

071105908 [2007] RRTA 52 (19 March 2007)

DECISION RECORD

RRT CASE NUMBER: 071105908

DIAC REFERENCE(S): CLF2006/110226

COUNTRY OF REFERENCE: Lebanon

TRIBUNAL MEMBER: Ms J. Morris

DATE DECISION SIGNED: 19 March 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who 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 made the decision to refuse the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention and notified the applicant of the decision and his review rights by letter.

The applicant applied to the Tribunal on for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Section 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Convention). Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

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

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

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

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

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Standard) and English languages.

WRITTEN CLAIMS AND INFORMATION PROVIDED IN THE APPLICANT'S PROTECTION VISA APPLICATION

Personal and travel details

The applicant is a citizen of Lebanon. He was born in Lebanon. He speaks, reads and writes Arabic and English. The applicant underwent years of education, he then worked in retail. The applicant resided at the same address from birth. He departed Lebanon on a passport issued legally and without difficulty by the Lebanese government and expired last year. He is a Moslem.

Refugee claims

The applicant claims that:

- Since the recent war in Lebanon he fears he will have to undergo his military service
- He fears that he will be recruited by Hezbollah and forced to fight for them
- Members of terrorist groups have been harassing the applicant's family
- The military have been visiting the applicant's home looking for him.

DOCUMENTS SUBMITTED BY THE APPLICANT

The applicant submitted a document, downloaded from the internet. The document is a Department of Foreign Affairs (DFAT) Travel Advice dated 24 January 2007.

TRIBUNAL HEARING

The Tribunal noted the applicant's passport which was renewed twice in Australia. The Tribunal asked the applicant if he had any problems having his passport renewed. The applicant stated that he did not.

Tribunal asked the applicant his residential address in Lebanon – where he actually lived. The applicant stated that he resided at a small village near Tripoli.

The Tribunal asked the applicant how long he resided at this address (when he started living there and when he stopped living there). The applicant stated that he resided there all his life. The applicant stated that he resided there until he departed for Australia.

The Tribunal asked the applicant if he resided continuously at the address he provided - for example did he eat, sleep, bathe and reside there physically. The applicant confirmed that he did.

The Tribunal asked the applicant about his education – what level did he attain. The applicant stated that he studied up to 3rd year in University and then came to Australia to finish it off. The Tribunal noted that according to his passport he arrived in Australia on a provisional visa. The Tribunal noted that according to this visa his main reason for coming was to get married. The applicant concurred. The applicant stated that he studied at Tripoli.

The Tribunal asked the applicant if he was employed in Lebanon. The applicant stated that he worked in retail.

The Tribunal asked the applicant his religion (Shi'a or Sunni). The applicant stated that he is Moslem, and that he is Sunni.

The Tribunal asked the applicant if he attended Mosque in Lebanon or here in Australia. The applicant stated he attended.

The Tribunal asked the applicant why he fears return to Lebanon now. The applicant stated that he escaped and came to Australia and he did not do his military service and the applicant fears that he will be sent to South Lebanon to fight with Hezbollah. The applicant stated that his brother joined the army after he left and he told the applicant about his bad experiences and frustrations. The Tribunal asked if he fears harm by anyone else apart from the government who will send him to South Lebanon. The applicant stated that “they” are searching for the applicant. The Tribunal asked the applicant who he means by “they” – the applicant stated that Hezbollah are coming to the house and calling and he fears he will be conscripted by them. The applicant stated that they have been once but mainly they call because they know the applicant if overseas.

Fear of forced recruitment by Hezbollah

The Tribunal asked the applicant what he fears from Hezbollah – do they want to conscript the applicant. The applicant stated that they want the applicant to join and fight Israel. The applicant stated that he will be forced.

The Tribunal noted that according to the independent evidence:

Hezbollah - meaning "party of God" - is a radical Shi'a Islamic militia and political and paramilitary organization based in Lebanon ((see: <http://en.wikipedia.org/wiki/Hezbollah>, downloaded on 8 March 2007)

The Tribunal asked why a Shi'a organisation would want to conscript a Sunni – a different faith. The applicant stated that they want someone to help them against Israel.

The Tribunal asked the applicant to comment on the following independent evidence:

According to the UK Home Office Lebanon Assessment (2002):

There have been no reports of Hezbollah harassing or threatening people who disagree publicly with its policies. It does not recruit its members by force.

The Tribunal asked the applicant if he wished to comment on this. The applicant stated that they control half the government they do not use the Hezbollah they use the name of the government.

The Tribunal also noted independent evidence from an organisation called Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service: Conscription and Conscientious Objection Documentation Project which states:

There are no reports of forced recruitment by Hezbollah. Apparently voluntary applications to join Hezbollah are sufficient to achieve the requisite number of recruits.

The Tribunal asked the applicant if he wished to comment. The applicant stated that they do not force people under the name of Hezbollah, they force name people under the name of the government.

The Tribunal asked if he can elaborate on what he means by his statement. The applicant stated that everyone is forced to do military service. The applicant stated that they are forced to go to the South and this is controlled by Hezbollah and therefore they are working for Hezbollah.

The Tribunal noted that it is clear from the independent evidence that the Lebanese Army and Hezbollah are separate entities.

Information retrieved from Europa World online on 4 November 2005 states that:

“In August 2004 the Lebanese armed forces numbered 72,100 (army 70,000, air force 1,000, navy 1,100). Paramilitary forces included an estimated 13,000 members of the Internal Security Force. Hezbollah’s active members numbered some 2,000 in August 2004. At that time there were also an estimated 16,000 Syrian troops in Lebanon. However, following several Syrian redeployments, it was reported in late April 2005 that Syria had withdrawn all of its troops from Lebanon; a UN team was dispatched to the country to verify the withdrawal (for further details, see Recent History). Israeli armed forces and the Israeli-backed South Lebanon Army (SLA) withdrew from Lebanon in May 2000. Government expenditure on defence was budgeted at £L796,000m in 2004.”

While Hezbollah:

The strength of Hezbollah's forces are disputed, having been estimated by US government sources as either "several thousand"http://en.wikipedia.org/wiki/Hezbollah_-_note-USDBackground2801#_note-USDBackground2801 or, alternatively, as several thousand supporters and a few hundred devotee operatives. It is frequently claimed that Hezbollah's militia is supported by Iran and Syria. The International Institute for Strategic Studies estimates Hezbollah forces to consist of 600-1000 active fighters (with 3,000 - 5,000 regulars available and 10,000 reservists) and to possess stockpile of 10,000 - 15,000 rockets of the Katyusha, Fajr-3 and Fajr-5 type in addition to an estimated 30 missiles of the Zelzal type.[citation needed]

The Tribunal noted that they are separate entities as far as their armed activities are concerned. The applicant stated that he objects being sent to the South of Lebanon. The applicant stated that he fears war.

Military conscription

The Tribunal asked the applicant if he has undergone his military conscription. The applicant state he has not.

The Tribunal asked the applicant to explain his objection. The applicant confirmed that he fears war in the South of Lebanon.

The Tribunal noted the independent evidence which indicates that:

According to the UK Home Office, Country of Origin Information Service, Country of Origin Information Report: The Lebanon (Section 5.18.27-5.33, Military Service, July 2006):

The CIA World Factbook (last updated 1 November 2005) states that military age and obligation was “18-30 years of age for compulsory and voluntary military service; conscript service obligation – 12 months (2004).”

The Tribunal asked if this is correct. The applicant concurred.

The Tribunal also noted the independent evidence which indicates that:

“All Lebanese male citizens born in the year 1973 or later (over 18 years old) are called for military service. As of November 5, 2002, citizens who live abroad and are called for the Military service can make a deferral or exemption in two ways:

“By personally contacting a Lebanese Embassy or Consulate in their jurisdiction or by delegating their parents to contact the military headquarters in Lebanon while they are still living abroad.”

The same source stated that one of the grounds for deferment was on account of “Legal permanent residence outside Lebanon for nine months or more, during which the cumulative stay in Lebanon should not exceed 3 months per year.”

The Embassy information also stated that grounds for exemption include “Being a legal resident outside Lebanon for the past five years or more during which the cumulative stay in Lebanon did not exceed 3 months per year.”

The Tribunal asked if this is correct. The applicant stated that this is correct.

The Tribunal notes that according to the independent evidence:

Lebanon previously had mandatory military service of one years for men. On May 4, 2005, a new conscription system was adopted, making for a six-month service, and pledging to end conscription within two years. As of February 10, 2007 mandatory military service no longer exists in Lebanon thus making it a conscription free all volunteer force.

The Tribunal asked if the applicant wished to comment. The applicant stated that he has talked last month with his mother who has stated that the applicant can no longer defer.

The Tribunal noted that according to the Lebanese army itself:

“The army command-army staff for personnel-mobilization department declares the following:

1. The final cancellation of the military service starting from 10/2/2007 according to the law 6650/2005.
2. All the Lebanese citizens who were called to execute their military service and who applied for a final acquittal application are asked to submit themselves to the mobilization department as far as 1/6/2007 maximum to receive the acquittal card.
3. Those who postponed their service until 10/2/2007 and those who possess military service cards or travelling authorizations or other documents are not obliged to submit themselves to the mobilization department or its sections in the regions after the date of the postponement and are requested to keep these documents and they are considered responsible of these documents”

The Tribunal noted that according to this information, the applicant no longer has military obligations. The applicant responded that it is for people who have been outside Lebanon for five years. The applicant stated that he has not reached the five years. The Tribunal re-read the independent evidence to the applicant and observed that according to this independent evidence he no longer has military obligations. The applicant stated that he has no information about this.

The Tribunal asked the applicant if he fears anything apart from Hezbollah or military service upon return to Lebanon. The applicant stated that he does not fear anything apart from being conscripted by Hezbollah or being conscripted by the Lebanese Armed Forces.

The Tribunal asked the applicant what he thinks would happen to him if he returned to Lebanon now. The applicant stated that he will be forced to go to the military service and he will be taken to the South of Lebanon. The Tribunal asked the applicant his objection to going to the South. The applicant stated that it is a war zone.

After a short break the Tribunal asked the applicant if he wished to say anything else. The applicant stated that if you watch the news you will see lots of bombs in Beirut. The Tribunal noted that his claims are in relation to conscription, the war with Israel and being sent to the South.

The Tribunal noted the following and asked the applicant to comment:

On 11 August 2006, the UN Security Council passed Resolution 1701, which called for a full cessation of hostilities, the deployment of the United Nation’s Interim Force in Lebanon (UNIFIL) and Lebanese armed forces in southern Lebanon – accompanied by the withdrawal of Israeli Defence Forces from Lebanese territory – and the enlargement of UNIFIL to a maximum strength of 15,000 troops.

September: Lebanese government forces deployed along the Israeli border – in territory formerly controlled by Hezbollah – for the first time in decades. The applicant responded that Hezbollah did not go they are still there.

The Tribunal noted that these conditions have been met and therefore his claims to fear fighting against the Israelis seem unfounded. The applicant stated that the Israelis have not withdrawn.

After a break the Tribunal referred the applicant to the UNHCR handbook (at p40, paragraph 168) which states that: “A person is clearly not a refugee if his only reason for desertion or draft evasion is his like of military service or fear of combat”

The Tribunal asked the applicant if he wished to comment on this. The applicant stated that it is not just military service, it is joining Hezbollah and being forced to fight with Hezbollah. The applicant added that he is scared for his safety. The applicant stated that his wife would not be safe as well.

EVIDENCE FROM OTHER SOURCES

Hezbollah – Conscription and other issues

According to an organization called the Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service: Conscription and Conscientious Objection Documentation Project (downloaded from the internet on 8 March 2007) in a section entitled “Forced recruitment by armed groups” it states:

The SLA (South Lebanese Army) occupies the 'security zone' between the Israeli border and UNIFIL controlled areas. The SLA maintains a separate and arbitrary system of justice in the areas under its control.

In the past there have been many reports of forced recruitment by the SLA. Although the SLA paid wages nearly twice as high as those of average soldiers, they were still short of recruits.

In 1993 and 1994 there were several reports of the SLA conscripting men aged 16 to 35 in the western sector of the 'security zone'. In January 1994, for instance, SLA troops surrounded the village of Rmeish after villages refused to hand over 50 young men for conscription. There are no reports of forced recruitment by Hezbollah. Apparently voluntary applications to join Hezbollah are sufficient to achieve the requisite number of recruits. During the civil war many armed groups turned to recruiting children, sometimes as young as 14.

According to independent evidence:

Hezbollah - meaning "party of God" - is a radical Shi'a Islamic militia and political and paramilitary organization based in Lebanon. It follows a distinct version of Islamic Shi'a ideology developed by Ayatollah Ruhollah Khomeini, leader of the Islamic Revolution in Iran (see: <http://en.wikipedia.org/wiki/Hezbollah>, downloaded on 8 March 2007)

According to the UN Home Office report (Ibid):

A Human Rights Watch report released in June 2000, the month that followed the Israeli withdrawal from south Lebanon, reported on the kidnapping of persons believed to have some connection with the South Lebanon Army (SLA), and the suspicion that Hezbollah was responsible for the kidnappings. The report states that:

“In separate interviews, several local residents speculated that the men were abducted and questioned on the basis of intelligence files left behind in the SLA's security office in Aitaroun after the withdrawal. These views were substantiated by the comments of a man who was released after one week. He told Human Rights Watch that he was interrogated three times while blindfolded and that it seemed his interrogator was making statements and asking questions based on information he was reading from a file. The wife of another victim

testified that she visited Hizballah's office in Aitaroun and was told this about her husband: 'Don't worry. He is with us. They treat them very well and they are not beaten.' The woman said that she was also told that 'every person who had a file in Aitaroun's SLA security office will be asked some questions and will return.'"

USSD 2004 reports that "During the year, there were several reports that Hizballah subjected former SLA operatives who returned to their villages to regular harassment including arrest. In July [2004], one parliamentarian publicly criticized Hizballah for detaining Fouad Mazraani on the accusation of cooperating with the Israelis. Although Mazraani was released, the parliamentarian argued that any such action was the responsibility of the Government." However, USSD 2005 states that "Unlike in previous years, there were no reports that Hizballah subjected former Southern Lebanese Army (SLA) soldiers who returned to their villages to harassment."

The same source records that "Internet usage and access was reportedly restricted in Hizballah-controlled areas in south Lebanon and in the Palestinian-controlled refugee camps." Also, that "Some human rights groups reported harassment and intimidation by the government or Hezbollah." "On several occasions, Hezbollah operatives interfered with the freedom of movement of UN Interim Forces in Lebanon (UNIFIL) personnel. According to the UN secretary general's 2004 report, no action had been taken against the 15 Hezbollah operatives who injured 3 UNIFIL observers in 2002, despite government assurances that the perpetrators would be arrested and brought to trial." (USSD 2005). Nevertheless, International Crisis Group (ICG) remarked in its December 2005 report that, following the Syrian withdrawal and recent elections, "The state gradually is extending its presence to no-go zones, those run by Syrian allies, and in particular those being held by pro-Syrian Palestinian groups."

According to the UK Home Office Lebanon Assessment (2002):

There have been no reports of Hezbollah harassing or threatening people who disagree publicly with its policies. It does not recruit its members by force.

The Tribunal also noted independent evidence from an organisation called Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service: Conscription and Conscientious Objection Documentation Project which states:

There are no reports of forced recruitment by Hezbollah. Apparently voluntary applications to join Hezbollah are sufficient to achieve the requisite number of recruits.

(see: Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service: Conscription and Conscientious Objection Documentation Project (downloaded on 8 March 200, website: <http://www.wri-irg.org/co/rtba/lebanon.htm>):

Military strength – Hezbollah and the Lebanese Armed Forces

Information retrieved from Europa World online on (4 November 2005) states that:

"In August 2004 the Lebanese armed forces numbered 72,100 (army 70,000, air force 1,000, navy 1,100). Paramilitary forces included an estimated 13,000 members of the Internal Security Force. Hezbollah's active members numbered some 2,000 in August 2004. At that

time there were also an estimated 16,000 Syrian troops in Lebanon. However, following several Syrian redeployments, it was reported in late April 2005 that Syria had withdrawn all of its troops from Lebanon; a UN team was dispatched to the country to verify the withdrawal. Israeli armed forces and the Israeli-backed South Lebanon Army (SLA) withdrew from Lebanon in May 2000. Government expenditure on defence was budgeted at £L796,000m in 2004.”

While in regard to Hezbollah:

The strength of Hezbollah's forces are disputed, having been estimated by US government sources as either "several thousand"http://en.wikipedia.org/wiki/Hezbollah_-_note-USDBackground2801#_note-USDBackground2801 or, alternatively, as several thousand supporters and a few hundred devotee operatives. It is frequently claimed that Hezbollah's militia is supported by Iran and Syria. The International Institute for Strategic Studies estimates Hezbollah forces to consist of 600-1000 active fighters (with 3,000 - 5,000 regulars available and 10,000 reservists) and to possess stockpile of 10,000 - 15,000 rockets of the Katyusha, Fajr-3 and Fajr-5 type in addition to an estimated 30 missiles of the Zelzal type.

Military conscription

According to the UK Home Office, Country of Origin Information Service, Country of Origin Information Report: The Lebanon (Section 5.18.27-5.33, Military Service, July 2006):

“In August 2004 the Lebanese armed forces numbered 72,100 (army 70,000, air force 1,000, navy 1,100). Paramilitary forces included an estimated 13,000 members of the Internal Security Force. Hezbollah’s active members numbered some 2,000 in August 2004. At that time there were also an estimated 16,000 Syrian troops in Lebanon. However, following several Syrian redeployments, it was reported in late April 2005 that Syria had withdrawn all of its troops from Lebanon; a UN team was dispatched to the country to verify the withdrawal. ... Israeli armed forces and the Israeli-backed South Lebanon Army (SLA) withdrew from Lebanon in May 2000. Government expenditure on defence was budgeted at £L796,000m in 2004.”

The CIA World Factbook (last updated 1 November 2005) states that military age and obligation was “18-30 years of age for compulsory and voluntary military service; conscript service obligation – 12 months (2004).” A report of April 2003 by the Canadian Immigration and Refugee Board stated that women were not subject to compulsory conscription as their military service, and its conditions, had yet to be decided by the government.

The Lebanese Embassy in Washington published information accessed on 15 November 2005 from the Lebanese Army official website about liability for the military draft. The Embassy information includes the following advice:

“All Lebanese male citizens born in the year 1973 or later (over 18 years old) are called for military service. As of November 5, 2002, citizens who live abroad and are called for the Military service can make a deferral or exemption in two ways:

“By personally contacting a Lebanese [sic] Embassy or Consulate in their jurisdiction or by delegating their parents to contact the military headquarters in Lebanon while they are still living abroad.”

The same source stated that one of the grounds for deferment was on account of “Legal permanent residence outside Lebanon for nine months or more, during which the cumulative stay in Lebanon should not exceed 3 months per year.”

The Embassy information also stated that grounds for exemption include “Being a legal resident outside Lebanon for the past five years or more during which the cumulative stay in Lebanon did not exceed 3 months per year.”

A report of 14 April 2003 by the Canadian Immigration and Refugee Board stated that there was no compulsory conscription for women. “There is no alternative service and no option to pay a fee to avoid compulsory conscription in Lebanon. Lebanon does not recognize conscientious objection.”

According to an organisation entitled: Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service: Conscription and Conscientious Objection Documentation Project (downloaded on 19 March 200, website: <http://www.wri-irg.org/co/rtba/lebanon.htm>):

“Failure to respond to call-up for military service is punishable by 12 months' imprisonment”.

Coalition to Stop the Use of Child Soldiers (CSC) released a Global Report in 2004 which noted that Hezbollah did not believe that there was a specific age when a child should be considered an adult as it depends on each individual, but the report also states that, whilst “Hezbollah did claim responsibility for several armed attacks carried out by minors up to 1994. However, the Israeli withdrawal in 2000 seemed to have ended this practice.”

Most recently the independent evidence indicates that:

Lebanon previously had mandatory military service of one year for men. On May 4, 2005, a new conscription system was adopted, making for a six-month service, and pledging to end conscription within two years. As of February 10, 2007 mandatory military service no longer exists in Lebanon thus making it a conscription free all volunteer force (see: http://en.wikipedia.org/wiki/Military_of_Lebanon#Conscription, Lebanese Armed Forces, Conscription, downloaded on 8 March 2007)

This evidence is confirmed by the Lebanese Army in their website: <http://www.lebarmy.gov.lb/article.asp?ln=en&id=13251> in an article dated 25 February 2007 they state:

The final cancellation of the military service

The army command- orientation directorate issued the following statement.

The army command- army staff for personnel- mobilization department declares the following:

1- The final cancellation of the military service starting from 10/2/2007 according to the law 6650/2005.

2- All the Lebanese citizens who were called to execute their military service and who applied for a final acquittal application are asked to submit themselves to the mobilization

department as far as 1/6/2007 maximum to receive the acquittal card.

3- Those who postponed their service until 10/2/2007 and those who possess military service cards or travelling authorizations or other documents are not obliged to submit themselves to the mobilization department or its sections in the regions after the date of the postponement and are requested to keep these documents and they are considered responsible of these documents”

FINDINGS AND REASONS

The applicant’s credibility

It is reasonable that applicants whose claims are plausible and credible should, unless there are good reasons not to do so, be given the benefit of the doubt (UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, Re-edited, Geneva, January 1992, paras. 196-197 and 203-204). However, it is appropriate that the Tribunal assess the specific claims advanced in support of an Applicant's case, bearing in mind that

“A decision-maker does not have to have rebutting evidence available before he or she can lawfully hold that a particular factual assertion by an applicant is not made out” (*Selvadurai v The Minister for Immigration and Ethnic Affairs and Refugee Review Tribunal*, Heerey, J, 20 May 1994, p.7).

It is clear that the Tribunal is not required to accept uncritically all claims made by applicants. In *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, Beaumont J observed (at page 16) that a liberal attitude concerning proof of persecution in the context of an application for refugee status

“should not, however, lead to 'an uncritical acceptance of any and all allegations made by suppliants'.

It was also stated in *Chan* (per McHugh at 428) that under the 1951 Convention :

"It was unlikely ... that a State party was expected to grant refugee status to a person whose account, although plausible and coherent, was inconsistent with the State's understanding of conditions in his or her country of nationality."

Generally speaking it is inappropriate to speak of onus in administrative law decisions. However, *"it must remain the position that the applicant for refugee status carries the overall onus of establishing to the satisfaction of the decision-maker that the relevant chance or possibility exists."* - *Denissenko v Hasket and Minister for Immigration & Ethnic Affairs* (unreported, Federal Court, Foster J, 9 May 1996, at p22.)

The Tribunal is satisfied that the applicant is a citizen of Lebanon, and is supported in this finding by the applicant’s passport, issued by the Lebanese authorities and sighted at hearing. The Tribunal will therefore assess the applicant against Lebanon.

The applicant’s claims and evidence at hearing are to the effect that he fears return to Lebanon for two reasons.

- Firstly because he fears that he will be forcibly recruited by Hezbollah to fight for them, and;
- Secondly, because he does not want to undergo his compulsory military service.

Fear of harm of being forcibly recruited by Hezbollah

The applicant's claims and evidence at hearing were to the effect that he fears harm in the form of forced recruitment by Hezbollah upon return to Lebanon. The Tribunal finds that this particular claim lacks credibility for the following reasons:

Firstly: because as stated at hearing, the applicant is a Sunni Moslem. The independent evidence indicates that Hezbollah - meaning "party of God" - is a radical *Shi'a* Islamic militia and political and paramilitary organization based in Lebanon. It follows a distinct version of *Islamic Shi'a ideology* developed by Ayatollah Ruhollah Khomeini, leader of the Islamic Revolution in Iran.

In light of this independent evidence, the Tribunal finds the applicant's claims that Hezbollah would have any interest in recruiting a person of a different faith to be so far fetched as to be fanciful.

Secondly: contrary to the applicant's evidence at hearing, independent evidence indicates that there are no reports of forced recruitment by Hezbollah. Apparently voluntary applications to join Hezbollah are sufficient to achieve the requisite number of recruits. Other sources also indicate that Hezbollah does not recruit its members by force.

The applicant's claims are diametrically contradicted by the independent evidence, and the Tribunal gives weight to the independent evidence over the applicant's evidence.

Whilst the applicant did not specifically raise it as a claim, the Tribunal has considered whether any objection to being recruited by Hezbollah could give rise to a fear of harm for reason of political opinion, namely, that his refusal to be recruited by Hezbollah would be considered by them to be an opposing political opinion to Hezbollah. The independent evidence in this regard is also clear, namely that there have been no reports of Hezbollah harassing or threatening people who disagree publicly with its policies.

The applicant's claim to fear harm – in the form of forced recruitment - by Hezbollah is wholly and utterly contradicted by the independent evidence, and the Tribunal therefore finds that the applicant's evidence in this regard is not credible and gives this claim no weight.

Military Conscription

The applicant's claims and evidence at hearing were to the effect that he does not wish to undergo military conscription and is a draft evader. The applicant gave evidence at hearing that he "fears the war" and "fears for his safety" and does not want to fight against the Israelis in the South (of Lebanon) where his life would be at risk (due to the fighting).

The Tribunal cannot be satisfied that the applicant's refusal to undergo military conscription gives rise to a well founded fear of harm for a Convention reason. Its reasoning is discussed below:

Firstly, the Tribunal notes that according to independent evidence, Lebanon previously had mandatory military service of one year for men. On May 4, 2005, a new conscription system was adopted, making for a six-month service, and pledging to end conscription within two years. As of February 10, 2007 mandatory military service no longer exists in Lebanon thus making it a conscription free all volunteer force. This evidence is confirmed by the Lebanese Army who on 25 February 2007 announced the final cancellation of military service starting from 10/2/2007 according to the law 6650/2005. They also stated that all the Lebanese citizens who were called to execute their military service and who applied for a final acquittal application are asked to submit themselves to the mobilization department as far as 1/6/2007 maximum to receive the acquittal card, and that those who postponed their service until 10/2/2007 and those who possess military service cards or travelling authorizations or other documents are not obliged to submit themselves to the mobilization department or its sections in the regions after the date of the postponement and are requested to keep these documents and they are considered responsible of these documents.

In light of this independent evidence, the Tribunal is satisfied that the applicant is now no longer under any obligation to perform military service since it has been abolished.

Even if the Tribunal is incorrect in this matter and the applicant faces a residual military service obligation, the Tribunal cannot be satisfied that he is a Convention refugee arising from his refusal to undergo military conscription.

According to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, Page 40, Paragraph 168):

“A person is clearly not a refugee if his only reason for desertion or draft evasion is his like of military service or fear of combat”

The matter has also been discussed in Australian Courts. As was stated in *Mohamed v MIMA*:

Persecution for failure to be conscripted is not necessarily persecution for a Convention reason. ... Imprisonment for resistance may be motivated by punishment for failing to comply with a lawful obligation to join not for a political view or arising from membership of a group. But it does not follow from this ... that in all circumstances persecution for failure to accept conscription might not amount to persecution for a Convention reason. All the facts must be considered (1998) 83 FCR 234 at 247

As noted above, the applicant gave evidence to the effect that his reason for evading military conscription was because he “fears the war” and “fears for his safety” and does not want to fight against the Israelis in the South (of Lebanon) because he fears for his safety. The applicant has not claimed and there is no evidence to suggest that the applicant has any *ideological, religious* or *moral* reasons for evading the draft, or being sent to fight in the south of Lebanon.

The independent evidence indicates that draft evasion incurs a prison sentence of 12 months. The applicant has not claimed and there is no evidence to suggest that he would suffer disproportionately severe punishment for his draft evasion for a Convention related reason. On the evidence before it, the Tribunal cannot be satisfied that the applicant has a well founded fear of harm arising from his draft evasion.

The applicant made a claim in passing, at the conclusion of the hearing that his wife (an Australian citizen), would be at risk upon return to Lebanon because of the bombings and the security generally. Any decision by the applicant's wife to travel to Lebanon with her husband and the consequences for her of doing so fall outside the parameters of this Tribunal and therefore the Tribunal cannot make findings on this matter.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant.

Sealing Officer's I.D. PRRT38