

1109441 [2012] RRTA 104 (27 February 2012)

DECISION RECORD

RRT CASE NUMBER: 1109441

DIAC REFERENCE(S): CLF2011/100057

COUNTRY OF REFERENCE: Bahrain

TRIBUNAL MEMBER: Patricia Leehy

DATE: 27 February 2012

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bahrain, arrived in Australia on [date deleted under s.431(2) of the Migration Act 1958 as this information may identify the applicant] June 2011 and applied to the Department of Immigration and Citizenship for the visa on [a further date in] June 2011. The delegate decided to refuse to grant the visa [in] September 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] September 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department’s file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate’s decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] February 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration agent.

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21. According to his Protection Visa application, the applicant is a man who was born on [date deleted: s.431(2)] [in] Bahrain. He says that he separated from his wife [in] December 2010. The applicant says that his brother, [Mr A], is an Australian citizen, and that his brother, [Mr B], is an Australian permanent resident. The applicant says that he has a brother, [Mr C], who is resident in Australia. The applicant’s parents are resident in Bahrain, as are a brother, [Mr D], and three sisters.
22. The applicant says that he lived in Jordan from May 2007 to June 2011. Prior to that he lived in Bahrain. The applicant says that he attended [university] in Jordan from [years deleted: s.431(2)]. The applicant attached a copy of his Bahraini passport to his application, together with a quantity of country information on the current situation in Bahrain. He also attached a notification from the Department of Immigration granting him a Tourist visa which allows for multiple entry to Australia for three month periods. The visa was granted [in] March 2011 and the applicant arrived in Australia [in] June 2011.
23. The applicant’s adviser made a submission in which he says that the applicant is a student and human rights activist. His brother, [Mr A], was granted protection in Australia in August 2010. He says that since 2005 the family has been mistreated, beaten and tortured. He says that the applicant was a pro-democracy organiser in Jordan during February 2011. He led a demonstration in front of the Bahraini Embassy in March 2011 which was recorded by a camera in the embassy and as a result was called for questioning with other demonstrators. The adviser states that the applicant is claiming persecution on the grounds of his religion as a Shi’ite; his membership of the particular social group of the family, recognised as active in the Shi’ite opposition in Bahrain; his membership of a particular social group “pro-democracy Bahraini Shi’a families which have been active in resistance to the repression of Shi’ites by the Bahraini security authorities”; a second particular social group “imputed Shi’ite pro-democracy activists suspected of inciting international opposition to the rule and the security authorities of Bahrain”. The applicant’s family members have undergone

harassment and detention with torture. They are pressing for a non-sectarian government under the rule of secular law.

24. The applicant attached a statement to his application. A summary of the information contained in the statement is set out below:

- The applicant attended [university] in Jordan for three years to qualify as a [vocation deleted: s.431(2)]; he was under strict surveillance from the Bahraini Embassy there;
- While there he followed the activities of his family and colleagues in Bahrain who faced persecution, which forced his brothers in Bahrain to seek asylum in Australia;
- The applicant went to Bahrain in mid-January 2011 intending to spend a holiday with his family; he did not know that his brother [Mr D] had been imprisoned and that the situation in Bahrain was tense;
- The applicant felt compelled to leave the country after being warned by family and friends in the Ahrar Al Bahrain group and the Haq movement;
- The applicant left Bahrain [in] February 2011 for Jordan to continue his studies; he became obsessed with the situation in Bahrain and talked to his Bahraini friends and fellow-students about it;
- The applicant felt compelled to join the demonstrations of Bahraini students in Jordan;
- [In] February 2011, the applicant and others organised a demonstration and vigil before the Bahraini embassy in Amman; they had posters and slogans denouncing the despotic monarchical regime and demanding a constitutional monarchy and a government elected by the people;
- There were several protests, the most important of which was a demonstration protesting the invasion of the Saudi forces, followed by raiding and looting Bahraini homes, including the family's house where they smashed furniture and cars and stole money and jewellery;
- [In] March 2011 the applicant rushed out "boiling from inside", unaware that he was being photographed by the authorities; he then received a request from the Embassy to attend questioning on [a further date in] March 2011 about what they called the vilification of the king of Bahrain and the Prime Minister Sheikh Khalifa;
- The applicant did not attend the Embassy because he feared being detained and deported to Bahrain; he told the Jordanian police about it and told them that some of his colleagues had agreed to go to the embassy despite the risk; he asked the police to protect his colleagues;
- The applicant says that he overlooked the fact that Jordan and its police are direct accomplices of Bahrain;

- [A senior official from the] Bahraini Embassy approached the university and summoned the applicant through the administration; he informed him that the Embassy had obtained detailed information about his activities, his approach to the Jordanian police and his disregard of the instructions of the Bahraini Embassy and government; he warned the applicant that he would face repercussions in Bahrain because the Embassy had photos of him in the protests and demonstrations;
 - The applicant found out that his father suffered a heart attack in participating in the demonstrations and was moved to hospital;
 - The applicant's [brothers] escaped Bahrain, and the Bahrain Centre for Human Rights and the Ahrar Al Bahrain Movement warned they should leave Jordan because the regime was involved in the operations of the Gulf Cooperation Council, and was closely connected to Jordanian security;
 - The applicant found out that his colleague [name deleted: s.431(2)] who had participated with the applicant in demonstrations had been arrested on his arrival at Bahrain airport [in] May 2011;
 - The applicant decided to leave Jordan and come to Australia to seek protection;
 - The applicant's brother, [Mr D], has been in prison for three years, being released and re-arrested and detained.
25. The applicant attended an interview with an officer of the Department [in] August 2011. He brought to the interview a referral to a psychologist, [Mr E] , dated [in] August 2011. He also brought to the interview country information about the situation in Bahrain, including a statement by [name deleted: s.431(2)] of the London-based Bahrain Freedom Movement dated [in] August 2011, writing in support of the applicant stating that the applicant "will certainly be one of those whose life could be endangered by a regime which [is] intent on crushing any form of opposition to its hereditary dictatorship."
26. At his interview, the applicant, according to the Delegate's decision record, provided further details of his written claims. However, the Delegate made adverse credibility findings against the applicant, and refused his application on that basis.
27. On the applicant's file are the Department's notification of a grant of a Protection Visa to the applicant's brother [Mr A] [in] August 2011, and the Tribunal's remittal of a decision refusing a Protection Visa to the applicant's brother, [Mr B], [in] March 2011. Also on the applicant's file is a letter from Toby C Jones, Assistant Professor of History at Rutgers University in support of [Mr B], described as a human rights and Shi'ite political activist. There is also a CD apparently of photos of the applicant engaged in demonstrations.

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28. The applicant provided a copy of the Decision Record refusing him a visa with his review application to the Tribunal. He did not submit any additional information.
29. The applicant's adviser made a submission to the Tribunal [in] February 2012.

30. In his submission the adviser includes the following relevant information:

We ask the Tribunal to be aware that [the applicant] is the last of the sons of a Bahraini family involved in the protest demonstrations in Bahrain who were able to escape to Australia. His brother [Mr A] and his wife [name] were granted Australia's protection in 2009, though they were working in Sydney at the time of the 2011 demonstrations, His brother [Mr A] was granted a Protection visa by a primary delegate in August 2011. His brother [Mr B] was found by the RRT to merit Australia's protection in Case [number] in March 2011 and has since been granted a Protection visa. His other brother [Mr C] has a Hearing scheduled at the Refugee Review Tribunal on Friday next, February [date]. Another brother [Mr D] was arrested in Bahrain in 2009 and remains in prison. We trust this is well-documented in his primary file.

He himself a student in Jordan, fled back to Jordan after the arrest of one of his brothers in 2011. He participated in protest demonstration at the Bahrain Embassy in Amman in March 2011 He was filmed, summoned and interrogated at the Embassy and put under surveillance...

As independent evidence in support, we also enclose letters from the well-known and respected Bahrain Center for Human Rights and from the noted academic authority on Bahrain, Professor Toby Jones of Rutgers University who knows [the applicant] and his family personally...

The reality in present-day Bahrain is that the unrest and brutal crackdown on peaceful demonstrators and house raiding, harassing families of those they want to put on trial but who fled from Bahrain, still continues. According to the BBC, the poorly-trained police still harass Shia villages with almost daily tear gas firings while the government and it's media people seek to claim that the situation is calm and that reform is in place. But this is far away from reality, The Government have been subjecting the families of those they want to put on trial but who fled from Bahrain to violent persecutory raids as has happened to our client's family ...

[The applicant's] fears are:

- On the grounds of religion, as one of the Shi'ite majority in Bahrain who suffer under what international agencies such as the US State Department (in-its - - Country Reports on Bahrain, recognise as "government and societal discrimination" which remains a human rights "problem".
- On the grounds of membership of a particular social group, a Shiite political activist known to the Bahrain security authorities as a student demonstrator against them in Amman, Jordan.
- On grounds of imputed political opinion as a member of a long-standing Shi'ite activist family deemed to be hostile to the ruling elite in the Sunni-dominated Kingdom of Bahrain.

The cumulative effect of these creates a heightened profile for him which realistically and appreciably increases the risk for him if he has to return to Bahrain. He will inevitably be detained and put in the hands of the now highly-sensitive but still badly-trained and barbaric Bahraini security authorities, determined to squash all resistance to the ruling elite...

He deeply fears that on arrival at Bahrain international airport he will be taken into custody and held for close, severe, intensive interrogation under torture because they

now also clearly regard young Bahrainis returning from overseas as being suspect of engaging in anti-Kingdom utterances at overseas meetings or, worse, planning terrorist activities with overseas anti-kingdom elements. The possibility of liquidation in prison cannot be discounted.

Strong support for the well-foundedness of these fears come in the enclosed letter from Professor Toby Jones now with Rutgers University in New Jersey. Professor Jones states:

"Given the current tensions and political climate would almost certainly be made to pay a significant price if he were to return to Bahrain. He recent activism virtually guarantees that he would be treated cruelly.

The Tribunal may be aware that Professor Jones wrote the International Crisis Group 2005 report Bahrain's Sectarian Challenge — which has been relied on substantially in other Tribunal cases, notably 060883850120071 RATA 41 (25 January 2007) and 0800979 [2008] RATA 186 (29 April 2008)...

In terms of [the applicant's] fears if he is forcibly removed to Bahrain, we draw the attention of the Tribunal to the continuing use by the security authorities against citizens it dislikes of two laws.

Because of his activities in Jordan he is open to act under the 1976 Penal Code Article 134 prohibitions about citizens making statements without approval about the kingdom which might affects its "prestige". He will also be interrogated about his time in Australia under the 2006 Protecting Society from Terrorist Acts Act.

These laws are in violation of Bahrain's own commitments to international human rights conventions including:

- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) — in March 2000
- The Convention on the Rights of the Child (CRC) — in February 1992
- The Convention on the Elimination of All Forms of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) — in March 1998; &
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in June 2002.

However, it should be noted that Bahrain is NOT a signatory to the key human rights conventions the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR) or the UN Refugee Convention and Protocol.

31. The adviser attached to his submission: a BBC News report dated 14 February 2012 headed "Bahrain restricts protests on uprising anniversary"; a psychological report on the applicant by [Mr E] , in which [Mr E] states that he has seen the applicant for six sessions since [a date in] August 2011, and that in his opinion the applicant is suffering from Post-Traumatic Stress Disorder and Sleep Disorder; a letter dated [in] February 2012 from Toby C Jones, Assistant Professor, Department of History, Rutgers University, stating that given the "current tensions and political climate, [the applicant] would almost certainly be made to pay a significant price if he were to return to Bahrain" and that "his recent activism virtually guarantees that he

would be treated cruelly”; Prof Jones states further that the applicant is “currently affiliated with two groups that have taken a particularly defiant stand against government brutality, corruption, and excess” and names the groups as the Bahrain Human Rights Society based in Manama, and with the February 14th Bahrain Peace Movement; a letter dated [in] January 2012 from Nabell Rajab, President, Bahrain Centre for Human Rights which states that the applicant will be at great risk of imprisonment, torture and persecution if he returns to Bahrain because of his activism in Jordan against the Bahraini regime and because of his family’s history of activism and the repercussions against family members, including his brother [Mr D] who has been detained several times and is still in prison.

32. The adviser also attached referrals to a number of Facebook pages, including that for [name deleted: s.431(2)], which was discussed in some detail at the applicant’s hearing. A further attachment submitted by the adviser is a new item dated [in] June 2011 headed “In divided Bahrain, students pay price for protests” reporting on the fact that over 400 mostly Shi’ite students have been expelled from Bahraini universities in recent months.
33. [In] February 2012, the Tribunal (differently constituted) in an oral decision set aside the Delegate’s decision refusing a Protection Visa to the applicant’s brother, [Mr C] (Tribunal file [deleted]).
34. The applicant attended a hearing with his adviser [in] February 2012.
35. It was put to the applicant at the hearing that his situation might be somewhat different from that of his brothers who had been found to be refugees, in that he had been outside Bahrain for the events which followed the uprising in February 2011. It was put to him that the Tribunal accepted the country information which indicated that those involved in protests in Bahrain were likely to be persecuted, however the Tribunal wished to clarify some aspects of the applicant’s claims.
36. At his hearing, the applicant was asked whether he had continued to see the psychologist whose report had been submitted. He said that he had seen him several times, and was taking medication for anxiety and stress. He was not sure about his future and was very worried. He said that he did not think that the medication would hinder his capacity to give evidence at the hearing.
37. The applicant, when asked what he feared if he returned to Bahrain, said that he feared that he would be arrested on arrival and disappear. Nobody would know anything about him. He said that he feared he would be tortured to death. When asked why he feared this, he said that everyone involved in political activities against the regime was at risk of arrest. A friend of the applicant was arrested [in] May 2011 only because he was involved in demonstrations. He had participated with the applicant and others in front of the Bahraini Embassy in Amman, Jordan. The applicant said that some people involved in the protests in Amman were called for questioning at the Embassy. Some of them escaped to Syria, and their scholarships were cancelled.
38. The applicant said that he was only able to enter Jordan to study. You have to enrol in university in Jordan and then you are allowed to enter. Otherwise you cannot get a visa simply to live in Jordan. The applicant said that he would not be allowed by security to re-enter Jordan. The applicant said that he was last in Bahrain in mid-January 2011. He left [in] February 2011, just before the revolution.

39. The applicant said that his father was resident in Bahrain. He had been in hospital after he collapsed while he was at a demonstration. He has suffered a lot. The authorities search the family house from time to time and abuse and bash him. He lives about [distance deleted: s.431(2)] from Manama. The applicant has been in contact with his father, and last spoke to him a few days ago. He does not speak of the situation in Bahrain because the applicant is afraid that the authorities are monitoring the phone calls. The applicant's mother and sisters are living at home. His brother [Mr D] is in detention. The applicant said that his brother [Mr D] is an activist and has been arrested a few times. He was arrested in 2009 and released at the end of 2010. When the applicant went back to Bahrain in January 2011, he had just been arrested again. The family was very concerned. There was no news of him, though they know he was released at the end of March 2011, trying to escape from Bahrain, but he was re-arrested in April and the family knows nothing about him.
40. The applicant is in contact with his brothers in Australia. He said that they are all involved in several activities against the regime. They are involved with the global 14 February Movement. There have been demonstrations and protests in Australia which the applicant and his brothers have either organised or participated in. Two weeks before the hearing, his [brother] was in a protest in front of the American Consulate. There was also a protest in front of the American Embassy in Canberra. The applicant was involved in both of these, and also previous demonstration of which he cannot remember the details.
41. The applicant confirmed that he was separated from his wife, though not yet divorced. She is living in his father's house in Bahrain at the moment. The applicant's brother [Mr C] is a political activist who was arrested during the revolution in Bahrain and now lives in Australia, having had an oral decision in his favour from the Tribunal very recently. The applicant's adviser submitted a letter from the Tribunal confirming the oral decision, made [in] February 2012. The applicant's brother [Mr D] is the only brother remaining in Bahrain.
42. The applicant was asked about the letter previously submitted by [name deleted: s.431(2)] about him, and said that he knows the applicant's family well as activists. He has met the applicant's brothers personally, though they now communicate by email.
43. The applicant was asked about his internet activities. He said that he last posted comments on an opposition website the day before the hearing. At the hearing, the applicant logged in to a Facebook page for [details deleted: s.431(2)] on which there were very frequent and regular posts. The applicant said that he had started this page in Australia, and they update the website when any notable events occur. The applicant said that hundreds of people had been arrested at the anniversary protests [on 14 February 2012].
44. The applicant was asked about his activities in Jordan. He said that he participated in many activities, and had organised two of the biggest protests in Amman, [in] February and [in] March 2011. He organised the transport. He said that he was one of a [group] of Bahraini students in Amman involved in activities, though the applicant did most of the organising, such as inviting people to attend, arranging transport and so on. There were other groups as well involved in anti-regime activities. They began their activities after the revolution began, when they saw the killing and the massacres by the regime. The applicant said that they got advice on their strategies from the Haq group and from the Bahrain Human Rights Centre. Though he knows the President, he mainly dealt with members of that group.
45. The applicant said that after their March protest in Amman, he was called on [in] March to the Bahraini Embassy accused of denigrating the King of Bahrain. He said that he was told

by the [senior official] at the university, who called him, and told him that they had video evidence of his participation in protests and knew everything about his activities.

46. The applicant was asked about the fact that he returned to Bahrain in January 2011 despite knowing that his brother [Mr D] had been in trouble with the authorities there. He said that he would go back home regularly when he was at university in Jordan, though his family was regularly harassed by the authorities. It was a routine visit that he made in January 2011. When he got there, he was shocked to find that his brother [Mr D] had been arrested again. His family had not told him, because they did not want to disturb him during his exams.
47. The applicant was asked why he had applied for a visa to come to Australia [in] March 2011, prior to hearing that he was to be questioned at the Bahraini Embassy in Amman. The applicant said that after the first protest [in] February 2011 he decided to apply for a visa for Australia as a precaution, in case he had to get out. He said that he stayed in Jordan for as long as he could, however, after the second massacre when the Saudis invaded Bahrain he was very afraid and felt he could not stay there. It was put to the applicant that it was difficult to understand why he had stayed on in Jordan until June before leaving for Australia, despite being asked to come to the Embassy to answer questions. He said that he was reluctant to leave, hoping the situation would improve, but when the Saudi army came in to Bahrain, he finally felt he had to go.
48. The applicant explained various images on the Facebook page for [details of page and images contained deleted: s.431(2)]. The applicant said that he himself had posted a comment on the page two days ago, but there were other people posting things. The people posting comments came from all over the world. The Bahraini media were blocking things that were happening there.
49. The applicant said that he thought he would be in danger in Jordan as well if he tried to return there. He said that it was known that Jordan supported the Gulf countries, and actually sent police there to help the authorities.
50. The applicant's adviser, when asked for his comments, particularly about the applicant's delay in arriving in Australia after he got a visa, said that the applicant was very young and was extremely emotional about events in Bahrain. He felt obliged to use his visa to come to Australia only at the last moment when danger was facing him, because he had little forethought for his own safety and was very involved in protests. The adviser stated that the applicant's claims had been supported by some very important and high-profile activists for human rights in Bahrain and outside. The Department had accepted the claims of the applicant's family members. The adviser said that the applicant and his brothers had approached him to establish legally a new organisation which would defend human rights in Bahrain.

Country Information

Bahrain – Anti-regime Activities

51. *Human Rights Watch* in its 2012 *World Report* on events in 2011, published on 22 January 2012, describes the Bahraini "revolution". Demonstrations and political rallies erupted throughout Bahrain on 14 February 2011. Bahraini authorities arrested 2,929 people in

connection with the protests.¹ While most have now been released, some protest leaders have been sentenced to heavy prison terms. The special military courts established after the protests ended their operation on 7 October 2011, after more than 250 persons were convicted through the courts.

52. The Human Rights Watch *Report* notes that twenty protest leaders were sentenced by the special military court to prison terms ranging from five years to life.² The charges against them ranged from calling for a change of government, leading illegal demonstrations, spreading false news, and harming the reputation of the country. An appeals court upheld their convictions and sentences on 28 September 2011.³
53. Protests have continued in Bahrain in recent months.⁴ Sources report that prominent human rights activists and demonstrators have been detained and ill-treated in recent protests. On 15 December 2011 police detained Zainab al-Khawaja, human rights activist and daughter of a prominent opposition leader, during a demonstration.⁵ According to *Al Jazeera*, along with Zainab Al-Khawaja's father, three other male relatives and her husband were imprisoned after the February 2011 uprising.⁶ Al-Khawaja and Al-Sayyid were reportedly released after five days in custody and are awaiting trial.⁷
54. On 25 January 2012 *Associated Press* reported the death in custody of a protester who had been detained during recent clashes. The Interior Ministry reportedly issued a statement noting that public prosecutors would investigate the death. According to *Associated Press*, the statement from the Interior Ministry said that the detainee had been accused of 'vandalism' during a protest.⁸
55. On 26 January 2012 Amnesty International criticised the Bahraini authorities for inappropriately using tear gas against protesters.⁹ The report noted that more than a dozen

¹ On the State of National Safety legislation see Chapter III: Section F: Bahrain Independent Commission of Inquiry 2011, *Report of the Bahrain Independent Commission of Inquiry*, 23 November, p.47
<http://files.bici.org.bh/BICIreportEN.pdf>

² Human Rights Watch 2012, *World Report: Bahrain*, 22 January, p.3-4
http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf

³ Human Rights Watch 2012, *World Report: Bahrain*, 22 January, p.3-4
http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf

⁴ Khalifa, Reem 2012, 'Bahrain protests turn violent after teen protester's funeral', *Huffington post*, source: *Associated Press*, 1 January http://www.huffingtonpost.com/2012/01/01/bahrain-protests-violent_n_1178414.html; '4 killed in protests in Bahrain, opposition groups says' 2012, *CNN*, 27 January http://articles.cnn.com/2012-01-27/middleeast/world_meast_bahrain-unrest_1_bahrain-center-bahraini-police-wefaq?_s=PM:MIDDLEEAST; 'Bahraini police fire tear gas in clash with protesters' 2011, *Arabian Business*, source: *Reuters*, 17 December <http://www.arabianbusiness.com/bahraini-police-fire-tear-gas-in-clash-with-protesters-435540.html>; 'Fired Bahrain Shiites want their jobs back' 2012, *Kuwait Times*, 22 December (CISNET Bahrain CX278984)

⁵ 'Bahraini police fire tear gas in clash with protesters' 2011, *Arabian Business*, source: *Reuters*, 17 December <http://www.arabianbusiness.com/bahraini-police-fire-tear-gas-in-clash-with-protesters-435540.html>

⁶ 'Bahraini blogger released on bail' 2011, *Al Jazeera*, 21 December
<http://www.aljazeera.com/news/middleeast/2011/12/2011122155515288556.html>

⁷ 'Bahraini blogger released on bail' 2011, *Al Jazeera*, 21 December
<http://www.aljazeera.com/news/middleeast/2011/12/2011122155515288556.html>; 'Bahrain blogger Zainab al-Khawaja freed on bail' 2011, *BBC News*, 21 December <http://www.bbc.co.uk/news/world-middle-east-16283557>.

⁸ 'Protester in Bahrain Dies After Arrest' 2012, *ABC News*, source: *Associated Press*, 25 January
<http://abcnews.go.com/International/wireStory/bahrain-police-fire-tear-gas-rally-capital-15438138>

⁹ Amnesty International 2012, *Bahrain's use of tear gas against protesters increasingly deadly*, 26 January
<http://www.amnesty.org/en/news/bahrain-s-use-tear-gas-against-protesters-increasingly-deadly-2012-01-26>

protesters had died since February 2011 as a result of tear gas, ‘with a rise in such deaths in recent months’.¹⁰ Security forces reportedly threw tear gas canisters into people’s homes, including the home of Bahraini lawyer Fatima Khudair, although the report does not indicate whether the victims of such attacks were known to the authorities.¹¹ On 27 January 2012 *CNN* reported that four people had been killed in anti-government protests.¹²

56. On 30 January 2012 Bahrain Youth Society for Human Rights (BYSHR) reported that more than 70 demonstrators had been arrested ‘in recent weeks’.¹³ It is BYSHR’s view that the arrests are part of a ‘proactive security crackdown’ in the lead up to the one year anniversary of the Bahraini uprising on 14 February 2012.¹⁴
57. *The New York Times* in a report headed “Bahrain: Crackdown after Clashes”, dated 14 February 2012, states that on the anniversary of the Bahraini uprising tear gas was fired at a small number of protesters near the Pearl Roundabout, and that 30 people were arrested. In a summary of events in Bahrain (“Bahrain News – the Protests”) the newspaper reports as follows:

The opposition in Bahrain is not calling for revolution, or the execution of the ruler, or the overthrow of his family, as in Syria or Yemen. But it is calling for deep political reforms — a constitutional monarchy with an empowered parliament, an elected government and an end to gerrymandering that has left Shiites disenfranchised.

Yet, a year later, the first anniversary of the uprising ended as it began: in clouds of tear gas As thousands of protesters tried to march to the former site of the Pearl monument, police blocked their way by firing tear gas and stun grenades ...

Perhaps the pivotal figure in Bahrain these days is Crown Prince Salman bin Hamad al-Khalifa, the heir to the throne who straddles the West, where he earned a master’s degree from Cambridge, and the Bedouin environs of a family that conquered Bahrain in the 18th century...

But while Prince Salman enjoys standing among the opposition, he lacks it among the country’s Sunni minority, whose fears of domination were stoked by the government. The power of the prince — and even of King Hamad bin Isa al-Khalifa — is less than that of the collective authority of the Khalifa clan.

Monarchy’s Concessions Fall Short of Opposition’s Demands

In mid-January, 2012, King Hamad announced constitutional amendments that will give the elected Parliament greater powers of scrutiny over the government, but the concessions fell short of the opposition’s demands for change.

¹⁰ Amnesty International 2012, *ibid.*

¹¹ Amnesty International 2012, *ibid.*

¹² ‘4 killed in protests in Bahrain, opposition groups says’ 2012, *CNN*, 27 January http://articles.cnn.com/2012-01-27/middleeast/world_meast_bahrain-unrest_1_bahrain-center-bahraini-police-wefaq?_s=PM:MIDDLEEAST

¹³ Bahrain Youth Society for Human Rights 2012, *Bahrain: a crackdown on demonstrators in the first anniversary of the Feb. 14 protests*, 30 January <http://byshr.org/?p=922>

¹⁴ Bahrain Youth Society for Human Rights 2012, *ibid.*

Targeted groups

58. In response to the 2011 protests the Bahraini authorities targeted doctors, teachers, students, leaders of recognised opposition groups, journalists, athletes and human rights defenders.¹⁵ Some reports suggest that Shi'as in general may have been targeted purely due to membership of their religious sect. Many of those arrested have been held incommunicado and there have been reports of torture and ill-treatment while in detention. Additionally, government agencies, other official bodies and private companies in which the state held a substantial interest dismissed more than 2,500 employees, reportedly for their suspected involvement in the protests. Sources report that some family members of detainees have been assaulted or threatened (see below).
59. The Human Rights Watch (HRW) *World Report 2012* states that, since mid-March 2011 security forces have arrested over 1,600 people who participated in, or were suspected of supporting, the anti-government demonstrations. According to HRW, authorities held most detainees in incommunicado detention for weeks, in some cases months.¹⁶
60. An October 2011 article from *AlJazeera* reported that 'teachers, professors, politicians, doctors, athletes, students and others have all appeared in Bahrain's military courts' The article notes that, in just two weeks, 208 people were sentenced or lost appeals, leading to a cumulative total of just less than 2,500 years in prison.¹⁷

Shi'as

61. Amnesty International (AI) has reported that the 'overwhelming majority' of hundreds of people arrested in March 2011 were Shi'a Muslims who were active during the protests.¹⁸ According to AI, as the military and security forces took control of the Pearl Roundabout, the Financial Harbour and the SMC 'they launched a clearly planned and orchestrated crackdown on the Shi'a political and community leaders and activists who had been prominent in leading the protests and who had spoken out publicly criticizing members of the royal family and calling for a change of government...' In addition, AI reported that military or police checkpoints had been set up at the entry and exit points of predominantly Shi'a villages and towns.¹⁹
62. Some reports suggest that Bahraini authorities have targeted Shi'as in general, not just those suspected of involvement in the protests. An article published by the *Institute for War and Peace Reporting (IWPR)* on 23 March 2011 reported that authorities were stopping people at checkpoints and asking them if they were Muslim or Rafithi – a derogatory term for Shi'a. According to the report, 'people feel like they have to lie about their background and maybe

¹⁵ Matar Ibrahim Matar and Jawad Fairouz, who represented Al Wefaq, the largest opposition bloc in parliament before its members resigned in protest in February, were seized on 2 May 2011. Authorities released Matar and Fairouz in August but they still face charges related to their political activities. Human Rights Watch 2012, *World Report: Bahrain*, 22 January, p.2

http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf

¹⁶ Human Rights Watch 2012, *ibid.*

¹⁷ 'Two weeks in Bahrain's military courts' 2011, *AlJazeera*, 19 October (CISNET Bahrain CX274733)

¹⁸ Amnesty International 2011, *Briefing paper – Bahrain: A human rights crisis*, 21 April, p4

<http://www.amnesty.org/en/library/asset/MDE11/019/2011/en/40555429-a803-42da-a68d-0f016b908580/mde110192011en.pdf>

¹⁹ Amnesty International 2011, *ibid.*

even their name to be safe and to be allowed to pass'²⁰ Saudi soldiers reportedly 'treated them like they were not human because they are Shi'a, and that they were cursed for being Shi'a while being beaten up'.²¹

63. *The New York Times* on 25 January 2012 published a report headed "In Bahrain, Worries Grow of Violent Shiite-Sunni Confrontation" The article quotes a Shiite student at Bahrain University, a member of the 14th of February movement, "a group that started with peaceful protests but that in recent weeks has seen some members calling on the Internet for violent protests to overthrow the government – and especially the ruling family". The article goes on:

People like Mr. Ibrahim [the Shiite student] and his friends are a worry to Western and Arab security officials who say that the passions unleashed by last year's democracy campaign are evolving into another violent Shiite-Sunni confrontation, like the one that plagues Iraq.

Ever since gaining independence from Britain in 1971, the island's Sunni rulers have had uneasy relations with some of the Shiite population, leading to periodic civil unrest. But now, according to a British security official speaking on condition of anonymity, "We see an increase of attacks against policemen and a change in the language on the Internet from Shia and Sunni young people."

Bahrain has become the turf for a bigger regional conflict as well.

"The situation in Bahrain started as a nonsectarian movement for freedom and turned into the hottest battlefield in the Iranian-Saudi regional war," said Omid Nouripour, a member of the German Parliament and an expert on Iran and security issues. "As the kingdom of Saudi Arabia is supporting the state-repression inside Bahrain, Iran acts as the protector of the Shia." ...

Targeting of family members

64. Some sources report that security forces have assaulted or threatened the family members of those they suspect of involvement in the protests. This has reportedly occurred both at the time of arrest and also during other encounters. According to AI, when people were arrested they were often taken at night, 'by groups of police and security forces who wore masks, failed to produce arrest warrants and sometimes assaulted those they wished to detain and members of their families'.²²
65. On 9 April 2011 *Reuters* reported that Bahraini authorities had arrested and beaten a prominent human rights activist and members of his family.²³
66. On 14 April 2011 the *British Broadcasting Corporation (BBC)* reported on a Shi'a funeral for 'one of the several detainees to die in police custody'. Accused of trying to run over a

²⁰ Al-Khawaja, Zainab 2011, 'Protesters reject Sunni-Shi'a split claims', *Institute for War and Peace Reporting (IWPR)*, 23 March ([CISNET Bahrain CX265640](#))

²¹ Al-Khawaja, Zainab 2011, *ibid.*

²² Amnesty International 2011, *ibid.*

²³ Richter, Frederik 2011, 'Bahrain human rights activist "arrested, beaten up"', *Reuters*, 9 April <http://www.reuters.com/article/2011/04/09/us-bahrain-idUSTRE7382WW20110409>

policeman during a protest, Ali Isa al-Saqer reportedly handed himself over to police after his family said they were threatened.²⁴

67. On 22 June 2011 human rights activist and protest leader Dr Abdul Jalil Singace was sentenced to life imprisonment (25 years).²⁵ After his arrest, Abdul Jalil's 28-year-old son, Hussein, and his wife reportedly moved into the family home. According to *AlJazeera*, one week after his father's arrest, police again raided the house in the middle of the night and arrested Hussein. On 6 October 2011, the final day of military courts, Hussein was sentenced to seven years in prison.²⁶
68. According to news reports, some Bahrainis alleged that family members of expats who had been pictured at a pro-democracy protest in England had been harassed.²⁷

Protests in Australia

69. Protests have been held in Australia in solidarity with the Bahraini protesters, according to a number of news article as well as blogs and other websites. Reports of protests include the following:

[Details in relation to protests deleted: s.431(2)]

FINDINGS AND REASONS

70. The Tribunal finds on the evidence before it, including the evidence of the applicant's passport, that he is a national of Bahrain. There is no evidence that he has a right to re-enter and reside in Jordan. He was able to live there before he came to Australia because he was enrolled in a university course there. He is no longer enrolled.
71. The Tribunal found the applicant to be a credible and convincing witness who gave his evidence in a detailed and straightforward manner. His evidence has been consistent, and is also consistent with the country information before the Tribunal, and the evidence given at Tribunal hearings by his brothers. Three of the applicant's brothers have been granted Protection Visas because of their activities in opposition to the current regime in Bahrain. Furthermore, highly credible and well-respected individuals have expressed their support for the applicant's claims. They are Professor Jones of Rutgers University, a widely-published authority on Bahrain; [name deleted: s.431(2)] of the London-based Bahrain Freedom Movement; and [name deleted: s.431(2)] of the Bahrain Centre for Human Rights
72. The applicant has claimed protection on the basis of his political opinion, real and imputed, as an activist for human rights in Bahrain, on the basis of his membership of a particular social group, his family, members of whom have had protection claims accepted in Australia, and on the basis of his religion as a Shi'a. The Tribunal accepts these claims, but will deal in detail only with the applicant's political opinion, real and imputed.

²⁴ 'Bahrain's security clampdown divides kingdom' 2011, *British Broadcasting Corporation (BBC)*, 14 April ([CISNET Bahrain CX263961](#))

²⁵ 'Two weeks in Bahrain's military courts' 2011, *AlJazeera*, 19 October ([CISNET Bahrain CX274733](#))

²⁶ 'Two weeks in Bahrain's military courts' 2011, *ibid.*

²⁷ Bruton, Brinley. F 2011, 'Bahrain to citizens living abroad: Spy on countrymen, no protests permitted', *MSNBC*, 1 July http://www.msnbc.msn.com/id/43590958/ns/world_news-mideast_n_africa/t/bahrain-citizens-living-abroad-spy-countrymen-no-protests-permitted/.

73. The Tribunal accepts that the applicant comes from a Shi'a family, all of whose members hold strong political views and have been active in opposition to the current regime in Bahrain. The Tribunal accepts that the applicant has himself organised and participated in demonstrations against the regime while he was a student in Amman in Jordan, and that as a result of these activities he was called for questioning at the Bahraini Embassy in Jordan, though he did not respond to this summons. The Tribunal further accepts that the applicant has organised a Facebook [page] in Australia, and that he has participated with his brothers in protests and demonstrations in Australia.
74. The Tribunal accepts that the applicant has a genuine fear of being persecuted if he returns to Bahrain, as attested by his continuing treatment by a psychologist, as well as his own evidence.
75. The country information set out above indicates that the regime in Bahrain continues to mistreat those engaged in protests against it. Paras 58-60 above indicate that the authorities have arrested many hundreds of people, and that they target students like the applicant. There is evidence that the authorities target family members of human rights activists, and that the targeting might be based on images of people engaged in protests abroad (paras 64-68). [Details in relation to website deleted: s.431(2)].
76. While the Tribunal finds that the applicant has not been persecuted in the past for reason of his political opinion, or for any other Convention reason, it accepts that he has been warned and threatened by a Bahraini official in Jordan following a protest which he organised and participated in, in March 2011 in Amman. The Tribunal accepts earlier decisions by the Department and the Tribunal finding that that three of the applicant's brothers have a well-founded fear of Convention-based persecution in Bahrain, and that they have been granted protection in Australia on that basis. It further accepts that the applicant's remaining brother, [Mr D], is an activist who has been detained on a number of occasions and is presently believed to be in detention in Bahrain.
77. The Tribunal has considered whether there is a real chance that the applicant will be persecuted in a Convention sense if he returns to Bahrain in the foreseeable future.
78. The country information indicates that despite attempts by the king to make changes to the regime, the opposition to the regime is not satisfied that the changes proposed have gone far enough, and the police continue to act against opposition activists with impunity (see para 57). Human rights activists continue to be targeted for serious harm (para 54-56).
79. The Tribunal accepts that the applicant is a committed activist who has demonstrated against the Bahraini regime in both Jordan and Australia. It accepts that not only would he continue to voice his opposition to the regime if he returned to Bahrain, but that he would readily be identified as coming from a politically committed family which has come to the adverse attention of the Bahraini authorities. He would therefore be imputed with a political opinion against the regime, as a member of a family known to be opposed to it, and punished for its opposition.
80. On the evidence before it, the Tribunal is satisfied that there is a real chance that the applicant will be persecuted in a Convention sense if he returns to Bahrain for reason of his political opinion, real or imputed, as an opponent of the regime. It is satisfied that the applicant has a well-founded fear of persecution in Bahrain, within the meaning of the Refugees Convention.

CONCLUSIONS

81. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

82. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.