased when they were told by [a certain person] about certain information only revealed to them. Their identities were kept secret and he was in charge of the Tripoli branch. The applicant moved to the Beirut branch in 2007.
11. Just prior to this he had a lot of information about how the party had infiltrated Lebanon and into Jabal Mohsen, how they had eliminated their opponents and the name of their mediator that they used to control the Lebanese Army. He was [in his teens] when he was told this. He was also told about the history of fighting and how they had eliminated the pro-Iraq Ba'th party. He had remained with the party since he came to Australia but in name only.
12. The applicant claimed that after Wissam al-Hassan was assassinated, Army investigators stopped him a week later and said that he had been seen in the CCTV cameras in Ashrafiyyah (the suburb where the blast occurred). He denied it and claimed that he told them Ashraf Rifi was the one who wanted al-Hassan's position. It was put to him that Rifi was head of the ISF so it made no sense that Rifi would want someone's position who was subordinate to him. He claimed that al-Hassan was always accompanying Hariri and Rifi wanted to be Hariri's right hand man.
13. Asked what he did in the Ba'th party between 2007 and the time he left, he claimed he organised meetings and he took aid to needy people. He had nothing to do with arms or fighting. He helped to stop the Syrian fighting from spreading; his position title was [Official 1] of the Beirut branch. He had never come to the attention of the Lebanese security forces prior to the al-Hassan assassination, but they knew he had moved from Tripoli to Beirut.
14. He was questioned and became fearful but you can't leave the Ba'th Party unless you die according to their rules. Asked what he feared now he was in Australia, he claimed that there were many explosions in Tripoli and many of these were caused by the pro-Syrian parties, including his own. The Ba'th party was responsible for the fighting in Jabal Mohsen, and his house had been shot at and that his time out of Lebanon that he was allowed to have had run out. The Ba'th Party had threatened his family and told his mother that if he didn't return he would be killed - but she had not passed it on to him. They went to his house as soon as he arrived in Australia.
15. Asked how long he was given, he claimed they told his mother was told that he had six months. Asked if anything had occurred since this first threat in January 2013, he claimed that after June he and his mother had been threatened and he asked his brother-in-law to move them to a Sunni area so he would be safe. Asked why the Ba'th Party couldn't come into a Sunni area given they were a secular party, he claimed they were affiliated with the Alawites. Ba'th had been supporters of Jabal Mohsen which was Alawite.
16. He was asked why they wanted him to return given he only had a minor role in the party, he claimed that he was passing information to the Tripoli branch from Beirut and had got 30 people to join them. He passed on military movements, locations of the intelligence vehicles and the location of checkpoints in areas that they wanted to move into to control. He didn't know what they needed this information for.
17. He was asked how the Ba'th Party went in the elections, and he claimed that this wasn't his role in the party as he looked after aid. He was asked how many members of parliament the party had and who they were. He claimed that they had one from Jabal Mohsen, Rifaat Eid. It was put to him that Eid was with the Arab Democratic Party; he claimed all the parties had combined. He

was advised that this had not occurred and was again asked to name the Ba'th MPs. He claimed that ADP, Hizbullah, Amal and Ba'th all got their instructions from Syria and elected the one president themselves.

18. It was put to him that he was not answering the question and that there were concerns that he was even a member of the Ba'th Party and that, if he was [Official 1] of the Beirut branch it was reasonable to expect him to know the names of the Party's MPs. He asked if he would be in trouble if he named them, and it was out to him that they were public officials. He claimed that there was Fahad Raad; asked if he was in parliament he claimed he used to be but didn't have the most up to date information.
19. He then claimed that he did not know the names of the current MPs. It was put to him that the election was run while he was in Beirut so it was strange that he didn't know. He claimed he began to withdraw slowly since al-Hassan's assassination and it was put to him that the election occurred the year prior to this. He claimed he was [Official 1] but not a high position and he had specific jobs.
20. Asked what the Party's ideology was and who founded it, he claimed that Michel Aflaq founded it in 1947. Regarding its ideology, it was initially to help and respect people but what they do and what they say is different. He was asked about their position regarding forms of government, Arabism and larger questions regarding ideology; where the Ba'th Party sat on the spectrum of political ideologies. He said they tried to recruit the largest numbers of people as possible.
21. Asked where the Ba'th Party was in Tripoli, he claimed it was in Akkar. It was put to him that the Tribunal had possession of country information regarding the location of the Tripoli office in 2007 and he was asked to describe its location. He claimed that the Akkar location was secret; it was put to him that country information indicated that party meetings of the Tripoli branch were held in this building. There was no mention that the Tripoli branch meetings were held in Akkar. Regardless, if he was a member of the Tripoli branch then it was reasonable to assume that he would know where the Tripoli branch office was located. He claimed that from 2004-07 he only went to meetings in Akkar.
22. His statement in his protection application indicted that his mother received threats from anti-Ba'th elements, and yet he said during the hearing that the threats came from the Ba'th party. He claimed that he had said before that the calls came from unknown elements, the Ba'th Party of Future Movement. It was put to him that his written statement said anti-Ba'th elements.
23. He was also asked why he had no mention of being questioned about the al-Hassan assassination given the significance of the event. He claimed that it was the first interview he had ever had and he was fearful; he claimed that he had also given his complete story to his lawyer but he had submitted something completely different. He was told he had signed the application and that he accepted personal responsibility when he signed a document and should know what it was that he signed. He said the lawyer was not trustworthy.
24. It was put to him that it was strange that [a certain person] told him all this secret information when he was only [in his teens]. He claimed that the party implanted these thoughts when they were young to keep them with the party.

25. He asked the Tribunal that if there were any questions from the Tribunal they could send them to his lawyer. Asked if he had kept the same untrustworthy lawyer, he claimed it was and he didn't know any other lawyers.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

26. The applicant arrived in Australia on a visitor's visa [in] February 2013 and applied for a protection visa [in] March 2013. I have sighted his passport and accept that Lebanon is the applicant's country of nationality.
27. The applicant is [an] unmarried Sunni Muslim originally from Tripoli but resident in Beirut since 2007. He claimed that he would be forced to re-join the Ba'th party if he returned to Lebanon and forced to do filthy things, and that he and his family would be harmed by the Ba'th Party if he did not. He had no other claims.
28. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth. Nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant.
29. I found the applicant's evidence regarding his claims to lack credibility. For reasons set out below I did not find the applicant to be a reliable, credible or truthful witness, and that he fabricated his entire claim in order to be granted a protection visa.

#### *Party membership*

30. I do not accept that the applicant is, or was ever a member of the Ba'th Party or has any other political affiliation. There are several reasons for this. Firstly, he was unable to say how many MPs the party had in the Lebanese parliament or who they were.<sup>1</sup> He was vague and tried to obfuscate, claiming that the parties had combined (they hadn't) and that Rifaat eid (Alawite head of the Arab Democratic Party) was a Ba'th MP.
31. Given the small number of MPs and the fact that he claimed he was [Official 1] in the Beirut branch during the 2009 election, it is reasonable to assume that he would know both their names regardless of what role he played within the party. I do not accept that his lack of knowledge was because he was in charge of aid as this would not preclude him from knowing the party's parliamentary representatives, or because he had begun to withdraw after Wissam al-Hassan's assassination, given that the MPs were elected in 2009 and the assassination occurred in 2012.
32. The applicant was also unable to name or describe the location of the Tripoli office of the Ba'th Party despite having claimed to have been an active member of it until 2007. Country information<sup>2</sup> indicates that it was opposite the Palace Cinema and above the Negresco Café in Tripoli. This is a quite specific location with the cinema in particular being an easily recognised landmark. The applicant's inability to know anything about the location of the Tripoli office during his membership of the Tripoli branch until he left for Beirut in 2007 further strengthens the finding that the applicant has no connection to the Ba'th party.

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<sup>1</sup> There are two members of the Ba'th Party in parliament; Qassim Hashim and Assem Qanso who were elected in the 2009 polls. See the Lebanon section in [www.ifes.org](http://www.ifes.org) for the 2009 election results.

<sup>2</sup> RRT CIR LBN31810 dated 7 June 2007

33. Although he was able to name the founder of the Ba’th party, this can be easily gleaned from any on-line source and is not indicative of any degree of association with the party in and of itself. He could not describe what its ideology was, either in terms of its socialist roots or its advocacy of pan-Arabism.<sup>3</sup> His lack of knowledge regarding the party’s ideology, the location of its Tripoli office during his time as a member there or who its MPs were, is not indicative of someone who had been a member of the party since 2005/06 and a secretary in the Beirut branch until he left. I give no weight to the three colour photos he presented; they appear to be generic photos of people in military garb armed with weapons; there is nothing to indicate where or when they were taken, or what organisation the people belong to. The applicant doesn’t appear in any of them.
34. Because I do not accept that the applicant has been a member of the Ba’th party I do not accept that he has been followed, shot at or that either he or his family have been threatened. He was inconsistent regarding his claim of who was actually threatening him. In his protection application statement (folio 68) he claimed that he was subjected to threats by the Future Movement and that his mother had received calls from ‘anti-Baath groups’, whereas in his hearing he claimed that the threats were made by the Ba’th Party in order to get the applicant to return.
35. I don’t accept that this inconsistency is due to his lawyer who was untrustworthy and had misrepresented what he had said. Despite claiming that the lawyer was untrustworthy, the applicant also asked that any correspondence continue to be sent to him; I do not accept that he had retained him only because he didn’t know any other lawyer.
36. I also do not accept that the applicant was detained and questioned by the Lebanese Army over the assassination of Wissam al-Hassan. The issues regarding the applicant’s lack of credibility have been raised above. I note that the applicant was mistaken about the date of the assassination during the hearing, and had not previously raised the claim. Given the importance of such an incident, it is reasonable to assume that the applicant would have thought to have mentioned it previously and that he would be aware of the correct date of the incident.
37. Lastly I don’t accept that the applicant was at risk because of explosions in Tripoli caused by pro-Syrian parties such as his own. While there have been some explosions in Tripoli in the past few years, the applicant did not explain how he was likely to be the target of such explosions. Regardless, he has lived and worked in Beirut for the six years prior to coming to Australia and it is reasonable to assume that this is where he would return to given his contacts and the greater employment opportunities there.
38. Having considered the applicant’s evidence both individually and cumulatively, for the reasons set out above the Tribunal does not accept there is a real chance that he would suffer persecution for any Convention reason either now or in the reasonably foreseeable future.

#### *Complementary Protection*

39. Because I do not accept that the applicant is or ever was a member of the Ba’th Party, that he or his family has been shot at or threatened by anyone, that he would be targeted by explosions in Tripoli or that he was ever questioned by the Lebanese Army over the Wissam al-Hassan assassination, I am not satisfied that there are any substantial grounds for believing that there is a

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<sup>3</sup>Baathism: an Obituary’, *New Republic*, 14 September 2012, <http://www.newrepublic.com/article/world/magazine/107238/baathism-obituary>, accessed 4 April 2014

real risk of significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa).

40. Therefore, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm.

#### **CONCLUDING PARAGRAPHS**

41. For the reasons given above, the Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant **does not satisfy** the criterion set out in s.36(2)(a).
42. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
43. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

#### **DECISION**

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

Rodger Shanahan  
Member

## **ATTACHMENT A – RELEVANT LAW**

1. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the ‘refugee’ criterion, or on other ‘complementary protection’ grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

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

3. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).

4. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.