



Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division: GENERAL DIVISION

File Number(s): **2022/7728**

Re: **JPPS**

APPLICANT

And **Minister for Immigration, Citizenship and Multicultural Affairs**

RESPONDENT

DECISION

Tribunal: **Dr Stewart Fenwick, Senior Member**

Date: **21 September 2023**

Place: **Melbourne**

The Tribunal sets aside the decision dated 16 September 2022 and substitutes it with the decision that the Applicant is not ineligible for grant of a protection visa by reason of s 36(2C)(a)(ii) of the *Migration Act 1958*.



.....
[SGD]
Dr Stewart Fenwick, Senior Member

Catchwords

MIGRATION – refusal to grant protection visa – whether serious reasons for considering that the applicant committed a serious non-political crime before entering Australia – citizen of Lebanon – sentence of death in absentia by Judicial Council of Lebanon – alleged involvement with Islamist terrorism – decision set aside and substituted

Legislation

Administrative Appeals Tribunal Act 1975 (Cth)

Extradition Act 1988 (Cth)

Migration Act 1958 (Cth)

Cases

Attef Al-Habr and Minister for Immigration and Multicultural Affairs [1999] AATA 150

Australian Postal Commission v Hayes (1989) FCA 176

Azizi and Minister for Home Affairs (Migration) [2018] AATA 2561

Braysich v The Queen [2011] HCA 14

DZT18 v Minister for Home Affairs [2019] FCCA 734

DZT18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2019] FCA 1639

FTZK and Minister for Immigration and Citizenship; Re [2012] AATA 312

FTZK v Minister for Immigration and Citizenship [2013] FCAFC 44

FTZK v Minister for Immigration and Border Protection [2014] HCA 26

GWRV v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 39

Issa and Migration Agents Registration Authority [2017] AATA 1110

GWRV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 602

Minister for Immigration and Multicultural Affairs v Singh [2002] HCA 7

Rawson Finances Pty Ltd v Commissioner of Taxation [2013] FCAFC 26

SZQSC and Minister for Immigration and Citizenship [2012] FMCA 531

T v Home Secretary [1996] AC 742

ZYVZ and Minister for Immigration and Border Protection (Migration) [2018] AATA 3967

ZYVZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCA 28

1822068 (*Migration*) [2018] AATA 4086

1932525 (*Refugee*) [2020] AATA 5544

Secondary Materials

Department of Immigration and Border Protection, *Refugee Law Guidelines* (reissued 27 November 2022)

Department of Foreign Affairs and Trade, *Country Information Report Lebanon* (19 March 2019)

REASONS FOR DECISION

Dr Stewart Fenwick, Senior Member

21 September 2023

BACKGROUND

1. JPPS applied on 20 September 2022 for review of the decision of a delegate of the Minister for Home Affairs, dated 16 September 2022. The delegate determined that there were serious reasons for considering the Applicant had committed a serious non-political crime before entering Australia under s 36(2C)(a)(ii) of the *Migration Act 1958 (Cth)* (the Act).
2. The legal consequences of this decision are that JPPS is taken not to have satisfied the criterion in s 36(2)(aa) of the Act, which otherwise provides that as a necessary and foreseeable consequence of being removed from Australia there is a real risk the Applicant will suffer significant harm. As will be seen below, a protection finding was made in JPPS's favour in 2020 by the Migration and Refugee Division of the Tribunal (MRD).
3. The focus of this matter is a decision of a body in Lebanon known as the Judicial Council. This document was produced by JPPS in the course of other proceedings forming part of the Applicant's extensive history before courts and the Tribunal in respect of protection and bridging visa applications. JPPS was sentenced to death by the Judicial Council in absentia

in relation to certain charges said to arise out of his alleged involvement with individuals associated with Fatah al-Islam.¹

4. There is no dispute in this matter that JPPS was detained by Lebanese authorities and subjected to torture between mid-2007 and mid-2009. He was then released without charge and, later in 2009, was the victim of a shooting. JPPS subsequently travelled to Australia in May 2010 on a sponsored visa, and a substantial number of immediate family members are resident in Australia. The Applicant made his first application for a protection visa shortly after arrival in Australia, and has been in immigration detention since July 2018 following the failure of an application for complementary protection, and the subsequent cancellation of his then bridging visa.
5. JPPS was represented before the Tribunal and lodged a Statement of Facts, Issues and Contentions dated 30 November 2022 (ASFIC), a tender bundle comprising principally country information (ATB), and a bundle of additional evidence lodged on 12 January 2023 comprising witness statements (AE). A revised translation of evidence given at an earlier Tribunal hearing was lodged (Exhibit A1), as well as a bundle of correspondence from the Applicant's former immigration representative (Exhibit A2). A bundle of authorities was provided on the final day of the hearing (ABA).
6. The Respondent lodged documents pursuant to s 37 of the *Administrative Appeals Tribunal Act 1975 (Cth)* (T), a SFIC dated 22 December 2022 (RSFIC), a revised SFIC dated 13 March 2023 (Second RSFIC), and the following additional material:
 - (a) Supplementary T documents on 1 December 2022 (ST) (174 pdf pages);
 - (b) Further Supplementary T documents on 31 January 2023 (FST) (137 pdf pages) comprised of transcripts of previous Tribunal hearings; and
 - (c) Second Further Supplementary T documents on 28 February 2023 (FST2) (344 pdf pages).
7. The Applicant gave evidence at the hearing with the assistance of an interpreter in the Arabic language. Five of JPPS's siblings gave evidence, and I will identify them as Sibling

¹ The translation of the resolution refers to 'Fath Al-Islam'.

(S) 1, 2, 3, 4 and 5 (in order of their appearance). Evidence was also given by the Applicant's Lebanese legal representative, Mr Z, and Dr C, a Lebanese legal academic.

8. Procedural issues were raised at the outset of the hearing by the Respondent's representative. These, briefly, related to the content of a statement made by JPPS included in bundle AE which was said to raise new factual background relevant to the matter. I determined that the issue did not warrant an adjournment. On the second day of the hearing, it emerged during cross-examination of the Applicant that it may be necessary to retranslate transcript of a previous Tribunal hearing. Both matters related to one of the Respondent's contentions which is that JPPS's credit is in issue (RSFIC [17]).
9. I also raised with the Respondent's representative the brevity of its principal contentions in the RSFIC, which are that the resolution of the Judicial Council is legitimate, and the offences identified in it are serious non-political crimes (RSFIC [23]-[24]). These matters were addressed by the parties during the period between the two hearing blocks, with the rescheduling of the hearing subject to counsel availability.
10. In the Second RSFIC the Respondent relies upon *Australian Postal Commission v Hayes* [1989] FCA 176 (*Hayes*) for the proposition that it is entitled to make tactical decisions about the presentation of its case including not setting out a discussion of any matters relating to the Applicant's credit prior to cross-examination. It is also contended here that the Tribunal would be in error should it determine that the Judicial Council decision '*was not genuine or valid*', as it would amount to a rejection of a relevant finding of the Tribunal in the protection visa decision.

LEGISLATION

11. Section 36 of the Act specifies certain ways in which a finding in favour of an individual as to the existence of protection obligations can be negated. As noted, in this matter the relevant provision is s 36(2C)(a)(ii) being where the Minister, or a decision-maker, has '*serious reasons for considering that ... the non-citizen committed a serious non-political crime before entering Australia ...*'.
12. Non-political crime is defined in s 5 as follows:

(a) *subject to paragraph (b), means a crime where a person's motives for committing the crime were wholly or mainly non-political in nature; and*

(b) includes an offence that, under paragraph (a), (b) or (c) of the definition of political offence in section 5 of the Extradition Act 1988, is not a political offence in relation to a country for the purposes of that Act.

13. The *Extradition Act 1988 (Cth)* (the Extradition Act) defines 'political offence' as follows:

... in relation to a country, means an offence against the law of the country that is of a political character (whether because of the circumstances in which it is committed or otherwise and whether or not there are competing political parties in the country), but does not include:

- (a) an offence that involves an act of violence against a person's life or liberty; or*
- (b) an offence prescribed by regulations for the purposes of this paragraph to be an extraditable offence in relation to the country or all countries; or*
- (c) an offence prescribed by regulations for the purposes of this paragraph not to be a political offence in relation to the country or all countries.*

14. The Refugee Law Guidelines is a departmental document that provides policy guidance to decision-makers (the Guidelines). While framed around the definition of 'refugee' (s 5H of the Act), they provide commentary on the exclusion arising in the case of serious non-political crime. I summarise briefly relevant guidance in this document:

- (a) evidence of a charge or conviction is not of itself sufficient to establish serious reasons for considering, though such evidence may be strongly probative [3.19.2];
- (b) the decision maker should not merely extend the criminality of an organisation to an individual without undertaking clear analysis of the individual's complicity in the crimes or acts in question [3.19.2];
- (c) an applicant's own confession '*will normally suffice to establish serious reasons for considering*' however further evidence should be obtained in the case of retraction or duress [3.19.2];
- (d) decision makers should exercise caution in relation to convictions in absentia or without a proper trial, or where a confession may have been obtained under duress, and further analysis should be undertaken of the process undertaken in such cases for convictions in absentia [3.21.1];
- (e) assessing whether a crime was wholly or mainly non-political in nature involves a consideration of subjective motives through statements and claims made, however subjective motives are complex, noting the High Court has held that a crime will be political '*if its substantial or significant purpose is political, and that the existence, in*

*part, of a lesser non-political motive, will not render the crime non-political*² [3.21.4.3]; and

- (f) assessing an applicant's motives also involves consideration of objective factors such as the nature and circumstances of the crime including whether there is a political struggle in existence, and whether the offence was an incident of the political struggle [3.21.4.3].
15. The exclusion of protection obligations found in the provision reflects the terms of article 1F(b) of the *Convention relating to the Status of Refugees (1951)* (Refugee Convention) (*ZYVZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 28, at [10]-[12]) (*ZYVZ*). A key authority is the decision of *FTZK v Minister for Immigration and Border Protection* [2014] HCA 26 (*FTZK*). The court here dealt with what amount to serious reasons for considering the commission of a serious non-political crime, however the question of what constitutes a non-political crime did not arise.
16. In *FTZK*, the court as a whole was consistently of the view that serious reasons are not to be equated with any legal standard of proof. Other relevant observations include:
- (a) it is not necessary that there be a finding that a serious non-political crime has been committed, but there '*must be material before a receiving state that supports a rational foundation for that inference*' (French and Gageler JJ, [13]);
 - (b) the term 'serious' indicates reasons must be sufficient to support a strong inference, and this requirement is underpinned by '*consciousness of the potentially adverse consequences of exclusion from protection of the Refugees Convention for a person otherwise entitled to that protection*' [14];
 - (c) absence of the need for a positive finding of an offence being committed '*does not mean that the criterion requires anything less than 'meticulous investigation and solid grounds'*' with particular attention to the material said to engage the exclusion [16]; and

² Citing *Minister for Immigration and Multicultural Affairs v Singh* [2002] HCA 7 (*Singh*).

- (d) both international scholarship and judicial authority indicate the exclusion clause be *'interpreted restrictively'* and *'used with great caution'* (Crennan and Bell JJ, [73]).

ISSUES

17. The sole issue for determination is whether I am satisfied that there are serious reasons for considering that JPPS committed a serious non-political crime before entering Australia.

JUDICIAL COUNCIL DECISION

18. A translated version of the decision of the Judicial Council was lodged with the T documents (T30.p.iv). It appears to have been prepared by a qualified Australian-based translator and, as noted, it was originally provided by JPPS in the course of other proceedings. It bears a case number in 2012 and the decision is dated in 2014. The case is described as being brought by the Prosecutor General, against three defendants: JPPS; Mr M; and, Mr A. All defendants were tried in absentia, and while there appears to be some relationship among the offences alleged against Mr M and Mr A, their alleged offending does not bear any relationship to that alleged against JPPS.
19. The Council is described as being comprised of a President by proxy, Judge Anthony Issa El-Khoury, and four other judicial members. The decision is stated to have been based upon 'investigations and consultations', an indictment, and a prosecution brief presented at the Court of Cassation before the Judicial Council. The indictment is said to have been split into 30 files to facilitate the hearing. Supporting references are made to:
- 1- *Decree No. /154/ on 4/07/2007, by which the offence against the State national security which occurred on 20/05/2007, at Nahr el-Bared, and which resulted in a number of soldiers and civilian deaths and casualties, was brought before the Council, in addition to all individuals who contributed to, encouraged or interfered in this offence in any capacity;*
 - 2- *The decision of the Minister of Justice... which appointed Judge Ghassan Owaidat as a judicial investigator in the case ...*
20. The decision records that an arrest warrant was issued against JPPS in 2014 after being tried in absentia having *'failed to appear before the Judicial Council despite being duly notified'* (and warrants were also issued for the other defendants) and the document then states:

They have recently, at the camp of Nahr el-Bared – in the North of Lebanon and outside it, engaged in conspiring against the State national security, a felony defined

and punishable in Articles 207/271/339/316 of the Penal Code, in Arms Trade, a misdemeanour defined in Article 72 of the Arms Code and forgery and usage of forged material, a misdemeanour defined in Articles 463 and 470 of the Penal Code.

21. I summarise the facts alleged against JPPS which are lengthy, and stated as being based upon his testimony before the Information Division:

- (a) he had a relationship with MM and his brother AM based on a loan which their father promised to pay;
- (b) he admitted that he provided weapons to Fatah al-Islam and committed fraud;
- (c) he met AM in 2004 and was directed by MM and another gentleman at the end of 2006 to sell arsenic and red mercury to a further gentleman in Nabatieh;
- (d) the transaction did not occur as the mercury was fake and MM also presented material claimed to be gold to a jeweller, also found to be fake;
- (e) MM asked JPPS to help sell fifty Glock pistols to a gentleman, but the deal did not go through, and he was then asked to negotiate a deal for heavy weapons;
- (f) at MM's request he assisted in securing forged passports and asked for money to purchase the heavy weapons;
- (g) JPPS ultimately procured eight forged passports for MM in multiple nationalities, two forged driver licences and a bad quality ID card, and received payment for these items;
- (h) he was also paid for supplying AM with a pistol and silencer; and
- (i) a gentleman testified that he sold his children's passports as part of the forgery deal and another gentleman testified that he had been sold a forged Lebanese passport by JPPS.

22. Two further passages merit quoting in full:

... and upon being interrogated before the military Investigation judge on 6/06/2007, but he withdrew his initial testimony, stating that he testified because he was hit and tortured, clarifying that he sold [AM] and [MM] a "Mercedes" car in return for /14,000/ AUD which they paid for by cheque. However, it turned out to be a dud cheque, so he filed a lawsuit against them, unknown to him that they were members of Fath El

Islam. He then explained that the ... brothers asked him to buy weapons for them; he agreed but they did not loan the money to him, so he did not get the weapons.

Upon his interrogation by the judicial investigator on 13/09/2007, he testified that there is not truth in what has been attributed to him, and hence, withdrawing his initial testimony as well as the one he gave before the military investigation judge adding that he was subject to beatings. He clarified that he contacted [AM]'s family to ask them to settle the price of the vehicle he sold to [AM]. He added that [MM] did not ask him to buy weapons and did not ask him to help sell the red mercury; rather, he was present when he – ie [MM] – presented the matter to [a gentleman] and his family.

23. In summarising the evidence upon which the decision is based, the decision states that the events were confirmed by the Prosecutor General, preliminary and initial investigations, 'by the fact that the accused escaped'; and, 'by the overall investigation papers'.

24. The findings of the Judicial Council in respect of JPPS read as follows:

As established by the aforementioned facts which were supported by the aforementioned evidence, the accused [JPPS] was in contact with the terrorist organisation "Fath El Islam" and met with members, leaders and key figures of the aforementioned group. He also attempted to sell red mercury on behalf of [MM] and [AM], both of whom were members of the aforementioned organisation.

And WHEREAS it was established that the accused [JPPS] actions were in contribution to the criminal and terrorist activities carried by Fath El Islam, which fall under of penalty of felony in accordance with Article 4 read together with Articles 2 and 3 of the law of 11/01/1958, a specific provision of Article 316 of the Penal Code that the accused has been charged with, therefore need to be excluded as well as excluding Articles 270 and 271 of the Penal Code as they do not constitute a legal law to a specific crime.

And WHEREAS the aforementioned accused was involved in the forgery of Lebanese ID and passports on behalf of the so-called [MM] of Fath El Islam, which falls under penalty of felony in accordance with Article 463/219 of the Penal Code. Moreover, his actions with respect to being involved in forging the Drivers licences falls under penalty of felony in accordance with Article 464/219 of the Penal Code, hence shall be charged with these two felonies.

And WHEREAS there isn't enough evidence that the aforementioned accused has used the services of the forger, he shall be found guilty of the felonies raised under Articles 463/454 and 464/454.

And WHEREAS the accused engaged in the provision of various weaponry on behalf of the terrorist group Fath El Islam, which falls under penalty of felony in accordance with Article 72 Weapons, he shall be found guilty accordingly.

25. The decision then states that as the defendants have committed more than one Penal act, the Council has the right to enter judgment and 'integrates' the penalties 'so that each of them receives only the severest penalty'. It records the following unanimous ruling:

- (a) first, to convict all defendants *'of the crime set forth in Article 4 coupled with Articles 2 and 3 of Law 11/1/1958 and to bestow the death sentence upon them ...'*;
 - (b) second, to convict all defendants of the offence in Article 463/219 of the Penal Code and sentence them to three years' imprisonment, and to convict JPPS of the offences in Article 464/219 of the Penal Code and sentence him to two years imprisonment;
 - (c) third, to declare all defendants innocent of the offence in Article 463/454 of the Penal Code for lack of sufficient evidence;
 - (d) fourth, to convict all defendants of the offence in Article 72 Weapons, and sentence them to two years' imprisonment;
 - (e) fifth, to forbid the defendants carrying weapons throughout their lives; and
 - (f) sixth, integration of the penalties under Article 205 of the Penal Code under which each defendant receives the severest penalty only of capital punishment.
26. The decision closes by stating that it was issued in absentia and *'made clear publicly in the presence of the representative of the Appellate Public Prosecutor'*.

PROCEDURAL BACKGROUND

27. JPPS first came to Australia in 2009 on a visitor's visa sponsored by his family. He subsequently arrived in Australia on 8 May 2010 on a further visitor's visa, also sponsored by his family.

First protection visa decision

28. JPPS engaged Mr Sam Issa of Firmstone Associates to lodge his first protection visa application (FST2, 103). In his associated statutory declaration (FST2, 143), the Applicant declares:
- (a) he sold a vehicle to MM on 17/5/2007 with the balance to be paid in two days, and on Sunday 20/5/2007 conflict broke out at Nahar El Barad refugee camp [11];

- (b) the purchaser did not come on 21/5/2007 and JPPS spent the rest of the day calling the purchaser's cell number [12];
- (c) later that day a named gentleman informed the Applicant that MM had been arrested by Lebanese intelligence and this was associated with the conflict in the camp [13];
- (d) he later received a call from Lebanese intelligence requesting his attendance the next morning at the Ashrafieh headquarters [14];
- (e) later the following day he was questioned and gave the account of selling a vehicle, showing the cheque, was released, and left about 11.00 PM [15]-[16];
- (f) the following Saturday he was again summoned to Ashrafieh and attended that evening and was detained [17]-[18];
- (g) the following day JPPS was blindfolded and was then interrogated in sessions lasting 3 hours over the next five days, during which time he remained handcuffed and was suspended by a piece of timber placed between his legs, beaten with a steel object, and received electric shocks *'in an effort to make me confess that I had some association with the militants'* [19];
- (h) he was then transferred to Roumiah prison and held without charge for 24 months, together with other detainees accused of terrorism, experienced periodic interrogation and torture, and was denied legal representation [20]-[21];
- (i) JPPS received two visits by the Red Cross and was seldom permitted family visits, then was released without charge and made to sign an undertaking not to discuss his situation with any third person, or his legal representative [22]-[24];
- (j) an attempt was made on his life in September 2009 by Lebanese intelligence when he was shot in the face while entering his house at 1.00 AM, the police advised him to drop the matter, and his lawyer advised him to leave Lebanon [26]-[29]; and
- (k) JPPS states *'I have never had any association nor supported any militant group or individual'* and continues to experience trauma from his ordeal [31]-[32].

29. Further relevant material associated with this application includes:

- (a) translation of a document described as Copy of Judicial Record, dated 11 August 2009, which reports that JPPS has a 'clean record' (FST2, 159);
 - (b) translation of a letter from the Applicant's Lebanese lawyer, Mr Z, dated 22 May 2010, which states that JPPS was detained in Roumieh Prison between May 2007 and May 2009 and '*was released because he was not guilty in a terror crime they attributed to him*' (FST2, 155);
 - (c) translation of a statement from the Ministry of Justice, Lebanon, dated 22/6/2010 (FST2, 213) declaring that JPPS was arrested on 13/9/2007 and released on 29/5/2009; and
 - (d) report of a clinical psychologist, dated 7 June 2010 (FST2, 209), which states that JPPS reported frequent suicidal thoughts and hypervigilance and '*has developed post traumatic stress disorder and major depression*'.
30. A translation of what appears to be the record of a criminal proceeding in Lebanon relating to the shooting also forms part of this material (FST2, 237-241). The record reveals that JPPS accused a gentleman of shooting him in the face on 18/9/2009 because the man's brother died in Nahr al-Bared, and he considered the Applicant a supporter of Fatah al-Islam. The primary accused initially denied the claim, then admitted to shooting JPPS at the request of another man for the sum of ten thousand dollars. The other gentleman (who bears the same surname as JPPS) denied association with the incident, and was found not guilty. The primary accused was found guilty and received a sentence of imprisonment and made to pay a sum in restitution.
31. JPPS did not attend the hearing, possibly due to a failure on the part of his representative who appears to have had no record of the scheduled hearing (FST2, 301). On 30 August 2011, the Refugee Review Tribunal affirmed the delegate's refusal of a protection visa, in part as it had been unable to test the Applicant's claims in person (FST2, 314).

Second protection visa decision

32. JPPS obtained the assistance of Mr Issa to lodge a further protection visa application on 2 November 2012 (T4.a), on grounds of complementary protection. This was accompanied by a copy of the Applicant's 2010 statutory declaration. In November 2014 JPPS was

informed that Mr Issa's registration as a migration agent had been cancelled (T7), and the Applicant continued with the assistance of another representative from the same firm (T8).

33. The Applicant's representative provided a translated and original copy of the Judicial Council decision to the Department by letter dated 12 January 2015 (T9). It is accompanied by a statement from Mr Z that he was the agent for JPPS in the Judicial Council proceeding (T9.b). The materials also include an English language media article headed 'Lebanon sentences 3 Fatah al-Islam suspects to death in absentia' (T11). The article continues:

...

The council accused the suspects of "conspiring against internal security by contributing to the criminal acts of Fatah al-Islam, which is a terrorist organisation that seeks to spread sectarian strife between citizens of the nation," read a statement published by the council after the ruling.

The suspects, whose nationalities were not identified, are accused of arming the group which fought a 15-week battle with the Lebanese Army in 2007 with "light and moderate arms," and providing them with "fake passports".

"[JPPS] tried to secure mercury to one of the terrorists, and mediate between the latter and an arms dealer."

...

34. This application was refused by a delegate on 18 May 2015 (T12), and this decision was affirmed by the MRD on 29 July 2018, with the delay attributed to the reconstitution of the matter to another member after the cessation of an earlier member's term (T13, [13]). Transcripts of the associated hearings have been lodged (FST1-3). The Tribunal notes information provided in 2017 by a departmental officer posted to Beirut that JPPS had outstanding criminal matters in Lebanon (T13, [32]) (based on an email at T30.p.iv). The Tribunal found that it did not accept that JPPS was ever tortured in Lebanon, that the Lebanese authorities ever caused him any difficulty upon release, and that he was ever the subject of an assassination attempt by the authorities (T13, [16]).
35. The Tribunal then refers to conflicting information provided to the Department with respect to the Judicial Council decision but determined that it could accept the 2014 decision as genuine, and went on to find that JPPS was '*convicted of terrorism offences by the Lebanese Judicial Council in 2014*' (T13, [34]). The Tribunal cites at length the delegate's conclusions as to credibility concerns, including the fundamental observation that the delegate found '*no part*' of JPPS's claims to be credible (T13, [45]). Further observations were made about what were '*divergent*' claims not previously made (T13, [87]).

36. The Tribunal also notes that JPPS claimed in the 2018 hearing of his matter that *'he was sentenced to death because he spoke out against the Lebanese government, specifically Hezbollah – although he was very vague about how he did this'* (T13, [91]). The reasons then address at length the evidence provided, including talking in coffee shops and discussions with people in the community (T13 [92]-[107]).
37. The Tribunal addresses at length the claims made concerning the shooting. The Tribunal placed heavy weight on JPPS's evidence that his neighbour and cousin were implicated in the shooting, but did not accept any connection to Lebanese intelligence (T13, [117]-[118]).

Bridging visa decision

38. On 14 August 2018, the MRD affirmed a decision to cancel JPPS's bridging visa (1822068 (*Migration*) [2018] AATA 4086). The reasons state that JPPS attended the Department at its request ostensibly to discuss the rejection of a visa on grounds of complementary protection but, instead, was served with a notice of intention to cancel his visa, being placed in immigration detention on the same day [16]-[20].
39. The reasons indicate that the bridging visa was cancelled on a prescribed ground, being that JPPS had been convicted of an offence against the law of another country [26]-[27]. In considering whether to exercise discretion in favour of the Applicant the Tribunal gave great weight to the circumstances in which cancellation arose, being that he *'was convicted of terrorism offences in Lebanon'*, and that the 2014 Judicial Council decision did not reveal any irregularity or unlawfulness [124]. Considerations weighing against cancellation were not found to outweigh these factors [125]-[126].

Judicial appeals

40. A judge of the then Federal Magistrate's Court dismissed JPPS's appeal from the first protection visa decision (*SZQSC and Minister for Immigration and Citizenship* [2012] FMCA 531). JPPS appealed the second protection visa decision to the then Federal Circuit Court of Australia (*DZT18 v Minister for Home Affairs* [2019] FCCA 734). The Court made observations, later to contribute to the successful appeal of this decision, about apparent inconsistencies between the correspondence from Mr Z and the decision of the Judicial Council [46]. More specifically, the Court notes [47]:

- (a) it made no sense that JPPS would have been granted bail after the decision was rendered in 2014, having already left the country, as appeared to be asserted in the correspondence;
 - (b) there was no apparent explanation as to why the Applicant would be convicted in 2014, years after release from detention in 2009;
 - (c) no further documents were produced relating to the Judicial Council proceeding; and
 - (d) the decision of the Judicial Council '*does not sit comfortably*' with other evidence including other correspondence from Mr Z that his client had been released without charge after his detention.
41. The Federal Court of Australia (*DZT18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2019] FCA 1639) subsequently found that the Tribunal had failed to reconcile possibly inconsistent evidence [17]-[20].

Third protection visa decision

42. When considered afresh, JPPS was found by the MRD in a decision dated 18 December 2020 to satisfy the complementary protection criteria in the Act (1932525 (*Refugee*) [2020] AATA 5544).
43. JPPS lodged with the Tribunal a letter dated 30 November 2020 in response to an invitation to comment (ST23, 138). It is nearly three pages long and addresses his links to the brothers and the circumstances of his detention. In summary, JPPS states:
- (a) the last time he saw AM was when the Applicant sold him the car, then AM disappeared;
 - (b) he met MM after asking around, including at the family's shop, and was told that AM had gone overseas;
 - (c) '*[he] had to file a claim with the police because of the unpaid money. In the end the family agreed that they would be able to pay ...*';

- (d) they told him to be patient and in 2007 kept pressuring MM because he had a new car, until being told the money would be paid on Monday, conflict occurred over the weekend, and JPPS called continuously to follow up;
 - (e) on his second visit to the intelligence agency he was detained and beaten and lost track of time, and 'at the end' told him he needed to sign something that he could not see;
 - (f) when taken to the military investigating judge he denied the confession;
 - (g) he would never be involved in arms dealing and was not involved in terrorist activity; and
 - (h) having been convicted of involvement with Fattah al-Islam, how is the community to believe he was not involved.
44. In its reasons the Tribunal sets out the claims made in the Applicant's 2010 statutory declaration [19]. It also sets out at length evidence given at hearing by JPPS with respect to the sale of the car, his detention, and the shooting incident [31]-[55]. This summary includes evidence given by JPPS that police in Lebanon had taken any documents relating to the car sale [34]. The reasons note that the Applicant himself maintains that the decision of the Judicial Council is legitimate, and that there is no evidence to the contrary [70]. For these reasons the Tribunal accepts that it is a legitimate document, and that JPPS was sentenced to death.
45. A number of pieces of evidence regarding the car sale are described as contradictory. Principally, discrepancies were said to be apparent as to the accounts given about which brother was the purchaser, and how and with whom inquiries were made about payment. JPPS is said to have described the statutory declaration as incorrect, because it was prepared by his previous migration agent, and he did not have the opportunity to confirm its contents [74]. Nonetheless, the Tribunal refers to a police complaint about the car sale [74], and ultimately found that the sale took place, that the purchase price was not paid, and that JPPS contacted the buyer's brother about the payment [75].
46. The Tribunal acknowledges JPPS's denial of the charges brought against him, but considers there to be no independent evidence to contradict the findings of the Judicial Council [82]. There are, however, other statements made by the Tribunal about the Judicial

Council decision that require noting [80]. The reasons explain that it is not the role of the Tribunal to assess the guilt or innocence of JPPS, or to second guess the findings of another court, and: *‘in any event, in circumstances where the Tribunal has not been provided with the evidence presented to the Judicial Council it is difficult and inappropriate for the Tribunal to make any findings in relation to the veracity of the Order by the Judicial Council’*.

47. The Tribunal’s findings in respect of the shooting are intertwined with its finding (at [82]) about the outcome in the Judicial Council. The reasons identify apparent contradictions in JPPS’s evidence, including about investigation by police, whether there was medical evidence supporting the claim, and also questions the logic of the Applicant being targeted [83]. The Tribunal notes the reference by the delegate to material in an earlier protection claim that the offender was jailed following the incident. It also appears that JPPS offered two possible explanations for the shooting: that security forces sought to make it look like revenge for the death of the shooter’s brother in the fighting at Nahr al-Bared; or, that it arose from a disagreement with his cousins [84].

48. In conclusion, the Tribunal states [84]:

if the applicant had been involved in the activities with members of an extremist group as outlined by the Judicial Council, then the circumstances of the applicant’s shooting becomes more plausible and realistic and as such the Tribunal is more likely to accept that it did occur.

49. Accordingly, the Tribunal finds [85]:

having accepted that the order of the Judicial Council is legitimate and in light of the applicant’s insistence that he had been shot as claimed, which the Tribunal accepts, the Tribunal is of the view that it is more likely that the applicant did have some involvement with members of an extremist organisation as outlined in the Judicial Councils order.

50. By way of conclusion, the Tribunal finds that the decision of the Judicial Council establishes the requisite need for intent to cause the Applicant significant harm, meeting the test for complementary protection [88].

LEGAL AND POLITICAL CONTEXT

51. The DFAT Country Information Report Lebanon (ATB1) describes the Judicial Council as a specialised tribunal that *‘deals with cases of sensitive criminal offences of a political nature’* [5.10]. Whilst independence of the judiciary is guaranteed in the Lebanese Constitution,

petty corruption is said to be widespread in the courts, and *'the performance and independence of the courts is often subject to political interference'* [5.11]. The law provides for trial in absentia, and in such cases the maximum penalty is usually given [5.12].

52. The same source states that the United Nations Human Rights Committee has expressed concern about reports of *'arbitrary and extra-judicial arrest and detention'* including incommunicado, by security forces [4.15]. The use of torture during interrogation and the use of confessions extracted under torture are known in the military court system [5.17]. The report describes Roumieh prison as the main detention facility, and that it operates well above capacity [5.19]. Lebanon is also known for its large number of detainees in prolonged pre-trial detention [5.22].
53. A report from a civil society organisation, funded by European development agencies, describes the Judicial Council (named the Justice Council) in more detail (ATB4, 77). It is described as a special court, and as the highest court in Lebanon. The reports states that the body is presided over by the first President of the Court of Cassation, sitting with other members of that court.

...

The Justice Council has jurisdiction over breaches of external and internal security of the State. It is often considered as a political court because of its organic link with political authorities: the Council is referred to by decree taken by the Council of Ministers which decides on the cases referred to it. An investigating judge with broad powers is then appointed by the Minister of Justice for each case referred. The bill of indictment is presented to the Council by the Attorney-General without any possibility of appeal.

Under Article 366 of the Code of Criminal Procedure, as amended in 2005, decisions of the Justice Council cannot be appealed in any way, except if the trial is revised by the Justice Council itself.

...

54. A summary of submissions made as part of Lebanon's second cycle Universal Periodic Review by the United Nations Human Rights Council in 2015 records concerns including: systematic interference of the executive in judicial matters; that the Judicial Council *'functions under the orders of the Executive branch'*; about representation of defendants

facing the death penalty *‘and sentences by the Judicial Council, which are not subject to appeal’*; and, systematic torture and arbitrary detention of suspected terrorists.³

55. A report from Reuters (ATB6) explains that fighting broke out between the military and Fatah al-Islam on Sunday 20 May 2007 and continued on Monday 21 May at the Palestinian refugee camp Nahr al-Bared, near the northern city of Tripoli. Fatah al-Islam is described as a group that split from another Syrian-backed Palestinian group, and that its leader is a veteran Palestinian guerrilla. The group is described as having the objective of reforming the Palestinian refugee community according to Islamic sharia.
56. Wikipedia describes Fatah al-Islam (ATB8) as a *‘radical Sunni Islamist group’* that became known in 2007 for combat against the Lebanese military in Nahr al-Bared. It appears to have been formed at some time in 2006 in part from a previous secular Palestinian militant group. It was classified as a terrorist organisation by the US State Department on 9 August 2007, and relocated to Lebanon in 2008. Any remaining members are thought to have joined other groups by 2014. The fighting in Nahr al-Bared 2007 is said to have lasted three months, with the military taking control on 2 September 2007.
57. An academic article published in 2010 (ATB9) describes Fatah al-Islam as a Salafi-Jihadi group that operated in Lebanon between 2006-2008. It states that following the conflict in the camp *‘many people were arrested and persecuted by the authorities because of often marginal links with known terrorists’*, despite not yet being charged (ATB9, 212). In describing Fatah al-Islam as multilayered, the article names AM as forming part of a layer comprised of dissidents from Lebanese *Salafi-jihadi* groups (ATB9, 218).
58. Publicly available online material explores the issue of ‘red mercury’. One press article, almost contemporary to the events in Lebanon in this matter, describes it as a *‘near mythical compound’* that had been discussed in the context of terrorism and the construction of ‘dirty

³ Office of the United Nations High Commissioner for Human Rights ‘Summary prepared in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21’ (10 August 2015)
<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/176/04/PDF/G1517604.pdf?OpenElement>>
accessed 28 July 2023.

bombs'.⁴ The article states that the International Atomic Energy Agency declared that the compound does not exist. An older article in *New Scientist* cites a US Department of Energy report. The report is said to note that various compounds including mercury have been offered for sale but '*none has any special military application*', and has concluded that it does not exist.⁵

59. The Special Tribunal for Lebanon, a body established under UN auspices, has published a version of legislation referenced in the Judicial Council decision.⁶ The 'Law enacted on 11 January 1958' appears to suspend certain articles of the Criminal Code and replace them with 'exceptional provisions', granting jurisdiction to military tribunals. This document reads, relevantly:

...

Article 2 – Any person who commits an act of violence or attempted violence with intent either to provoke civil war or sectarian conflict by arming Lebanese citizens or urging them to take up arms against one another, or to engage in incitement to murder, pillage or vandalism, shall be liable to the death penalty.

Article 3 – Any person who leads an armed gang or occupies therein any function or leadership position of whatever nature for the purpose of invading a city or area, state-owned property or private property, or for the purpose of attacking or resisting the law enforcement authorities operating against the perpetrators of these offences, shall be liable to the death penalty.

Article 4 – Members of an armed gang formed for the purpose of committing any of the offences set out in the two preceding articles shall be liable to the death penalty.

However, those members who have not occupied any function or specific mission in the gang, who have not been arrested at the site of a violent incident and who have surrendered with their weapons without resistance before a court has issued judgment, shall not be liable to the said penalty

...

⁴ David Adam, 'What is Red mercury?', *The Guardian*, (online, 30 September 2004, last updated 25 July 2006)
<https://www.theguardian.com/science/2004/sep/30/thisweekssciencequestions1?CMP=Share_iOSApp_Other> accessed 6 March 2023.

⁵ William Bown, 'Only fools still hunt for elusive red mercury', *New Scientist*, (online, 6 June 1992)
<<https://www.newscientist.com/article/mg13418241-900-oby-fools-still-hunt-for-red-mercury/>> accessed 28 July 2023.

⁶ Special Tribunal for Lebanon, 'Law Enacted on 11 January 1958' (online, 11 January 1958)
<[Relevant Lebanese law and case law | Special Tribunal for Lebanon \(stl-tsl.org\)](#)>

60. Selections from the Criminal Code provided by the same body indicate that Article 205 deals with application of only the most severe penalty in cases where multiple felonies or misdemeanours are found to have been committed. Article 219 establishes the criteria for those found to be accomplices to crimes.

EVIDENCE

JPPS

61. The Applicant lodged a brief further statement dated by the translator 7 December 2022 (AE1), which I summarise:
- (a) he was a teacher at the time his father passed away in 1999 and he took over his father's role working for the post office during the time the postal contract was managed by the Eido family;
 - (b) the Applicant became involved with some politicians and his political activities increased to the point he considered becoming a candidate for municipal council;
 - (c) his involvement with the member of parliament Walid Eido extended to seeking to register an association which was not politically affiliated, the registration not being approved;
 - (d) he also assisted Walid Eido in elections in Beirut in 2005, which he states led to some form of threat from a Syrian officer;
 - (e) Walid Eido and his son were killed in a bombing in 2007 due to their public opposition to Hezbollah, a little after JPPS was arrested, and this information was raised with Mr Issa but he did not appear to be interested and did not read papers provided to him, or add them to the case file; and
 - (f) he considered that his story in a telephone hearing with the Tribunal was affected by poor interpreting.
62. JPPS stated in evidence that he sold the car to AM in 2004 who provided a cheque, but the Applicant kept calling him about the payment. I understood JPPS to say he was then jailed for three months and then tried again to call about the money. JPPS was told by the family that AM was out of Lebanon. The Applicant went to the bank to obtain proof about the failure

to pay, which he did and then lodged a legal complaint. JPPS then referred to following up with the family, and an agreement signed by MM and his father in 2006, and stated that he agreed to withdraw the complaint.

63. When redirected to explain how he came to be in prison in 2007, JPPS stated it was because he had been in contact with MM about the money. He referred to being seen by another gentleman to be talking on the phone, and to being advised that he may be called in for questioning. JPPS stated that he was questioned late at night and asked what he wanted from MM, he explained the situation and was released.
64. JPPS stated that he was asked to return on a Saturday after an officer had visited the family home. On this occasion after being made to wait, the Applicant stated he had a bag placed over his head, was handcuffed and was taken underground in a lift. JPPS stated he was then regularly questioned about MM and abused. Later he signed a paper when asked to do, in order to get out of the situation. I understood during this passage of evidence that the Applicant referred to signing papers on two occasions, once in his first period of detention and again in Roumieh prison.
65. The Applicant stated that he had two lawyers during his time in prison, naming a gentlemen ('NH') and Mr Z. JPPS stated that his family identified Mr Z as a more proficient lawyer, and that his lawyer 'kept applying for... release' as there was no evidence against him. The Applicant stated that as he was also assisted by a prominent lawyer and former member of parliament, Mikhail al-Daher, who went to court with Mr Z due to the lack of response to the work of Mr Z. He stated that his release was a result of their efforts and Mikhail al-Daher's capacity to intervene with the investigating judge.
66. JPPS confirmed that he was released from prison in May 2009 with no formal conditions, but did receive a verbal warning not to talk about his situation. He applied for, and was issued, a passport for his travel to Australia, which he undertook in around May 2010. The Applicant stated he was informed about the Judicial Council decision in 2014 by his brother-in-law, following which he contacted Mr Z in order to obtain the decision, and Mr Issa.
67. Initial questions in cross-examination sought to establish JPPS's language ability in English and Arabic. Questioning also sought to establish, I understood, the extent and impact of his concerns with the work of Mr Issa. One specific example given by the Applicant appeared

to be reliance in another hearing on a report from Foundation House, which JPPS considered to have been wrong. Questioning then returned to the record in a Foundation House report (T30.p.iv) that JPPS sought to conduct counselling in English, which he explained at the hearing related to 'trust' issues he had at the time with Lebanese interpreters.

68. JPPS confirmed that his employment with the Eido family included a period from 1999-2005 with a transport or courier business, followed by time with a business involving 'tracing transactions' (as referred to in his 2022 statement (AE1)). The Applicant confirmed his interest in politics as identified in this statement, including the establishment of what he described as a 'social charitable association'.
69. The Applicant was then asked some questions with reference to the first protection visa matter and the hearing in 2016 (FS1), including an instance of being asked about his statutory declaration. I also understood that it was put to JPPS that his account in evidence of his work history differed with a prior account, and he responded that this concerned matters that go back 23 years.
70. It was then put to JPPS that his account of the sale of the vehicle to AM was different to that given previously, in which the sale was to MM. The Applicant reiterated that MM agreed to pay the amount at the police station (which I take to be a reference to the evidence about lodging a complaint). JPPS was asked to confirm that he stated MM would pay, and the Applicant responded that a mistake may have been made in interpretation.
71. The Applicant's cross-examination was interrupted by the adjournment, during which time, as noted, a retranslation was obtained. I understood, upon the resumption of the hearing, that the question of who JPPS sold the car to was no longer being pursued as an example of inconsistency going to credit.
72. Upon its resumption, cross-examination returned to JPPS's concerns about the work of his former migration agent, Mr Issa. This appeared to focus on the Applicant's repeated claims about documents not being relied on in previous hearings. Ultimately, it was put to JPPS that he would 'say anything' to help his case, to which he replied he would not lie, 'for the sake of a visa or anything else'. It also emerged in cross-examination that Mr Issa had lodged appeals on the Applicant's behalf, that JPPS had studied law for three years in

Lebanon, and that the Applicant's family had paid large sums for migration assistance. JPPS raised further concerns about his prior representation and it was put to the Applicant that he makes stories up: he denied this assertion.

73. JPPS was taken to evidence given in 2016 concerning allegations put to him about his offending. When asked if he had been accused in a court of shooting a military person, the Applicant stated that this claim was in fact put to a group of people, and not to him individually. JPPS stated he was taken from intelligence detention before an investigating judge and he wasn't in jail. He then clarified that he may have been in jail at this time and it became apparent there had been some confusion during the interpretation. The purpose of this passage, I understood, was to highlight alleged inconsistencies in JPPS's story.
74. The Applicant was then taken to evidence given before the Tribunal in 2018 in respect of his political views. It was put to him that he had told the Tribunal that he was targeted because of his political views. JPPS confirmed that he was against the Hezbollah militia, and confirmed that he was not a member of any party. It was put to the Applicant he did not mention the Future Movement or the attempt to establish an association in 2018 because he indeed had no fear in Lebanon based on his political views. JPPS disputed this assertion and stated that he had told everything to his lawyer.
75. Questions were then put to JPPS about his 2010 statutory declaration, and apparent inconsistencies identified by the Tribunal in 2016. The Applicant stated that material prepared by Mr Issa was all in English and he had been told simply to sign. I put to JPPS that the document must have been constructed from information provided by him, and the Applicant repeated he did not know about its contents.
76. Further questions were put to JPPS about his travel to Australia and arrival in 2010, and about his employment history. Returning again to the car sale, JPPS confirmed that he told Mr Issa in 2010 that he sold the car in 2004 to MM. It was put to JPPS that in 2016 the Tribunal had addressed inconsistencies between the statutory declaration and his evidence. It was also put to him that he was now saying that he sold the car to AM, and the Applicant responded: 'I said in Lebanon, in Australia, and everywhere, that I sold the car to [AM]. How could I say that I sold the car to [MM]. I don't know – I don't even know [MM]. I only knew [MM] when [AM] fled'.

77. JPPS was asked about his faith based on the statement in his statutory declaration that he is 'committed to his faith'. The Applicant responded that he is conservative, but not a fanatic. JPPS then confirmed his date of birth and place of birth as 'W', which it was noted is a different location to 'M' which had been identified elsewhere. JPPS explained that his identity card bore the location 'W' as this was the town he was formally registered in due to the small size of 'M'. It was noted in cross-examination that the Applicant's passport also bears the location 'W'.
78. It was put to the Applicant that he had changed his story from 2010 in order to make it consistent with information about the involvement of AM, and he denied that he had ever changed his story. It was also put to JPPS that he blames Mr Issa for not raising things that the Applicant now wished to put to the Tribunal in the present hearing. He responded that he plans to sue Mr Issa.
79. JPPS was asked whether the statement in the statutory declaration that the police took no action after he reported being shot was in fact true. He stated that it was. It was then put to the Applicant that there was other evidence indicating a civil compensation payment arose out of the shooting, which was accidental. JPPS described this as a story to cover up for government involvement in the shooting. When asked if he lied about the shooting to make his claim at the time more plausible, JPPS responded that he was indeed in fear of his life. He denied that he lied about his reason for coming to Australia, and stated that he merely wanted the process to be quick, as he 'had a genuine fear for his life'.
80. JPPS was then asked about an observation made in the 2016 Tribunal hearing that bank statements lodged with his tourist visa application in 2009 indicated deposits into his account during his time in detention (which I understood to relate to material at FST2, S5(d)). His responses indicated he understood that he had to demonstrate his account balance and he disagreed that money had been paid to him in detention. It was put to him that he had perhaps not even been detained, and that as the Tribunal had put to him at that time, the bank statements were false. JPPS denied this.
81. In response to some final questions from myself, JPPS denied supporting terrorism and purchasing or distributing weapons. He stated he was not aware what the substance red mercury was, and had no knowledge of the co-defendants named in the decision of the Judicial Council.

Family members

82. S3 provided a statutory declaration dated 13 December 2022 (AE6), which I summarise:
- (a) he was in Lebanon when JPPS had problems and was involved in trying to get the money from the brothers;
 - (b) he attended prison with a lawyer and his brother appeared to have been abused;
 - (c) he relocated to Australia at the end of 2007, beginning of 2008, and then returned to Lebanon after one year *'to sort the situation out'*;
 - (d) he approached a *'minister and international law solicitor'* *'Khoyil al dahir'* who agreed to help and they visited Judge Owaidat; and
 - (e) the investigating judge recommended he request release from the *'president of the court'* Judge *'Said Merza'* who spoke with Khoyil and granted the release.⁷
83. In his evidence, S3 stated that JPPS sold the car to MM who purchased it with a 'raincheck' being a cheque that cannot be deposited until later, and the Applicant called him frequently to follow up. He understood that the brothers were already detained at this point. S3 stated that he accompanied his brother to the Interior Security Headquarters in Beirut and he was released at midnight. He was recalled after a week and 'the torture stage started from there'. S3 became emotional describing his visit to JPPS in prison with the lawyer, observing his bruises and harsh treatment during the visit.
84. S3 confirmed that he returned to Lebanon at 'election time' and gathered 50-60 people to visit a Member of Parliament Mikhail al-Daher to seek his involvement in his brother's case.⁸ They attended 'Justice House' together the following Monday and met with Judge Owaidat. The judge explained that the public prosecutor Said Mirza should be approached. They moved between the two offices and were then unable to contact the investigating judge, and S3 stated a call was made to the judge's wife threatening to take the matter to the media if it was not resolved.

⁷ A Judge Said or Saeed Mirza appears in publicly available sources to have been Lebanon's Prosecutor General.

⁸ The interpreter assisted in confirming the name, and noted that this former MP is now deceased.

85. S3 stated that his brother was not associated with Fatah al-Islam and if he was, he would never have been released from prison. He explained that his father and JPPS worked for LibanPost which was owned by the Eido family which was openly anti-Hezbollah, and his brother expressed similar views. S3 stated that 'intelligence' sent someone to kill his brother for a purported link with Fatah al-Islam, but the underlying reason was because he was against Hezbollah.
86. In cross-examination, S3 reaffirmed that he is very close to his brother. He stated that while he did not make calls about the money for the car, he did visit the father of the brothers at his 'gift shop' in 2007 to raise the issue. He stated that he visited his brother many times in prison and identified the lawyer he originally attended with as NH. S3 stated further that during the visit when JPPS first attended for questioning, S3 remained outside. He also saw the Applicant transferred by truck for an attendance at court.
87. When asked further about the visit with Mikhail al-Daher, S3 confirmed that Mr al-Daher was shown material on a laptop by Judge Owaidat. He also stated that both the prosecutor and investigating judge had to sign to approve JPPS's release. I understood that S3 was unable to clearly confirm how bail was arranged as he stated that he left for Australia and Mr al-Daher offered to resolve the matter. He later stated that he paid for the lawyer, Mr Z, as well as 'bail or something'; 'that's it'. He described the bail amount as 'insignificant', and 'symbolic'.
88. It was put to S3 that the story concerning the shooting of JPPS was based on speculation, and the witness insisted it was 'not a... made up story'. He also confirmed that he had put JPPS in touch with Mr Issa as he had been S3's representative previously, and only attended the first meeting with his brother. JPPS routinely provided documents in Arabic that Mr Issa would arrange to translate.
89. Statutory declarations were also lodged by each of JPPS's other siblings that appeared to give evidence at the hearing (S1 – AE3; S2 – AE4; S4 – AE5; S5 – AE8; S6 – AE7). These statements, while distinctive, share broadly similar themes. They attest to JPPS's good character, they propose that his difficulties have arisen from political issues and corruption in Lebanon, and state that their brother is not a criminal or terrorist.

90. Cross-examination at hearing of these witnesses went largely to the issues of the method of preparing their statements (in at least two cases) and determining the degree of familiarity each had with JPPS, given the time many had spent in Australia. I sought some further evidence from S6 about JPPS's political affiliation. The witness explained the family history working with LibanPost which he stated led to JPPS meeting influential people. S6 also stated that the Applicant at one time considered standing for election as Mayor in their home town. In cross-examination, S6 passionately defended his statements as true, and not merely advanced to help his brother.

Legal witnesses

91. In the written material provided by Dr C in the third protection visa matter (T30.e) he confirms his experience as a human rights lawyer, and with representing terror suspects in Lebanon. Dr C describes a range of experiences of clients, including some experiencing torture and providing confessions under duress. He states that even innocent association with a terror suspect can lead to arrest. Dr C states that from general knowledge of JPPS's case, his matter commenced in a military court and was then transferred to the Judicial Council.
92. In his evidence at the hearing, Dr C stated that the investigative judge Judge Owaidat was not involved in the early stage of JPPS's case as the Applicant was first held in a military prison. The investigative judge is appointed by the Cabinet of Ministers and matters involving state security or terrorism are referred to the Judicial Council. Dr C stated that there is no appeal from decisions of the Judicial Council, and cited an example of a matter dating back to 1994 in which a decision was overturned only by act of Parliament. He described the body as an 'exceptional' tribunal due to the nature of its jurisdiction.
93. Dr C also provided some general observations about the procedure of the Judicial Council: he was not surprised that the decision in the Applicant's case was handed down five years after his release, describing the process as 'unfair'; a defendant's absence from a trial is taken as evidence of their guilt; the legal system does not provide boundaries for the work of the Judicial Council; and, he considered the specific ruling against JPPS could be voided if he returned to Lebanon.
94. Mr Z provided a detailed written statement dated 9 January 2023 (AE2) which I summarise:

- (a) he first met JPPS in Roumieh prison on 14 July 2008 after being approached by the Applicant's mother to assist when a previous lawyer had been dismissed;
- (b) there was a financial dispute over a car sale between JPPS and the brothers who had also been detained, and had raised the car sale, weapons sales and forgery allegations against the Applicant;
- (c) JPPS was active politically in the Future Movement, and there was a government plan to harm him;
- (d) JPPS was arrested by the Information Division, a security branch of the Ministry of Interior, prior to being transferred to Roumieh prison until his release;
- (e) he attended judicial investigation sessions, and submitted an application for bail which was later accepted;
- (f) JPPS was not charged with any crimes while detained, and was released by the investigating judge as the allegations were not proven;
- (g) he was aware of the charges from the time of his appointment as legal representative but was not notified of the date of the Judicial Council hearing, and he was not permitted by law to attend a hearing without his client present;
- (h) the Judicial Council is an '*exceptional court*' that '*deals with cases referred to it by a decree issued by the cabinet and serious crimes risking state security*', its rulings are final and not subject to appeal, and therefore the rulings are politicised;
- (i) the ruling does not deal with the fact that JPPS confessed under duress, which is a common occurrence in terrorism cases;
- (j) a ruling in absentia is overturned when the convicted person submits themselves to the court for retrial;
- (k) the result is '*natural and expected*' as the court considers failure to appear and 'escape' as evidence against them; and
- (l) he is personally sure that JPPS is innocent of terrorism crimes.

95. Mr Z gave evidence about his involvement with JPPS consistent with this statement, including that when he met with him, he showed signs of torture. He also confirmed that he applied to the Judicial Council for bail, and that he considered the Applicant's release consistent with the practice of Judge Owaidat of only detaining suspects who would be found guilty. Mr Z explained the political nature of the Lebanese judiciary as relating to the vertical division of society upon sectarian grounds.
96. In cross-examination, Mr Z insisted that he debated the issue of bail in the chambers of Judge Owaidat and secured the Applicant's release, having attended on the judge on around ten occasions. He accepted that in Lebanon, guilty parties could be released for political reasons, but did not think this was the case in relation to the Applicant. Mr Z reconfirmed his belief that the Applicant was not guilty of the alleged crimes. He stated that this was based upon his understanding of the evidence in the investigative process of Judge Owaidat. Mr Z stated that contact between JPPS and the brothers was a 'given' under the circumstances of the car sale, noting that the Applicant had worked as a clerk in vehicle registrations. He also confirmed that 'most people in the District' were supporters of the Future Movement.
97. Mr Z stated further that he came to be aware of a civil claim lodged in respect of the failed car sale. He believed that the brothers had also been tortured and provided 'many names', and that the allegation of a terrorism connection with JPPS was due to the civil claim. Mr Z understood that AM had been convicted and sentenced to 15 years and MM to 10 years, but later passed away.
98. I understood that when taken to the findings of the decision, Mr Z agreed with the interpretation that only weapons offences were upheld against JPPS. He stated that breach of article 72 carried a maximum penalty of one month in prison, and that punishment in respect of the offences against the 1958 law may carry the death penalty.

Other material

99. The decision under review (T3) includes a table of events outlining the migration history of JPPS. Included in this table are two references to a 'security referral'. The first is dated 27 July 2018 and the notation reads: *'The Department initiated a security referral'*. The second instance is dated 21 January 2022, and the notation reads: *'Security referral was finalised as Non-Prejudicial (cleared)'*.

100. After the initial phase of the hearing when the matter was adjourned, I brought to the attention of the Respondent's representatives that there appeared to be no documents lodged in this matter that correspond to these entries. In the course of a directions hearing during the adjournment period the Respondent confirmed that this material was not in the Respondent's possession or control.

101. The 2017 email from an officer in Beirut concerning information about JPPS reads, relevantly (T30.p.iv):

We contacted the Lebanese authorities (informally) today in relation to this matter and were advised that the client is adversely known to them and that the information in the report appears to be accurate. They advise further that the client has additional criminal matters pending and is known by a number of aliases in addition to the one he is using for the current matter. The Lebanese authorities advise caution in dealing with this client.

102. On 5 November 2014, JPPS was informed by the Department (T7) of the cancellation of the registration of his migration agent, Mr Issa. This matter was considered by the Tribunal in 2017 and it appears the agent's five-year cancellation was upheld due to sustained breaches of the relevant code and a lack of diligence, although certain other alleged forms of misconduct were not upheld.⁹ The period of alleged misconduct appears to align in part with the timing of the Applicant's first protection visa application.

103. A number of character references, including statutory declarations, were lodged in the course of the third protection visa matter (T30.f-n). These are uniformly positive in their description of JPPS as a person of good character. A number restate the Applicant's innocence. Two of the statements are from individuals who knew JPPS in Lebanon. One of these asserts knowledge of the Applicant from a young age and, while the writer has an association with the Future Movement, the statement does not refer to the Applicant's political affiliation or activity.

⁹ *Issa and Migration Agents Registration Authority* [2017] AATA 1110.

SUBMISSIONS

Applicant

104. A substantial amount of the ASFIC is dedicated to countering adverse findings by the delegate in the decision under review. Among this material I note the following contentions:
- (a) JPPS claims that he is innocent of the crimes for which he was found guilty, and his involvement extended only to selling a car to a person involved in a terrorist organisation [12]-[13];
 - (b) the Applicant's claim as to a link between Lebanese intelligence and his shooting should be accepted [27]-[29];
 - (c) the Judicial Council considered statements that appear to have been made prior to his detention in prison, JPPS withdrew his confession, and the claims of a car sale were made during the investigation [45]-[47];
 - (d) the Tribunal does not have before it any of the evidence referred to by the Judicial Council [55];
 - (e) a conviction in absentia raises questions about procedural fairness, and consideration should be given to reports of corruption in the Lebanese justice system [58], [64];
 - (f) the Applicant's claim that his prosecution could have been politically motivated as supported by country information and the evidence of Dr C [83]-[89];
 - (g) the Judicial Council did not make a finding that JPPS was a member of Fatah al-Islam, nor directly involved in violent crimes and there are discrepancies in the Judicial Council decision in respect of its findings and the offences JPPS is said to have committed [100]-[101];
 - (h) the offence of supplying weapons does not involve an act of violence against a person's life and therefore does not come within the terms of s 5(a) of the Extradition Act [110]-[115];
 - (i) determining subjective motives with respect to the commission of an offence is complex, often involves a mixture of political and non-political purposes and as the

Applicant denies committing the offences, there is no direct information to assess the question of motivation, let alone the assumption of financial gain raised by the delegate [120]-[130];

- (j) Fatah al-Islam and those associated are materially linked to a political cause including to institute Islamic law in Palestinian refugee camps and the use of violence to achieve political objectives, and it is not open to find the offending to be non-political [131]-[136].

- 105. At the hearing, it was submitted that the Applicant's evidence about experiencing torture was important as it demonstrated duress. The Judicial Council notes the withdrawal of his confession, and the impact on his health was noted in medical reports. In respect of credibility, it was contended that the Department's Protection Visa Processing Guidelines (ABA1) acknowledge that trauma can have an impact on memory and demeanour, specifically that: consideration should be given to whether conducting an interview is appropriate [11.6.6]; this background may be relevant to a decision whether to draw an adverse inference on credibility under s 91V(3) of the Act [12.8.3]; and, they may amount to mitigating circumstances in respect to credibility [15.4.6].
- 106. It was submitted the evidence of JPPS's siblings was positive as to his character but the evidence of S3 is particularly important. Character evidence is relevant in criminal matters as it goes to the likelihood of guilt (*Braysich v The Queen* [2011] HCA 14, [39]-[40], (ABA1)). It was submitted that S3's evidence is valuable because of his direct involvement in the events in question in Lebanon, including being involved in trying to obtain payment for the car, and it should be accepted that he is a credible witness. The Applicant's representative also identified the extensive further character material lodged in this matter (T30).
- 107. It was contended that the evidence of Mr Z should also be accepted. This included evidence that: he was unable to represent JPPS in absentia in the deliberations of the Judicial Council; JPPS was mistreated in detention and would not have been released had the investigative judge considered there was a genuine link to the offending; and conviction with the death penalty so long after release and with no right of appeal does not amount to a serious reason for considering JPPS committed the offending.
- 108. Dr C's evidence about the nature of Judicial Council operation is to the effect that it is complicated, unfair, and inherently political. Furthermore, the Tribunal has not been

presented with any evidence concerning the actual nature of Judicial Council procedure. The terms of the decision itself also do not clearly identify all sources of information relied upon, nor are these before the Tribunal.

109. It was submitted that the Tribunal is not bound by the findings made in the course of the third protection visa decision in 2020, however the following contentions were raised: the finding as to the legitimacy of the Judicial Council decision does not amount to evidence of guilt; the Applicant's story about the sale of the car and the follow up inquiries was accepted; and, the Tribunal stressed it was not involved in determining the guilt or innocence of JPPS particularly in the absence of evidence underlying the alleged offending.
110. It was further contended that country information material lodged in this matter cites human rights abuses and corruption in the Lebanese judicial system (T30.p.iv, 791, 912).
111. In relation to the Respondent's approach to evidentiary matters (see below) the Applicant cited *Rawson Finances Pty Ltd v Commissioner of Taxation* [2013] FCAFC 26 at [137] where Jagot J distinguishes *Hayes*, in the particular circumstances of that case, in respect of an issue of procedural fairness: '*[t]here is no rule that procedural fairness dictates the rejection or giving of no weight to evidence which cannot be tested by cross-examination*'.

Respondent

112. The contentions set out in the RSFIC are that:
 - (a) the Judicial Council decision is legitimate and '*nothing in the evidence provided by the applicant undermines its findings*' [23]; and
 - (b) '*[t]he offences identified by the Judicial Commission are serious crimes and are non-political crimes*' [24].
113. It is also asserted that the Applicant's '*credit is in issue*' which is put in justification of the brevity of the document [17].
114. The Second RSFIC expands on the core contentions:

- (a) as a matter of procedural fairness, the Minister is entitled to make forensic and tactical decisions for the purpose of cross-examination (*Hayes*) [2], and thus the SFIC did not set out any of the matters relevant to the Applicant's credit [5];
 - (b) the Tribunal in its decision of 18 December 2020 accepted the Judicial Council decision as genuine [7];
 - (c) this Tribunal is confined to '*reviewing the delegate's adverse decision under s 36(2)*' of the Act (*GWRV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 602), and cannot address other provisions such as the complementary protection criteria in s 36(2)(aa) [8]; and
 - (d) to determine the decision of the Judicial Council is not genuine or valid would amount to jurisdictional error as '*fundamentally inconsistent with the basis upon which jurisdiction is invoked, by essentially amounting to a rejection of the finding that JPPS is owed protection*' [9].
115. At the hearing it was submitted for the Respondent that JPPS's 2010 statutory declaration was fundamental to consideration of this matter as it was made closest to the events in question. In particular, it was contended that the statement should not be read as affected by anything done by Mr Issa, given the evidence provided by S3 as to the manner in which engagement with the migration representative unfolded. Moreover, the Tribunal was invited to accept and prefer S3's evidence about the timing and nature of the car sale in 2007, and in respect of the sequence of events thereafter.
116. It was also submitted that materials lodged evidence a drop in salary from 2005 which was said to be not inconsistent with the alleged involvement with the brothers for financial gain. It was contended that the only identified motivation is money; apparently a reference to the decision under review (T3, 28).
117. It was specifically contended that after the production of the Judicial Council decision, JPPS changed details about the narrative including the number of brothers involved, the year of the car sale (to 2004), and raised the story about an associated court action. Moreover, it was contended that the date of the confession that was later retracted, was prior to the experience by the Applicant of torture. It was also submitted that S3's evidence

demonstrates that JPPS was indeed permitted legal representation, confirmed by the evidence of Mr Z.

118. It was submitted that there are a range of inconsistent stories about the shooting incident, and the better interpretation of this is that it was accidental, was subject to a compensation payment, and is unrelated to the prior events. In the 2010 statement this is posed as security-related, but JPPS has since sought to associate it with local politics. Moreover, the Applicant's claims to engagement in politics had evolved over time.
119. The Respondent accepted that the Lebanese judicial system can be understood to function differently but it was contended that the evidence should be interpreted as indicating that its political nature worked in JPPS's favour. This was said to be because the same investigating judge that released the Applicant, later secured his conviction before the Judicial Council; that is, given the evidence, the release should be inferred to be due to political influence rather than the innocence of JPPS. Further, the Judicial Council should not be understood as solely a political body due to its links to the executive.
120. The point was made in submissions that the Respondent had flagged it's wish to cross-examine any witnesses on which the Applicant seeks to rely. On this basis, while it was acknowledged there is no rule that weight cannot be given to material before the Tribunal, JPPS did not call all of those who have provided statements in his matter. Equally, it was acknowledged that none of the character evidence deals directly with the inconsistencies and associated credibility issues relied on by the Respondent.
121. The Respondent identified the following as reinforcing its claims about credibility: JPPS studied law for three years; was the most educated of the children; has given evidence at multiple hearings; and, has engaged over some years now with other detainees. In summary, it was put that JPPS found it hard to give a straight answer to questions, except when responding to the Tribunal and tried to distract the cross-examiner.
122. The Respondent clarified that it was not specifically relying upon correspondence from the Departmental officer in Beirut stating that informal inquiries led local authorities to express concern about the Applicant's record. However, I understood the Respondent to indicate this material may carry weight if supported by the evidence as a whole. It was also confirmed

that documents said to refer to a security referral about JPPS were not in Departmental files.

CONSIDERATION

123. It follows from *FTZK* that considerable care must be taken in determining whether serious reasons exist, and a finding must be based on a strong inference, with very close attention paid to the material said to form the basis of the operation of the exclusionary provision. The decision of Mathews J, then President of the Tribunal, in *Attef Al-Habr and Minister for Immigration and Multicultural Affairs* [1999] AATA 150 (*Al-Habr*) also provides some relevant guidance. This is particularly so as that decision deals with a matter involving a ruling in absentia by the Lebanese Judicial Council. Consistent with *FTZK*, Her Honour considered the provision did not represent a standard of proof [81]. It was also held, that *‘the mere fact of a conviction does not, of its own, necessarily constitute “serious reasons for considering” that the person has committed the crime in question’* [85].
124. Mathews J went on to state that findings, in the context of continued denials of involvement in the crime, could only be based on an assessment of the integrity of the trial in Lebanon and the strength of the evidence [88]. In the particular circumstances pertaining in *Al-Habr*, Her Honour considered there was so much unanswered (and unanswerable) as to the integrity of the trial, that the fact of conviction could not be given great weight [92]. There appears to have been a very detailed statement of evidence in the reasons of the Judicial Council lodged in that matter.
125. I note that Kerr J, in the minority of the Full Court decision in *FTZK*¹⁰ observes that in the original decision,¹¹ the Tribunal *‘correctly approved’* the approach taken in *Al-Habr* [159]. This was said (by the Tribunal) to involve examining all of the evidence *‘in minute detail bearing in mind the seriousness of the allegations’*. His Honour goes on to say that this approach is *‘warranted by the nature of the jurisdiction, given that the ‘paradigm case’ is that it cannot be assumed the person facing return will get a fair trial’* [160].

¹⁰ *FTZK v Minister for Immigration and Citizenship* [2013] FCAFC 44.

¹¹ *Re FTZK and Minister for Immigration and Citizenship* [2012] AATA 312.

126. ZYVZ also involved consideration of whether the outcome of a trial in absentia might contribute positively to a finding that there were serious reasons. The Tribunal in that matter considered that it was feasible that a conviction might constitute serious reasons, assuming certain procedural fundamentals were present (*ZYVZ and Minister for Immigration and Border Protection (Migration)* [2018] AATA 3967 [45]-[47]). On appeal, the court appeared to generally endorse the detailed attention paid to such procedural matters (*ZYVZ* [57]-[80]).
127. The factors outlined above appear to be reflected in the Guidelines summarised above in these reasons [14]. The Guidelines also address the other element of the statutory test, being what constitutes a non-political crime. The document cites the somewhat earlier decision of the High Court in *Singh* on the question of an individual's motivation for alleged offending. Thus, where motives are found to be mixed, a lesser non-political motive will not change the character of a crime whose substantial purpose is political.
128. The Act, similarly, provides that a non-political crime is one where the motive is wholly, or mainly, non-political in nature. The Act also incorporates the definition of political offence in the Extradition Act. That act specifically excludes from the definition an offence involving violence against a person's life or liberty, even in circumstances where the offence is otherwise considered to be of a political character.
129. The challenge of the task has been recognised in the authorities. Gleeson CJ observed in *Singh* that there is '*no bright line*' between what is a political and a non-political crime, but there must be a '*sufficiently close connection between the criminal act and some objective identifiable as political to warrant its characterisation as a political act*' [21]. This language reflects the reasoning in *T v Home Secretary* [1996] AC 742 (cited in *Singh* and *Al-Habr*), with a further consideration said to be whether civilian targets or members of the public are involved. This reasoning appears to have led Mathews J to observe that the killing of the wife and children of the leader of a Christian political group in an assassination plot could never fall within the definition of a serious non-political crime (*Al-Habr* [75]).
130. Before turning to the Judicial Council decision and the alleged offending in this matter, it is necessary to address the Respondent's contentions about the manner in which the third protection visa decision should be treated.

131. The Respondent's submissions reflect, at least in part, the well-established principle that the Act creates a bifurcated system of merits review (*GWRV v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 39, at [42]-[48]) (*GWRV*). Hence, protection visa decisions are heard in the MRD and matters involving the consideration of exclusionary provisions are heard in the General Division. There is possibly an argument for normativity in Tribunal decision making, (see for example *Azizi and Minister for Home Affairs* (Migration) [2018] AATA 2561), but I consider this would strictly apply only in respect of decisions regarding the same statutory question.
132. At the heart of the Respondent's contention is the slightly more complex scenario in which relevant facts and circumstances may be interpreted differently in the context of different statutory questions in two related, but separate, decisions under this legislative system. This scenario was identified in the submissions made before the Full Court in *GWRV* [31]: circumstances might arise in which an applicant sought to challenge a finding that the 'serious crime exclusion' applied at the risk of reconsidering positive findings as to the existence of protection obligations.
133. There is no dispute in this matter that the Judicial Council decision exists as, it might be said, a juridical fact. The Applicant originally produced the document, and Mr Z represented him in respect of the charges (although not at the hearing). The only question that arises is what weight to give to it. The Respondent's position is, essentially, that I afford the decision significant weight.
134. The document demands close attention because it stands as the only evidence in this matter that might substantiate a finding that there are serious reasons to consider that JPPS committed serious non-political crime in Lebanon. The text of the decision refers to an indictment and prosecution brief, and the indictment is said to have been issued by Judge Owaidat in July 2012, some five years after his appointment in August 2007. Neither document is before me, and I have not seen any evidence to indicate that JPPS or his lawyer Mr Z have seen these documents. I add further that there is no consolidated list of offences in the decision, but rather references to various provisions of several different laws. None of the elements of offences said to be represented by the provisions referred to are set out in the decision.

135. The facts alleged are based almost entirely on testimony said to have been given by JPPS before the 'Information Division' on 26 May 2007. The decision notes clearly that this testimony was withdrawn when the Applicant was interrogated by the military investigating judge on 6 June 2007. On this occasion JPPS is said to have raised the car sale as the basis for his relationship with the brothers, but apparently admitted to being asked to source arms. He also retracted his testimony before Judge Owaidat, on 13 September 2007, apparently with an acknowledgement of being present when an arms deal was discussed.
136. I note from the description provided of the initial testimony that nearly all of the arms deals are said to have fallen through, save for the sale of a pistol and silencer to AM, and JPPS is not the instigator of the other deals. The transaction in respect of arsenic and red mercury did not take place, and the material is described as fake. Two sources are cited in relation to the document forgeries. This first source appears to have implicated both AM and JPPS in respect of passport forgery. The other source also gave testimony that he was sold a fake passport by JPPS. These individuals are named, but their identities and specific relevance to the events are not in fact spelled out.
137. The first finding in the decision is that JPPS met with key figures of Fatah al-Islam and attempted to sell red mercury on their behalf. These actions are directly linked to offences against the 1958 law, and are identified in part as terrorist offences. I read the decision as going on to exclude several other offences. I cannot see from the circumstances described in the initial, withdrawn, testimony read together with the publicly available extract of the 1958 law, that JPPS's own actions fall within the articles cited. Nonetheless, JPPS was convicted of contributing to terrorist activities.
138. Further, the decision refers twice to red mercury. It is not clear from the factual description how or when the substance was determined to be fake, although I have identified reliable public sources in these reasons concerning this fictional substance. It is not clear under the circumstances why the concluding findings of the Judicial Council restate JPPS's alleged association with this particular transaction having also described the material as fake. It is uncertain whether the decision is inherently to be read as acknowledging the substance does not exist, or whether the transaction was intended to involve a fake substance.
139. Finally, a timeline of some kind emerges from the factual background, with JPPS said to have first met AM in 2004, and activities associated with the alleged offending do not arise

until 2006. I consider the wider sources cited above in these reasons demonstrate that Fatah al-Islam was not formed until some time in 2006. There is no information suggesting some kind of criminal association in 2004.

140. JPPS was also found to have contributed to the forgery of identity documents and passports, but not to have used the services of a forger. He was convicted accordingly of two offences, and it appears from the references to article 219 that this is offending as an accomplice. Unlike the first offending, supported solely by reference to a confession, there appears to have been some supporting evidence for these charges, albeit in one case somewhat hard to follow.
141. Finally, JPPS is described as having engaged in the provision of 'various weaponry' and is convicted of a weapons offence. As noted, the facts relied upon only identify one allegedly completed transaction, being the sale of a pistol and silencer to AM.
142. Were I to consider the decision of the Judicial Council as a source of information to be wholly reliable, I would have some concerns about the foundation for the first offences. I might have slightly less concern about the other groups of charges, but there is some ambiguity in the evidence supporting the forgery charges, and the wording of the finding on the weapons charge appears somewhat at odds with the related facts. In short, I consider the text of the decision appears to raise some possible grounds for considering that JPPS committed some offences in Lebanon.
143. There are opposing contentions as to whether the findings against JPPS should be understood to involve serious non-political crime. I accept that the evidence before me demonstrates that the Judicial Council is an exceptional body that hears matters identified by the Cabinet of the Lebanese Government. In particular its remit appears to be matters of national security. Neither fact necessarily means that all of the work of the Judicial Council is inherently directed at 'political' crimes. The question of the nature of the offending is, rather, governed by the applicable statutory test. Neither this test, nor the authorities discussed above, require that engagement with a terrorist organisation be automatically considered as political criminal activity. What is important is to understand specific alleged conduct, together with associated motivations.

144. There is no evidence implicating JPPS directly in acts of violence of any kind. It might be said that some or all of the alleged offending might be thought to 'involve' violence since the prosecution was clearly inspired by the conflict at Nahr al-Bared. If this were the case, then the Applicant's involvement would likely be deemed wholly or mainly non-political in nature. However, I generally agree with the Applicant's contention that it is challenging to determine motive in the context of such contested facts, a question I pursue at greater length below in relation to the basis of the findings of the Judicial Council.
145. The Respondent did seek to advance an argument about a purported financial motive behind JPPS's involvement with the brothers. This contention appears to be based on the passage of evidence addressing the Applicant's bank transactions. The material before me (FST2, S5(d)) relates to 2009, contemporary with JPPS's application for a visa sponsored by his family, and not to any earlier period of employment. I note this was the subject of consideration in the second protection visa decision [152]-[155] but the Applicant's responses recorded there appear also to refer to the visa application, as they did in the hearing.
146. I do not place any particular weight on the arguments and evidence in this matter concerning the Applicant's political affiliations. This issue was not entirely new when introduced in his statement prior to the hearing, as possible political associations were raised in the second protection visa hearing. More importantly, the nature and scope of his activities appear not to be of a kind that obviously bears relevance to the alleged criminal activity. I accept that it may reflect attempts by the Applicant to rationalise his pursuit by the authorities. However, the evidence overall indicates he was pursued due to his personal links to members of a terrorist organisation.
147. Ultimately, for reasons that I now come to, I do not consider it necessary to make a concerted finding about the nature of the alleged offending.
148. With the exception I have noted about the supporting evidence concerning acts of forgery, the decision records only the information said to have been given in two confessions, one on 26 May 2007 and the other, I infer, being the revision of JPPS's evidence on 6 June 2007. These confessions were both retracted on 13 September 2007. The Applicant continues to rely on the contention that any confession was affected by his treatment in detention.

149. The evidence and material demonstrate there are, broadly speaking, two phases to the Applicant's detention. The first of these appears to be a preliminary investigation stage conducted by an organisation or organisations variously described as information/intelligence/security/military services, commencing in May 2007. This is not only referred to by the Judicial Council decision, but is also supported by the Applicant's written and oral evidence, and the evidence of Dr C. There is then a subsequent phase of detention in the prison service, attested to by correspondence from Lebanese justice authorities. This is described as commencing 13 September 2007, which is also the date of what I presume was JPPS's first encounter with Judge Owaidat, and also the date of the Applicant's first retraction.
150. The chronology provided in the 2010 statutory declaration aligns with the timeline found in the text of the decision. That is, it appears that JPPS was recalled for further questioning on Saturday 26 May 2007, and from that point was held in detention. There is no dispute from the Respondent that JPPS suffered mistreatment during his time in detention, however, the Respondent maintains that the initial confession outlined in the factual background of the decision was provided without coercion on or prior to 26 May 2007. I infer from the Respondent's submissions that I am asked to treat the contemporary retractions as unreliable on the basis that the Judicial Council found against JPPS. This approach may be said to be supported by the other contentions raised about the reliability of the Applicant's evidence.
151. In his 2010 statutory declaration, which the Respondent has urged me to consider the better account of circumstances provided by JPPS, there is no reference to a confession or to the retraction of his testimony. Reference is made to his mistreatment. I have noted the evidence given at the hearing by JPPS that he was made to sign two confessions, and the evidence of S3, which was that torture of his brother commenced upon his detention. I have noted the submission made by JPPS before the third protection visa hearing about his mistreatment upon initial detention. This account appears to refer to a single instance of signing a confession.
152. It is difficult to construct a detailed timeline of events after JPPS represented himself before the Information Division on or about 26 May 2007. The Applicant referred in his evidence to

the passage of some time before the first signing, but was unable to be specific.¹² In the second protection visa hearing he referred to a matter of days between detention and the first signing (Exhibit A1, p12). In both sources JPPS claims that he was handcuffed and blindfolded, and either threatened or abused at the time.¹³ I noted above, that the Tribunal in the third protection visa decision considered these matters and the account given there appears to correlate with these other accounts.

153. Accordingly, I consider the better view of the evidence is that JPPS was made to sign a confession of some form on or shortly after his representation on 26 May 2007. I consider it reasonable to accept that this confession, as well as other admissions noted in the decision of the Judicial Council, were modified before the military investigation and retracted before Judge Owaidat, which is consistent with the Applicant's contention. These documents, or the information said to be contained in them, are the sole source of factual material revealed in the text of the Judicial Council decision with respect to engagement with Fatah al-Islam figures, and arms deals.
154. These confessions were the outcome of a process that on its face would appear to not be part of the routine judicial process. While there is reference to a military investigating judge, I note that this first period of detention is not officially recognised by the Lebanese justice authorities. I also observe that there has been no argument presented as to why JPPS would wish to initially volunteer a detailed confession about involvement with a terrorist organisation to Lebanese intelligence, shortly after the conflict at Nahr al-Bared. If this were the case, equally an argument would need to be proposed as to why the true story of the Applicant's involvement with these individuals was then modified and retracted. Retraction before Judge Owaidat is more consistent with my reading of the evidence as to coercion and mistreatment. Finally, I observe that in the absence of a credible foundation based in the confession, I consider the additional supporting evidence about forgeries loses the weight it might otherwise have had since the context for that material is unreliable.
155. To summarise, I have identified above what I consider to be several procedural flaws arising from the decision of the Judicial Council:

¹² Transcript, 20 February 2023, pp 43-44.

¹³ Transcript, 20 February 2023, pp45-46; Exhibit A1, p 12.

- (a) the specific nature of the offences themselves are poorly articulated;
 - (b) the elements of the offences are not specified;
 - (c) the indictment and prosecution brief have not been provided nor, it appears, summarised;
 - (d) the factual basis for the findings in the decision are otherwise based upon, primarily, an amended and retracted confession;
 - (e) the confession was given under duress; and
 - (f) no other, more plausible, explanations have been advanced to address these issues, and specifically the retraction of the confession.
156. For these reasons, I consider that the record of the Judicial Council proceeding alone is not a sufficient basis on which to make the finding that there are serious reasons for considering that JPPS committed serious non-political crime in Lebanon.
157. Given the Respondent's submissions, some consideration needs to be given to the nature and effect of the findings in the third protection visa application. While acknowledging the bifurcated nature of decision-making under the Act, it might be said that in matters affecting the same applicant and the same factual background, due weight ought to be given to relevant findings of the Tribunal. In making the complementary protection finding, the Tribunal specifically made no finding as to the 'veracity' of the Judicial Council decision. On this basis, my specific findings about the decision do not contradict any finding by the Tribunal in that decision.
158. The Tribunal, moreover, appears to have adopted a particular interpretation of the circumstances of the later shooting incident which, together with the nefarious association with the brothers assumed in the Judicial Council decision, formed the basis of the protection finding. With respect, the Tribunal there refers to three possible interpretations of the shooting: one, before the delegate and based upon material in the first protection visa application, in which a man was jailed for shooting JPPS because of his assumed association with the incident at Nahr al-Bared; a second, being that state security arranged the shooting; and, a third, that it related to a dispute with his cousins.

159. The Tribunal preferred an interpretation of the events in which, due to the existence of the Judicial Council decision, JPPS must be assumed to have had involvement with members of an extremist group. This finding is made, with respect, despite the Tribunal declining to make a finding about the substance of the Judicial Council decision. The court records relating to the prosecution raised following the shooting (FST2) are somewhat convoluted. They refer to a dispute between JPPS and the individual bearing the same surname, which may, or may not, be the cousin referred to in the Applicant's evidence before the Tribunal on that earlier occasion. The record also states that the individual responsible for the shooting confessed after being beaten. The record also refers to an assumed relationship between JPPS and extremists as being one explanation provided for the shooting.
160. I consider it appropriate to put some weight on the record of proceedings about the shooting. I also consider that this material, taken together with the findings of the Tribunal in the third protection visa decision, falls short of evidence substantiating JPPS's involvement with Fatah al-Islam. I consider that a better interpretation of the finding of the Tribunal is that it acknowledges that the shooting arose from an assumed link with extremists and that this, in the context of the Judicial Council decision, leaned toward the complementary protection finding. However, I do not consider the protection finding itself to be a sufficient basis to alter my conclusions, based on my own more detailed consideration of the Judicial Council decision, and the explicitly confined nature of the other Tribunal's inquiries.
161. Particular attention was paid by the Respondent to apparent inconsistencies in the narrative about the sale of the car. Specific interest was paid to the absence of a reference to the year 2004 in the 2010 statutory declaration. As with the absence of references to confession and retraction of evidence, the text of the Judicial Council decision provides the initial and earliest basis for this date. I accept the general point of the Respondent that the 2010 statement predates the Judicial Council decision, as well as its provision to the Department by the Applicant. Nonetheless, on its face, the decision reveals that the nomination of 2004 arose in the 2007 confession. I consider this fact, and the fact that previous decision makers have accepted that some form of relationship dated back to a sale in 2004, both rob the Respondent's argument of force.
162. This conclusion, and the Applicant's own repeated evidence about a sale in 2004, appear to conflict with the evidence of S3 that seems to place the sale in 2007, an interpretation favoured by the Respondent. A concomitant to the issue about the timing of the sale of the

car is the question of what the reason was for contact with MM on the eve of the fighting at Nahr al-Bared in May 2007. The issue was not elaborated thoroughly in submissions, despite the considerable time spent at the hearing upon aspects of the narrative about the car sale. It is one important example, however, illustrating the Respondent's wider contention about the credibility of JSSP. For the reasons given immediately above, and those that follow, I do not consider it necessary to attempt to resolve categorically any of the contentions in relation to the alleged competence or otherwise of Mr Issa. That said, I note the fact of his suspension, which explains, to some extent, the reason why JPPS cast aspersions upon his agent's competence.

163. While the question is not fully on a par with the issues elaborated in the decisions in *FTZK*, I consider the reasoning of the High Court has some application here. At its heart, that decision addressed certain findings about events and conduct following alleged criminal conduct overseas, including the making of visa applications in Australia. The majority in the Full Court determined that the Tribunal had considered these facts as demonstrating consciousness of guilt in the applicant [45]. In the High Court, French CJ and Gageler J held the view that in the context of considering the serious reasons question, the existence of contested matters of fact is not alone sufficient finding, let alone a concession as to the requisite criminal conduct [18]. That said, I do not dispute that their honours observe that adverse findings about conduct may go to credibility. However, Hayne J specifically endorses the reasoning of Kerr J in the Full Court (at [130]-[138]) [67], and this logic is summarised briefly by Crennan and Bell JJ to be that conclusions adverse to the applicant were not the only conclusions open to the Tribunal about the apparently misleading conduct [95].
164. It is logically possible that JPPS was both engaged with a car sale at one point, and also subsequently embroiled in some manner in support for the Fatah al-Islam cause, as was observed by the Tribunal in the second protection visa matter. I note that the decision-maker appears not to have addressed in any substantive way, however, the question of the car sale as an explanation for the link to the brothers, presumably preferring overall the decision of the Judicial Council (T3, 17, 20). Equally, the delegate appears to have unquestioningly accepted references to red mercury, notwithstanding the Judicial Council itself notes the material was fake (T3, 25). The point, however, is that JPPS has always maintained an alternative explanation for his connection to the brothers, and while this was apparently rejected by the Judicial Council, the basis of that rejection is information contained in the

Applicant's withdrawn confession. Given my findings about this, I am unable to place determinative weight on matters of credibility raised by the Respondent insofar as they are directed to emphasising the value of the reasons of the Judicial Council in determining the statutory question.

165. The circumstances of JPPS's release from detention have also occupied the attention of decision makers, as well as being a matter of some interest during examination at the hearing. On the face of the evidence there appears to be an unresolved conflict about the respective roles of the now-deceased Lebanese politician, and the Applicant's own legal representative, Mr Z. The evidence appears to depict narratives about meetings with Judge Owaidat that do not intersect, although it may be that they are not in fact conflicting narratives. What is clear, however, is that JPPS was released from detention by the state justice system, probably on bail. I note there is reference made to bail in the amount of 3 million lira in evidence given in the second protection visa hearing (Exhibit A1, 15), broadly consistent with the evidence given by S3 here.
166. The fact remains that JPPS was held on suspicion of involvement with a terrorist organisation and was released by a duly appointed investigating judge. The Applicant was also permitted to leave Lebanon, and has also been described in material from the justice authorities as having no criminal record. This record was generated prior to his release from custody which itself raises questions about the Applicant's period of officially recognised detention. It may be that it was determined that his involvement was not sufficiently serious to make him a risk in the community. It was put for the Respondent that release was possibly an indicator of a politicised judiciary. This too may be a possible explanation. Ultimately, I do not consider I have adequate evidence to make a finding, other than to note his release during the investigative stage (or the second investigating stage, following my earlier analysis).
167. I consider it pertinent to note that the delegate in this matter had an indication before them that JPPS was found by a security evaluation of some kind to not be associated with any prejudicial issues or findings. This material postdates by some years the informal advice passed on by the departmental office in Beirut that JPPS was in some way known to the authorities. This may well be explicable by the publicity associated with the Judicial Council decision. In any event, the Respondent was unable to provide any material related to a security assessment, however I take note that such an assessment appears to have been

made. The Respondent did not seek to rely upon the informal advice from Beirut and I give it no weight since the source and basis upon which it was made is not clear.

CONCLUSION

168. In summary, I have found that the decision of the Judicial Council appropriately forms the starting point for the inquiry into whether there are serious reasons for considering whether JPPS committed serious non-political crimes in Lebanon. As I have explained, even were I to accept the Respondent's argument that my decision is in some way bounded by the third protection visa decision, I consider that decision to be somewhat nuanced, in the manner contended for by the Applicant.
169. I explored in my considerations the two parts of the serious reasons inquiry. To a large extent, the complexity and – indeed – ongoing obscurity of some matters raised in evidence has meant that both parts of the inquiry have been rendered particularly challenging. Regardless, I have found that I cannot place reliance upon the Judicial Council decision to the degree required by the authorities to find against JPPS. This is due to the substantial procedural weaknesses that I consider to lie at the heart of its findings. These include, critically, the fact that it is fundamentally based upon admissions extracted under duress in an investigation led by an intelligence body of some kind.
170. Accordingly, as the record of the conviction alone is the sole basis for consideration of the exclusion provided for in the legislation, I am not able to find that there are serious reasons for considering that JPPS has committed a serious non-political crime before entering Australia.

DECISION

171. For the reasons given above the Tribunal sets aside the decision dated 16 September 2022 and substitutes it with the decision that the Applicant is not ineligible for grant of a protection visa by reason of s 36(2C)(a)(ii) of the *Migration Act 1958*.

*I certify that the preceding 171
(one hundred and seventy -
one) paragraphs are a true
copy of the reasons for the
decision herein of Dr Stewart
Fenwick, Senior Member*

.....[SGD].....

Associate

Dated: 21 September 2023

Date(s) of hearing: **20-21 February 2023, 11-13 July 2023**

Date final submissions received: **12 July 2023**

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