

1210036 [2013] RRTA 8 (9 January 2013)

DECISION RECORD

RRT CASE NUMBER: 1210036

DIAC REFERENCE(S): CLF2012/13583

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Pauline Pope

DATE: 9 January 2013

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 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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2012.
3. The delegate refused to grant the visa [in] June 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. 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 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant*

S395/2002 v MIMA (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb

of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of 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.

Complementary protection criterion

16. 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. 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.

Application for Protection Visa

20. According to the information provided in the application for a Protection visa the applicant was born in Tripoli, Lebanon on [date deleted: s.431(2)]. She came to Australia [in] 2011 as the holder of a Provisional Spouse visa for the purpose of marriage.
21. The applicant states that her father is deceased. Her mother lives in Lebanon and she has [some siblings] living in Lebanon. She [also has some siblings] living in Australia.
22. In a separate written statement the applicant states that she claims that she will be persecuted in Lebanon because she belongs to a Particular Social Group. She states that

she separated from her husband [in late] 2011 after she arrived in Australia on a Provisional Resident visa, having been sponsored by her estranged husband.

23. The applicant says that she was born a Sunni Muslim and continues to practise that faith. Her family adheres strictly to their religion and are socially conformist.
24. The applicant writes that she was married [in] 2011 in [City 1]. Her estranged husband was extremely violent. She suffered physical, sexual and verbal abuse. She states that she opted to leave the marital home [in late] 2011 because she could not tolerate the level of abuse.
25. The applicant writes that her estranged husband is her [Relative A]. She alleges that he has threatened to do her harm if she returns to Lebanon. She states that she fears reporting threats and incidents of violence to police because he or other close relatives may harm her. Despite suffering physical and sexual abuse she has refrained from reporting the matter to police because she does not want to further infuriate her estranged husband and relatives.
26. The applicant states that under Lebanese law and custom a woman has no right to complain about marital sexual or physical abuse and is expected to tolerate abuse.
27. Her decision to leave the marriage is viewed as socially unacceptable. If she returns to Lebanon she cannot expect that the Lebanese authorities will protect her. She does not wish to return to Lebanon where she will remain vulnerable in the absence of effective legal protection and social antagonism.

Interview with the delegate

28. The applicant attended an interview with the delegate [in] June 2012. The Tribunal has listened to the recording of the interview.

Decision of the delegate

29. The delegate found in the decision record that the harm the applicant claims to fear in Lebanon is at the hands of a particular individual, her estranged husband who is resident in Australia.
30. The delegate found no evidence to support a finding that the applicant has been subjected to serious harm at the hands of her (now estranged) husband in Australia. Further she did not accept that there is a real chance that the applicant is at risk of spousal violence in Lebanon. She found no evidence to support a claim made by the applicant that she will face serious harm in Lebanon for the reason that she is a separated or divorced woman.

Hearing before the tribunal

31. The applicant appeared before the Tribunal [in] November 2012 to give evidence and present arguments. The Tribunal also received oral evidence from three of the applicant's siblings and [another relative]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

32. The applicant was represented in relation to the review by her registered migration agent.
33. The Tribunal established that the applicant came to Australia for the purpose of marriage to her [Relative A]. She explained that she had visited Australia in 2009 and during that visit she met [Relative A] personally. He made the proposal of marriage. She returned to Lebanon and eventually returned to Australia to marry. She arrived [in] 2011. The couple married [in] 2011.
34. The Tribunal established that the applicant's [family details deleted: s.431(2)].
35. The Tribunal asked about the connection between herself and her husband. The applicant said that her estranged husband is her [Relative A]. [Family details deleted: s.431(2)].
36. The Tribunal asked whether the families maintained contact. The applicant said that they did. [Personal details deleted: s.431(2)].
37. The Tribunal heard that after the applicant arrived in Australia [in] 2011 she went to her [sister's place] where she lived until the marriage. The Tribunal asked about the contact she had with her then fiancé, [Relative A], in the intervening period [up until] marriage in [2011]. The applicant replied that he showed no signs of poor behaviour towards her during the period of their engagement. The Tribunal asked whether they spent much time together. The applicant said that they did not because [Relative A] was working. He was living with his mother at that time.
38. The applicant continued that the marriage [details of marriage deleted: s.431(2)]. There was a religious ceremony at the house of [Mr C]. The Tribunal said that it understands that the marriage was not registered. She replied that it was not registered but she only learned of this later.
39. The Tribunal asked the applicant to describe their lives together after marriage. She said that after only two days of marriage her husband wanted to go out at night. He did so and did often did not come back until six o'clock in the morning. He forced her to sleep with him. She said she could not object. She went on to say that increasingly her family members were discouraged from visiting her. The Tribunal asked whether [Relative A] was working at this time. She replied that after about three weeks of marriage he stopped work. The Tribunal asked how he supported her and how he paid the rent. She replied that he did not support her; her family did so. The Tribunal asked whether they went out together; whether for example they went out to do shopping. She said that she stayed at home and her husband bought the food. Again the applicant said that her husband went out often and he came home drunk. One night she said he told her at midnight to leave the house. The Tribunal asked the applicant whether [Relative A]'s father knew what was happening in the marriage. She said that he was aware of it but seemed to believe that he was powerless to do anything. The Tribunal asked whether her sister knew of the situation at an early stage. She said that she had confided in her sister who, on learning of the applicant's difficulties encouraged her to take it easy. Her sister also warned her that if there appeared to be a problem so early in the marriage the blame would be directed at the applicant. It was likely that a stigma would be attached to her.

40. The applicant said that the difficulties began after only two days of the marriage. Later she said that she went to stay with her sister. The Tribunal asked when she left the marital home at [location deleted: s.431(2)] on a permanent basis. She said that was [in late] 2011. The Tribunal asked whether her [siblings] ever went to [assist her] during this period of difficulty. She said that her brother [name deleted: s.431(2)] came. He saw the manner in which her husband treated her and he confronted him about this. The Tribunal asked the applicant how her brother [Mr B] had responded when he learned from her that she was suffering abuse from her husband. She said that at first [Mr B] did not interfere. The Tribunal asked about [Mr B]'s response on learning of this. The applicant said that [Mr B] told her to take it easy. The Tribunal asked whether her [siblings] knew the extent of the violent behaviour. She said that they did after one week. The Tribunal understood that the applicant was intimating that her family did not become involved at that time.
41. The Tribunal asked whether [Relative A] ever attempted to harm the applicant's [siblings]. She replied that in December 2011 [Relative A] came to [City 2] [and during] that visit she said [Relative A] assaulted her brother [Mr B]. The Tribunal established that the applicant was not present and did not witness the event.
42. The Tribunal said that it had read in the Departmental file that during the applicant's interview in Lebanon held in connection with the visa application certain questions were put to her by the interviewing officer about [Relative A]'s [background]. The Tribunal asked the applicant whether she recalled these questions. She said that this person asked whether she knew that [Relative A] is a sick person. The applicant told the Tribunal however that [Relative A] had told her that he is now well. The Tribunal asked why the delegate overseas would have had cause to ask this question. The applicant replied that it seems that [Relative A] had suffered from [a certain condition] but she also said she asked him about it and he said that this was not true.
43. The Tribunal asked the applicant what she knows of [Relative A]'s [family details deleted: s.431(2)].
44. The Tribunal asked the applicant whether she had further contact with [Relative A] after she came to [City 2]. She replied that she did not. The Tribunal asked when she last saw [Relative A]. The applicant said it was in [late] 2011. The Tribunal asked the applicant what happened when she left the marriage. The applicant replied that she travelled to [City 2] by plane alone. Her brother [Mr B] picked her up at the airport. She said that her situation was not discussed anymore.
45. The Tribunal said it had also heard that she had subsequently made a visit to the home of [Mr C] who had performed the religious marriage. The applicant explained that on the same day that she was coming to [City 2] she made this visit. She told the Tribunal that she wanted to enquire about the divorce paper. It was then she learned from [Mr C] that the marriage had never been registered. The applicant said she did not receive any papers in relation to the marriage. The Tribunal established that [Relative A]'s father also accompanied the applicant to [Mr C's] house on that day.
46. The Tribunal asked the applicant why the marriage was never registered. She said that [Relative A] told her that he did not register the marriage because he had no money to do so. The Tribunal asked the applicant whether she therefore knew that the marriage had not been registered before she visited [Mr C]'s house. The applicant replied that

she did not really know for sure. The Tribunal asked the purpose of the visit to [Mr C]. It asked whether she was trying to secure evidence of the marriage or whether she was trying to initiate a divorce. The applicant said she was in fact already divorced by that time. She added that her husband had only to say three times that he divorced her and he had done so [in late] 2011. The Tribunal asked whether her husband had gone personally to [Mr C] to do this. She then explained that at the time [Relative A] was visiting [Mr C] to seek the divorce [Mr C] also rang her and informed her of this. By this time she said that she had left the [marital home] and was staying at her sister's place.

47. The Tribunal asked the applicant what happened about her visa and her status in Australia. She said that [Relative A] started to threaten her. He went to DIAC, informed them of the marriage breakdown and he withdrew his support for her. She added that he made threats against her on her mobile phone so her [siblings] destroyed the SIM card and she no longer had a mobile phone.
48. The Tribunal asked the applicant what she fears from her former husband, [Relative A], at the present time if she has not seen him since [late] 2011, and if, as she had stated she no longer has her mobile phone. The applicant replied that [Relative A] could easily come to [City 2] and could easily find her. She knows that in Australia the government protects its people; in Lebanon she said it is different. In Lebanon she is considered as the husband's belonging; he can do as he pleases. The Tribunal asked the applicant what she fears from [Relative A] in Lebanon. She replied that in Lebanon she cannot be protected. The Tribunal again asked what harm she fears from [Relative A] in Lebanon. The applicant said [Relative A] has relatives in Lebanon and they can find her. The Tribunal asked whether there are any other reasons she does not wish to return to Lebanon. She replied that in Australia women are protected from violence. The Tribunal asked again whether there are other reasons she does not wish to return to Lebanon. She said that there are not.

Evidence of the witness [Mr B]

49. The Tribunal established that the witness is the applicant's brother. The applicant had referred to him as [Mr B]. The witness began to outline what he knows of the marriage and the difficulties encountered early on in the marriage. The witness said that the applicant began to experience difficulties one day after the marriage. He said that they fought and the applicant's spouse grabbed her by the throat. The witness said that the applicant kept these things to herself for one week. She was then living in [City 1] and the witness lives in [City 2] He did not know of her problems initially. Finally, he explained that the applicant could not handle things anymore and she called her [relative] to assist. It seems that she left the marital home late one night and her husband followed her by car. The witness said that two people witnessed the ongoing argument. Her husband was trying to drag the applicant into his car. The Tribunal asked whether these persons came to her assistance. He said that they did and they wanted to call the police. However, he said the applicant did not wish to involve the police in the matter. The witness said that the family finally brought the applicant to [City 2] where she has now been living for a couple of months.
50. In his evidence the witness said that the applicant returned to the marital home on a number of occasions. She was encouraged by family members to persevere and to try to make the marriage work. It was only later that the witness and the family became aware

of the extent of the applicant's difficulties. They learned that the applicant was forced to have sexual relations against her will.

51. The witness told the Tribunal that the applicant's former husband came to [City 2] to visit [family details deleted: s.431(2)]. The witness continued that he was passing that place and he was near the entrance to the building. The Tribunal asked whether a physical altercation took place. The witness said there was not an actual physical altercation but there was swearing. The witness then said that the other party pushed the witness. The witness said he backed off because he knows that [Relative A] is dangerous. The Tribunal asked whether the police were called during that incident. The witness said that they were not called.
52. The witness said that the estranged husband made threats against the witness. Asked the nature of these threats the witness said that he told him that would come back after him. The witness denied that he threatened the other party. [Further details deleted: s.431(2)].
53. The Tribunal asked when this event happened. He said that he cannot remember the exact date; it was over [several] months ago. The Tribunal asked that the witness whether he has seen the estranged husband since that time. He said he has not. The Tribunal asked the witness whether there was anything else he wished to add. He explained that the family is worried about the applicant. She will not be safe in Lebanon.

Continued evidence of the applicant

54. The applicant continued her evidence. She said that her former husband made threats against her that if she contacted the police about the problems he would kill her. She then said that he has threatened that he cannot reach her here but he will get her in Lebanon. The applicant said he can do that because in Lebanon there is no protection. The Tribunal asked the applicant when her former husband made this particular threat. She replied that he always said these things to her.
55. The Tribunal put to the applicant that it seems that the harm she fears in Lebanon is private harm, from an individual, for personal reasons and due essentially to the failure of her marriage. The applicant replied that she came to Australia as a virgin and she will be going back to Lebanon as a divorced woman. In her community she said it will be assumed that there is something wrong with her. She said that her estranged husband has destroyed her life. The Tribunal put to the applicant that it seems that no Convention reason forms the essential and significant reason for the harm she claims to fear in Lebanon.
56. The Tribunal asked the applicant why she did not call the police when she was facing and experiencing physical harm in [City 1]. She replied that she did not want to cause problems for the family. The Tribunal put to her that it seems from her evidence that neither she nor her [siblings] in [City 1] sought protection from the police. The applicant replied it is not their custom to contact the police. She added that this is not the way they conduct themselves. The Tribunal put to the applicant however that she has stated a number of times during her evidence that she believes that in Australia she can be protected against her estranged husband. However, she has never sought the protection of the police or the authorities in Australia during these claimed difficulties.

Indeed, she had also said that to do this is not their custom. The applicant replied she did not know anything about the rules here. The Tribunal put to her that it may form the view that her [siblings], who have been in Australia for a longer period, would have been aware of the avenues available for protection had they considered it required. The applicant replied that she did not think or expect that her situation would turn out as it has done in Australia. She continued that in the beginning she did not know much about the country and she heard only comments from her husband.

57. The Tribunal put to the applicant that it may form the view on the basis of all of the evidence before it that her estranged husband [Relative A] has no real intention or desire to harm her for any reason. The Tribunal put to her that according to her evidence she has not seen him for many months. The applicant replied that he can attack her at any time. The Tribunal put to her that it seems that he has not sought to do so up until this time. It put to her that it may question that he would be motivated to harm her if she returns to Lebanon. The applicant replied that no one knows what he may do. She added that he threatened that if she goes to the police he will kill her. Again, the Tribunal put to her that notwithstanding the threats her estranged husband allegedly has made in the past he has not made any attempt to locate her or see her. He has not sought to harm her.
58. The applicant said she fears treatment as a divorced woman in Lebanon where she said that she will face ridicule and discrimination because her marriage has failed. The Tribunal put to the applicant that the delegate, during an interview had provided country information which indicates that on average some 4,900 divorces were granted annually in Lebanon between 2000 and 2010. This suggests that divorce is not a rare occurrence in the country. The applicant said this may be the case but it is different when someone goes overseas to marry.
59. The applicant's adviser made oral submissions on behalf of the applicant. He submitted that the type of abuse suffered by the applicant within the marriage was such that it warranted police intervention. However, he continued that the Tribunal must be mindful of the cultural aspects. These relate firstly to the views of the family members when they first became aware of the problems in the applicant's marriage. Initially the family encouraged the applicant to return to the marriage and allow things to settle. This was even when they had become aware of the nature of her difficulties. Furthermore, it was submitted that there was a sense that the marriage difficulties had the potential to embarrass or reflect poorly on the wider family. The applicant was not initially supported by the family who, for cultural reasons were slow to react to her difficulties. The applicant's adviser asserted that this is not to say that the applicant would not call the police in the future; she is now familiar with the system in Australia.
60. The applicant's adviser submitted that cultural factors are relevant; he drew the Tribunal's attention to the infamy of divorce in Lebanon; he asserts that honour crimes in Lebanon are prevalent. He said that there is no evidence to conclude that violence against the applicant in Lebanon is not reasonably foreseeable. According to the adviser the applicant's former husband took action to report the breakdown of the marriage to immigration authorities as a means of ensuring that the visa would be cancelled and the applicant would be returned to Lebanon where there is no protection for abused women.

61. The applicant's adviser referred the Tribunal to country information cited in another Tribunal decision. It seems that the particular information relates to domestic violence and honour killings in circumstances where a woman has reneged on an arranged marriage. The adviser suggested that it is relevant to consider that the applicant's former husband is her [Relative A]. Honour killings are widespread in Lebanon and there is limited state protection for women in matters of family related violence which generally are considered as private matters.

Independent information

Violence in Lebanon is reportedly "deeply embedded in social (particularly familial) culture".¹ Religious courts that preside over domestic violence cases, and often discriminate against women, can legally require victims to return home despite abuse.² As Islamic religious laws do not recognise marital rape as a crime, and custody of children in divorce cases is often awarded to the father, many Muslim women choose to remain in violent relationships for the sake of their children.³ Furthermore, women's rights advocates have stated that social attitudes in Lebanon which allow men to exercise almost complete domination over their wives⁴ prevent many women from accessing the courts.⁵

Domestic violence is widely perceived as a private, family matter. Discussion of the issue is considered to be taboo. As a result, many victims stay silent "for fear of causing a scandal and bringing shame on the family" Ghida Anani, the program coordinator for Kafa, explains that women are required to "be obedient and keep family secrets".⁶ A legal services officer at Kafa, Leila Awada-Dawi, advises that many female victims of domestic violence who contact the organisation choose not to pursue their claims due to the fear of family members that "legal proceedings will cause a scandal".⁷ In addition, the US Department of State reports that women are at times "compelled to remain in abusive marriages because of economic, social, and family pressures".⁸

State intervention in private matters such as domestic violence is seen to violate 'the sanctity of the home',⁹ and threaten the patriarchal authority in the family.¹⁰ A number of

¹ Clark, S. 2008, 'Lebanese women still vulnerable to violence', *The Daily Star*, 9 June http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=92895 – Accessed 10 June 2008

² US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

³ 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247> – Accessed 28 September 2009

⁴ Miller, D. E. 2011, 'Lebanon's clerics attack domestic violence law', *The Media Line*, 26 June <http://arabnews.com/middleeast/article462177.ece> – Accessed 30 June 2011

⁵ 'Abused Lebanese women fall victim to legal system' 2011, *Al Arabiya News*, 13 August <http://english.alarabiya.net/articles/2011/08/13/162079.html> – Accessed 24 October 2011

⁶ 'Domestic violence remains hidden in shadow of tradition' 2007, *The Daily Star*, 18 October http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=86044 – Accessed 18 October 2007

⁷ 'Domestic violence remains hidden in shadow of tradition' 2007, *The Daily Star*, 18 October http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=86044 – Accessed 18 October 2007

⁸ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

⁹ Clark, S. 2008, 'Lebanese women still vulnerable to violence', *The Daily Star*, 9 June http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=92895 – Accessed 10 June 2008

¹⁰ Human Rights Watch 2011, 'Lebanon: Enact Family Violence Bill to Protect Women', UNHCR Refworld website, 6 July <http://www.unhcr.org/refworld/docid/4e327fd42.html> – Accessed 24 October 2011

prominent Muslim leaders have recently espoused such views in their objection to draft legislation currently before the Lebanese Parliament,¹¹ which seeks to transfer cases of domestic violence from religious courts to specialised civil courts.^{12 13} Such views indicate that conservative Muslim women would be expected to remain in a violent relationship, rather than seek protection from the state.

For example, Lebanon's highest Sunni religious authority, Dar Al-Fatwa, has publicly claimed that the proposed Family Violence Bill contradicts Islamic (Sharia) law, and intends "to break up the family similar to Western ways, which are foreign to our society and values".¹⁴ It also stated that "[c]loning Western laws that encourage the breakdown of the family...will have a negative impact on Muslim children...who will see their mother threatening their father with prison, in defiance of patriarchal authority".¹⁵ Dar al-Fatwa argued that the bill would therefore "diminish the father's authority in the family".¹⁶ The Higher Shi'a Council reportedly supported Dar al-Fatwa's position.¹⁷

The deputy head of Shiite militant group Hezbollah, Sheikh Naim Qassem, has similarly objected to the Family Violence Bill on the grounds that it "interfere[s] in the affairs of husband and wife".¹⁸ Qassem recently stated that "[t]he suggested law is far from ending domestic violence, and closer to sabotaging the family from the inside... We are against domestic violence... But we don't approve of fragmenting the family with complaints that open the door for courts to interfere in any small or trivial dispute". He further stated that families should not be obliged to answer to civil courts regarding "private internal affairs... between husband and wife or between parents and children".¹⁹

Domestic violence and marital rape are not criminalised under Lebanese law. The prosecution of perpetrators in domestic violence cases is limited to the application of general forms of violence under laws such as the Penal Code. However, these laws do not consider the private relationship between the perpetrator and the victim in domestic violence cases. The Penal Code also fails to recognise rape within marriage and does not punish perpetrators of rape if the victim is his wife.^{20 21}

¹¹ Miller, D. E. 2011, 'Lebanon's clerics attack domestic violence law', *The Media Line*, 26 June <http://arabnews.com/middleeast/article462177.ece> – Accessed 30 June 2011

¹² 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247> – Accessed 28 September 2009

¹³ 'Enough: ending private justice and violence against women' 2008, Open Democracy website, 26 November <http://www.opendemocracy.net/audio/enough-ending-private-justice-and-violence-against-women> – Accessed 30 June 2010

¹⁴ Miller, D. E. 2011, 'Lebanon's clerics attack domestic violence law', *The Media Line*, 26 June <http://arabnews.com/middleeast/article462177.ece> – Accessed 30 June 2011

¹⁵ 'Abused Lebanese women fall victim to legal system' 2011, *Al Arabiya News*, 13 August <http://english.alarabiya.net/articles/2011/08/13/162079.html> – Accessed 24 October 2011

¹⁶ Human Rights Watch 2011, 'Lebanon: Enact Family Violence Bill to Protect Women', UNHCR Refworld website, 6 July <http://www.unhcr.org/refworld/docid/4e327fd42.html> – Accessed 24 October 2011

¹⁷ Human Rights Watch 2011, 'Lebanon: Enact Family Violence Bill to Protect Women', UNHCR Refworld website, 6 July <http://www.unhcr.org/refworld/docid/4e327fd42.html> – Accessed 24 October 2011

¹⁸ 'Abused Lebanese women fall victim to legal system' 2011, *Al Arabiya News*, 13 August <http://english.alarabiya.net/articles/2011/08/13/162079.html> – Accessed 24 October 2011

¹⁹ 'Qassem: Law on domestic violence will sabotage family values' 2011, *The Daily Star*, 9 August <http://www.dailystar.com.lb/News/Local-News/2011/Aug-09/Qassem-Law-on-domestic-violence-will-sabotage-family-values.ashx#axzz1bfDmnMw2> – Accessed 24 October 2011

²⁰ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

According to Lebanese women's rights group KAFA, prosecution for domestic violence and spousal rape is rare.²² In addition, the punishments handed out to perpetrators of honour crimes are lenient.²³ The lack of protection offered to domestic violence victims under Lebanese law is exacerbated by the fact that the police often fail to report domestic violence cases. Although police may record violent incidents against women, their reports often do not identify the perpetrator.²⁴ In most cases, allegations of domestic violence are ignored by the police,²⁵ and the victims are instructed to sort out their problems at home.²⁶ The lack of a specific law relating to family violence, and the perception that such incidents are a family matter, informs the reluctance of the police to intervene.²⁷ In addition, hospitals often report cases of abuse as 'home accidents' without making any further investigations.²⁸

Furthermore, cases relating to personal status laws such as family violence are dealt with by each sect's religious courts,²⁹ which are not required by the state to protect women from violence by prosecuting or punishing perpetrators of domestic abuse.³⁰ Although battery is punishable by up to three years imprisonment, many religious courts require female victims to return home despite the risk of further abuse.³¹³² A cleric of Dar Al-Fatwa, Lebanon's highest Sunni religious authority, recently stated that Islamic law "did not and could not criminalize 'non-brutal beatings' by the patriarch of a family".³³ Rights

²¹ Chemali Khalaf, M. 2010, *Women's Rights in the Middle East and North Africa 2010: Lebanon*, Freedom House website, 3 March <http://freedomhouse.org/template.cfm?page=384&key=258&parent=24&report=86> – Accessed 9 March 2010

²² US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

²³ Safa, O. 2010, *Countries at the Crossroads 2010: Country Report – Lebanon*, Freedom House website <http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=191> – Accessed 19 April 2010

²⁴ 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247> – Accessed 28 September 2009

²⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

²⁶ 'Liberal Lebanese women suffer under outdated laws' 2008, *Agence France Presse (AFP)*, 7 March <http://www.naharnet.com/domino/tn/Newsdesk.nsf/0/0B134D5B4DC1C6D0C2257405000EC229?OpenDocument> – Accessed 7 March 2008

²⁷ 'Domestic violence remains hidden in shadow of tradition' 2007, *The Daily Star*, 18 October http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=86044 – Accessed 18 October 2007

²⁸ 'Move to take domestic violence cases out of religious courts' 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247> – Accessed 28 September 2009

²⁹ Freedom House 2011, *Freedom in the World 2011 – Lebanon*, 26 May

³⁰ Human Rights Watch 2011, 'Lebanon: Enact Family Violence Bill to Protect Women', UNHCR Refworld website, 6 July <http://www.unhcr.org/refworld/docid/4e327fd42.html> – Accessed 24 October 2011

³¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Lebanon*, 8 April, Section 6

³² Chemali Khalaf, M. 2010, *Women's Rights in the Middle East and North Africa 2010: Lebanon*, Freedom House website, 3 March <http://freedomhouse.org/template.cfm?page=384&key=258&parent=24&report=86> – Accessed 9 March 2010

³³ 'Abused Lebanese women fall victim to legal system' 2011, *Al Arabiya News*, 13 August <http://english.alarabiya.net/articles/2011/08/13/162079.html> – Accessed 24 October 2011

lawyer Ghada Ibrahim advised in August 2011 that “[t]he vast majority of abused women do not resort to the courts...because they have no faith that the court will protect them”.³⁴

In April 2010, draft legislation that seeks to criminalise domestic violence and marital rape, known as the Family Violence Bill, was approved by the Lebanese Cabinet and submitted to parliament.^{35 36} The Family Violence Bill aims to transfer cases of domestic violence to specialised, civil law family courts, thereby addressing the discriminatory provisions against women in both the personal status laws of religious courts and the penal laws regarding family violence. The bill would therefore give women of all religious denominations equal rights under the law, as well as require the state to take responsibility for the protection of women who are victims of domestic violence.^{37 38}

Specifically, the draft law would establish specialised family violence units within the police force, prescribe fines and prison terms for perpetrators of violence against women, and require public health centres to report suspected cases of abuse. Women would also be able to seek a restraining order against an alleged abuser, and receive a decision within 48 hours.³⁹

However, the Family Violence Bill has not yet been passed by parliament, after being stalled by widespread religious opposition in June 2011.⁴⁰ As mentioned in the response to question two, Muslim leaders claimed that the bill contradicted Islamic law, interfered with the private affairs between husband and wife,⁴¹ and “would deprive Muslim women of the ability to turn to religious courts for protection”.⁴²

FINDINGS AND REASONS

62. On the basis of the applicant’s passport which was sighted by the Tribunal, the Tribunal accepts that the applicant is a Lebanese national.
63. The applicant states that she came to Australia [in] 2011 as the holder of a Prospective Marriage (Subclass 300) Visa for the purpose of marriage. According to her oral

³⁴ ‘Abused Lebanese women fall victim to legal system’ 2011, *Al Arabiya News*, 13 August <http://english.alarabiya.net/articles/2011/08/13/162079.html> – Accessed 24 October 2011

³⁵ ‘Gender Based Violence: The Law to Protect Women from Family Violence’ (undated), KAFA (enough) Violence & Exploitation website

<http://www.kafa.org.lb/FOA.aspx?code=1&Dcode=13&title=The%20law%20to%20Protect%20Women%20from%20Family%20Violence> – Accessed 30 June 2010

³⁶ Human Rights Watch 2011, *World Report 2011 – Lebanon*, 24 January

³⁷ ‘Move to take domestic violence cases out of religious courts’ 2009, *Integrated Regional Information Network (IRIN)*, 23 September <http://www.irinnews.org/Report.aspx?ReportId=86247> – Accessed 28 September 2009

³⁸ ‘Enough: ending private justice and violence against women’ 2008, Open Democracy website, 26 November <http://www.opendemocracy.net/audio/enough-ending-private-justice-and-violence-against-women> – Accessed 30 June 2010

³⁹ Human Rights Watch 2011, ‘Lebanon: Enact Family Violence Bill to Protect Women’, UNHCR Refworld website, 6 July <http://www.unhcr.org/refworld/docid/4e327fd42.html> – Accessed 24 October 2011

⁴⁰ Sara, A. 2011, ‘Men join the fight for women’s rights’, *NOW Lebanon*, 17 October <http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=322887&MID=0&PID=0> – Accessed 28 October 2011

⁴¹ ‘Qassem: Law on domestic violence will sabotage family values’ 2011, *The Daily Star*, 9 August <http://www.dailystar.com.lb/News/Local-News/2011/Aug-09/Qassem-Law-on-domestic-violence-will-sabotage-family-values.ashx#axzz1bfDmnMw2> – Accessed 24 October 2011

⁴² Miller, D. E. 2011, ‘Lebanon’s clerics attack domestic violence law’, *The Media Line*, 26 June <http://arabnews.com/middleeast/article462177.ece> – Accessed 30 June 2011

evidence, the applicant and her fiancé underwent an [Islamic marriage] [in] 2011. No evidence has been provided to support this claim. However the Tribunal accepts that the religious marriage took place as claimed. The Tribunal accepts the applicant's oral evidence that the marriage was never registered and she only learned of this after she had left the marriage.

64. The Tribunal accepts that the relationship ceased and the applicant left the marital home a number of times before she left for good [in late] 2011, at which time she came to [City 2] where she lives with her brother.
65. The Tribunal is prepared to accept that the marriage broke down and it is prepared to accept that the applicant suffered abuse within the marriage. The Tribunal accepts that the applicant told her family of the difficulties she was facing in the marriage and it finds that initially they encouraged her to "take it easy" and make an effort to make the marriage work. The Tribunal heard the explanations for this response from the witness and from the applicant's adviser, both of whom referred to cultural norms and practices which informed this response.
66. The Tribunal acknowledges independent country information which describes the difficulties which exist for women in Lebanon in violent spousal relationships and the entrenched societal attitudes which render them vulnerable and often unable or unwilling to seek and obtain meaningful state protection.
67. The Tribunal's task is to determine whether there is a real chance that the applicant will face persecution for a Convention reason if she returns to Lebanon. Essentially the applicant says that her estranged husband has threatened to harm her if she returns to Lebanon. Seemingly the motivation for this is because she left the marriage. The applicant has given no other reason. As the Tribunal put to the applicant at the hearing it appears that no Convention reason is the essential and significant reason for the harm the applicant claims to fear from her estranged husband. Furthermore, the Tribunal does not accept that the threats of harm, if made are serious threats. The Tribunal notes that the parties have been separated for more than 12 months. According to the applicant's evidence, the marriage has been terminated religiously and no legal marriage exists because the religious ceremony was never registered by the celebrant. The applicant has not seen her former husband for more than 12 months. He knows where she lives. The families are related by blood; there is a close family connection between the applicant, her estranged husband and their families. Yet, in all of these circumstances the estranged husband has never sought to make contact with the applicant since the separation in [late] 2011. The Tribunal concludes on this basis that he has no ongoing interest in the applicant. It therefore does not accept that he has the interest or the motivation to harm her or to have her harmed if she goes to Lebanon. It does not accept the claim that he will harm her in Lebanon because there she will not be protected by the authorities, either because she is a woman or a woman fleeing a violent relationship.
68. At the hearing, the applicant's adviser submitted that the applicant fears harm in Lebanon from her former husband and other family members who feel that they have been dishonoured by the failure of the marriage. Apart from the former husband these family members have not been named or identified.
69. The applicant claims that in Lebanon she will face discrimination for a number of reasons related to her failed marriage. She told the Tribunal that when she left Lebanon

she was a young woman and a virgin. When she returns she will be divorced. The Tribunal accepts that although her marriage in Australia was never registered she will be considered to be a young divorced woman when she returns to Lebanon. It accepts that there may well be a poor view of the applicant from elements of her community for the reason that she is a divorced woman or a young woman who entered into an unsuccessful marriage abroad. The Tribunal accepts that either of these groups is capable of being found to constitute a particular social group. However, the Tribunal does not accept that the discrimination described by the applicant and which she fears in Lebanon because of her marital status or her failed marriage is serious harm amounting to persecution for the purposes of s91R. The Tribunal has also considered that the applicant has a mother and other siblings living in Tripoli who can assist her. She is well educated and has a [qualification deleted: s.431(2)]. She has had previous [employment] These are factors which might ameliorate the effects of any discrimination the applicant may experience as a young divorced woman in her community.

70. On the basis of the evidence before it the Tribunal does not accept that there is a real chance that the applicant will suffer persecution in Lebanon for the reason that she entered into an unsuccessful marriage abroad or that she is a divorcee living in a family which adheres strictly to the Islamic religion or indeed for any Convention related reason if she returns there in the reasonably foreseeable future. Her fear of Convention related persecution in Lebanon is not well-founded.

Complementary Protection

71. The Tribunal has considered whether, in the light of its findings in relation to the applicant's claims as set out above, 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 she will suffer significant harm.
72. The Tribunal has found that the applicant's estranged husband divorced the applicant religiously in [late] 2011. It has found that, notwithstanding the applicant's claims that he has made threats to harm her, she has not seen him since she left the marital home permanently in [late] 2011, despite the fact that he knows where she is living in [City 2]. The applicant claims that he will be motivated to harm her if she returns to Lebanon because he knows that as a divorced woman or a woman suffering family violence she will not be protected in that country. Given that the marriage has broken down and given that the estranged husband has not made any attempt to contact the applicant in the intervening 12 month period the Tribunal finds that the risk that the applicant will suffer significant harm at the hands of her former husband or any family member, if she is returned to Lebanon is low and less than real. The Tribunal found nothing in the applicant's evidence to satisfy it that any other family member, either in Australia or in Lebanon has made threats against the applicant or intends to harm her because of her failed marriage. The Tribunal finds that there exists no real risk that the applicant will suffer significant harm from other family members if returned to Lebanon.
73. The Tribunal accepts that the applicant may find it awkward and difficult to return to her area as a divorced woman, having left there to enter into a marriage overseas. It accepts that there may exist in her community the stigma attached to her marital status and her failed marriage. However the Tribunal does not accept that such treatment would amount to cruel or inhuman treatment or punishment or degrading treatment or

punishment. Further the Tribunal finds that she has family members who will support her in Lebanon. She is well-educated and has previously engaged in employment in Lebanon prior to coming to Australia in 2011.

74. At the hearing the applicant's adviser submitted on the applicant's behalf that she fears that she will be the victim of an honour killing if returned to Lebanon. No perpetrator was named or identified. The Tribunal does not accept that the applicant's former husband has the motivation to harm her either in Australia or in Lebanon. Likewise it has not found credible evidence that any family member in Lebanon has expressed the intention to harm the applicant because of her failed marriage or because of a sense that she has dishonoured the family. The Tribunal finds that there is not a real risk that the applicant will suffer significant harm at the hands of family in Lebanon if she is returned there.
75. In the light of the above, the Tribunal is not satisfied 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 she will suffer significant harm as this is defined for the purposes of s36(2A) of the Act.

CONCLUSIONS

76. 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).
77. 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).
78. 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) for a protection visa.

DECISION

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