

**1311045 [2013] RRTA 729 (28 October 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1311045  
**DIAC REFERENCE(S):** CLF2012/256145  
**COUNTRY OF REFERENCE:** Lebanon  
**TRIBUNAL MEMBER:** Shahyar Roushan  
**DATE:** 28 October 2013  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, a citizen of Lebanon, applied to the Department of Immigration (the department) for the visa [in] December 2012. His claims are set out in his application for a protection visa. He also provided additional evidence to the department at an interview with a delegate of the Minister [in] April 2013.
3. The applicant appeared before the Tribunal [in] October 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
4. The applicant, a Sunni Muslim, claims that he worked at his father's [business] in [Suburb 1], Tripoli. He and [Relative A] were attacked at the [business] in March 2012 by 'fanatic' Sunnis, who accused the applicant's family of harbouring supporters of Bashar Al Assad and asked why they were doing business with the Alawis. He claims that [Relative B] and her family are Sunni Syrians from [City 2] and supporters of Al Assad. Following the applicant's arrival in Australia, his friend, who also worked at the [business], was shot dead while opening the [business]. The applicant's father has been forced to close the [business]. Alawis are shooting at people close to the [business] and he fears being seriously harmed by Alawis, who have come down from the mountains and are shooting at Sunnis.
5. The delegate refused to grant the visa [in] July 2013. Based on inconsistencies between the applicant's written claims and oral evidence at the interview, the delegate did not find the applicant's claim relating [Relative B] and her family credible. He was not satisfied that the applicant faces a real chance of persecution for any Convention reason in the foreseeable future. The delegate was not satisfied that there are 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 the applicant will suffer significant harm.

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

6. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

8. 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').
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
11. The Tribunal accepts that the applicant's father's [business] was located in [Suburb 1], an area [near] Bab El Tabbaneh and Jabal Mohsen, two other suburbs of Tripoli. The country information before the Tribunal suggests that neighbourhoods of Jabal Mohsen, a mainly Alawite area, and Bab El Tabbaneh, a Sunni district, have a long-standing feud, which sporadically erupts into violent clashes between residents of the two areas.<sup>1</sup>
12. The Tribunal accepts that due to its proximity to these areas, the applicant's father's [business] in [Suburb 1] was at times impacted in the course of skirmishes between the sparring neighbourhoods. The applicant gave evidence at the hearing that as a result of vibrations caused by rocket-propelled grenades exploding nearby, at times, the windows of the [business] were shattered. At other times, due to the skirmishes, his father had to close the business temporarily or limit the hours of work. The Tribunal appreciates that the violence in Jabal Mohsen and Bab El Tabbaneh has made it difficult for the applicant's father to keep his business open in [Suburb 1] on a continuous basis. When at the hearing he was asked why, given the proximity of the business to Jabal Mohsen and Bab El Tabbaneh, his father does not relocate the business to another area, he stated that his father's business has been in [Suburb 1] since the beginning. All of his father's friends are in [Suburb 1] and he is used to the area. The evidence before the Tribunal does not suggest, and the Tribunal is not satisfied, that the applicant's father's [business] was targeted or singled out by anyone for a Convention reason.
13. In his application for a protection visa the applicant claimed that Alawis were shooting at people close to the [business]. He feared being seriously harmed by Alawis, who had come down from the mountains and were shooting at Sunnis. The applicant did not claim that he has been or will be targeted by Alawis for any reason other than the fact that his father's business is located in [Suburb 1]. His evidence the hearing clearly suggested that he was

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<sup>1</sup> see Clashes kill two in Lebanon's Tripoli, security source says, *Al Arabiya*, 19 May 2013, <http://english.alarabiya.net/en/News/middle-east/2013/05/19/Clashes-kill-two-in-Lebanon-s-Tripoli-security-source-says-.html>; Macleod, H. 2008, 'Tripoli's Perfect Storm', *Sunday Herald*, 16 August, <http://www.sundayherald.com/international/shinternational/display.var.2427200.0.0.php>

fearful of being harmed as a consequence of the armed skirmishes between Alwais and Sunnis in the neighbouring suburbs.

14. The Tribunal accepts that the applicant's friend, who also worked at the applicant's father's [business], was shot dead as he opened the business. The applicant's evidence at the hearing indicated that as his friend was about to open the business in the morning, fighting broke out between Jabal Mohsen and Bab El Tabbaneh. His friend had found himself at the wrong place at the wrong time. The Tribunal is not satisfied that the applicant's friend was specifically targeted by anyone for Convention reasons. Rather, he had the misfortune of being caught in the fighting between the militias of Bab El Tabbaneh and Jabal Mohsen.
15. On the basis of the evidence before it, the Tribunal finds that if the applicant were to return to work in [Suburb 1], his chance of facing Convention related harm as consequences of clashes between Alawis and Sunnis in their respective Tripoli neighbourhoods of Jabal Mohsen and Bab El Tabbaneh is remote.
16. In his oral evidence to the delegate and the Tribunal the applicant claimed that [Relative A], is married to a Sunni Syrian from [City 2]. Following the Syrian uprising, [Relative B]'s family came to Lebanon and are currently residing in a unit adjacent to where the applicant's parents are residing. He also claimed [Relative B]'s family support Bashar Al Assad and are opposed to the Syrian uprising. These claims were absent from the applicant's application for a protection visa. Nevertheless, as the applicant is unrepresented and he had relied on the assistance of relatives in completing his application for a protection visa, the Tribunal gives him the benefit of the doubt and accepts the claims he has advanced orally.
17. The applicant has claimed, and the Tribunal accepts, that in March 2012 three or four Sunni men came to his father's [business] looking for [Relative A]. They accused the family of harbouring Assad supporters and doing business with Alawis. At that time the applicant and [another relative] were at the [business]. The men verbally abused them and damaged property before a fight broke out, as a consequence of which [the other relative sustained an injury]. The applicant did not claim that he was personally harmed. He stated at the hearing that eventually the police intervened and the culprits were arrested, but they were soon released. The applicant also stated that he did not know the men who came to the [business] and did not encounter them in the months before he departed Lebanon in November 2012. Nor did he claim that he or any other member of his family have come to any harm by Sunnis or anyone else in El Minieh since his departure from Lebanon. When specifically asked at the hearing if anything had happened to his family in his absence, he stated that [family members of Relative B] have caused many problems, but he did not provide any other details. There is no other evidence before the Tribunal to indicate that [family members of Relative B], let alone any member of the applicant's immediate family, have been targeted or subjected to any harm due to their express or imputed political opinion. The Tribunal is not satisfied that if the applicant were to return to Tripoli there is a real chance that he would be harmed for the reason of his imputed political opinion, membership of his family, or any other Convention reason in Lebanon.
18. While at the interview the applicant alluded to being a supporter of Bashar Al Assad, at the hearing he did not pursue this claim. Rather, in response to the Tribunal's questions in relation to his involvement in politics or expression of political views, he was adamant that he had never had any involvement in politics and has not given expression to any political opinion. On the basis of the evidence before it the Tribunal is not satisfied that he would involve himself with politics or would seek to express his views at a level different to what he

has done in the past. The Tribunal is not satisfied that if the applicant were to continue to merely harbour pro-Assad views there is a real chance that he would be harmed for the reason of his political opinion or any other Convention reason in Lebanon.

19. The Tribunal appreciates the applicant's concern in relation to the general instability and rising sectarian tensions in northern Lebanon, particularly in the neighbourhoods of Jabal Mohsen and Bab El Tabbaneh. These clashes do not appear to have spread wider to encompass other areas in Tripoli, including El Minieh. The applicant did not claim to have suffered any harm in the past for the reason of his Sunni religion. The country information consulted by the Tribunal did not suggest that Sunnis in Lebanon are being seriously harmed or persecuted by Shi'as, Shi'a groups or other religious groups in Lebanon for the reason of their religion.<sup>2</sup>
20. The applicant claimed at the hearing that his father and [relatives] were at a mosque in Tripoli on 23 August 2013 when it was targeted by a car bomb, but they escaped injury. He stated that his father and [relatives] were praying at the [mosque]. According to news reports, the August 23 blasts, which targeted two Sunni Muslim mosques and killed 47 people, came less than a fortnight after a deadly explosion in a Shi'a neighbourhood south of Beirut. As it was put to the applicant at hearing, there have been no reports of further similar attacks in Tripoli. Other reports indicate that the authorities have since charged 7 people over the bombing.<sup>3</sup> The Tribunal does not consider the incident to be a typical occurrence. The Tribunal is not satisfied that there is a real chance that the applicant will be killed or harmed or otherwise persecuted in the context of bombings of this nature if he were to return to Tripoli. The sources consulted by the Tribunal do not suggest that Sunnis are denied the freedom to practise their religion or that the applicant would be seriously harmed in Tripoli because he is a Sunni.<sup>4</sup> The Tribunal is not satisfied that there is a real chance that the applicant will be killed or injured, or otherwise persecuted, or that he will be prevented from practising his religion, as a result of rising sectarian tensions in Lebanon.
21. The Tribunal is not satisfied that the sectarian tensions, instability and the general lack of safety the applicant is apprehensive of in Lebanon is faced by him personally. The Tribunal is not satisfied that the general security situation in Lebanon would expose the applicant to a real chance of persecution for a Convention reason in Lebanon.
22. The Tribunal does not accept, therefore, either individually or cumulatively, that the applicant has a well-founded fear of being persecuted for one or more of the five Convention reasons if he returns to Lebanon now or in the reasonably foreseeable future.
23. The Tribunal accepts that Lebanon is currently experiencing some instability, as well as political and sectarian tensions, which have resulted in parts of the country being affected by violence. However, having considered all the applicant's circumstances, the Tribunal is not

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<sup>2</sup> See, for example, US Department of State 2013, *Country Reports on Human Rights Practices for 2012 - Lebanon*, 19 April, Section 2.a, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204372>.

<sup>3</sup> Lebanese city of Tripoli rocked by deadly explosions, *BBC News*, 23 August 2013, <http://www.bbc.co.uk/news/world-middle-east-23811328>; and Lebanon charges 7 over Tripoli mosque bombing, *The National*, 14 October 2013, <http://www.thenational.ae/world/middle-east/lebanon-charges-7-over-tripoli-mosque-bombing#ixzz2iQXbylDE>.

<sup>4</sup> See, for example, US Department of State 2013, *Country Reports on Human Rights Practices for 2012 - Lebanon*, 19 April, Section 2.a, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204372>.

satisfied that there is a real risk that he will suffer significant harm as a result of instability, tension or general violence. The Tribunal is not satisfied that there is a real risk that the applicant will be arbitrarily deprived of his life or that he will otherwise suffer significant harm at the hands of other Sunnis, Alawis or anyone else in Lebanon if he returns to Tripoli. The Tribunal is not satisfied that, if the applicant returns to his home in Tripoli, there is a real risk that he will suffer significant harm as defined because he is a Sunni or because his in-laws are supporters of Bashar Al Assad.

24. Having regard to the Tribunal's findings 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 he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined. The Tribunal, therefore, 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 he will suffer significant harm as defined in subsection 36(2A) of the Act.
25. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
26. 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).
27. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

## **DECISION**

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

Shahyar Roushan  
Senior Member