

**071818233 [2008] RRTA 62 (15 February 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071818233

**DIAC REFERENCE:** CLF2007/119533

**COUNTRY OF REFERENCE:** Lebanon

**TRIBUNAL MEMBER:** Ms Philippa McIntosh

**DATE DECISION SIGNED:** 15 February 2008

**PLACE OF DECISION:** Sydney

**DECISION:** **The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.**

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

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

The applicant, who claims to be a citizen of Lebanon, applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and then notified the applicant of the decision and his review rights

The delegate refused the visa application on the basis that the applicant was not a person to whom Australia had protection obligations under the Refugees Convention.

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

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

### **RELEVANT LAW**

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

Section 36(2)(a) of the Act provides that a criterion for a protection 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

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

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

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

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

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

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

## **CLAIMS AND EVIDENCE**

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

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from Person A, Person B and Person C. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages.

The applicant was represented in relation to the review by his registered migration agent.

The applicant, who is a citizen of Lebanon, arrived in Australia and he lodged an application for a protection visa. He sought review of the Department's decision to refuse that application, and this Tribunal, differently constituted, affirmed that decision (RRT file reference N97/17197, henceforth the "first Tribunal"). He left Australia and re-entered, having been sponsored and then that sponsorship was withdrawn He entered Australia again on a Lebanese passport issued in his name with a substantive visa

In relation to his first application for a protection visa, the applicant provided written submissions to the Department, was interviewed by an officer of the Department, and made written and oral submissions to the first Tribunal.

### **Evidence before the first Tribunal**

The applicant claimed to have joined a group which opposed the Syrian army presence in Lebanon. He and other members had deflated the tyres of Syrian vehicles several times and written slogans on public walls criticising the Syrian presence in Lebanon. At the first Tribunal's hearing, he said the group had never been caught doing these things by the authorities. Of the claims in his written statement - that he had directed attacks on Syrian troop positions and had wrecked Syrian armoured vehicles - he claimed this meant he had been deflating Syrian car tyres. There had been no force used, or any casualties, as a result of these actions.

A fortnight to a month after he left the army this group, including the applicant, wrote anti-Syrian slogans in public places. He told the group that he had to go somewhere for five minutes and would return. He had given a document saying he had completed his national service to one of the group members because he himself had nowhere to keep it, his trouser pocket having been torn. He had been holding it in his hand until then. This was a document he had to have with him to prove to military patrols that he had completed national service. When he returned the group members had gone. He was told by passers-by that Syrian soldiers had arrested them. He went home, then hid with a relative. The Syrians came to his home seeking him. His family denied knowing where he was. He claimed that the arrested group members had given his name to the Syrians under torture. The Syrians had been given his military document and had come looking for him. As to why they might have sought him, given that he had not been found with the others, and that his military document had merely

been found on one of those arrested so would not have revealed that he too had been writing slogans, he said that the Syrians had his name before they had arrested the group. They had been looking for him when they came upon it. Then when they found his military document they had come for him. As to why they had been focusing on him, he claimed that “they had been after that group of people”. He did not know for how long they had been after the group.

As to why, if the Syrians had his name, they had not arrested him earlier given that his address would have been known to them, he said that in Lebanon one did not have home addresses. Asked to explain why he had first said that the Syrians had been alerted to his presence after his colleagues had given his name and military document to them, and his later claim that the Syrians had been after him for some time and had known his name, he said he would not be able to give an exact answer and could not remember every detail. He said he had recounted what he could remember.

He said he had stayed hidden at the homes of various relatives until he came to Australia, seldom going out and then only briefly. An agent had obtained his visa for him and an uncle had arranged for him to pass through the airport security checks. Of evidence that airport security was stringent, with the Syrians running a parallel checking process, he said he had been able to get through this because the Syrians did not run the airport.

In light of evidence before the first Tribunal several years ago people caught distributing leaflets and writing slogans criticising the Syrian presence had not been treated harshly, usually being freed without charge within a day or two, he was asked why he feared persecution at the hands of the Syrians over his slogan-writing activities. He claimed that the Syrians would persecute him for the damage he had done to their vehicle tyres.

In written claims he stated that he had lived in the village in which he was born until he first left for Australia. The relatives with whom he had hidden lived 45 minutes from his home.

Evidence relating to the spouse visa

The applicant was interviewed in Lebanon by an immigration official, as was his female sponsor. Each gave information about the development of the relationship. They had first met in several years ago at a bar, and had decided a few months later to marry. They intended to have children. The relationship was assessed as genuine and the applicant was granted a provisional spouse visa, on the basis of which he returned to Australia.

Evidence before the Tribunal as now constituted

In the present application, the applicant claimed to be a homosexual. He submitted evidence from various sources in support of this claim.

Of his marital status he wrote that he and his sponsor Person D had separated a few years ago. In a statutory declaration submitted to the Department he wrote that he was currently permanently and legally separated from his estranged wife. He said that the relationship had ended after persistent arguments and following incidents of domestic violence perpetrated against him by her. He wrote that he had made claims to have suffered domestic violence to the Department, and was referred to an independent expert, who concluded that he had not suffered domestic violence.

He claimed that since early manhood he had suppressed “homosexual tendencies”, because of “societies’ attitude towards gays”. He said he was also eager to please his family and marry but this was at the expense of his true feelings. He claimed that before his marriage he was sexually active but never entered into a gay relationship because he always aimed to marry a girl. However after marrying he realised that suppressing his feelings would harm him and other people.

He claimed that after living for almost 12 months in a heterosexual relationship the situation became intolerable. During that period he had a number of sexual encounters with other men. His estranged wife was never aware that he was attending gay clubs and having casual sex with males.

He claimed that he could never hope to maintain a gay relationship in Lebanon because he feared being harmed by his very conservative family who, because of his fear, remained unaware of his true feelings. Homosexuality was a taboo subject in Lebanon and homosexuals were considered to be sexual deviants who required medical treatment. He said that his family would seek revenge for bringing it into disrepute.

He also claimed that the Lebanese authorities would not offer him effective protection because under Lebanese law homosexuality was considered an attack on the moral fibre of society. Suspected homosexuals were rounded up by the morals police and physically abused whilst in custody. Gay clubs and venues were often raided by police. Most homosexual relationships in Lebanon were discreet as no homosexual could maintain an open gay lifestyle without being physically harmed or arrested.

He claimed that he was now trying to get his life back in order after a difficult marriage. He had resumed socialising with other gay men and attending gay venues. He had a few gay friends and hoped that such friendship would develop into something more serious. He wanted to live according to his true feelings and without fear of violence.

In evidence that he was homosexual he submitted to the Department a letter from a social worker (Person B from a Counselling Service). She stated that he had told her that from the age of 13 he had felt attracted to boys of his age but had repressed these feelings. He had told her he married in the hope that his strong homosexual feelings would disappear and he would become “normal” He had found it very difficult to form a healthy relationship with his wife sexually, intimately and psychologically and had made excuses to avoid getting close to her. He had realised he could no longer deny his sexual identity and at the time of the letter was seeking assistance with “connecting to the gay lifestyle”. He had been referred to a few services for follow-up support. She wrote that he had presented with “fear and anxiety about his present circumstances” He had been unable to tell anyone he was gay, not even his brother, as he feared being disowned and rejected by his family. Of his present circumstances she stated that he was living with his married brother and working casually as a tradesperson. He had limited support networks and limited resources. She said that he was from a small village in northern Lebanon, had limited education, had worked as an assistant tradesperson after high school and then had done his mandatory military service. She also stated that his current psychological state appeared to be disturbing, that he complained of sleep disturbances, difficulty focusing and concentrating, and that fear and anxiety were overwhelming him. She had referred him to his GP, who had confirmed he was suffering from depression and had prescribed antidepressants.

A further report from the same source, was submitted to this Tribunal. Person B stated that many factors contributed to the marriage's breakdown, one being interpersonal issues about his sexual identity. In addition to the information set out in the first letter, she said he had been referred to various Gay and Lesbian support services in Sydney. She wrote that he seemed to have been able to form new relationships since increasing the support networks and currently had a steady boyfriend. She wrote that he had had a secret relationship with a male friend in Lebanon, but this was short lived as this man was killed in the war. She wrote that the applicant had concluded he could not remarry as his family wished, and that he wanted to "pursue a gay lifestyle". The life he was seeking could not be found in Lebanon and he feared being harmed there. (She referred to a press report in support of her assertion that it was "a well-known fact" that gays and lesbians in Lebanon were seen as abnormal, "either devil possessed or mentally unstable". These views appear to be beyond her field of professional expertise).

Also submitted was a letter from Person E, from a Gay and Lesbian Counselling Service. He wrote that the counselling service was aimed at providing support to people who were questioning their sexuality. He wrote that Person B had e-mailed him regarding the applicant and it was suggested that the applicant attend the group. The applicant and his partner had regularly attended this group since then. Person E also understood they had socialised with other group members and attended another social group for people from a similar ethnic background (Service A). Person E wrote that he had had a meeting with Person B and the applicant on 2 November 2007, and that the applicant had expressed his comfort about being in the gay friendly environment of Suburb A and Oxford Street but felt sad at home where he was unable to be himself.

A letter from a founding member of Service A was also submitted (from Person F, dated [date]) in which the author said that Service A was a social and support group for people from the applicant's background who identified as (among others) gay. He said that he had first learned of the applicant's situation about six months earlier, and that the applicant had been "quite uncomfortable" discussing his life with Person F initially, but had since been attending monthly meetings of the group. He now seemed much happier. The organisation supported the applicant in his personal situation.

The Tribunal hearing

Oral evidence of Person C

The witness told the Tribunal that around six weeks earlier, at the end of October 2007, he had joined the Gay and Lesbian Counselling Service group. It met every Wednesday. He understood that the applicant was already a member of this group.

He expressed confidence that the applicant was gay. He said he was a nice guy and seemed very honest. He said that he had been out with the applicant and "his partner" Person A to gay bars in Oxford Street. He said he had seen them show physical affection to each other, although Person A was the more affectionate. He had seen them hold hands, hug, and touch each other's legs.

The applicant had told him that he had been married but the marriage had not worked out because of his feelings. The witness understood that the applicant's wife had been unaware of his sexual orientation.

Person B

Person B told the Tribunal that she was a professional counsellor. On that basis she saw the applicant every two or three weeks and they were also in telephone contact. She said she worked with a charity. She expressed the opinion that it was very difficult for homosexuals in Lebanon

She said that the applicant had been referred to the Gay and Lesbian service and to Service A. Since then he had become accustomed to the "gay lifestyle". She had seen a change in his personality, and a real improvement in affect, which she attributed to his having met people from the gay community and having a partner. These had given him a new sense of hope.

She stated that she was giving him support for anxiety and depression arising from his current situation. He had told her that he was anxious because he feared return to Lebanon and did not know the outcome of his application. She said he was on antidepressants from his GP. She said that she was sure he was homosexual, and had seen the effect of his dilemma about his identity. She said she thought he had always wanted to reveal he was gay, but since the breakdown of his marriage he had become more willing to reveal this. He had realised that he could not live with a woman and deny his own identity.

As to whether the breakup of his marriage was due to his being homosexual, she said he had told her he found it difficult to have a physical relationship with his wife. Person B was not aware if he had had a female partner previously. However he had told her he had had a male partner before, in Lebanon.

The applicant's oral evidence

In response to questions the applicant stated that all his relatives from his mother's side, and his brother, lived in Australia.

He stated that, while in Australia, he had been living with his brother, his brother's wife and their children, apart from when he lived for about six weeks with his wife. After separating from his wife he had gone straight back to his brother's place. He confirmed that he was still living with his brother. He said that they got on well and his brother did not know he was gay. As to why he chose to continue living with his brother, in an environment where, according to his claims, he had to hide his sexual orientation, he said he was a licensed tradesperson but that work was scarce. If he rented his own place and did not get work, he would lose his accommodation. Anyway his brother had invited him to stay at his house.

As to when he realised he was homosexual, he said that that was when he was 13. He said that he had been living in a small village, and had helped with his family's business during his school holidays. A client of the business, who was aged about 40 at the time, was from City A. This man had "touched" him, and the applicant had realised after he "slept with him" that the applicant liked males. After that the applicant felt like moving away when he got close to girls, but felt more natural when he was close to boys.

As to the harm the applicant feared in Lebanon now, he said that there gays lived under cover. He was from a small village, and would prefer to live there if he returned to Lebanon, but if his father knew he was homosexual he would kick him out, or the government might imprison him. As to why he could not live in City A, he said that he could not because the

family house was in the village and his family would expect him to live there. However his life would be as it was before - "hidden".

The Tribunal asked him about the background of his current partner, in response to which the applicant said that he was also Lebanese, but had come on a temporary visa and had had problems with his wife, "like me". His wife had kicked him out. The applicant claimed he did not know the details. However he confirmed that his partner was also an applicant for a protection visa on the basis that he was homosexual, his application at present still being considered by the Department. The applicant had started to go to Service A where the two recently met.

As to what had happened after that, he said that they had first gone out on their own three days after meeting. The applicant had rung Person A and invited him out for coffee. They had gone to the Suburb B hotel.

He said the relationship was becoming serious. He said that he and his partner had kissed, and had sex, for the first time at a sauna in Oxford Street. This was a place "for people like us". He said that Person A had rung him and suggested they go to "Establishment A", they had had drinks there for two hours and then Person A had suggested they go to the sauna. He said that Person A was affectionate, looked after him, they went out to dinner, and because he knew the applicant was not working, he paid for his train tickets.

As to whether the applicant had ever stayed overnight at Person A's place, he responded "no, he lives with someone straight". The applicant was waiting until he got work, then they planned to move in together. They had been looking in Suburb A and Suburb C

Person A's oral evidence

The witness similarly stated that he and the applicant had met in early September at Service A. Three days later the applicant had rung and invited him out for coffee and they had gone to Suburb B. He said that the first significant date was when they went to the Establishment A gay club on a Saturday. He said that they had first had sex at Establishment B.

He said that he himself lived in Suburb D, where he rented a room. The owner did not allow anyone to stay overnight, so the applicant had never done so. He said that they intended to live in Suburb A together but could not afford to do so until the applicant got a job.

Continuation of oral evidence from the applicant

I asked the applicant if he had ever had any romantic or sexual relationship with a man before coming to Australia the first time. In response he said that he had not, because his family was strict. I asked him to explain why, if so, he had told Person B (according to her written submission) that he had had a relationship with a man who was "killed in the war". He responded that he had meant the 40-year-old man with whom he had had a relationship of a couple of months when he was 13. Of "the war" he said that he had meant this man was killed a few years ago, when Israel attacked Lebanon. As to how he had known of this man's death, he said that the man's family had told him about it.

As to whether any of his social life had involved meeting or socialising with homosexual men at any time while he was in Lebanon he said that it had not. A few years ago that was because his wife had come twice to Lebanon, and because his father was there.

As to why he had told the Tribunal at a hearing several years ago that he had left Lebanon because of his fear that Syrian security forces would arrest and harm him for the damage he had done to their vehicle tyres and for painting graffiti, I asked him if the real reason he had applied for refugee status back then was because he was gay. He responded that he had hidden it from himself from the age of 13 until now. He had thought he could not say anything. Revealing it would be like having a new skin. Asked to clarify whether any or all of the claims he had made in that first application were true, he said it was true that he was with Person G [a Lebanese military commander and politician] against the Syrians - "It was like that. Part of it was right. The story, it kind of was the story. But I couldn't say I was gay. The whole story is I'm gay and so I had to apply for a protection visa, but I didn't have the courage to say it". He said he had not known then that he could get protection for being homosexual, and had felt he was not normal. I told him that I had listened to the taped record of that first hearing and that he had been given three opportunities to add anything further he wished to his oral evidence. I noted that he had not implied in any way that there was any other issue of concern to him about returning to Lebanon, and told him that I would have to consider why he had not done so. He responded that he had not had the courage then, but the doctor and counsellor had given him courage.

As to whether he had made any attempt to meet male partners in Australia after arriving here in 1995, given that this was a very liberal environment compared to that in Lebanon, he said that he had "kind of tried, but nothing serious". He said he had done this one or two times, but he had not had the courage to ask because he feared being reported to the police or being beaten up. He had not known there was a gay community, counselling and Service A. However he also said that he used to go to clubs. He had gone "once" to the Suburb A hotel and sometimes went to the city. As to whether he had had any sexual contact with anyone, he said that he had done so "once, a few times". He said he had gone to Establishment A in the city, which was 90% gay. I asked him in what year he had first done that, and he indicated that he did not know. I put to him that this must have been a highly significant step for him, so that it seemed reasonable to expect him to recall, at least approximately, when he had first taken it. He then responded with apparent confidence that it was several years ago, which was when his English improved.

Noting that in his written claim he had stated that before he was married he had been sexually active but had never entered into a gay relationship because he always wanted to marry a girl, I asked him if he had meant he was sexually active with women or men. He responded only that he had never had a sexual relationship with any other woman but his wife.

Noting his written claim that he had met his future wife in a bar, I asked him if he had been looking for a wife at that point, and if so why. He responded that he was not looking for anyone. He then said that his parents had come to Australia and they and his brother had been trying to "force" him to marry. He said that if you got too old they thought there was something wrong with you.

As to whether he had ever been truthful with his wife about his sexual orientation, he said that he had not, because she would tell his brother and there would be a big problem. She was not friendly with his brother but had his telephone number.

As to whether, during his six months in Lebanon, he had had any contact at all with homosexual men or gone to any places where gay men socialised, he said he had not. As to whether he knew the names of any venues where gay men socialised he said he did not know as he had had "no reason to" go to Beirut and had always lived in the village. As to whether

he knew the name of a group based in Beirut described as the Arab world's first and only gay advocacy group, he said he did not.

Of his claim that while he was living with his wife he was going to gay clubs and having casual sex with men, I asked him to name the places where he had done this, to which he responded that these were the Suburb A Hotel, and the "Establishment A". I asked him where Establishment A was and he said "Oxford Street". As to in what part of the street, he reiterated that it was in Oxford Street, but that he did not know in what suburb or area it was. I told him that the street ran through Paddington, Darlinghurst and into the city. He responded that it was the city. I advised him that he should be aware that the Tribunal might make enquiries about the Establishment A after the hearing. His migration agent submitted that the hotel may not have been using the same name. However the applicant then confirmed that it had.

I told him that, while I accepted that his witnesses might believe him to be homosexual, it did not necessarily follow that he was. I drew to his attention various concerns about his claims, as follows:

Firstly, he had not made any claim to be homosexual until recently, despite living in Australia for 10 years before returning to Lebanon, and giving evidence at a private, confidential, hearing of the Tribunal several years ago. Secondly, the Tribunal had before it no more than his own assertions that he had participated in any sexual activity with men until recently. Thirdly, in a statutory declaration submitted to the Department he had written that he was separated from his estranged wife. He had said that the relationship ended after arguments and incidents of domestic violence against him by her. He also wrote that he had made claims to have suffered domestic violence to the Department, and that those claims were found to be untrue by an independent expert, a matter which could cast doubt on his truthfulness. Fourthly, he had conceded that he had not been entirely truthful in his first protection visa application. Finally, his claimed current partner was also an applicant for a protection visa, so the Tribunal would have to consider whether both had a vested interest in making the current claims. I told him that the Tribunal would have to consider whether, in order to be able to remain permanently in Australia, he had not been truthful about his circumstances in the past and was not homosexual.

On these points his migration agent asked the Tribunal to take into account Person B's evidence that the applicant had struggled to come to terms with his sexual identity and that was why he had not revealed it earlier. The applicant had said that he had married in order to suppress his feelings, but he had now come out. Further, his client had not said that the claims in the first protection visa application were untruthful, but had meant he was being untruthful with himself. He had relied on more popular or common claims about Lebanon. His migration agent also submitted that the competent person who was asked by the Department to assess the claim by the applicant that he had been a victim of domestic violence, had not said he had not suffered domestic violence but that he had not suffered "relevant domestic violence". On this point his migration agent submitted a letter from the Department (undated) referring to the opinion it had received on the subject. It stated that

By letter dated [date] you were informed that your claim under the domestic violence provisions of the Migration Regulations 1994 had been referred to an independent expert for assessment. On [date] the independent expert who assessed the claim informed this department that they were not satisfied that relevant domestic violence had taken place. In reaching this opinion the independent expert gave the following reasons:

[The applicant] met his wife, [Person D] in early [month, year] and they married approximately 12 months later on [date]. [The applicant] described their relationship as positive until his return from Lebanon in [month, year] He stated that, from this time, his wife's behaviour towards him altered and she abused him verbally on a daily basis and he also described incidents where she hit him. [The applicant] however had difficulty in recalling the motives for his wife's anger or the reasons for the arguments.

According to [the applicant] they have been separated since [date] and he has lived with his brother since his time. He stated that [Person D] has continued to threaten him via phone calls to his mobile phone.

[The applicant], during the interview, stated that he suffers from numerous symptoms as a result of the alleged domestic violence including depression, sleeping and eating difficulties, frustration, a lack of motivation and apprehension in leaving the house. However, [his] reluctance to change his mobile phone number or pursue an Apprehended Violence Order do not support his claims of ongoing fear.

Furthermore, [the applicant's] involvement with counselling and support services has been minimal, and included only one visit to both a GP and psychologist. [The applicant] also indicated during the interview that he still considered reconciliation with [Person D] an option.

It is the opinion of the Independent Experts that [the applicant] is grieving the breakdown of his relationship with his wife, and his hopes and expectations of the marriage. It is our opinion that many of the symptoms and feelings he described result from the failed marriage rather than [his] claims of ongoing fear resulting from alleged domestic violence.

The Department's assessor went on to say that, taking this independent expert's opinion to be correct, he was not satisfied that "you have suffered domestic violence".

I advised the applicant that, if the Tribunal was satisfied that he was homosexual, the Tribunal's decision would likely be that he had a well-founded fear of Convention related persecution in Lebanon. However the Tribunal had to be first satisfied that he was homosexual, and may write to him on this matter if, after considering all the evidence, this appeared necessary. The hearing ended.

Later the Tribunal wrote to him as follows:

I am writing about your application for review of a decision on a Protection (Class XA) visa.

You are invited to comment on/respond to information that the Tribunal considers would, subject to any comments/response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

1. You claim to fear rejection and abuse by your family if they find out you are homosexual, and claim that the real reason you initially applied for the first protection visa was your sexual orientation. You also claim to have been having sexual encounters in gay venues in Sydney with men since [year]. However while in Australia since [year] you have resided almost continually for some [number of] years with your brother, who you claim is unaware of your sexual orientation. Your willingness to do so for so long does not appear to be consistent with your claims to fear being harmed by your family if its members find out you are homosexual.

The Tribunal could infer from this that you do not fear being harmed by your family because of your claimed homosexuality.

2. You claim to have been visiting a primarily gay venue, [Establishment A], in "Oxford Street" since [year]. The Tribunal has evidence that [Establishment A] opened in [Year A].

The Tribunal could infer from this that you were not involved in any sexual activity at [Establishment A] between [Year B] and [Year A]. Further, asked at the hearing if it was in the city, Darlinghurst or Paddington for example, you nominated the city. The Tribunal has evidence that it is in Darlinghurst.

The Tribunal could infer from this that you are unfamiliar with [Establishment A] and that you have not been truthful about your visits to it.

3. You have claimed you realised you were homosexual at the age of 13. However you did not refer to your sexual orientation during your Tribunal hearing in [year], despite indicating to the Tribunal as now constituted that it was your primary reason for lodging the application. You instead made claims relating to political activities. The [earlier] hearing was conducted in private, you were told that the proceedings were confidential, and you were invited to add any other claims you wished.

The Tribunal could infer from your failure to refer to your sexual orientation in your oral or written submissions to the previously-constituted Tribunal, when you appear to have had a genuine opportunity to do so, that you did not consider yourself to be homosexual in [year], and had no fear of harm in Lebanon because of a perception that you were.

4. During your interview conducted in Lebanon on [date], relating to your application for a Spouse (Provisional) (UF309) visa, (the "spouse interview") you were asked why you had previously feared returning to Lebanon, but did not refer to the key incident which formed the basis of your first protection visa application, instead saying you could not recall what happened.

Further, during your spouse interview you stated that you loved your wife, wanted to have children with her and "build a new life with her", that she would remain in Lebanon with you if the application was refused and that you would not separate. You now claim that all this was untrue.

The Tribunal could infer that you are willing to be untruthful in order to remain in Australia, which in turn could cast doubt on the truthfulness of your recent claim to be homosexual.

5. [Person B], your counsellor, (letter of [date]) states that you told her that you had "a secret relationship with a male friend in Lebanon, but that was short lived as he was killed in the war". You also told her that from the age of 13 you had "emotional feelings towards boys [your] age". That is not consistent with your oral evidence to this Tribunal, which was initially that you had never had any romantic or sexual relationship with a man before coming to Australia in [year], and subsequently that your only sexual contact in Lebanon was at the age of 13, with a 40 year old man, that it lasted for some two months, and that this man died many years later, in [year].

The Tribunal could infer from these various claims that you have not been truthful about your homosexual orientation or relationships while in Lebanon.

6. On [date] you withdrew your application for a Migrant-Spouse visa and some seven weeks later lodged the application for a protection visa on the basis of your sexual orientation.

The Tribunal could infer from the belated nature of this claim, made over a year after the relationship with your wife ended, that you had had no social contact with homosexuals in Australia until around the time you lodged the protection visa application.

7. In his written submissions and during his Departmental interview (held on [date]), in relation to his own application for a protection visa, the person you claim is your current partner, [Person A], stated that he was also a national of Lebanon, having arrived in Australia in [2003]. His spouse visa application had also been refused, (a decision affirmed by the Migration Review Tribunal on [date]), and in [month, year] he applied for a protection visa because he had "just found out that I'm gay". He claimed that his only homosexual relationship was with you and that it had started in [month, year].

Given your very similar migration histories and mutual interest in remaining in Australia, the Tribunal could infer that you have not been truthful about the nature of this relationship and that you are not in a homosexual relationship with him.

The Tribunal could infer from all these issues that you are not homosexual and have no fear of persecution on the grounds of your sexual orientation if you return to Lebanon.

You are invited to give comments/respond to the above information in writing.

Your comments/response should be received at the Tribunal by [Date A]. If the comments/response is in a language other than English it must be accompanied by an English translation from an accredited translator.

If you cannot provide your written comments/response by [Date A], you may ask the Tribunal in writing for an extension of time in which to provide the comments/response. If you make such a request, it must be received by the Tribunal before [Date A] and the request must state the reason why the extension of time is required. The Tribunal will carefully consider any request for an extension of time and will advise whether or not the extension has been granted.

If the Tribunal does not receive your comments/response within the period allowed or as extended, it may make a decision on the review without taking any further action to obtain your views on the information.

No response to this letter was received by the deadline for response, and neither the applicant nor his solicitor had contacted the Tribunal to request an extension of time in which to respond. However a few days later the applicant's solicitor provided a response to the Tribunal's letter. It did not address some of the concerns raised in that letter. It is summarised as follows:

- The applicant's brother remained unaware he was homosexual. The applicant had tried to force himself to reject his homosexuality and had entered into a heterosexual relationship in an effort to deny these feelings. He feared being harmed or rejected by his family. He had struggled to deal with his homosexuality for many years and was "closed homosexual". This response did not address the issue raised in the Tribunal's letter as to why the applicant had continued to live with his brother for so long;
- of his apparent lack of familiarity with the Establishment A, he said that he had been attending the Establishment C one minute away, and had confused it with the "Establishment A". He had also attended another club close by, the "Establishment D". All three clubs were close to each other in Oxford Street. It was also claimed that the applicant mistakenly understood that Darlinghurst and Paddington were all in the city area;
- It was not uncommon for Lebanese men to enter into a heterosexual relationship while secretly engaging in homosexual activity. Indeed the Gay and Lesbian Counselling Service stated in a letter to the Tribunal that many men identifying as gay, including the author, had married and had children;
- The applicant had not claimed to be homosexual in his previous protection visa application because he did not want anyone to know this, and had also been in denial about his homosexuality;
- at the time he lodged his spouse application he had genuinely intended to live in a spousal relationship with his ex-wife. He denied conceding at the Tribunal hearing

that all his claims relating to his spouse application were untrue, but agreed that some of his previous claims of political persecution were untrue;

- The applicant had had a sexual relationship lasting two months with a 40-year-old man, at the age of 13. It was argued that this was consistent with the counsellor's report which stated that he had had a relationship with a male friend in Lebanon. No explanation was provided as to why the applicant had told the Tribunal in oral evidence that he had never had a sexual relationship with a man before coming to Australia, or why he told his counsellor that the relationship he had had at the age of 13 had ended *because* the partner had been killed in the war;
- While the applicant and his partner had a very similar migration history, "such similarities should not be construed as not being genuine without his partner and initially having his claims tested by the Tribunal".

It was also argued that attached material provided evidence in support of the applicant's claims. This was:

- a) a letter from a medical practitioner, who stated that the applicant had come to his surgery several years ago with regard to his HIV status, advising him that he had had a previously negative HIV result. He had told the doctor that he had had "'male to male' intercourse". He was referred to a Sexual Health Clinic and was treated by an HIV and sexual health registrar. His most recent visit to the clinic was a few years ago. The author stated that he had no doubt that the applicant's health problems, which he listed, were "due to his homosexual activities". The Tribunal subsequently contacted Doctor A to ascertain whether his opinion of the applicant's sexual orientation was based on his notes some years ago or, rather, on information given to him by the applicant more recently. Doctor A consulted the applicant's file and advised the Tribunal that he first became aware of the applicant's sexual activity several years ago when he referred him to the sexual health clinic. The applicant attended that clinic twice after the referral. Later that year he again saw Doctor A for further treatment;
- b) a letter from a Coordinator from the Gay and Lesbian Counselling Service who reiterated the content of this service's support previous letter. He said he had no reason to suspect that the applicant was not homosexual and that all his observations confirmed that he had formed both emotional and sexual relationships with men. He recognized the possibility that one could pretend to be gay, but observed that in his view it would be difficult to maintain its pretence over an extended period of time and in a variety of social situations. He listed a number of social situations in which he had observed the applicant, on the basis of which he had formed his confident view that he was homosexual;
- c) a letter from a founding member of Service A, who stated that, while he could not say with "100%" certainty that the applicant was homosexual, based on the many occasions he had had contact with him, that was his "strong opinion". He also said that the applicant and his partner were always together when he saw them. He regarded them as being in a relationship together. He emphasised the difficulties for homosexuals who grew up in Middle Eastern families, with the importance of family and religion and the pressure to marry and have children. This letter was signed by the

author and written on behalf of 12 other members of Service A, whose names, signatures and contact details were provided.

#### Evidence from other sources

The situation of homosexuals in Lebanon has only in the past five to six years begun to receive general attention and be discussed at the public level. A gay advocacy body, Helem, was established in this time, and newspaper articles on the situation of homosexuals with regard to family rejection, ill treatment from police and general societal discrimination have also appeared in newspapers such as *The Daily Star*. The Lebanese legislature retains an article in its penal code which is open to use against homosexuals. Recent conflict in Lebanon and internal political instability currently hamper the ability of Helem and other human rights advocates to lobby for political change to improve the situation of homosexuals. According to Helem, the homosexual community is:

...increasingly visible in Lebanon and sometimes tolerated, mainly in Beirut where a vibrant underground gay scene is concentrated, where a few sympathetic articles have been published and where some rare and daring public statements have been made. However, this timid tolerance neither applies to most Lebanese households, Christian and Moslem alike, nor rules out the ever-roaming threat of state persecution which regularly enforces article 534 of the penal code all over the country ('Interpretation of Homosexuality in Lebanese Society' (undated) Helem website, <http://www.helem.net/page.zn?id=1> – accessed 13 March 2007).

A 2005 *BBC News* article similarly points to greater discussion of homosexuality in Lebanon in recent years: "Homosexuality in Lebanon is no longer on the fringes of society or confined to an underworld of nightclubs and exclusive gatherings. It is now the subject of daily discussions in the country" (Torbey, C. 2005 'Lebanon's gays struggle with law', *BBC News* website, 29 August [http://news.bbc.co.uk/2/hi/middle\\_east/4154664.stm](http://news.bbc.co.uk/2/hi/middle_east/4154664.stm) – accessed 12 March 2007). "The level of visibility of the gay community in Lebanon can be gauged by the fact that the first gay representation in a general public event occurred just five years ago, when ten gay people displayed the rainbow flag while participating in an anti-war demonstration on March 2002 in Beirut ('Pride and war protests mix in Mexico and Lebanon', 2003, Gay.com website, 25 March <http://www.globalgayz.com/lebanon-news.html#article2> – accessed 14 March 2007).

Helem has been operating since 2004-2005 (<http://www.helem.net/>). It is supported financially by international bodies but also gets "support from a number of politicians but only informally because religion is still very powerful in Lebanon and politics ruled by sectarianism", according to Helem's director George Azzi (Ghattas, K. 2006 'Landmark meeting for gay Lebanese' *BBC News* website, 26 May [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle\\_east/5019908.stm](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/5019908.stm) – accessed 14 March 2007). A 2006 press article indicates that until 2006's Lebanese-Israeli conflict, Helem's aim was greater legal and political rights for the homosexual community which it saw as especially appropriate within a wider Lebanese political context calling for 'freedom and democracy' which followed the "cedar revolution". Since the conflict with Israel and the resultant internal political instabilities, the organisation has seen little hope in such goals and is currently limiting its work to counselling and health services for the homosexual community (Austin, P. 2006 'Gay and lesbian advocacy group lowers political profile amid growing tensions on national scene' *The Daily Star*, sourced from the Gaymiddleeast website, 22 November <http://www.gaymiddleeast.com/news/article124.html> - accessed 14 March 2007).

According to the UK Home Office's Country of Origin Information Report "The Lebanon", July 2006 (paras. 6.188-6.190), the International Lesbian and Gay Association (ILGA) reported that, due to the existence of article 534 of the Lebanese penal code which punishes 'all physical contact and union against nature', homosexuality was in fact illegal as most Lebanese, including the authorities, viewed homosexual acts as being 'against nature'. The organisation Lebanese Equality for Gays and Lesbians (LEGAL) stated that "The law is enforced by a special vice-squad of the 'Police Des Moeurs' (Morals Police). The Morals Police is indiscernible from the other police squads and sometimes operate undercover. Still, Lebanon is maybe the only Arabic country alongside with Egypt to have a somewhat active gay scene; active but extremely secretive and risky." The UK-based website, Gay Times, produced a profile on homosexuality and Lebanon, updated on 21 November 2005, which stated that:

"In Lebanon homosexual acts are illegal, though there is greater tolerance than other Middle Eastern countries. However, homosexuality is still not that accepted by Lebanese society and there are virtually no gay organisations. Most gay life is secret and closeted. However, in 2004 a human rights group called Hurriyyat Khassa or Private Liberties campaigned for the repeal of Article 534 of Lebanon's penal code by screening the film 'Victim'.

"The Lebanese gay scene is concentrated in Beirut There are a number of mixed pubs, clubs, cafes, beaches and baths where you can meet other gays and lesbians. Visitors are however advised to be discreet."

The Helem website contained an undated report on human rights, with particular reference to the gay community in Lebanon The report detailed information on law and practice, law enforcement practices, the treatment of homosexuals in Lebanese society and recorded the existence of other human rights reports on the same subject. According to Helem, homosexuals could not avail themselves of police protection, and homosexual detainees were at risk of torture, inhuman or degrading treatment. The website Gay Middle East reproduced a number of news reports on the situation for homosexuals in Lebanon, the most recent – at the time of the UK report – was a 13 November 2005 report on the arrest of people in two Beirut gay clubs.

The situation of homosexuals in Lebanon is examined below under the following three areas: *Article 534* of the Lebanese Penal Code, treatment of homosexuals by police and security authorities, and the treatment of homosexuals by family and society generally.

#### Article 534 of the Lebanese Penal Code

While it does not use the term "homosexuality", Article 534 makes illegal certain acts which sources translate variously as "unnatural sexual intercourse", "all physical contact and union against nature", or "penetrative sex against nature", and which is punishable by up to one years imprisonment ('Lebanese Law and Practice' (undated), Helem website, <http://www.helem.net/page.zn?id=4> – accessed 13 March 2007; 'Lebanon's homosexual community speaks out' 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – accessed 13 March 2007; 'Lebanon: Homosexuals still facing discrimination' 2005, Tayyor.org website, 8 December [http://www.tayyar.org/tayyar/articles.php?article\\_id=8462&type=news](http://www.tayyar.org/tayyar/articles.php?article_id=8462&type=news) – accessed 14 March 2007). The Helem website points to two direct instances of the *Article* being used to arrest homosexuals ('Lebanese Law and Practice' (undated), Helem website, <http://www.helem.net/page.zn?id=4> – accessed 13 March 2007). However the head of Helem indicated in a 2005 article that the progression to trial and prosecution of a homosexual under *Article 534* has not occurred "for a long time" (Torbey 2005). The rarity of prosecution in

Lebanon is confirmed by a lawyer from the Lebanese Human Rights organisation *Hurriyyat Khassa* or Private Liberties, while at the same time pointing to the further case of “many young men” who were charged under the Penal Code in 2003 (‘We Invite People to Think the Unthinkable – An Interview with Nizar Saghieh about gay/human rights in Lebanon’, 2004, Middle East Report, sourced from Global Gayz website, March <http://www.globalgayz.com/lebanon-news.html#article4> – accessed 13 March 2007).

While implementation of *Article 534* to the extent of prosecution is rare, various sources point to the secondary and perhaps main effect of the *Article*. This is that it makes homosexuals hesitant to seek recourse through or protection from the police for things like theft or harassment due to the fear that they will themselves be arrested. This use of the *Article* occurs together with blackmail by the police, according to a 2005 article:

#### Blackmail

Azzi admits that no homosexual has been tried and sentenced under article 534 for a long time, but he complains the law is easily exploited, including by the police. “The mere existence of this article weakens gay people and strips them of legal protection enjoyed by other citizens,” he says.

Since it makes them outlaws, he explains, it also means they cannot turn to the police or sue anyone when their rights are violated. “A number of people, including police, use this article to blackmail gays by asking for money or using violence or insults knowing full well that it will cost them nothing at all to do so.” (Torbey 2005).

#### Treatment of homosexuals by police and security authorities:

Beside the role which *Article 534* plays in the treatment of homosexuals by Lebanese police and security officials, reactions from these officials ranges from indifference and sympathy to verbal or physical abuse. The head of Halem indicated in 2005 that arrests of homosexuals had occurred based purely on personal appearance and demeanour and that, while detained, homosexuals “usually suffer verbal abuse and beatings and are forced to take degrading ‘medical’ anal examination when they are arrested” (‘Lebanon’s homosexual community speaks out’ 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – accessed 13 March 2007). In one case, involving a young gay man beaten up by four young men while crossing a square in Beirut in April 2005 and who then immediately filed charges, “the police only made fun of my shaved legs... They noted down everything, but never acted” (‘Lebanon: homosexuals still facing discrimination’ 2005, Tayyor.org website, 8 December [http://www.tayyar.org/tayyar/articles.php?article\\_id=8462&type=news](http://www.tayyar.org/tayyar/articles.php?article_id=8462&type=news) – accessed 14 March 2007). After physical abuse and threats from his family, another gay man who turned to the police in 2003 to seek redress was mocked and slapped (Sirois, M. 2003, ‘Gays and lesbians face uphill battle for acceptance: Coming out of the proverbial ‘closet’ can be a painful experience - literally’ *The Daily Star*, sourced from the Lebanonwire website, 9 July <http://www.lebanonwire.com/0307/03070907DS.asp> – accessed 14 March 2007).

Helem reports that security officials also keep records of homosexuals, making them further vulnerable to police corruption. (‘Law Enforcement Practices’ (undated), Helem website, <http://www.helem.net/page.zn?id=3> – accessed 14 March 2007).

Current police treatment can also be highly inconsistent in relation to the homosexual community (Ghattas 2006; Austin 2006; (‘Lebanon: Gay ‘activities’ should be banned, say Beirut counsellor’ 2006, Gaymiddleeast website, 30 May

<http://www.gaymiddleeast.com/news/article101.html> – accessed 14 March 2007; ‘Lebanon Denies Approving Nudist Beaches, Gay Rights Group’ 2006, Gaymiddleeast website, 18 June <http://www.gaymiddleeast.com/news/article105.html> – accessed 14 March 2007). *The Daily Star* newspaper reported in 2005 that according to an unnamed source from the Lebanese Internal Security Forces, its official position was to ignore homosexuals until such time that their behaviour becomes public and “does not affect public morals” (‘Lebanon’s homosexual community speaks out’ 2005).

Treatment of homosexuals by family and society generally:

Individuals report violent reactions from family members upon their homosexuality becoming known, especially when from conservative families (Gorani, H. 2006, ‘Struggle for gay rights in the Middle East’ CNN.com website, 2 June <http://www.cnn.com/2006/WORLD/meast/06/02/ime.gorani/> – accessed 14 March 2007). Fear of a strong reaction from his conservative family was reported by a twenty-seven year old male in 2005, while at the same time pointing to his further fear of societal harassment and workplace discrimination (‘Lebanon’s homosexual community speaks out’ 2005, *The Daily Star*, sourced from the Gay Middle East website, 7 September <http://www.gaymiddleeast.com/news/article73.html> – accessed 13 March 2007).

In 2003 *The Daily Star* reported the case of a teacher. The reaction of his (Muslim) family was particularly violent as it involved the threat of being shot (Sirois, M. 2003, ‘Gays and lesbians face uphill battle for acceptance: Coming out of the proverbial ‘closet’ can be a painful experience - literally’ *The Daily Star*, sourced from the Lebanonwire website, 9 July <http://www.lebanonwire.com/0307/03070907DS.asp> – accessed 14 March 2007). In contrast, in 2005 one member of the Halem organisation indicated unproblematic reactions from society at large and from his immediate family and friends (‘Lebanon: Homosexuals still facing discrimination’ 2005).

## **FINDINGS AND REASONS**

The Tribunal is satisfied, and finds, that the applicant is a national of Lebanon and of no other country.

His claims to fear harm in Lebanon arise solely from his claimed sexual orientation. However, before considering whether the applicant has a well-founded fear of being persecuted because of his sexual orientation, the Tribunal must be satisfied that he is homosexual.

For the reasons given to him during the hearing and subsequently in writing, the Tribunal has had some doubt that the applicant was homosexual. It is the case that some of its concerns were not addressed in the response to a letter sent to the applicant under s.424A of the Act. The most serious concerns of the Tribunal were that the applicant’s claims to be homosexual were first made only recently, and that there was no evidence apart from his own assertions that he had considered himself to be homosexual before then. This had the potential to cast doubt on the plausibility of his claim to be homosexual.

However, the Tribunal considers crucial the recently- submitted evidence from a medical practitioner that the applicant told him during a consultation several years ago that he was having sexual contact with other men. In other words the applicant told a third party of this some years before lodging an application for asylum based on his homosexuality, with no

apparent purpose other than to get medical attention. The Tribunal considers the evidence from Doctor A to be reliable.

Secondly, a number of individuals, from the Gay and Lesbian Counselling Service and from Service A, who share his claimed sexual orientation, have confirmed that they believe him to be homosexual. Further, the Tribunal notes that various members of Service A share his cultural background, so are undoubtedly well placed to make such an assessment. The Tribunal gives their evidence considerable weight because, in part, they have spent a great deal of time with him and have had a genuine opportunity to observe him in a range of environments and situations, and also because their recent evidence indicates they have been willing to consider the possibility that he is not homosexual. In addition, his counselor Person B has formed the view that he is homosexual, as has Person C, who gave oral evidence to the Tribunal that he was from the same support group and socialised with the applicant

Having had regard to this evidence, and notwithstanding the concerns about his claim to be homosexual that were raised with him in the Tribunal's letter sent to the applicant, the Tribunal is satisfied that the applicant is homosexual.

The evidence from various sources above is mixed as to the current situation for homosexual men in Lebanon. Nevertheless, given the evidence from Helem that they cannot avail themselves of police protection, and that homosexual detainees are at risk of torture, inhuman or degrading treatment, the Tribunal is of the view that some homosexual men are vulnerable to treatment amounting to persecution in Lebanon. Their vulnerability is apparent in the evidence contained in the UK Home Office's Country of Origin Information Report (2006 paras. 6.188-6.190), that, due to the existence of article 534 of the Lebanese penal code which punishes 'all physical contact and union against nature', homosexuality is in effect illegal as most Lebanese, including the authorities, view homosexual acts as being 'against nature', and in the evidence from the same source that this law is enforced by a special vice-squad of the 'Police Des Moeurs' (Morals Police). Further, it is apparent (2005, *The Daily Star* et al) that the police deny protection to homosexuals and, in some cases, assault them.

The Tribunal accepts that the applicant has been able to avoid harm in the past because he successfully hid his sexual orientation from his family and his community in Lebanon. The Tribunal accepts that he was able and willing to return to Lebanon previously because he was confident of maintaining that façade, so has drawn no adverse inference about his sexuality merely because he returned to Lebanon. It is likely that, if he were to return to Lebanon now, he would again make considerable efforts to hide his sexual orientation. The Tribunal accepts that his "discreet" behaviour was, and will again be, motivated solely by a fear of harm. Having regard to the evidence from other sources above about the situation for homosexuals in Lebanon, the Tribunal accepts that, if he is not discreet in future, there is a real chance he will face treatment amounting to persecution because he is homosexual. His need to avoid living openly as a homosexual, being motivated solely by a well-founded fear of serious harm, constitutes persecution.

The Tribunal is satisfied, and finds, that homosexuals in Lebanon comprise a "particular social group" in Convention terms.

For the reasons set out above the Tribunal finds that the applicant has a well-founded fear of being persecuted because of his membership of a particular social group. Therefore he has a well-founded fear of Convention-related persecution.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore he satisfies the criterion set out in s.36(2)(a) of the Act for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria.

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

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

Sealing Officers ID: PRRTIR