

**0800113 [2008] RRTA 131 (17 April 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0800113

**DIAC REFERENCE(S):** CLF2007/143215 OSF2002/020207

**COUNTRY OF REFERENCE:** Lebanon

**TRIBUNAL MEMBER:** Patricia Leehy

**DATE DECISION SIGNED:** 17 April 2008

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

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 s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Lebanon, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
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 s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

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

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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
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 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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**

19. The Tribunal has before it Department's files (OSF2002/020207, CLF2007/143215) 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.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages.
21. The applicant was represented in relation to the review by his registered migration agent.

*Department file OSF2002/020207*

22. This file relates to the applicant's failed application for a permanent visa. In the present case the sponsorship of the applicant was withdrawn and the visa was refused. The Migration Review Tribunal affirmed the Department's decision.
23. Information on the Departmental file indicates that the applicant had been married until Year 1 to his first wife and had children. He married his second wife in Year 2 in Lebanon and came to Australia on a temporary visa in Year 3. His sponsor withdrew sponsorship of the applicant in Year 4, saying that the marriage had broken down, the applicant had treated her poorly, and she was afraid of him. At this time the applicant submitted a medical report on himself. This detailed report on the applicant's psychological condition states that the applicant "was extremely motivated and desperate to save his marriage", and that following its breakdown he was in an extremely depressed condition. There is no reference to the applicant's sexuality.
24. The applicant's application for a permanent visa was refused by the Department and he applied to the Tribunal for review. He was invited to a Tribunal hearing. At the hearing, he said that he had attempted reconciliation with his wife on a number of occasions but was rejected. He said at the hearing that he was not currently in a relationship. As far as he was aware, no divorce proceedings had been begun.

*Department file CLF2007/143215*

25. According to his Protection Visa application, the applicant is a man who was born in Lebanon. He says that he separated from his wife in Year 3. He says he had a few years of education and that he lived all his life in City A in Lebanon, and had been self-employed. He left Lebanon to be with his wife in Australia.
26. The applicant claims that he will be gaoled, abused and killed because homosexuality is prohibited in Lebanon.

27. The applicant enclosed a letter with his Protection Visa. In the letter he says that he and his wife have separated and intend to divorce. He gives his reasons for applying for a Protection Visa as:

- He is a “bi-sexual or gay” Lebanese citizen and penalties in Lebanon for those who are bisexual or gay are severe, including more than 7 years imprisonment;
- His marriage was in trouble after several months because he and his wife lived with his relative and had arguments about money and deteriorating emotional ties between them; he suffered severe depression and stress and later suffered confusion about his sexuality;
- The applicant has come to realise that he had begun having emotional and sexual inclinations towards his own sex and that such friendships were more satisfying than those with women;
- In the beginning he experimented with sexual relations with men he met at a venue in Location A and then at a venue in Location B in City B; he met a few young bisexual/gay men of Arabic-speaking background including Person A and Person B who became close friends; he also met a number of young Australians who wanted casual sexual encounters;
- Over the past few months the applicant has developed a homosexual relationship with a young Lebanese man whom he met at Hotel A (known as Group A among Arabic-speaking gays); the applicant and the young man, Person C, formed a close sexual relationship at Hotel A and often visited other gay venues such as Hotel B in Location A, Hotel C in Suburb A and Place A in Location A;
- The applicant and Person C are partners and their relationship is developing; the applicant is much happier because he has realised his true sexuality;
- The applicant cannot return to Lebanon as he has many Lebanese friends in Australia who know that he is bi-sexual or gay, and this has caused the news of his sexuality to become known among friends and family in Lebanon, which makes it impossible for him to return;
- The applicant is afraid to return to Lebanon in case he is put in gaol or people publicly abuse him because of his sexuality.

28. The applicant was interviewed by an officer of the Department. The Departmental officer said that the applicant provided descriptions of his behaviour when he first realised his sexual orientation which were inconsistent with the statement attached to his Protection Visa application. The applicant claimed to be living with his current partner whom he met at Hotel A and with whom he said he began a relationship in September of Year 7. The applicant was unable to provide any documentary or other evidence to support this claim. The Departmental officer further found that the applicant’s account of the situation for homosexuals in Lebanon was exaggerated, and that his knowledge of the current situation for homosexuals in Lebanon is inaccurate. He was not convinced that the applicant was a genuine homosexual.

*Tribunal file 0800113*

29. The applicant provided no further information with his application for review to the Tribunal.

30. The Tribunal wrote to the applicant in accordance with S424A of the Act, inviting him to comment on information that might be the reason or part of the reason for affirming the decision under review. The information included: his claims at interview to have begun a homosexual relationship from about mid Year 7 and that prior to that he had been experimenting for many months with homosexual relationships; his history of two marriages, from one of which he had children, and his evidence to a Centrelink agency and to the Migration Review Tribunal later in Year 7 that he did not wish to divorce his wife and had attempted reconciliation; that his review application to the Migration Review Tribunal resulted in a decision by the Tribunal to affirm the Department's decision refusing him a permanent visa and that a few weeks later he had applied for a Protection Visa. He was advised that the information was relevant to the review because he claimed to fear persecution on the grounds of being homosexual but had demonstrated a commitment to heterosexual life. His personal history appeared to be inconsistent with his claims to have begun homosexual relationships from around mid-Year 6. Furthermore, his delay in applying for a Protection Visa was relevant because while he had claimed to have begun homosexual relationships from about mid-Year 6, he did not apply for a Protection Visa until many months later.
31. The applicant's newly-appointed adviser submitted a statement to the Tribunal in which he says that the applicant considers himself to be a homosexual and has been in a homosexual relationship with Person C since September of Year 7. The adviser says that the applicant claims that since about mid Year 6 he had been engaging in homosexual relationships, and that his failures with his past two marriages have incited his homosexual feelings which has led to an ongoing long term relationship with his current male partner. The applicant had his first homosexual encounter with Person A in mid Year 7, and entered into a relationship with Person C later in Year 7. The applicant's alleged partner, Person C, applied to the Tribunal for review of the Department's decision refusing him a Protection Visa for reasons of his homosexuality in late Year 6. The Tribunal accepted Person C's claims and remitted his application. Person C was subsequently given a Protection Visa.
32. The adviser attached to his statement the Tribunal's decision in relation to Person C, as well as a copy of Newspaper A, a publication for gays and lesbians. There is a photo of the applicant at a gay venue in the newspaper.
33. The Tribunal's decision on Person C found him to be a refugee for reason of his membership of a particular social group, homosexuals in Lebanon. Evidence given by Person C included his account at the Tribunal hearing of his relationship with the applicant from the time of their meeting in early September of Year 7 up to the time of the hearing. Person C stated that he was up to the time of the hearing living with a relative, and that he and the applicant had not lived together.

#### *Tribunal hearing*

34. The applicant attended a Tribunal hearing with his adviser and two witnesses. One was described as his partner, Person C, and the other witness was Person D, a volunteer for Service A. Person D also submitted a statement (described below).
35. The applicant was asked at the hearing when he realised his sexual orientation was towards men. He said that Relative A forced him to get married but there was no sexual desire towards his wife. They stayed together for over a year, but they got a divorce because there were no sexual feelings between them. It was put to the applicant that while he might have

married once against his inclinations, it was difficult to understand why he had married a second time. He said that Relative A had arranged for him to marry Person F, who Relative A believed would be more compatible because of their shared background. He said that he did not have any strong sexual feelings towards his second wife.

36. The applicant was asked whether he had had any sexual feelings towards men when he was in Lebanon. He said that when he was young, he and a friend used to engage in sexual play together, and the relationship lasted for many years. The applicant was asked how he felt when Relative A told him he had to get married. He said that he did not want to get married, but Relative A is stern and strict. The woman with whom the marriage was arranged was very acceptable to Person A. He was asked what he thought Relative A's reaction would be if he knew the applicant was in a homosexual relationship. He said as it happened he spoke to Relative B on the phone recently. Relative B had rung to ask whether he had received compensation money, and he told Relative B in the course of the conversation that he was sleeping with his partner, Person C. He said that Relative B "went crazy" and screamed abusive words at him. He said that Relative C and Relative D have been on the hajj. He said that if Relative A knew about him, he would probably be dead. He said he did not know what he would do. He said that Relative A gets very agitated and nervous.
37. The applicant was asked at the hearing what he himself thought about gays when he was in Lebanon. He said that he knew there were gays in Lebanon, but he also knew that if the police found them they would beat them every day. He said that gays are rejected by everyone. They don't have freedom as they do here. He described how he was able to express his affection for his partner in Australia, even though his partner is sometimes shy about kissing in front of other people. He said that he had a lot of energy to release and he was able to do that in Australia.
38. The applicant was asked to describe how his relationship with Person C began and developed. He said that they first met at a meeting at Hotel A in September of Year 7. He was asked when they began their long term relationship. He said that a few weeks later they went together to Place A in Location A and had sex, and that the relationship developed from there. The applicant said that he and Person C have now lived together in the same apartment for about a week, and they hope to sign a lease to stay together there. Prior to that they did not live in the same house. Initially, the applicant had a room in Suburb B, and Person C would come there and they would have sex. He said that a few months later his landlord, who knew about his relationship, evicted him and he went to stay at the home of a straight friend. This friend used to go to visit relatives regularly, so Person C could come and stay there often. The applicant was asked how often he sees Person C. He said that they see each other more or less every day. He said that Person C until they got a place together lived with his relative who supported him. He was asked whether he knew about Person C's previous life. He said that he did not know a great deal, but he knew that Person C had been previously married and did not have children. He said that he had told Person C that he himself had been married and had children. The applicant said that they were about to sign a lease on the place they had together. Person C would probably sign it, since his own future was uncertain. He said that he would pay his share of the bond and rent.
39. Person D of Service A gave evidence. He said that he had first met the applicant in August of Year 7. He said that the applicant had been brought to see him by a mutual friend, Person A from Country A with whom he had had a relationship. The applicant had said he had been married. He said that he wanted to make contact with other gay men, and Person D advised him about Group A, a gay and lesbian social group for people of Arabic-speaking

background, which meets at Hotel A. He also suggested he attend Group B, run by Service A.

40. Person D was asked whether he had any reason to believe that the applicant was not genuine about his sexuality. He said that he had not. He was asked what made him satisfied that the applicant was in fact homosexual. He said that he had seen the applicant from time to time since first meeting him. He said the applicant attended the first Group B meeting in September of Year 7 with Person C. He said that their behaviour towards each other was affectionate and demonstrative. He said that the last time he saw the applicant and Person C together was earlier this year at the Place B. Person D said that if he had had any reservations about whether the applicant was gay, they would have been dispelled by the fact that the applicant and Person C have visited a "Sex on Premises Venue" together, and that anyone who was heterosexual would be unlikely to feel comfortable in such a venue.
41. Person D was asked how long he had been a volunteer with Service A. He said that he had been in the position for several years, and that prior to that he was on the Executive of the group. He was asked whether he had had experience counselling many men of Arabic-speaking background. He said that he had known several, and had given evidence to the Tribunal for a number of men of Arabic-speaking background. He was asked whether it was unusual in his experience for men of Arabic-speaking background to have been married and of mature age before they expressed their sexual orientation. He said that it was not at all unusual for these men to come out later in life, because of family pressures and other circumstances. He cited his own life as an example, saying that it is a common feeling that one's sexual orientation will change and sexual feelings for the same sex will go away with marriage. He said that this was not so in his own case, and it is not unusual in the gay community. He said that in the present Group B there are older men.
42. The applicant was asked whether he had any evidence that he and Person C were in a relationship. He said that they have only just moved in together and they have no joint accounts for things like electricity. He said that neither of them had jobs, but that he receives some compensation money, and that Person C receives financial support from his relative. He said that when they go out together, he usually pays, because Person C has not been able to get work in his usual occupation.
43. Person C gave evidence. He had not been in the hearing room when the applicant was giving his evidence. He was asked how he met the applicant. He said he had gone to a counsellor who was called Person E, and he introduced him to other gay men of Arabic-speaking background. This group met regularly at Hotel A. He went to a meeting in September of Year 7, and the applicant was there with a friend from Country A. He said that after that meeting he again met the applicant at Hotel B where they had had a drink and talked and then later he went to a sauna called Place A where they had sex. Since then, he has seen the applicant just about every day. The witness described the applicant's addresses and his meetings with him in an account which was consistent with that given by the applicant. He said that they had moved to be together in a place which they would rent together, though the lease has yet to be signed. Both the applicant and his witness when asked when they last went out together socially said that they had gone to Place C a few days ago.
44. It was put to the applicant that his migration history, including his current Protection Visa application, could indicate to the Tribunal that he would do anything in order to remain in Australia. The history of his permanent visa application, its refusal by the Department, his review application to the Migration Review Tribunal were briefly described, and it was put to



the applicant that in none of the documents associated with these applications, including a psychiatrist's report, had mention been made of his homosexuality.

45. The applicant said that essentially he had been embarrassed about telling his story until he met Person A from Country A. Person A had encouraged him to come out, and had taken him to Service A. The applicant said that he had been borrowing lots of money for legal advice and he had been unwilling to spend more money. He said that it was only after Person A's advice and after having had counselling that he was persuaded to lodge a Protection Visa application. It was only after this support that he felt he could overcome his embarrassment and lodge an application.
46. The applicant was asked at the hearing whether he had told anyone else in the family apart from Relative B about his relationship. He said that he had told Relative E who supports him financially, who had said "This is your life" (implying that they would not interfere) He said that the people associated with his compensation claim also know about his relationship, and they might have told people who would tell his family.
47. The applicant was asked what he feared if he returned to Lebanon He said that he was afraid of all his family members They were very strict and he was afraid that they would kill him or get someone to kill him. This sort of thing happens frequently in Lebanon.
48. The applicant's adviser said that the genuineness of the applicant's homosexuality had been demonstrated by the support given to him both in his oral evidence and his written statement by Person D of Service A He said that this organisation is very well respected and would not lend its support to someone if they didn't believe he was genuine. He said that the applicant and his partner have been seen regularly at gay venues, and that most importantly they have been seen together at the Sex on Premises Venue. If they were not gay they would not be seen there, because they would have had to engage in sex acts. The adviser said that in relation to the applicant's late declaration that he is gay, the witness, Person D, had given evidence that this is not unusual. He said that while the applicant had given evidence that he had had sexual desires for men early in his life, he was not willing to come out until he had obtained support from Service A and his friend Person A, who encouraged him to lodge a Protection Visa application.
49. Person D's written statement states:
  - Person D first met the applicant in mid Year 7 when he visited Service A seeking social support with his friend Person A;
  - The applicant subsequently met Person C whom Person D had supported;
  - The applicant and Person C have consistently attended Group B meetings and have discussed their relationship in the Group;
  - Person D had previously provided comment on the relationship in connection with Person C's application to the Tribunal, saying that they displayed affection in the meetings, and that Person C had taken copies of two gay newspapers to read in the meeting breaks;
  - Person D observed the applicant and Person C together at the Place B, a gay bar; he is also aware that they have visited a "Sex on Premises Venue" together and says it is not uncommon for gay men in relationship to visit a venue of this kind together, though it

would be “unlikely that a heterosexually identifying man would feel comfortable in a place where there is frequent sexual contact between men”;

- Person D says that other facilitators of Group B have also observed the partnership between the applicant and Person C, and Person D gives their names;
- The applicant and Person C participated in the Mardi Gras parade in Year 8;
- Person D adds to his letter an extract from a previous letter in which he describes the meeting between himself, the applicant and Person A in late Year 7, saying that he suggested the applicant make social contact with other gay men via Group A, and the Group B; he also advised the applicant about safe sex practices, having discussed with him his sexual contact with other men.

### *Country Information*

50. The Tribunal also had before it independent information relevant to the applicant’s claims.
51. The situation of homosexuals in Lebanon has only in the past five to six years begun to receive general attention and be discussed at the public level. One gay advocacy body has been established in this time, Helem, operational since 2004-5, and newspaper articles on the situation of homosexuals with regard to family rejection, ill treatment from police, and general societal discrimination have also appeared in newspapers such as *The Daily Star*. The Lebanese legislature retains one article in its penal code, Article 534, which is open to use against homosexuals, and which provides for a maximum of one year’s imprisonment for homosexual acts. However, the head of Helem, George Azzi, indicated in a 2005 *BBC News* article that the progression to trial and prosecution of a homosexual under *Article 534* has not occurred “for a long time” (Torbey, C. 2005 ‘Lebanon’s gays struggle with law’, *BBC News* website, 29 August [http://news.bbc.co.uk/2/hi/middle\\_east/4154664.stm](http://news.bbc.co.uk/2/hi/middle_east/4154664.stm)). Recent conflict in Lebanon and internal political instability currently hampers the ability of Helem and other human rights advocates to lobby for political change to improve the situation of homosexuals.
52. According to Helem, the homosexual community is:

...increasingly visible in Lebanon and sometimes tolerated, mainly in Beirut where a vibrant underground gay scene is concentrated, where a few sympathetic articles have been published and where some rare and daring public statements have been made. However, this timid tolerance neither applies to most Lebanese households, Christian and Moslem alike, nor rules out the ever-roaming threat of state persecution which regularly enforces article 534 of the penal code all over the country (‘Interpretation of Homosexuality in Lebanese Society’ (undated) Helem website, <http://www.helem.net/page.zn?id=1>).
53. The Helem website identifies serious discrimination against homosexuals in Lebanese society from the press, religious leaders and corporations. It records instances of domestic and social violence against gay Lebanese men over the past few years.
54. The Lebanese newspaper “The Daily Star” and the BBC News have both recorded instances of gay men, having been abused and threatened by their families, turning to the police for protection, only to receive a hostile and occasionally violent response (see, for example, *The Daily Star*, 9 July 2003, Sirois, M. ‘Gays and lesbians face uphill battle for acceptance: Coming out of the proverbial ‘closet’ can be a painful experience - literally’, [www.lebanonwire.com/0307/03070907DS.asp](http://www.lebanonwire.com/0307/03070907DS.asp); .” (Torbey, C. ‘Lebanon’s gays struggle with

law', *BBC News* website, 29 August 2005  
[http://news.bbc.co.uk/2/hi/middle\\_east/4154664.stm](http://news.bbc.co.uk/2/hi/middle_east/4154664.stm))

## **FINDINGS AND REASONS**

55. On the evidence before it, including Departmental records and copies of his passport, the Tribunal accepts that he is a Lebanese national.
56. The applicant claims to fear persecution by his family in particular for reason of his sexual orientation as a homosexual or bisexual man.
57. The Tribunal had particular difficulties prior to the hearing in being satisfied that the applicant was in fact homosexual. This was because of his migration history which suggested that he had made every effort to remain in Australia despite the failure of his marriage, and because of the fact that no mention had been made of his homosexuality prior to the lodgement of his Protection Visa application. Furthermore, the applicant is an older man who has been married twice, and has children. The Tribunal's difficulties had been partially resolved by the applicant's response to the Tribunal's 424A letter
58. Evidence at the Tribunal hearing from the applicant and his witnesses, his partner Person C, and particularly Person D of Service A, has satisfied the Tribunal that the applicant is homosexual as he claims, and that he has been for several months in a homosexual relationship
59. The most compelling evidence was that provided orally and in writing from Person D of Service A, which appeared to the Tribunal to be essentially impartial evidence from an experienced person well-placed to form an opinion of the applicant's sexuality. He has given evidence that he first met the applicant for counselling in relation to his sexuality in mid Year 7, and, importantly, that the applicant had discussed with him at that time sexual contact with men. Person D has also been in a position to observe the development of the applicant's relationship with Person C and is clearly of the view that this is a sexual relationship. Furthermore, he said in evidence that the applicant and his partner have frequented gay venues in City B, including a Sex on Premises venue, and that they have participated in the Mardi Gras in City B in Year 8.
60. The applicant's account of his relationship with Person C is consistent with his own written claims and with Person C's oral account, both at the applicant's Tribunal hearing, and at his own Tribunal hearing. It is supported by the evidence of Person D.
61. The Tribunal accepts that the applicant is a practising homosexual, and has been so in Australia since at least August of Year 7. It further accepts the applicant's evidence that while he had had a relationship with another man in Lebanon since he was young, family pressure had caused him to enter into two marriages, neither of which had lasted for longer than several months. The Tribunal accepts the applicant's explanation that he was unable to speak publicly about his sexual orientation until he had received the support provided by Service A, the Arabic-speaking Group A, and supportive gay individuals, and it was only after receiving this support that he was able to lodge a Protection Visa application seeking asylum because of his sexuality.
62. On the evidence before it, the Tribunal accepts that the applicant, if he returned to Lebanon, would seek to continue his homosexual way of life, and that even if he sought to conceal his

sexuality by discreet behaviour, he would do so only because of fear of the consequences of exposure.

63. The Tribunal has considered whether there is a real chance that the applicant will be persecuted if he returns to Lebanon in the foreseeable future. The country information is to the effect that while prosecutions for breaching article 534 of the Criminal Code in Lebanon are very rare, if they occur at all solely for committing homosexual acts (see page 10), there is still a climate of hostility towards homosexuals in Lebanon. Furthermore, homosexuals abused or threatened by their families or by society at large are likely to be treated in a hostile manner by the authorities who will generally share society's hostile views on homosexuals (see page 11).
64. The applicant has claimed, and the Tribunal accepts, that his family is a strict and religious one, and that Relative B has reacted with outrage to his statement that he is in a homosexual relationship. It accepts that there is a real chance that the applicant's family will abuse and seriously harm him if he returns to his family. Even if he does not return to the family, there is a real chance, according to the country information before the Tribunal, that his behaviour as a homosexual will attract adverse treatment amounting to persecution from non-State agents. The Tribunal accepts that were the applicant to conceal his sexuality through fear of serious harm, this would amount to persecution in a Convention sense.
65. On the evidence before it, the Tribunal accepts that were the applicant to seek protection from the authorities against persons threatening him with serious harm because of his sexuality, there is a real chance that State protection would not be afforded to him, also because of his sexuality.
66. Given the existence of legislation relating to homosexual behaviour, the existence of a non-government organisation to protect the rights of gays and lesbians in Lebanon, and articles in the Lebanese press relating to homosexuals, the Tribunal is satisfied that homosexuals in Lebanon comprise a "particular social group" within the meaning of the Convention.
67. On the evidence before it, the Tribunal is satisfied that there is a real chance that the applicant will face Convention-based persecution for reasons of his membership of a particular social group, namely homosexuals in Lebanon, if he returns to Lebanon in the foreseeable future. It is therefore satisfied that the applicant has a well-founded fear of persecution, within the meaning of the Convention, if he returns to Lebanon.

## **CONCLUSIONS**

68. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

## **DECISION**

69. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR