

**1100115 [2011] RRTA 574 (8 July 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1100115

**DIAC REFERENCE(S):** CLF2009/20693

**COUNTRY OF REFERENCE:** Lebanon

**TRIBUNAL MEMBER:** Brook Hely

**DATE:** 8 July 2011

**PLACE OF DECISION:** Melbourne

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration 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 most recently in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] February 2009. The delegate decided to refuse to grant the visa [in] October 2009 and notified the applicant of the decision and his review rights.
3. The applicant sought review of the delegate's decision and the Tribunal, differently constituted, affirmed the delegate's decision [in] March 2010. The applicant sought review of the Tribunal's decision by the Federal Magistrates Court and [in] September 2010 dismissed the application. The applicant appealed the decision of the Federal Magistrates Court to the Federal Court and, [in] December 2010, the Court set aside the decision and remitted the matter to the Tribunal to be determined according to law.
4. 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.
5. The matter is now before the Tribunal pursuant to the order of the Court.

### **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 Part 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 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.

### **Background**

20. The applicant provided to the previous Tribunal (differently constituted) a detailed written statement setting out his claims for protection, as follows:
  1. I am a citizen of Lebanon having been born there on [date].
  2. I first came to Australia as a visitor on [date] October 2003. I visited family members in Australia and departed on [date] January 2004. While in Australia I met a young lady and we became engaged.
  3. After my return to Lebanon I lodged an application for a Prospective Marriage Visa. However while that application was still being processed my fiancée and I decided that we did not want to proceed with the marriage and I went to the Australian embassy and withdrew the application.
  4. I came to Australia to visit my relatives again on or around [date] October 2006. I left Australia on [date] January 2007.
  5. I returned to Lebanon again and continued to work there.
  6. On [date] December 2007 I applied once again for a Sponsored Family Visitor visa to come to Australia. On this occasion the application was refused and my sponsor appealed against the decision.
  7. The Migration Review Tribunal found in my favour and remitted the application to the Department of Immigration.
  8. I was subsequently granted a sponsored family visitor visa on [date] October 2008. I came to Australia, arriving on [date] November 2008.
  9. When I applied for the visitor visa in December 2007 I had no intention of seeking protection in Australia because I did not have any problems in Lebanon at that time. However my circumstances changed significantly so that by the time I came to Australia I was very fearful about returning to Lebanon.
  10. The history of my political problems is as follows: I was introduced to the Syrian Social National Party by a friend, [Mr A]. [Mr A] was in charge of distributing humanitarian assistance to the people in our region. I first met [Mr A] when I was at a restaurant called [name] in Jounieh, Lebanon one Saturday night around March 2007.

I was there with friends and [Mr A] was also there with a group of people. I knew many of the people who were with [Mr A] and I was introduced to him. We talked to each other during the evening and [Mr A] took my telephone number.

11. After 2 or 3 days [Mr A] called me and invited me to have coffee with him. I met him at the Syrian Social National Party offices in Halba. We met after I finished work. We had coffee and [Mr A] told me what sort of work he was doing for the Party and asked what sort of work I did. He told me that he was in charge of dispensing books, magazines, clothing and food to the needy in the local villages. He told me that the Party was a great Party, that it was like a charitable organisation that helped people. I liked the idea but I told him that I was already working and that I had a good job. [Mr A] told me that I didn't have to leave my job and that I could join the Party and work on Friday nights, Saturdays and Sundays. He told me that I could earn about 300,000 Lebanese Lira, which was equivalent to around US\$200 per month. That sounded very attractive to me and I said that I would think about it.

12. About a week after our meeting I rang [Mr A] and told him that I wanted to join the Party and work for it on a part-time basis.

13. We agreed that I would go to the Party offices on [date] April 2007 and join.

14. I did attend on [date] April 2007. I completed an enrolment form and I was shown a map of the areas where the Party worked. I showed them my region and agreed to work in the 5 or 6 villages in that region. I was there for about 2 hours on that occasion.

15. I had agreed to come on the following Friday night to get instructions for the deliveries I was to make on Saturday and Sunday. I was given a list of the families I had to distribute to.

16. The next two days I spent delivering the boxes to the families on the list. Each family who received a box had to sign and date that they had received the box. The boxes were quite large and weighed around 20 kilos each. The boxes were full of food; rice, tinned foods etc. as well as pamphlets and booklets about the Party and its work.

17. I delivered around 100-120 boxes on my delivery route each week.

18. Some families received boxes every week because they had many children and other families received boxes every 2 or 3 weeks, depending on their needs.

19. There were around 300 families on my route in total. The Party organisers arranged who was to get what. I just got the list and was told where to deliver the boxes.

20. The boxes were brown cardboard cartons and they were labelled "A present from the Syrian Social National Party. Halba branch" or something similar to that.

21. The name of the person who the box was to go to was written on the label.

22. I continued to deliver these food parcels every week for just over a year.

23. From around February 2008 there were a lot of problems between different parties and factions all across Lebanon. This had all been building for a long time. People were changing alliances and attacking each other.

24. Around the beginning of March 2008 when I was delivering food parcels in the village of [village], a group of three people came and threw some of the boxes on the ground and attacked me and the driver of the truck. A few people came and surrounded us and the attackers ran away.

25. On [date] April 2008 I was attacked by a gang of people who supported the Al Mostaqbal Party. I was in a car with a friend in [village], on my way to a restaurant to meet other friends. Another car pulled out in front of the car I was in. 4 or 5 people got out of the car and ran towards the car I was in. The men had their faces covered so I could not recognise anyone. They pulled me out of the car and beat me badly. I was left unconscious on the road. My friend managed to run away. I had injuries to my head, back and legs. My nose bled a lot. I was kept in hospital for ten days. The hospital is called [name] Hospital.

26. The hospital called the police and they came and took a statement but no action was taken.

27. It still took about two weeks after I came home from hospital for me to recover.

28. During this time I was unable to work but I used to go to the Syrian Social National Party offices to see friends there.

29. On [date] May 2008 I was at the Party offices when the news began to come through about what was happening in Beirut. We heard that many roads were blocked and that people were separated from each other. We heard that people began attacking each other. We heard that many people had been killed in Beirut.

30. Between 7th May and 10th May everyone was very worried about what was happening. There was great concern that full-scale civil war would erupt in Lebanon.

31. On [date] May when I was sitting in our centre we heard that there would be a big demonstration in the Halba main square where the major roads meet. The demonstration was called by religious leaders. The purpose of the demonstration was to denounce what was happening in Beirut, which was seen as an attack on all Sunni people. The religious leaders intended the demonstration to be a show of support for Hariri. It was intended to be peaceful.

32. The Syrian Social National Party offices or centre was about 150-200 metres from the city square. I was in there at the time of the demonstration. When the demonstration began to build, people started throwing things at the windows of the centre. Windows were broken and all of a sudden we heard shooting. Then I saw people being shot and falling to the ground. I was very scared and ran away through the back of the building.

33. There were a lot of people around the square and when the shooting began people ran in every direction. I ran through a big olive plantation and then through several villages towards my village. It took me about 6 hours to reach an isolated house at [village]. I knew the family who lived there and I thought that I would be safe there. I rested there for about 2 hours. My friends gave me food and drink. They knew what was happening in Halba. I asked them to drive me to the factory where I worked in [Town 2]. This is where I worked for my Monday to Friday job, not where I worked for the Party. I was confident that I would be safe at my workplace, where the majority of people were Christian.

34. When I got to the factory I told my employer what had happened. I told him that I was very scared and that I didn't want to return to my village or to Halba because I was afraid that I would be harmed. My employer said that I could stay at the factory for as long as necessary. I used to stay at the factory during the week when I was working but from the time of the demonstration onwards, I stayed there all the time until I came to Australia.

35. I was very worried about what had happened to my friends and colleagues at the Syrian Social National Party centre and I heard on the news that twelve people had been killed in the Party centre which had been surrounded and was burnt down. One of the people killed there was an Australian citizen, [name].

36. I stayed living in the factory for 6 months until I came to Australia. I did not go back to my village, [Village 1], or to Halba again before I left Lebanon because I was extremely fearful for my safety. I hardly left the factory during those six months.

37. All my friends at the centre were killed. My relatives have told me that people are looking for me as it is well known that I was working for the Syrian Social National Party. I have been told that people have been looking for me in [Town 2] as well.

There is no Syrian centre in the area now. The Lebanese army is now guarding the centre property and no-one has worked there since the massacre.

38. I fear for my life if I return to Lebanon. I know that I am wanted by people who support Mostagbal in our region. I was already targeted and severely beaten before the massacre and I am sure that I will be in grave danger if I return to Lebanon.

21. As set out in the previous Tribunal decision (at [24]), the applicant's agent also provided to the Tribunal a written submission, attaching the following documents:

1. Statutory Declaration signed by [the applicant] on [date] January 2010.
2. Letter written by [name], Head of [Office] of the Syrian Social National Party, dated [date] 10/2008 (including certified NAATI translation).
3. Letter provided by the Mayor of [Village 1], dated [date] 11/2009 (including certified NAATI translation).
4. Letter by [Doctor], of [Hospital] (including certified NAATI translation).
5. Letter written by [name] JP, voluntary social worker, dated [date] 11/2009.
6. Letter signed by ten members of [the applicant's] town, who purportedly witnessed the events (including certified NAATI translation).
7. United States Department of State, *2008 Country Reports on Human Rights Practice -Lebanon*, 25 February 2009.
8. Human Rights Watch, *Lebanon: A Year Later, No Accountability for Killings*, 7 May 2009.
9. Human Rights Watch, *World Report 2009 - Lebanon*, 14 January 2009.
10. United Kingdom: Home Office, *Operational Guidance Note: Lebanon*, 10 June 2009

11. Extract of article by Hussein Abdallah of the Daily Star, Lebanon 'Day 5: *Lebanese dare to hope worst is over*', 12 May 2008.

12. Ya Libnan, 'Saturday's live coverage of the war in Lebanon', 10 May 2008. (includes 'About Ya Libnan' article).

13. Screen-shots of two videos on YouTube which contain televised Arabic News Reports.

a. Report on the massacre, including an interview with the mother of the Australian citizen victim of the Halba Massacre;  
<http://www.youtube.com/watch?v=ZZHEkNjghYA> (accessed 7 January 2010)

b. Report on the massacre, including an interview with the sister of the Australian citizen victim of the Halba Massacre; <http://www.youtube.com/watch?v=G7H> (accessed 7 January 2010)

14. Printout of web-page containing a video of part of the massacre itself, available at; <http://1ubnan.wordpress.com/2008/05/> (accessed 7 January 2010)

22. [In] March 2010, the previous Tribunal affirmed the decision of the delegate on the basis that the Tribunal was not satisfied that there was a real chance that the applicant would be persecuted if returned to Lebanon now or in the reasonably foreseeable future and, accordingly, his fear was not well-founded. The Tribunal accepted that the applicant was from Lebanon and accepted that he had been a member of the Syrian Social Nationalist Party (SSNP). However, the Tribunal concluded that his membership of the SSNP was purely instrumental in order to obtain paid work distributing aid and he specifically did not want to get involved in the politics. The Tribunal found that the applicant's political profile was not sufficient to give rise to a real chance of persecution. The Tribunal outlined several concerns with the applicant's credibility arising from the manner in which he present his claims at the hearing, as well as problems with the plausibility of certain aspects of his claims. The Tribunal relied on these credibility concerns in finding that the applicant was not sought by the Freedom Movement in Lebanon.
23. [In] September 2010, the Federal Magistrates Court dismissed an application for review of the previous Tribunal decision. However, [in] December 2010, the Federal Court set aside the previous Tribunal decision and remitted the matter to the Tribunal (as presently constituted) to be determined according to law. Specifically, the Federal Court identified jurisdictional error in a finding by the previous Tribunal that there was an inconsistency in the applicant's evidence that the men who attacked him had their faces covered and he could not recognise anyone yet when asked at the hearing he said he knew the men who attacked him were from the Freedom Movement because they had a flag on their car. The Federal Court concluded that these two findings were not necessarily inconsistent and it therefore amounted to jurisdictional error for the Tribunal to have relied on such an alleged inconsistency in rejecting the applicant's claims.
24. On the morning of the Tribunal hearing [in] March 2011, discussed below, the applicant provided to the Tribunal a written statement from his mother regarding recent harassment by persons seeking the applicant, as well as a further written statement from the Mayor of [Village 1] and a series of articles regarding the political and security situation in Lebanon.



## **Tribunal hearing**

25. The applicant appeared before the Tribunal [in] March 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration agent, who also appeared at the hearing.

### *Living arrangements in Lebanon*

26. The Tribunal asked the applicant about his living arrangements in Lebanon prior to coming to Australia. He gave evidence that he has lived his entire life in his home village of [Village1]. However, for over 10 years he has been working as [a tradesman] in [Town 2], located approximately 90 minutes by car from his home village. There is accommodation provided at his factory and he stays there on weekdays, together with approximately 20 or 30 other workers. He then returns to his home village on Friday afternoon for weekends. He explained that the factory operates on the ground floor, with living quarters on the next floor and the owner of the factory lives on the two floors above that.

### *Current whereabouts of family members*

27. The Tribunal asked the applicant about the current whereabouts of his other family members. He gave evidence that he has one sister living in [Country 3]. He also has two other sisters and six brothers, all of whom live in Australia. His mother still lives in their home village in Lebanon. Approximately one month prior to the Tribunal hearing, she returned to Lebanon after a six month stay in Australia.

### *Harassment of mother*

28. The Tribunal asked if there was any reason why his mother did not apply for a Protection Visa whilst she was in Australia. The applicant responded that there was not. The Tribunal noted that, according to her written statement provided on the morning of the Tribunal hearing, she had been harassed by groups of men who had been coming to her home seeking the applicant. The applicant responded that his mother had told him that an armed political group had come questioning and harassing her about his (the applicant's) whereabouts. The Tribunal asked why, if she was being harassed by armed political groups seeking him, she did not seek a Protection Visa in Australia, like he had done. The applicant responded that she did not know previously that she was going to face such harassment until she returned to Lebanon. The Tribunal clarified with the applicant that his mother first experienced this harassment after her recent return to Lebanon. The applicant agreed that this was correct. The Tribunal put to the applicant that his mother's statement to the Tribunal indicated that she had also been harassed by men seeking him *prior* to her coming to Australia. The applicant responded that they had bothered her, but then she went to [Country 3]. The Tribunal asked whether his mother returned to Lebanon after travelling to [Country 3]. He responded that they mostly bothered her after she returned. He also confirmed that she was only in Lebanon for approximately one week before travelling to Australia. The Tribunal asked whether his mother was harassed during that one week in Lebanon. The applicant responded that she returned for a week and then booked her ticket to Australia. When the Tribunal repeated its question, he responded that he did not know, but they are harassing her now.

29. The Tribunal put to the applicant that it could seem unusual that the events that had led to him leaving Lebanon occurred in 2008, yet his mother only started to be seriously harassed by these men in March 2011. The applicant confirmed that the harassment started in March 2011. The Tribunal asked the applicant if there was any reason why these men would wait so long before harassing his mother. He responded that when he came to Australia, his mother travelled to [Country 3] within a few days. When asked how long his mother stayed in [Country 3], he responded that it was maybe three or six months, but he can't remember. He stated that she then came to Australia. The applicant also confirmed that he came to Australia [in] November 2008.
30. The Tribunal put to the applicant that it was concerned with his evidence regarding the timeline of his mother's movements, as he had only referred to approximately 3-6 months in [Country 3] and another six months in Australia but had not explained her whereabouts during the remainder of the time since he came to Australia in November 2008. The applicant responded that his mother went from [Country 3] to Lebanon and then came straight to Australia. When the Tribunal reiterated its concern that he had still not explained where his mother was during the other period that he was in Australia, he then responded that his mother went to [Country 3] twice and then came back. When asked why his mother only stayed in Lebanon a few days before coming to Australia, he responded he did not know. The Tribunal sought to clarify how much time in total his mother had spent in Lebanon since his arrival in Australia. The applicant responded that his mother has only spent a maximum of 2-3 weeks in Lebanon in between her travels to [Country 3] and Australia.

*Employment history in Lebanon*

31. The Tribunal asked the applicant about his employment history in Lebanon. He gave evidence that he worked for more than 10 years as [a tradesman] in a factory in [Town 2], earning 900,000 Lebanese pounds per month. He also gave evidence that he commenced work for the SSNP [in] April 2007. When asked how this employment came about, he gave evidence that he was out one Saturday night at a restaurant in Jounieh with friends from his factory, when he met a man named [Mr A] who worked for the SSNP. They exchanged telephone numbers and shortly afterwards he met [Mr A] at his office with the SSNP for coffee. During this meeting, [Mr A] asked him to start work for the SSNP delivering aid packages. The applicant gave evidence that he initially told [Mr A] that he was not interested in politics and was not interested in the job. He stated that [Mr A] told him that he did not have to be politically involved in the party, as they just needed someone to deliver humanitarian packages. When the Tribunal asked why he had some initial hesitation in working for the SSNP, the applicant responded that he told [Mr A] that he did not want to join any political party and wanted to be away from politics. When asked why he changed his mind and agreed to do the work, the applicant responded that he felt he could help the needy people. The Tribunal put to the applicant that his written statement indicated that he had accepted the job for financial reasons. The applicant responded that he thought that it would be okay for him if he was earning 300,000 pounds on top of the 900,000 pounds from his [job]. He added that he was being paid money and he was distributing things to needy people.
32. The Tribunal asked the applicant whether his involvement with the SSNP extended beyond his work distributing aid packages. He confirmed that it did not. He stated that he told [Mr A] that he was not going to take any role within the party whatsoever. He was assured that he did not have to become involved in SSNP politics and he could just provide the assistance by distributing aid packages.

33. The Tribunal asked the applicant whether it concerned him that he might be perceived within the communities where he was distributing aid packages as being associated with the SSNP. The applicant responded that he was given names of families and he would deliver the packages. The Tribunal flagged with the applicant its concern that there appeared to be a possible contradiction between his evidence that he did not want to become involved in Lebanese politics yet was publicly distributing aid packages for one of the political parties. The applicant responded that the people in the area he was distributing packages all knew him. However, when the political parties would clash, this would flow down to people like him who could be harassed by members of other parties.
34. The Tribunal asked the applicant whether it had concerned him that he was potentially putting himself in harm's way by taking on this job and performing work on behalf of the SSNP, given the often violent nature of the Lebanese political situation. The applicant responded that he never knew that he would be in politics and fighting and he never knew that this job would get him to that point. The Tribunal flagged with the applicant its difficulty in accepting that he would not have appreciated that doing such work for one of the political parties would put him at risk of being harmed by one of its opposing parties. The applicant responded that there were no problems when things were at peace and he never knew that they were going to get into conflict. The Tribunal noted that it may have some difficulty accepting this, given the volatile recent history of Lebanese politics. The applicant responded that he never knew about politics in Lebanon. The Tribunal asked whether he ever knew anything about the political ideologies or platforms of the SSNP. He responded that he did not.
35. The Tribunal asked the applicant whether he was working for the SSNP at the time he applied for his Subclass 679 Visitor Visa to come to Australia. The applicant gave evidence that it was between applying for the visa and having the refusal reviewed by the Migration Review Tribunal that he was exposed to the problems. The Tribunal repeated its question and noted that it was asking whether he was employed by the SSNP at the time he applied for his Visitors Visa. The applicant again reiterated his previous response. When the Tribunal reiterated its question again, the applicant confirmed that he was working with the SSNP at the time he applied for his Australian visa. The Tribunal asked whether he disclosed in his Visitor Visa application his employment with the SSNP. He stated that he did not. When asked why not, the applicant gave evidence that after his application was lodged the incident happened that led to him leaving the SSNP. The Tribunal asked why, prior to those incidents, he did not disclose his employment with the SSNP at the time of applying for his Visitor Visa. The applicant responded that he just disclosed his factory work; he could not remember why.
36. The Tribunal put to the applicant that it could seem unusual that he would not disclose his SSNP employment in his Visitor Visa application, given that it appeared to account for a quarter of his income. The applicant responded that it was not employment, it was helping people and he was not a formal employee. The Tribunal put to the applicant that his written statement indicated that he had taken the job for financial reasons, yet he now appeared to be indicating that he was doing the work to help people. The applicant responded that it was not a formal wage, but was just money to assist him with his expenses. The Tribunal asked the applicant how often he performed this work for the SSNP. He confirmed that he did this work every Saturday and Sunday for the approximately 12 month period that he worked for the SSNP. He also gave evidence that the money he received was petty cash for his expenses and was not very much money. The Tribunal put to the applicant that, when compared with his

regular wage from the factory, it seemed like more than petty expenses. The applicant reiterated that the money was just to recover his expenses. When asked if he was paid any wage on top of recovering expenses, the applicant stated that he received 300,000 pounds and that was it. When asked what portion of those 300,000 pounds was for his expenses and what portion was for his wages, he reiterated that he received 300,000 pounds. Despite the Tribunal rephrasing its question a number of times and asking the applicant to clarify what expenses were reimbursed, the applicant was unable to explain how much of these 300,000 pounds was for expenses and/or wages. However, the applicant confirmed that the 300,000 pounds was for him and he eventually agreed to the proposition that it was essentially a wage for him. When the Tribunal again asked why he would not disclose such a significant part of his income as part of his Visitor Visa application, the applicant then gave evidence that the application was prepared by his brothers on his behalf. When asked by the Tribunal, the applicant confirmed that he was in contact with his brothers to provide them with information about his circumstances in Lebanon and they were aware that he was working for the SSNP, although he stated that they perhaps did not know that he was being paid to do the work.

37. The Tribunal put to the applicant that, during his previous Tribunal hearing (differently constituted), he had given evidence that he did this work for the SSNP one day per week, sometimes one day per fortnight, whereas he had given evidence at the present hearing that he worked every Saturday and Sunday for the entire 12 month period he worked for the SSNP. The applicant responded that they used to distribute sometimes during one day and other times during two days. The Tribunal flagged its concern that his evidence on this matter appeared to be shifting. The applicant gave evidence that he would work every Saturday and Sunday, but to actually go to premises it would vary and would sometimes be once a week or once per fortnight.

*Problems whilst working for the SSNP*

38. The Tribunal asked the applicant about the first time he was attacked whilst working for the SSNP. The applicant gave evidence that they were distributing aid packages in [village deleted: s.431(2)] in March 2008, when a group of four or five men confronted them and threw their aid packages on the ground. One of the men grabbed him by the chest. A crowd of people then separated this man from the applicant. The applicant gave evidence that this incident happened because the situation was not stable in Lebanon. When asked how he knew what political party this man was from, the applicant gave evidence that the entire region was under the leadership of the Future Movement. He added that they knew that he was distributing aid packages for the SSNP and that was why he was attacked. However, he did not recognise the man personally. When asked to clarify how he knew that this man was from the Future Movement if he did not recognise him, the applicant responded that the man was logically from the Future Movement because the whole region belonged to the Future Movement. The Tribunal asked whether there was anything else that led him to believe that this man was from the Future Movement, aside from his assumption stemming from the fact that the Future Movement was the dominant party of the region. The applicant responded that the majority there were from the Future Movement.
39. The Tribunal asked the applicant if there was any reason why he chose to do this work distributing aid packages for the SSNP, rather than the Future Movement. The applicant gave evidence that he was commissioned by the SSNP to distribute aid packages. When asked by the Tribunal, the applicant confirmed that other political parties were distributing similar aid packages to their members. When asked again why he chose to do this work for the SSNP rather than offering his services to one of the other parties, the applicant gave evidence that it

was circumstantial, because he had met this man who was responsible for delivering these packages and he agreed to help.

40. The Tribunal asked the applicant about the circumstances following this incident in [village deleted: s.431(2)]. The applicant confirmed that he did not report the matter to the police as the government and police were incapable of protecting anyone in that region. He said that he told the SSNP what had happened, but they just told him that this happens. When asked if he then reconsidered whether it was a good idea for him to be doing this work given that it was putting him in harm's way, the applicant agreed that he did. When asked why he nevertheless continued with the work, he responded that he thought he would just continue doing what he was doing.
41. The Tribunal asked the applicant about the next occasion when he was harmed whilst working for the SSNP. He gave evidence that he was driving in the SSNP vehicle used for delivering aid packages together with the regular driver, [Mr A], when their car was intercepted by another car bearing the Future Movement emblem on its windshield. A group of men got out of the car and attacked them with batons. He confirmed that this incident happened on a road leading to a restaurant outside of the village of [village deleted: s.431(2)]. When asked how these men would know to be ready to attack them at this particular time, the applicant gave evidence that the whole region belonged to the Future Movement and were members of that party. He surmised that he and [Mr A] had been under surveillance and were followed. The Tribunal asked why they were delivering aid packages in this region if it belonged to the Future Movement. The applicant responded that the majority belonged to the Future Movement. The applicant also gave evidence that his co-worker, [Mr A], ran away, but he (the applicant) was delivered to a hospital. When asked by the Tribunal, the applicant gave evidence that he had no idea how he was taken to the hospital or for how long he was unconscious. When asked about the nature of his injuries, he confirmed that he did not have any broken bones and did not receive any stitches, but he had bruising and bleeding and could not stand up on his legs. He spent 10 days at the hospital.
42. The Tribunal put to the applicant its concern that he did not appear to have referred to this period in hospital as part of his medical examination forming part of his Protection Visa application. The applicant responded that he could not understand what was being said and he had a friend with him doing the interpreting. His friend asked if he had ever been examined or x-rayed before and he said no. The Tribunal queried that he would not have received an x-ray during his 10 days in hospital given the nature of his injuries. The applicant confirmed that he did not receive any x-rays as far as he knew.
43. The Tribunal asked the applicant whether he reported this matter to the police. It was the applicant's evidence that the staff of the hospital informed the police and provided them with a statement, but the police were not interested. He also confirmed that he saw the statement prepared by the hospital.

#### *Halba incident*

44. The Tribunal asked the applicant about the attack on the SSNP office in Halba, which led to him fleeing. The applicant gave evidence that there were large demonstrations in the streets of Beirut on 7 May 2008. He and his co-workers were watching these events unfold and he was concerned that Lebanon was on the brink of collapsing into civil war. On [a date in] May 2008, there were demonstrations in Halba against atrocities that had been committed in Beirut by the Hezbollah demonstrators. When asked by the Tribunal, he confirmed that he

was not working that day delivering aid packages and was just in at the SSNP office having a chat. The Tribunal flagged with the applicant its difficulty in accepting that he had been fearful three days earlier that Lebanon was about to collapse into civil war, yet chose to then pay a visit to the SSNP office for a chat. The applicant responded that he went to the office before anything had happened. When asked by the Tribunal, he confirmed that he saw the demonstrations occurring in Halba which involved up to 40,000 people in the city square and surrounding streets. When shots began being fired, the crowd dispersed and he was able to escape. He ran into some nearby valleys and came across the house of a stranger. The stranger assisted him to travel to [Town 2], where he sought refuge at the factory where he worked. His employer, [Mr B], then allowed him to stay in a room on the top floor of the factory for as long as he wished. The applicant also confirmed that he remained living there until coming to Australia in November 2008. He also confirmed that he did not work at the factory during this period and never returned to his home village. When asked about any contact with his mother in his home village, the applicant gave evidence she told him that armed people would sometimes come to the house looking for him.

45. The Tribunal put to the applicant that it could seem unusual that he chose his usual place of employment for seeking refuge. The applicant gave evidence that he was not staying with the other workers and never went outdoors during that six month period, aside from going out onto the balcony. He also gave evidence that there were no other relatives he could go and stay with as they all lived in his home village. When asked how he was able to obtain the necessary documents, such as his passport, in connection with his Protection Visa application, he gave evidence that it was done by his employer, [Mr B].
46. The Tribunal asked whether anyone came looking for him at the factory. The applicant gave evidence that [Mr B] used to tell him that people came to the factory looking for him. When asked how many times, the applicant responded 'always, many times'. The Tribunal asked the applicant whether it occurred to him to seek refuge somewhere else. The applicant responded that the men would come and confront [Mr B] but he would deny the applicant was there. After he came to Australia, the men made more frequent inquiries of [Mr B] trying to find him (the applicant). The Tribunal asked why he did not consider going somewhere else, such as Beirut, if the people kept coming to the factory looking for him. The applicant responded that he was living upstairs and no-one knew and [Mr B] assured him that it was fine.
47. The Tribunal asked the applicant whether he had had any further involvement with the SSNP following the Halba incident. The applicant confirmed that he had not. He also confirmed that he had not experienced any other problems in Lebanon whilst working for the SSNP aside from those referred to in his statement. When asked by the Tribunal, the applicant also confirmed that he has not had any involvement in any political activities since coming to Australia

#### *Future fears*

48. The Tribunal asked the applicant what he feared may happen to him if he returns to Lebanon. He responded that he was sure that the Future Movement would keep after him until they kill him. When asked by the Tribunal, he also gave evidence that he did not believe that the state authorities could adequately protect him.

### *Internal relocation*

49. The Tribunal put to the applicant that his past problems in Lebanon seemed quite localised to a particular region of Lebanon. The Tribunal asked whether there was any reason why it would not be safe or reasonable for him to relocate within Lebanon to avoid his feared persecution, such as to Beirut or somewhere else in southern Lebanon. The applicant responded that the Future Movement is armed and has members and followers throughout Lebanon so they would find him. The Tribunal asked the applicant whether he would resume his work or involvement with the SSNP if he returned to Lebanon and he confirmed that he would not. The Tribunal flagged with the applicant its concern that his involvement with the SSNP appeared to have been as a relatively low-level employee distributing aid packages. Given this low level involvement, combined with the significant lapse of time since he stopped work for the SSNP and given also the localised nature of the problems he experienced, the Tribunal noted that it may have difficulty accepting he would remain a target of the Future Movement wherever he were to live in Lebanon. The applicant responded that the Future Movement has a complete network throughout Lebanon. The Tribunal noted that it may nevertheless have difficulty accepting that the Future Movement would use this network to track him down so many years on, given his limited involvement. The applicant maintained that he would be tracked down and killed.
50. The Tribunal asked the applicant if there was any other reason why it would not be reasonable for him to relocate within Lebanon. The applicant responded that the Future Movement is armed and has a sophisticated network where information is exchanged. The Tribunal asked if there was any reason why it would not be reasonable for him to relocate aside from his fear of being harmed by the Future Movement. The applicant confirmed that there was not. When asked by the Tribunal, he also confirmed that there was nothing else he wished to say in his evidence.
51. Following the applicant's evidence, his agent made a brief oral submission noting that his mother is still being harassed which indicates that the applicant is still a person being targeted by the Future Movement. It was submitted that the applicant had previously been badly assaulted despite being only someone who delivered aid for the party so there was still a possibility that he would be targeted for harm. It was also submitted that the applicant had not been able to find a place of safety in the past in Lebanon and he would not be able to live a full life if he were to relocate elsewhere within Lebanon. It was also submitted that Lebanon was in the grip of uncertainty and unrest due to domestic political problems, as well as the general unrest affecting the Middle East in connection with pro-democracy movements in countries like Egypt. It was submitted that country information supported the fact that it was particularly unsafe for current and former SSNP members. In response to the request of the applicant's agent, the Tribunal then agreed to allow until [a date in] April 2011 to enable the applicant to provide further written submissions and relevant country information, as well as evidence relating to his mother's international travel.

### **Post-hearing correspondence**

#### *Further documents and submission*

52. [In] April 2011, the applicant's representative provided to the Tribunal a complete copy of the applicant's mother's passport. The representative also provided a copy of a recent decision record of the Department refusing an application for a Visitor Visa by a person from Lebanon, in which reference was made to civil strife and political upheaval in Lebanon.

*DFAT advice*

53. Following the above hearing, the Tribunal made a request to the Department of Foreign Affairs and Trade (DFAT) to make inquiries with the SSNP in Lebanon to verify the relevant SSNP letter provided by the applicant. [In] April 2011, DFAT advised the Tribunal that SSNP officials were unwilling to assist with its inquiries without further detailed information about the nature of the query. However, DFAT made the following observations about the applicant's SSNP letter:

While unable to obtain information from the [Office] of the SSNP regarding the authenticity of the letter, post makes the following observations:

- the text of the stamp used in the letter appears to be handwritten in parts;
- the circular outline of the stamp appears to be uneven and possibly hand rendered in parts;
- the symbol in the centre of the stamp does not appear to be a true reflection of the SSNP symbol;
- the letter does not include [sic] a letterhead – an unusual omission, as it is general practice for all letters in Lebanon to be printed on company or organisational letterhead.

Based on these inconsistencies, post cannot be confident that the letter is genuine.

*Section 424A letter*

54. [In] May 2011, the Tribunal wrote to the applicant pursuant to s 424A of the Act, inviting him to comment on or respond to adverse information, as follows:

1. As part of your application for your most recent subclass 679 Visitor Visa, you were asked to provide details of your employment in Lebanon. According to the relevant Department file relating to that visa application, whilst you provided details of your employment at a factory in [Town 2], you made no mention of any employment with the Syrian Social Nationalist Party ('SSNP').
2. When the above application was refused by the Department, you applied for review to the Migration Review Tribunal (MRT). According to the relevant MRT file, you again never disclosed your employment with the SSNP as part of your application for review, despite the fact that this additional evidence of employment in Lebanon would presumably have been relevant in helping you to meet the 'genuine visitor' visa requirement under cl.679.224 of Schedule 2 to the Migration Regulations (which was the relevant requirement that had led to your application being refused by the Department).

The information contained in paragraphs 1 and 2 is relevant to the review because you claimed in your oral evidence before the Tribunal on [date] March 2011 (as well as in your statutory declaration dated [date] January 2010) that you were earning 300,000 pounds from your employment with the SSNP, compared with 900,000 pounds from your full-time vocational employment as [vocation]. Given the comparatively large portion of your income derived from your SSNP employment, the Tribunal may have difficulty accepting that you would have omitted to mention this employment in connection with your Visitor Visa application, particularly given that the information relating to your SSNP employment would have been relevant in helping you to meet the 'genuine visitor' requirement under cl.679.224 of the Migration Regulations. This could lead to the Tribunal not accepting your claims



regarding your previous employment with the SSNP or the problems and risk of future harm arising as a consequence of this employment, as well as contributing to the Tribunal having doubts about your credibility generally. This could lead to the Tribunal not accepting your claim that you are a genuine refugee in need of Australia's protection. This would be the reason or part of the reason for affirming the decision of the delegate under review.

3. At the hearing of your application by the previous Tribunal (differently constituted) on [date] January 2010, you gave oral evidence that you worked for the SSNP one day per week, sometimes one day per fortnight. By contrast, in your oral evidence before the current Tribunal on [date] March 2011 you gave oral evidence that you worked both Saturday and Sunday for the entire period of approximately 12 months that you worked for the SSNP.
4. At the hearing of your application by the previous Tribunal (differently constituted) on [date] January 2010, when asked why you were at the SSNP office in Halba on the day of the attack ([date] May 2008), you responded 'I went to distribute the food and usually we would sit down, have a coffee.' By contrast, in your oral evidence before the current Tribunal on [date] March 2011 you gave oral evidence that you were not performing your work delivering SSNP aid packages on the day of the attack and had visited the office that day for a chat.

The information contained in paragraphs 3 and 4 is relevant to the review because the apparent inconsistencies in the evidence could lead to the Tribunal not accepting your claims regarding your previous employment with the SSNP or your involvement in the attack on the SSNP office in Halba on [date] May 2008, or your claims regarding the problems and risk of future harm arising as a consequence of these matters, as well as contributing to the Tribunal having doubts about your credibility generally. This could lead to the Tribunal not accepting your claim that you are a genuine refugee in need of Australia's protection. This would be the reason or part of the reason for affirming the decision of the delegate under review.

5. As part of your protection visa application, you were required to undergo a medical examination conducted through the Department. The relevant medical examination form appearing on your Department file indicates that you were asked various questions about your medical history, including whether you had ever had hospital treatment or been admitted to a hospital for any reason, to which the relevant box 'No' was ticked.

The information contained in paragraph 5 is relevant to the review because you have made claims that you were attacked and bashed in April 2008 near the village of [village], which led to you being hospitalised for 10 days. The Tribunal may be concerned that you appear to have omitted to mention this period of hospitalisation when asked during your medical examination. This could lead to the Tribunal not accepting your claims regarding this attack or this period of hospitalisation, as well as contributing to the Tribunal having doubts about your credibility generally. This could lead to the Tribunal not accepting your claim that you are a genuine refugee in need of Australia's protection. This would be the reason or part of the reason for affirming the decision of the delegate under review.

6. Following the Tribunal hearing on [date] March 2011, the Tribunal made a request to the Department of Foreign Affairs and Trade (DFAT) to make inquiries with the SSNP in Lebanon to verify the relevant SSNP letter provided by you. On [date] April 2011, DFAT advised the Tribunal that SSNP officials were unwilling to assist with its inquiries without further detailed information about the nature of the query. However, DFAT made the following observations about your SSNP letter:

While unable to obtain information from the [location] Office of the SSNP regarding the authenticity of the letter, post makes the following observations:

- the text of the stamp used in the letter appears to be handwritten in parts;
- the circular outline of the stamp appears to be uneven and possibly hand rendered in parts;
- the symbol in the centre of the stamp does not appear to be a true reflection of the SSNP symbol;
- the letter does not include [sic] a letterhead – an unusual omission, as it is general practice for all letters in Lebanon to be printed on company or organisational letterhead.

Based on these inconsistencies, post cannot be confident that the letter is genuine.

The information contained in paragraph 6 is relevant to the review because the concerns raised by DFAT as to the genuineness of your SSNP letter could lead the Tribunal to give that letter little or no weight. These concerns could also lead to the Tribunal not accepting your claims regarding your previous employment with the SSNP or the problems and risk of future harm arising as a consequence of this employment, as well as contributing to the Tribunal having doubts about your credibility generally. This could lead to the Tribunal not accepting your claim that you are a genuine refugee in need of Australia's protection. This would be the reason or part of the reason for affirming the decision of the delegate under review.

*Response to s 424A letter*

55. [In] May 2011, the Tribunal received the following response to its s 424A letter:

I refer to your facsimile dated [date] May 2011 and received in this office after 4:00 pm on that date.

I now have received instructions from my client in this matter and provide you with the following information.

Question 1

We have not been provided with this document, that is the application for Subclass 679 Visitor Visa so our comments are restricted to the style of the current form. In particular, we note that question 35 of that form 48S only allows for a singular employer to be detailed. There are no directions to provide details of other employers (see enclosed form).

Question 2

I am instructed by my client that there was no hearing and the Tribunal decided this matter on the papers. The Tribunal did not seek any further information from me before remitting my case back to the overseas office. There is no part of an application for review which requests this further particular information.

Question 3

We are instructed that we have not had the opportunity to listen to the tapes of each hearing but nevertheless it is my client's view that any inconsistency is due to interpretation because [the applicant] has always stated that he worked on a Saturday

and/or Sundays either weekly or fortnightly depending on the weather and the supply of goods.

Question 4

Subject to listening to the tapes of both hearings I am instructed by [the applicant] that he has been misinterpreted by the interpreter and that such misinterpretation has caused the tribunal to consider an interpretation without verification.

Question 5

I enclose Statutory Declarations of [name] who accompanied [the applicant] to the medical examinations at HAS.

Question 6

If the Tribunal has any doubts about this document then it should refer the document to the Immigration Department's Document Examination Unit.

The writer of the letter from the SSNP [name] may not be at that office any more.

However my client asserts that this document is authentic. We placed that document with the Tribunal on the date of the hearing ([date] March 2011) but the Tribunal did not provide us with a photocopy. We request that this document be forwarded to us so that we can complete our enquiries as to the documents authenticity.

Could you please indicate as to whether you forwarded the original document to DFAT or a copy.

Your invitation to comment raises many other issues and we would request further time to respond to these issues - especially matters that require investigation and listening to CD's.

Kindly acknowledge receipt.

Attachments:

- (1) Statutory declaration of [name] made on [date] may 2011
- (2) Page 14, Form 48S

*Further correspondence*

56. [In] May 2011, the Tribunal wrote to the applicant's representative advising that his request for an extension of time to respond further to the Tribunal's s 424A letter was granted, allowing until [a date in] June 2011. In relation to the representative's request for the original of the letter from [name deleted: s.431(2)] of the SSNP, the Tribunal stated:

The Tribunal notes that it was only ever provided with a copy of this letter, not the original. A copy of that letter is attached for your records. In the absence of the original, the Tribunal does not consider that referral of the letter to a document examiner would be of assistance.

57. As at the date of this decision, no further documents or submissions have been provided by the applicant or his representative to the Tribunal.

## Independent country information

58. It has been widely reported that tensions between the anti-Syrian March 14 Alliance, led by the Future Movement, and the pro-Syrian March 8 Alliance, which includes Hezbollah and the SSNP, increased following the establishment of the Special Tribunal for Lebanon (STL) by the UN Security Council in May 2007. The international tribunal was set up to investigate and prosecute those responsible for the assassination of Future Movement leader and former Lebanese Prime Minister Rafiq Hariri.
59. The US Congressional Research Service states that “[n]umerous media reports in July and August 2010 speculated that high-ranking members of Hezbollah may be indicted, and expressed concerns that such indictments could trigger sectarian and regional tensions that could lead to conflict”.<sup>1</sup> *BBC News* similarly reported in November 2010 that “[t]ensions have been steadily mounting over recent months” and that “[t]he issue is dominating the Lebanese political arena”.<sup>2</sup> In October 2010, the International Crisis Group (ICG) indicated that the potential political stalemate resulting from the increasing tensions could create instability in areas divided over current events, including in Tripoli.<sup>3</sup>
60. A September 2010 article in Arabic daily newspaper *Asharq Al-Awsat* argues that “[t]he situation in Lebanon continues to be a source of concern, domestically, regionally, and internationally, particularly in light of the escalation between Hezbollah and some of its allies on one side, and the Future Movement and some of its allies, on the other. Despite efforts to dispel the climate of tension that has existed between the two sides since the events of 7 May 2008...the political discourse from both parties’ remains inflammatory, and a campaign of escalation continues”.<sup>4</sup>
61. In anticipation of looming indictments and in response to Prime Minister Hariri’s refusal to denounce the STL, Hezbollah and its allies withdrew from the cabinet on January 13, 2011. According to the constitution, the current government now serves as a caretaker until a new consensus can be reached. On January 17, 2011, STL Prosecutor Daniel Bellemare signed indictments against the alleged assassins of Rafiq Hariri and filed them with pre-trial judge Daniel Fransen. Fransen will now review the indictments and reject or certify them. Hezbollah responded with organized demonstrations in a number of Beirut neighborhoods, but no serious incidents were reported.<sup>5</sup>

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<sup>1</sup> Addis, C. L. 2010, ‘Lebanon: Background and U.S. Relations’, Congressional Research Service, Federation of American Scientists website, 3 August, p.3 <http://www.fas.org/sgp/crs/mideast/R40054.pdf> – Accessed 1 December 2010.

<sup>2</sup> Muir, J. 2010, ‘Lebanon tense as fingers point over Hariri killing’, *BBC News*, 25 November <http://www.bbc.co.uk/news/world-middle-east-11837816> – Accessed 1 December 2010.

<sup>3</sup> ‘New Crisis, Old Demons in Lebanon: The Forgotten Lessons of Bab-Tebbaneh/Jabal Mohsen’ 2010, Middle East Briefing N°29, International Crisis Group website, 14 October <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-syria-lebanon/lebanon/B29-new-crisis-old-demons-in-lebanon-the-forgotten-lessons-of-bab-tebbaneh-jabal-mohsen.aspx> – Accessed 30 November 2010.

<sup>4</sup> Diab, Y. 2010, ‘Lebanon: Tensions between Hezbollah and Future Movement Escalate’, *Asharq Al-Awsat*, 22 September <http://www.aawsat.com/english/news.asp?section=1&id=22408> – Accessed 2 December 2010.

<sup>5</sup> United States Congressional Research Service, *Lebanon: Background and U.S. Relations*, 19 January 2011, R40054, available at: <http://www.unhcr.org/refworld/docid/4d46784e2.html> [accessed 28 April 2011], p.1.

*Areas of control of the Future Movement and the SSNP*

62. A number of sources confirm that the northern half of Lebanon, including the northern suburbs of Beirut, is controlled by the Future Movement.<sup>6</sup> The applicant also confirmed in his evidence that the areas of northern Lebanon where he delivered aid packages were controlled by the Future Movement. By contrast, southern parts of Lebanon remain under the control of SSNP ally, Hezbollah. For example, the UK Home Office Operational Guidance Note for Lebanon reports that SSNP ally Hezbollah is a dominant force in Beirut, particularly in the southern suburbs of the city, as well as in the Bekaa Valley and southern Lebanon generally.<sup>7</sup> Whilst the Guidance Note does not specifically consider the risks faced by person fearing the Future Movement per se, it does make the following analogous comments about internal relocation in the context of persons fearing persecution by Future Movement's main rival, Hezbollah:

3.7.17 **Internal Relocation.** The law provides for freedom of movement, and the government generally respected this right for Lebanese citizens. The law prohibits direct travel to Israel. The government maintained security checkpoints, primarily in military and other restricted areas. The security services used checkpoints to conduct warrantless searches for smuggled goods, weapons, narcotics, and subversive literature.

3.7.18 Hizballah operates in the southern suburbs of Beirut, the Bekaa Valley, and southern Lebanon. For those fearing Hizballah, internal relocation to an area of Lebanon not controlled by Hizballah would be a viable option in the majority of cases and is not considered unduly harsh. However, those of serious adverse interest to the Hizballah are unlikely to be able to escape the attentions of the organisation by moving to another area of the country.

*Halba incident*

63. An outbreak of violence is also reported to have occurred in the Akkar capital of Halba during May 2008 with pro-government Future Movement supporters attacking the Hezbollah-aligned SSNP. A number of sources have reported that Future Movement supporters attacked SSNP supporters in Halba in May 2008 with some sources reporting the attack as an atrocity perpetrated by the Future Movement. For example, the United States Department of State 2010 Country Report for Lebanon states:

Also in May 2008, supporters of the pro-government groups Future Movement and the Progressive Socialist Party (PSP) resorted to violence against civilians and offices associated with opposition groups in areas under the groups' control in northern Lebanon, the Biqa', and the Shouf. According to Hizballah, PSP fighters detained and then executed two Hizballah followers. After examining photos of the two Hizballah members, HRW reported PSP fighters shot at least one victim in the head at close range. In Halba, a village in the north, armed Sunnis killed members of the SSNP who had surrendered. According to HRW, the judiciary has issued only one indictment related to the May 2008 clashes, against an individual who shot at civilians. Other investigations have stalled with no prosecutions by year's end.<sup>8</sup>

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<sup>6</sup> See, esp, UK Home Office 2009, *Operational Guidance Note – Lebanon*, 10 June; United States Department of State, *2010 Country Reports on Human Rights Practices - Lebanon*, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56db2c.html> [accessed 28 April 2011].

<sup>7</sup> UK Home Office 2009, *Operational Guidance Note – Lebanon*, 10 June, p.11.

<sup>8</sup> United States Department of State, *2010 Country Reports on Human Rights Practices - Lebanon*, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56db2c.html> [accessed 28 April 2011].

64. According to the *Ya Libnan* news service “3 members of the Future Movement (Al Mustaqbal) and 9 members of SSNP were killed”.<sup>9</sup> A *New York Times* report listed the incident as a Future Movement revenge attack following Hezbollah’s occupation of Beirut. According to the *New York Times* report: “an angry mob set fire to the offices of a militia allied with Hezbollah and killed 11 of its members”.<sup>10</sup>

## FINDINGS AND REASONS

### Country of nationality

65. The Tribunal accepts that the applicant is a citizen of Lebanon. It accepts as evidence of this the copy of his passport provided to the Department. The Tribunal has assessed the applicant’s claims against Lebanon as his country of nationality.

### Credibility

66. The Tribunal accepts that ‘applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.’ The Tribunal also accepts that ‘if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts

67. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
68. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
69. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (see *Randhawa v Milgea* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)

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<sup>9</sup> ‘Saturday’s live coverage of the war in Lebanon’ 2008, *Ya Libnan*, 10 May  
[http://yalibnan.com/site/archives/2008/05/\\_1415\\_governmen.php](http://yalibnan.com/site/archives/2008/05/_1415_governmen.php).

<sup>10</sup> Worth, R.F. & Bakri, N. 2008, ‘Hezbollah Ignites a Sectarian Fuse in Lebanon’, *New York Times*, 18 May  
[http://www.nytimes.com/2008/05/18/world/middleeast/18lebanon.html?\\_r=1&oref=slogin&pagewanted=print](http://www.nytimes.com/2008/05/18/world/middleeast/18lebanon.html?_r=1&oref=slogin&pagewanted=print)

70. As flagged at the hearing and in the Tribunal's s 424A letter, and discussed further below, the Tribunal has a number of serious concerns with the applicant's credibility in this matter which, when viewed together, have led to the Tribunal finding that he is not a credible witness in relation to his claims regarding his past involvement with the SSNP and the various problems arising as a consequence.

*Employment with the SSNP*

71. For the following reasons, the Tribunal has serious concerns with the applicant's claim that he was employed by the SSNP.
72. The applicant gave evidence that he worked for 10 years in Lebanon as [a tradesman] in a factory, earning 900,000 pounds per month. In addition, he claims that from [a date in] April 2007 onwards he worked for approximately 12 months delivering aid packages for the SSNP, earning 300,000 pounds per month. However, as flagged in the Tribunal's s 424A letter, when asked to disclose details of his employment in Lebanon as part of his Visitor Visa application, the applicant disclosed only his factory work. The Tribunal acknowledges that, as raised by the applicant in his s 424A response, the relevant Form 48S for the visitor visa only allows for a single employer and there are no directions to provide details of other employers. The Tribunal also acknowledges that the applicant's review application to the Migration Review Tribunal was ultimately decided on the papers, without a hearing being required. Nevertheless, having regard also to the Tribunal's other credibility concerns in this matter, in circumstances where the applicant's SSNP employment accounted for a quarter of his income, the Tribunal has difficulty accepting that he would omit to add details regarding this employment in his Visitor Visa application and/or in connection with making his review application to the Migration Review Tribunal, particularly given that information relating to his SSNP employment would have been relevant to meeting the 'genuine visitor' requirement for the relevant Visitor Visa subclass pursuant to cl.679.224 of the Regulations.
73. The Tribunal is also troubled by the applicant's responses when asked at the hearing about his Visitor Visa application. The applicant was initially very vague and evasive as to whether he was already working for the SSNP at the time he applied for his Visitor's Visa. He eventually conceded that he was working for the SSNP at the time he applied and did not disclose this in his Visitor Visa application form. When asked why not, he initially claimed that the problems started between his application being lodged and his visa being granted. When the Tribunal noted its surprise that he would not disclose this employment given that it appeared to account for a quarter of his income, he then claimed that his SSNP work was not formal employment and he was just helping people. He then claimed that the money was not a wage, but was just a small amount and was petty cash to cover his expenses. However, despite the Tribunal rephrasing its questions several times, he was unable to provide any explanation as to what his expenses were or what portion of the 300,000 pounds he received were for reimbursement of expenses. The Tribunal also notes that he gave evidence at another part of the hearing that the SSNP provided the vehicle that was used in connection with his SSNP work, as well as employing a driver, which raises further doubts that the money he received was to reimburse his expenses. In addition, in the context of him allegedly receiving 300,000 pounds for two days' work per week of unskilled labour, against his other salary of 900,000 pounds for full time employment in his [vocation], the Tribunal has difficulty accepting that the money he received was either a small amount (by the applicant's standards) or simply 'petty cash'. Whilst the applicant eventually gave evidence that the omission of his SSNP work in his Visitor Visa application may have resulted from the application being prepared by his brother, he was very late in raising this explanation and, in

any event, he agreed that his brother prepared the application on his instructions. Overall, the Tribunal found the applicant's evidence throughout its questioning about these matters to be very vague, evasive and lacking in credibility.

74. The Tribunal is also troubled by the inconsistency that emerged in the applicant's evidence as to the frequency of his work for the SSNP. As flagged in the Tribunal's s 424A letter, in the previous Tribunal hearing the applicant gave evidence that he worked one day per week, sometimes one day per fortnight. When asked which day he distributed the aid packages, he gave evidence that it was sometimes Saturday and sometimes Sunday. By contrast, before the current Tribunal he gave evidence that he worked every weekend (both days) for the entire 12 month period that he worked for the SSNP. In the context of the applicant's claims, where his employment for the SSNP is central to his fears of persecution, the Tribunal would have expected a greater degree of consistency in his evidence as to how often he performed this work. To the extent that the applicant claimed in his s 424A response that the inconsistency in this aspect of his evidence was due to an interpreting problem, in the absence of any details as to what this alleged interpreting problem was, and in combination with the Tribunal's other credibility concerns in this matter, the Tribunal does not accept this explanation.
75. The Tribunal also notes the concerns raised by in the DFAT advice as to the authenticity of the applicant's SSNP letter. In relation to the first three of the four dot points in the DFAT advice regarding visible incongruities in the letter, the Tribunal gives that advice no weight given that it appears to stray into areas where the Post arguably lacks sufficient expertise. However, to the extent that it observes in the fourth dot point that it is general practice in Lebanon for all letters to be printed on company or organisational letterhead, the Tribunal accepts that this is a matter on which the DFAT Post would have some experience. The Tribunal accepts that this is not of itself a sufficient basis for concluding that the SSNP letter is not genuine. However, in combination with the Tribunal's other credibility concerns in this matter, the Tribunal has placed some, albeit limited, weight on this observation by DFAT as casting further doubt over the genuineness of the applicant's claims regarding his employment with the SSNP and as contributing to the Tribunal's credibility concerns with the applicant generally. The Tribunal acknowledges the request by the applicant that, if the Tribunal has any concerns over the authenticity of the relevant SSNP letter, it should refer the letter to a document examiner. However, as flagged by the Tribunal in its letter to the applicant dated [in] May 2011, in the absence of the original of the relevant letter, a proper examination cannot occur and referral to the Department's document examination unit would therefore be of little assistance. In the circumstances, having regard to the above concerns expressed by DFAT, combined with the other concerns with the applicant's credibility in this matter, the Tribunal has given the relevant SSNP letter little weight.

#### *Problems experienced in Lebanon*

76. The Tribunal also has serious concerns with the applicant's claims regarding problems he experienced in Lebanon in connection with his SSNP work. First, whilst the Tribunal acknowledges the applicant's claim that he was not interested in or informed about politics, in the context of the prominent history of political violence affecting northern Lebanon, where independent country information indicates that the Future Movement was the dominant party in the period surrounding the applicant's work for the SSNP, the Tribunal has great difficulty accepting the applicant's evidence that he did not appreciate that performing this work for the SSNP might put him in harm's way.



77. Furthermore, following the applicant's alleged confrontation with members of the Future Movement in the village of [village deleted: s.431(2)] in March 2008, he acknowledged that he began to be concerned about continuing his work for the SSNP, given the risks involved. However, when asked by the Tribunal he was unable to provide any explanation as to why he continued with this work, aside from saying that he just thought he would keep doing what he was doing. In circumstances where the applicant claimed no political allegiance to the SSNP, where the applicant acknowledged that the Future Movement also performed similar work delivering aid packages, where the applicant gave evidence that the Future Movement controlled the entire region where he was working at the time of this confrontation and where this confrontation clearly highlighted to the applicant the potential risks associated with his SSNP work, the Tribunal is troubled by the applicant's very vague explanation as to why he continued performing this SSNP work following this confrontation.
78. The Tribunal also has difficulty accepting the applicant's account of being attacked outside the village of [village deleted: s.431(2)]. In combination with its other credibility concerns, the Tribunal has difficulty accepting that members of the Future Movement would know to be ready to intercept him on a country road outside of a village (which was not the applicant's home village) in circumstances where the applicant claimed that he and [Mr A] were not actually working that day but were just travelling to a restaurant for a meal. To the extent that he claimed that they must have been under Future Movement surveillance, the Tribunal likewise has difficulty accepting that they would not have been attacked in the course of them performing their SSNP work, given the applicant's evidence that they did this every weekend on both Saturday and Sunday and it was this work that was the source of the Future Movement's animus towards him. The Tribunal also found the applicant's evidence very vague as to what happened following the attack. Whilst the Tribunal appreciates that the applicant has claimed that he was rendered unconscious and knows little about what happened, it nevertheless strikes the Tribunal as unusual that he made no inquiries at the hospital as to such basic matters as how he got there or for how long he had been unconscious.
79. The Tribunal's concerns in relation to the applicant's evidence regarding his attack near [village deleted: s.431(2)] are compounded further by the fact that, as flagged in the Tribunal's s 424A letter, the applicant appears to have made no mention of his period of hospitalisation when asked during his medical examination about any periods spent in hospital. To the extent that the applicant claimed at the hearing and in his s 424A response (including having regard to the statutory declaration of the friend who allegedly accompanied him during his medical examination) that he didn't properly understand what was being asked during the examination and thought he was just being asked if he had ever had an x-ray before, the Tribunal has difficulty accepting that he would not have still thought to mention such an extended period of hospitalisation following this attack. Furthermore, even if he had no actual recollection of being x-rayed, given the nature of his claimed injuries and the fact that he was unconscious for the initial period of his admission, the Tribunal has difficulty accepting that he didn't consider that he may have been x-rayed and/or that this hospital admission might be relevant to the question being asked about his medical history.
80. The Tribunal also has difficulty accepting the applicant's evidence regarding the Halba incident. Based on the applicant's evidence, including the letter provided from [the] Hospital, he was discharged from hospital on [a date in] April 2008 following 10 days in hospital for bashing to his head, back and legs. The applicant gave oral evidence at the hearing that seven days later, on [a date in] May 2008, he was then watching television with fellow workers at

the factory in [Town 2] when they saw scenes of Hizbollah shooting people in Beirut. As a preliminary matter, the Tribunal is concerned that his oral evidence on this matter before the Tribunal was not consistent with his account in his statutory declaration, in which he claimed (at [29]) that he was in the Party office on [that date in] May 2008 when news began to come through about violence occurring in Beirut. Secondly, he claimed in his oral evidence that he was concerned when watching these scenes of violence in Beirut that Lebanon was about to collapse into civil war. Similarly, he claimed in his statutory declaration (at [30]) that between 7 – 10 May 2008 ‘There was great concern that full-scale war would erupt in Lebanon’ In these violent circumstances, and noting again that the applicant claimed no involvement in, or allegiance to, the political side of the SSNP and gave evidence that he was not working on the day of the Halba incident, the Tribunal has great difficulty accepting that [during this period in] May 2008, he decided to visit the SSNP branch office in Halba for a chat. The Tribunal’s concerns are compounded further by the inconsistency in the applicant’s evidence as to why he went to the Halba office on that particular day. As set out in the Tribunal’s s 424A letter, he gave evidence before the current Tribunal that he was not working delivering aid packages that day and he had simply visited the Halba office for a chat. By contrast, before the previous Tribunal when asked what he was doing in Halba on the day of the Halba incident he responded ‘I went to distribute the food and usually we would also sit down, have a coffee.’ Again, given the centrality of the Halba incident to the applicant’s overall claims, the Tribunal is troubled by this inconsistency as to why he was in the SSNP office on that particular day.

81. The Tribunal also has difficulty accepting the applicant’s account on his period spent in hiding following the Halba incident. First, in circumstances where he claims that armed members of the Future Movement were searching for him, the Tribunal considers it unusual that he would chose his normal place of employment to seek refuge, given that this would be a logical place where his pursuers would seek to find him if he was as well known to the Future Movement as he claims. Moreover, even allowing for the possibility that a desperate man fleeing violence might turn to his place of employment as a first resort to seek refuge, the Tribunal has difficulty accepting that the applicant would remain hiding at the factory for approximately six months in circumstances where he claimed that the men who were pursuing him came looking for him at the factory ‘always, many times’ Against independent country information referred to earlier indicating that northern Lebanon has been a stronghold of the Future Movement, compared with other parts of Lebanon, including southern Beirut, the Bekaa Valley and southern Lebanon generally, which were strongholds of SSNP ally Hezbollah, the Tribunal has difficulty accepting that the applicant would not seek refuge in such other parts of Lebanon which were not under Future Movement control.

#### *Harassment of mother*

82. The Tribunal also has serious concerns with the applicant’s claim that his mother has recently been harassed by members of the Future Movement who continue to pursue him. First, in combination with its other credibility concerns, the Tribunal has difficulty accepting that the Future Movement would continue to take such an active interest in someone with such a low political profile within the SSNP as the applicant almost three years after he had ceased any involvement with the SSNP. The Tribunal accepts that delivering aid packages would have been, in the circumstances described by the applicant, overtly political and a person performing such work would be imputed as being politically aligned with the SSNP. However, the applicant agreed that he was never involved in the political side of the SSNP and his involvement was limited to delivering aid packages for approximately 12 months. In

these circumstances, whilst the Tribunal can accept that an SSNP worker who delivered aid packages might come to harm in the course of, or in connection with, performing their duties during the period that they actually performed the work, the Tribunal has difficulty accepting that the Future Movement would continue to target such a worker almost three years after they had ceased performing such work, particularly in circumstances where the worker had never had any other involvement with the party either before or since and had only performed this work for approximately 12 months.

83. Second, the Tribunal has difficulty accepting the applicant's evidence as to why his mother had not also applied for a protection visa during her stay in Australia. As noted earlier, the applicant gave evidence that his mother had recently spent approximately six months in Australia, returning to Lebanon approximately one month prior to the Tribunal hearing, yet she did not apply for a protection visa. When asked if there was any reason why not, he said that there was not. When the Tribunal noted its surprise that she had not sought protection given the claims in her statement of being harassed by groups seeking him, the applicant gave evidence that this was because she did not know that she was going to face such harassment until she returned to Lebanon. He then confirmed that she only began experiencing this harassment after she returned to Lebanon. However, as put to the applicant at the hearing, her written statement claims otherwise. It says that, since March 2008, groups of people would come to her house early in the early morning and late at night asking for the applicant. The applicant also gave evidence later in the hearing that, whilst in hiding following the Halba incident, his mother told him that armed men were coming to his house at night seeking him. To the extent that the applicant indicated that his mother was only 'bothered' in the past, but the real harassment started only recently, the Tribunal rejects this attempted distinction as implausible. The claims made by the applicant later in his evidence, as well as the claims made by his mother in her statement, as to the problems she was experiencing immediately following the Halba incident appear essentially the same as the problems she has allegedly been experiencing recently, named armed men from suspected political groups (namely, the Future Movement) coming to her house in the middle of the night searching for the applicant.
84. The Tribunal also found the applicant's evidence very vague and evasive as to his mother's movements in the period following his coming to Australia in November 2008. He initially claimed that his mother went to [Country 3] because she was being 'bothered' by the men who were searching for him. However, according to his evidence the Halba incident that led to him fleeing his home and armed men coming to his house searching for him occurred in May 2008, yet stamps in the copy of his mother's passport provided to the Tribunal indicate that it was not until December 2008 that she travelled to Europe, arriving at Prague airport on [a date in] December 2008. He was also very unclear of problems she experienced in the brief periods she had allegedly spent in Lebanon since that time. In circumstances where the applicant's mother had recently spent six months in Australia whilst the applicant's protection visa application remained unresolved, the Tribunal has difficulty accepting that the applicant would not have discussed these matters with his mother to confirm what her experiences had been in Lebanon.

#### *Conclusions re applicant's credibility*

85. Viewed separately, the Tribunal's concerns with the applicant's evidence discussed above might not be sufficient to undermine the applicant's credibility or otherwise cause the Tribunal to doubt his evidence (including his documentary evidence) regarding past events in Lebanon. The Tribunal also accepts that people in situations of panic or desperation, such as refugees fleeing persecution, do not always act rationally and the Tribunal needs to be careful

when assessing the plausibility of a refugee applicant's claims so as to avoid imposing an unrealistic standard of expected behaviour.

86. Nevertheless, viewing all of its credibility concerns in this matter together, the Tribunal has come to the conclusion that its concerns are sufficiently significant and pervasive such that the Tribunal finds that the applicant is not a credible witness in relation to his claims regarding his past involvement with the SSNP and the various problems arising as a consequence. The Tribunal has taken these credibility concerns into account when assessing each of the applicant's claims, as discussed below.
87. In making the above finding, the Tribunal wishes to note that it has considered all the documentary evidence submitted in support of the application, including for example the hospital report and the letters from the SSNP, his mother, his village mayor and the joint letter from several members of his village. In assessing the value of this documentation, the Tribunal has had regard to recent authority contained in *MIAC v SZNPG* [2010] FCAFC 51 and *MIAC v SZNSP* [2010] FCAFC 51. However, the Tribunal finds that the significant concerns it has with the applicant's credibility far outweigh any weight the documentation submitted might carry and, accordingly, the Tribunal gives little weight to this documentation.

#### **Assessment of the applicant's claims**

##### *Previous employment as a [tradesman] in [Town 2]*

88. The Tribunal accepts that the applicant was previously employed as [a tradesman] at a factory in [Town 2]. The Tribunal notes that the applicant's claims in this regard have remained consistent, including in his previous Visitor Visa application in which he provided supporting documentation regarding this employment.

##### *Previous employment with the SSNP and the problems and risks arising as a consequence*

89. In light of the Tribunal's credibility concerns set out above, the Tribunal does not accept the applicant's claims regarding his previous employment by the SSNP. In particular, the Tribunal does not accept that he was ever approached or employed by the SSNP (either on a paid or voluntary basis) to deliver SSNP aid packages in the region near where he lived in Lebanon or for any other reason. Given this finding, it follows that the Tribunal also does not accept that he ever experienced any problems in connection with undertaking such work or in connection with his actual or imputed political opinion arising from such work. In particular, the Tribunal does not accept that he experienced a confrontation with members of the Future Movement (or any other political group) in [village deleted: s.431(2)] in March 2008 or that he reported any such attack to the SSNP or that he refrained from reporting the attack to the police because the government and police were incapable of protecting anyone in that region. It also follows that the Tribunal does not accept that he was attacked and assaulted by members of the Future Movement (or any other political group) outside the village of [village deleted: s.431(2)] in April 2008, or that he sustained any injuries or spent 10 days in hospital in connection with any such attack. It also follows that the Tribunal does not accept that any report was made to the police or the SSNP in connection with any such attack, either by members of the hospital, the applicant or anyone else.
90. Given the above findings, combined with the Tribunal's credibility concerns set out above, it also follows that the Tribunal does not accept the applicant's claims regarding his

involvement in the Halba incident. In particular, the Tribunal does not accept that he was present at the SSNP office when it was attacked by members of the Future Movement on [a date in] May 2010 or that he was otherwise involved in the attack on the SSNP office or any other violence or protest activity that took place in Halba on or about [this date in] May 2010. It follows that the Tribunal does not accept that the applicant subsequently fled his home village in response to the Halba incident or the violence affecting Halba on that day, or that he then remained in hiding at the factory where he worked until coming to Australia in November 2008. It also follows that the Tribunal does not accept that members of the Future Movement (or any other political group) came to his house in [Village1] or his place of employment in [Town 2] searching for him following the Halba incident. It also follows that the Tribunal does not accept that his mother (or any of his other relatives) or his previous employer, [Mr B], or any other former friends or colleagues have ever been harassed, threatened or bothered by members of the Future Movement (or any other political group) searching for him, either in the immediate aftermath of the Halba incident, during his period in hiding in [Town 2] or his travel to Australia, more recently in March 2011 or at any other time.

91. Given the above, the Tribunal finds that the applicant has at no stage experienced serious harm in the past in Lebanon for reasons of his political opinion (actual or imputed) or for any other Convention reason.
92. The Tribunal appreciates that past experiences are not necessarily indicative of what may happen to a person in the future and that the absence of serious harm in the past does not necessarily mean that a person does not face a real chance of serious harm in the future. In this case, however, the Tribunal is satisfied that the applicant's past experiences provide a reliable basis for concluding that he does not face a real chance of serious harm if returned to Lebanon now or in the reasonably foreseeable future. Based on the Tribunal's finding that the applicant has never previously worked for the SSNP, combined with the applicant's evidence that he has no allegiance to, or even awareness of, the political ideology of the SSNP and had no interest or awareness of Lebanese politics generally prior to his alleged work for the SSNP, the Tribunal does not accept that he would become involved with the SSNP (or with Lebanese politics generally) if he were to return to Lebanon now or in the reasonably foreseeable future. The Tribunal is also satisfied that this would be due to his general disinterest in politics rather than to him living discreetly to avoid persecution. For the same reasons, the Tribunal also does not accept that he would seek to become involved in delivering aid packages or other similar charitable work for the SSNP (or any other political party) if he were to return to Lebanon now or in the reasonably foreseeable future.

*Generalise risk of violence*

93. The Tribunal has also considered the chance of harm for the applicant arising from the generalised levels of political violence and upheaval affecting Lebanon now and in the reasonably foreseeable future. The Tribunal has had regard to the country information relating to the situation in Lebanon, including the various reports provided by the applicant's representative to the Tribunal. The Tribunal has also had regard to the recent decision of the Department in an unrelated subclass 679 visa application provided to the Tribunal by the applicant's representative, in which the Department made general comments about civil disruption and political upheaval affecting Lebanon. The Tribunal has also taken into consideration the oral submissions of the applicant's representative at the hearing that the wave of pro-democracy protests sweeping the Middle East generally also threatens to further inflame the risk of political violence in Lebanon.

94. However, given the Tribunal's finding that the applicant has never previously worked for the SSNP in the past and will not seek to do so in the future or to otherwise become involved in politics due to his general disinterest in politics, the Tribunal does not accept that any such fear of harm in connection with the ongoing political upheaval and violence in Lebanon possesses the requisite nexus with a Convention ground. That is, the Tribunal is not satisfied that his fear of harm is for reasons of his political opinion (actual or imputed) or any other Convention ground, as opposed to simply a fear of falling victim to violence as a consequence of being in the wrong place at the wrong time.
95. Further or alternatively, whilst the Tribunal accepts from country information that the general political situation in Lebanon remains volatile and potentially dangerous, for someone such as the applicant, whom the Tribunal is satisfied would not seek to become involved in the political process or with one of the political parties, the chance of harm arising from this generalised risk of violence is sufficiently low as to be considered remote and therefore not a real chance.
96. Given the above findings, it follows that the Tribunal is not satisfied that the applicant's fear of harm in connection with the generalised risk of political violence in Lebanon is for reason of any Convention ground. The Tribunal is also not satisfied that the applicant's fear of harm is well-founded.

#### **Conclusions re applicant's claims**

97. The Tribunal has assessed all of the applicant's claims, both singularly and cumulatively. The Tribunal finds that there is no real chance that the applicant will face persecution if he were to return to Lebanon now or in the reasonably foreseeable future because of his political opinion (actual or imputed), the generalised risk of violence in Lebanon or for any other Convention reason. The Tribunal therefore finds that the applicant's claim that he will be persecuted for a Convention reason if he returned to Lebanon, now or in the reasonably foreseeable future, is not well-founded.

#### **Internal relocation**

98. Given the above findings, it is not strictly necessary for the Tribunal to consider the issue of internal relocation as the Tribunal is satisfied that the applicant does not have a well-founded fear of persecution if returned to Lebanon, including in his home town of [Village1], given the Tribunal's rejection of his claims regarding past employment with the SSNP and problems arising therefrom.
99. In considering the issue of internal relocation, the Tribunal wishes to make clear that it does not have any doubts in its above findings and is not applying the 'What if I am wrong?' test arising from cases such as *MEIA v GUO* (1997) 191 CLR 559, *Abebe v The Commonwealth* (1999) 197 CLR 611; *MEIA v Wu Shan Liang* (1996) 185 CLR 259 and *MIMA v Rajalingam* (1999) 93 FCR 220. Rather, the Tribunal considers it appropriate to express its findings in relation to the issue of internal relocation given that the Tribunal is satisfied that it forms a separate and standalone basis for affirming the decision under review. This is because the Tribunal considers that, even if it were to accept the applicant's claims relating to problems and risks in Lebanon arising from his previous SSNP employment (which for the reasons above the Tribunal does not accept), the Tribunal is nevertheless of the view that the applicant could reasonably relocate to another region of Lebanon where, objectively, there is no appreciable risk of the occurrence of the feared persecution.

100. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of “practicable”, to expect him or her to seek refuge in another part of the same country. What is “reasonable” in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* [2007] HCA 40 and *SZFDV v MIAC* [2007] HCA 41, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.
101. Even accepting the applicant’s claims regarding past problems in Lebanon (which for the reasons above the Tribunal does not accept), the Tribunal nevertheless considers that he would not continue to face a real chance of serious harm if he were to relocate to another part of Lebanon not under the control of the Future Movement.
102. The Tribunal notes that the problems experienced by the applicant were confined to the northern regions of Lebanon, notably the region surrounding his home village of [Village1], in the far north of Lebanon, and the town of [Town 2] (also in northern Lebanon, approximately 90 minutes by car from his home village) where he previously worked as a [tradesman] and sought refuge following the Halba incident. The Tribunal notes from independent country information referred to earlier that the northern regions of Lebanon are under the control of the Future Movement, compared with other regions of Lebanon further south that remain which under the control of SSNP ally Hezbollah, such as southern Beirut, the Bekaa valley and southern Lebanon generally.
103. Whilst the Tribunal accepts that the Future Movement possesses the capacity to pursue a person of interest even within areas of Lebanon outside its control, the Tribunal does not accept from independent country information noted earlier that there is a real chance that it would do so unless the person was of sufficient adverse interest to warrant taking such action. In the context of the applicant’s claims of having had only a limited involvement with the SSNP for 12 months as a low-level worker delivering aid packages in the far north, and where he claims to have had no involvement with the SSNP in the past approximately three years and at no stage had any involvement in the political side of the SSNP (beyond delivering the aid packages), the Tribunal considers it fanciful and remote that he would continue to face a risk of serious harm by members of the Future Movement (or any other political group) if he were to relocate to parts of Lebanon not under the control of the Future Movement. In making this finding, the Tribunal has had regard to the applicant’s claims regarding ongoing threats and harassment allegedly experienced by his mother, relatives and former employer in [Town 2], both in the period following the Halba incident and since coming to Australia, including his mother’s claim regarding a recent search of her house in March 2011. However, even if the Tribunal were to accept these claims of ongoing or past threats and harassment in connection with searches for him by members of the Future Movement (which for the reasons above the Tribunal does not accept), the Tribunal nevertheless would not accept that these matters are sufficient to demonstrate that he would

continue to face a real chance of serious harm in parts of Lebanon not under Future Movement control, such as southern Beirut, the Bekaa valley or southern Lebanon generally. In short, even accepting the applicant's claims regarding past events and problems in Lebanon, the Tribunal does not accept that the applicant would be a person of sufficient interest to the Future Movement that their efforts to target him would extend beyond the immediate confines of the regions where he previously lived and worked or regions otherwise controlled by the Future Movement.

104. On the question of whether the applicant's relocation within Lebanon would be reasonable, the applicant gave no other reasons as to why relocation would not be reasonable aside from his fear of the Future Movement. The Tribunal notes that he has approximately 10 years of work experience as [a tradesman] and he could presumably find this or similar work elsewhere in Lebanon. Whilst relocation would separate him from his home village where his mother and other relatives still live, the Tribunal does not consider this to be sufficiently harsh as to render relocation unreasonable in all the circumstances, noting that it would remain open to his mother and relatives to visit and communicate with him even if he were to relocate to another part of Lebanon.
105. As noted earlier, the Tribunal accepts from independent country information that the situation in Lebanon remains volatile and there is a potential for political violence to escalate. The Tribunal accepts that this carries a risk of harm for anyone living in Lebanon arising from the generalised risk of political violence affecting Lebanon now and in the reasonably foreseeable future. The Tribunal has taken this generalised risk of violence into account when assessing the reasonableness of internal relocation for the applicant. However, in the circumstances of this case the Tribunal has formed the view that this generalised risk of violence is not sufficiently serious as to render internal relocation unreasonable.
106. In line with the decision of the High Court in *SZFDV v MIAC* (2007) 233 CLR 51, the Tribunal has also considered whether relocation would effectively require the applicant to live 'discreetly' so as to avoid his feared persecution or offending the wishes of his persecutors, such as by avoiding any further involvement with the SSNP. However, the Tribunal considers that relocation would not require the applicant to live discreetly or otherwise sacrifice one of the fundamental attributes of human existence. As noted earlier, whilst the Tribunal accepts that the applicant would not seek to have any further involvement with the SSNP (or with Lebanese politics generally), the Tribunal is satisfied that this would be due to his general disinterest in politics rather than to avoid his feared persecution. The Tribunal again notes that the applicant denied any affiliation with, or even awareness of, the ideologies of the SSNP. He also gave evidence that he deliberately eschewed any involvement in the political side of the SSNP (aside from delivering the aid packages) because he had did not want to get involved in Lebanese politics. He also confirmed that he has had no involvement in any political activities since coming to Australia and claimed to have had no awareness of Lebanese politics generally prior to when he allegedly started working for the SSNP.
107. To the extent that the applicant claimed in his evidence that his acceptance of the SSNP work was partly motivated by his desire to help the needy, even if the Tribunal were to accept this claim it considers that there would remain many options for him to help the needy if he were to relocate within Lebanon without becoming involved in politics. The Tribunal does not accept that he has any particular interest in helping the needy by an association with the SSNP (or any other political party) or by delivering aid packages of one of the political parties. In this respect, the Tribunal notes the applicant's evidence at the hearing when asked



why he did this particular work delivering aid packages for the SSNP given that other political parties were also doing similar work in the region. He responded that it was circumstantial, because he happened to meet someone from the SSNP who offered him the work. In other words, there was nothing peculiar to the SSNP, or politics generally, that motivated him in performing this work. Were he to relocate within Lebanon, the Tribunal is satisfied that any desire he has to help the needy could reasonably be met by pursuing charitable activities unrelated to one of the political parties in Lebanon and which would not otherwise give rise to a well-founded fear of persecution for a Convention reason.

108. Weighing all of the above matters together, the Tribunal finds that, even if it were to accept the applicant's claims regarding past events and problems in Lebanon experienced by him, his mother, his employer and other persons known to him in connection with his employment with the SSNP, the Tribunal would nevertheless be satisfied that the applicant's internal relocation within parts of Lebanon not under Future Movement control, such as southern Beirut, the Bekaa valley or southern Lebanon generally, would avoid him facing a real chance of persecution for a Convention reason. The Tribunal is also satisfied that internal relocation would be reasonable in all the circumstances. Accordingly, even if the Tribunal were to accept his claims regarding past events and problems in Lebanon (which for the reasons above the Tribunal does not accept), the Tribunal would nevertheless not accept that the applicant has a well-founded fear of persecution for a Convention reason given that the relevant risk of Convention persecution does not exist in the country as a whole and safe internal relocation is reasonably open to the applicant.

## **CONCLUSIONS**

109. 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)(a) for a protection visa.

## **DECISION**

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