

1203448 [2012] RRTA 369 (1 June 2012)

DECISION RECORD

RRT CASE NUMBER:	1203448
DIAC REFERENCE(S):	CLF2011/187878
COUNTRY OF REFERENCE:	Indonesia
TRIBUNAL MEMBER:	Fraser Syme
DATE:	1 June 2012
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration 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 Indonesia, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2011.
3. The delegate refused to grant the visa [in] March 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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.

15. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the State is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [23]. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29]. Harm from non-State actors which is not motivated by a Convention reason may also amount to persecution for a Convention reason if the protection of the State is withheld or denied for a Convention reason.
16. 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.

Complementary protection criterion

17. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
18. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1) A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
19. Torture is exhaustively defined in s.5(1) of the Act as an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person. The pain or suffering must be intentionally inflicted. Furthermore, it must be inflicted for one of five purposes: for the purpose of obtaining from the person or a third person information or a confession; for the purpose of punishing the person for an act which they or a third person committed or is suspected of having committed; for the purpose of intimidating or coercing the person or a third person; for any purpose related to one of those purposes; or for any reason based on discrimination that is inconsistent with the Articles of the International Covenant on Civil and Political Rights (the ICCPR).
20. However, torture does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR.

21. 'Cruel or inhuman treatment or punishment' for the purposes of s.36(2A)(d) is exhaustively defined in s.5(1) of the Act to mean an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person, or pain or suffering, whether physical or mental, is inflicted on a person, so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature. The pain or suffering must be intentionally inflicted.
22. However, 'cruel or inhuman treatment or punishment' does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.
23. The final type of significant harm listed in s.36(2A) is degrading treatment or punishment: s.36(2A)(e). Degrading treatment or punishment is exhaustively defined in s.5(1) of the Act to mean an act or omission which causes, and is intended to cause, extreme humiliation which is unreasonable.
24. However, 'degrading treatment or punishment' does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one that causes, and is intended cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.
25. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.
26. Under s.36(2B)(b) of the Act there is taken not to be a real risk that an applicant will suffer significant harm in a country if the tribunal is satisfied that the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm. That is, the level of protection must be such that the risk of the applicant being significantly harmed is less than a 'real risk'

CLAIMS AND EVIDENCE

27. 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.
28. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.

Departmental application

29. The applicant declared in her protection visa application she was born in [date deleted: s.431(2)] in a town in Indonesia and is an Indonesia citizen by birth. She understands the Indonesian and English languages. She is Muslim. Although she provided no commencement date of a relationship, she separated in October 2011. She most recently arrived in Australia [in] November 2010 as the holder of a tourist visa in a passport issued to her in her own name which she obtained without difficulty and departed Indonesia lawfully. She declared one address in her home village, Indonesia from birth to her departure in November 2010. She had 12 years of education in Indonesia. Her occupation is [occupation deleted: s.431(2)], but she declared no employment history. The applicant's parents, two children, [and three siblings] remain in Indonesia. She is in contact with them by telephone via telephone. She included a copy of her Indonesian passport bio-data page, Australian visa and Australian entry and exit stamps. She declared she returns to Indonesia every three months. The applicant included too a letter from a community organisation accommodation service regarding the applicant being housed with that service since October 2011 with the confidential address of the domestic violence refuge of the service.
30. Approximately 8 years ago, the applicant claims she was tricked into travel to Australia by boat to find farm work. The applicant was [deported] to Indonesia.
31. Her claims for protection were set out in her answers to Q41-46 on the form 886C. Her claims to seek protection from returning to Indonesia included:-
 - a. She married an Australian and has a son. Her husband brought her to Australia promising a better life to her and her family (including two children from her first marriage).
 - b. She fears to return to Indonesia because everyone will know she married an Australian and had a son with him. All Indonesians, and especially from her village, will look down on her, isolate her from the community. They will treat her son badly, not accepting him as an Indonesian.
 - c. She fears if she returns to Indonesia, her husband will keep her son in Australia, she will be unable to see him again. He is too young to be without his mother.
 - d. It will be too hard for her to live as a single parent in Indonesia.
 - e. Indonesian authorities would not protect her from how she would be treated by Indonesians and her village because the authorities are corrupt and would not care about women, particularly single women.
32. [In] November 2011, the department received what the Tribunal considers is information from a confidential source including:
 - a. Information about the circumstances of the applicant's marriage
 - b. The applicant was previously deported from Australia.
 - c. The applicant and her former husband are well known to Indonesia police.

33. [In] February 2012, the delegate invited the applicant to attend an interview to discuss her visa application and claims for protection [in] March 2012. The interview was conducted via telephone at the scheduled time with the assistance of an interpreter of the Indonesian and English languages.
34. At the interview the applicant claimed her family in Indonesia could not support her. Her parents are old and her siblings barely make ends meet. She has to provide for her children. Her children are living with her parents in her home village. She met her husband when working in Bali. She moved to Bali in 2007 after her divorce from her first husband. She lived with her second husband for about 4 years before coming to Australia. They lived in [different parts of Indonesia] and mainly in Bali. Her son was born in Indonesia. She brought her son to Australia for a better life. She travelled back to Indonesia without her son, because her second husband would not allow her to take him. Her elder children did not live with her and her second husband, because they were happy and settled in school living with her parents. She stayed with her parents for the first six months after the birth of her son, her second husband was in Bali She thought it best to remain in her village because her husband drank a lot. The people in the village did not accept her being married to an Australian. She was isolated. Usually only people from rich families marry an Australia. So they found her curious and gossiped about her. She had to pay extra for everything because they assumed she was rich. They called her son a foreigner. Paperwork was made difficult for her and she had to pay more than others. People assumed she was rich because she married a foreigner and treated her differently. No one in her village really harmed her. It would be better for her youngest son if she remained in Australia.
35. The delegate discussed country information that approximately 6 million single parent households in Indonesian and 1000 Indonesians marry foreign nationals each year. The applicant understood this. If the applicant can stay here it is best for her youngest son so he can have contact with his father. Her other children are already used to living without her.
36. The delegate put to the applicant the gist of the allegations in the email [in] November 2011 regarding her and her first husband being known to Indonesia police. The applicant denied this. She was a victim. She thought she was able to work legally in Australia. When asked had she ever been jailed, the applicant said yes at the detention centre and in Indonesia for about 12 months. Because she and her husband were fighting trying to find the person responsible for sending the people to Australia. When asked she said she was not charged in a court of law, the police said it was for her own safety because they knew she was not a criminal.
37. The delegate made the decision under review because she was not satisfied the harm the applicant claimed to fear constituted serious harm.

Tribunal application

38. The applicant provided a copy of the delegate's decision record with her application for review. The delegate's decision record included a record of the applicant's migration history showing her arrivals and departures from Australia. The applicant provided no additional evidence or submissions to the Tribunal.
39. At the hearing, the applicant confirmed she prepared the departmental application by herself, all the contents were true and that she did not wish to make any amendments or additions to her claims.

40. The applicant discussed her family details in Indonesia, including of her two children from her former marriage and her time living and working in Bali. She explained that since coming to Australia in November 2010, she had returned to Indonesia every three months, but her current husband disallowed her to take their Australian citizen son with her to Indonesia. When in Indonesia, she would stay with her parents in her home village in Java.
41. When asked what she feared if she was to return to Indonesia, the applicant stated that her current husband would not allow her to take her Australian citizen son with her and she would be unable to see that son again. The Tribunal indicated that fear maybe compassionate, but it is not likely a ground related to the refugee convention or within the framework of complimentary protection. When asked was there anything else she feared, the applicant stated that Indonesians were corrupt. Because she had married a Westerner, she had to pay 10 times the normal price for things. When asked for examples, she said her passport, her visa and her entry taxes. She said that her life was very hard because other's treated her as a rich person, when actuality she was not rich. She stated too that it is hard for a single mother in Indonesia. It is difficult to find work or to provide a life for herself or her child because her husband does not want to help.
42. When asked about being isolated, the applicant stated she was put down by others in her village. When asked whom does she fear, the applicant stated the people in her village. When asked what harm she feared from them, she stated that they would treat her as a rich person, when she was actually not a rich person. That she would have to pay more than others. That she would be isolated. The Tribunal asked about her claim regarding her son. She stated that he was teased as the 'village Westerner', and that now she had been to Australia, she wishes he could have a new life in Australia for his own good, to have a future.
43. The Tribunal asked about the discussion the applicant during her interview with the delegate that she 12 months in prison in Indonesia. She said this was because she was tricked into trying to work in Australia. The person who arranged for her and others from her village disappeared. Because her husband had helped to organise this, the other villagers fought with her and her husband about refund of their money. She reported herself to the police and put into jail for her own safety. When asked why did she agree to be locked up in jail. She replied there were no other facilities to protect her. The Tribunal indicated it found this difficult to accept. When asked did she and her husband go to court, she said yes, but it was over very quickly. The Tribunal clarified was she sent to jail by the court, she said yes. The Tribunal asked whether the people who wanted a refund had caused her any other problems. She said she not had any more fights with the villagers nor had they asked for a refund of their money since her release from prison.
44. The Tribunal discussed with the applicant whether she could live again in Bali. When she lived in Bali did she pay extra for things. She said at shopping centres, no and at markets she only had to pay more if she went to the market together with her current husband. When asked was she isolated when living in Bali, she said yes. Her life is there and everyone she knows is there and they know her, she could not go anywhere else than her village or Bali.
45. The Tribunal indicated it was not satisfied the harm the applicant claimed to fear was neither serious harm for the purpose of the refugee convention nor significant harm for the purpose of the complimentary protection obligations. The issue of who should have care of her son is a dispute between her and her husband, which may be a compassionate consideration, but does not entitle her to protection as a refugee or as someone to whom the Australian government owes protection under the complimentary protection obligation.

46. The Tribunal noted that the delegate gave the applicant the details of a community legal service to seek advice about the compassionate considerations of her case regarding her Australian citizen son. The Tribunal indicated the applicant may wish to seek additional advice regarding what options were available to her as the Tribunal was minded on the evidence currently before it to affirm the decision. In particular, whether the applicant could apply to the Minister for exercise of his public interest powers.

FINDINGS AND REASONS

47. The Tribunal finds the applicant is a national of Indonesia. She travelled to Australia as the holder of a passport issued by the authorities of Indonesia, a copy of which she provided to the department. She made no claim to be a national of any other country. She participated in the hearing with the assistance of an interpreter of the Indonesian and English languages. The Tribunal accepts her claims should be assessed against Indonesia.
48. In making its findings, the Tribunal is mindful that whenever evidence is received through an interpreter there is always room for differences in meaning and nuance. However, the Tribunal finds the applicant was able to communicate effectively, understood the Tribunal proceedings and participated in a meaningful way. The Tribunal is satisfied too that the standard of interpreting was reasonable and at no time during the hearing did the applicant indicate any difficulty with the interpreting.
49. The applicant's claims for protection were made in relation to: fear of being separated from her Australian citizen son; of being discriminated against by others as a rich person because she was married to a foreigner, even though she was not rich and of being a single mother in Indonesia. An additional claim evident from her evidence but not raised by the applicant directly, was her being harmed by persons seeking a refund for money for a failed attempt to travel to Australia for work in part organised by the husband of the applicant. The Tribunal has considered each of these claims under s.36(2)(a).

Australian citizen son

50. The applicant's own evidence is that her main fear is related to whether her current husband will allow the applicant to take her Australian citizen son with her should she require to return to Indonesia. Being separated from her Australian citizen son will cause her and the son distress and hardship. The Tribunal is not satisfied that the essential and significant reason or reasons any harm the applicant may suffer would be for her race, religion, nationality, membership of a particular social group or political opinion. Therefore, the applicant does not have a well-founded fear of serious harm for any convention related reason. As such, if she returns to Indonesia the applicant does not have a well-founded fear of persecution now or in the reasonably foreseeable future on the basis of her being separated from her Australian citizen son. The Tribunal accepts though that there are compassionate issues regarding the distress and hardship the applicant and her Australian citizen son are likely to suffer if she and he are separated. The compassionate circumstances are discussed further below.

Imputed rich person

51. The applicant claims she has to pay more than others because it is known she is married to a Westerner and therefore it is imputed she is rich. She claimed she had to pay 10 times the normal price for things such as her passport, visa and entry taxes. She also claimed she had to

pay extra when shopping at markets in Bali with her husband. She claims she was isolated by the people in her village that looked down on her and her son, referring to him as the ‘village Westerner’ and not accept him as an Indonesian. The Tribunal has considered these claims individually and cumulatively. It is not satisfied the harm claimed is at such a level as to constitute serious harm. Therefore, the Tribunal is satisfied the applicant does not have a well-founded fear of serious harm. As such, if she returns to Indonesia the applicant does not have a well-founded fear of persecution now or in the reasonably foreseeable future on the basis of her being imputed as a rich person due to her marriage to a Westerner.

Single mother

52. The applicant claims as a single mother in Indonesia it will be hard for her to find work or to make a living for herself and her Australian citizen son. The Tribunal is not satisfied the harm the applicant claims she would fear is serious harm. She provided details regarding this claim in her original application, the departmental interview and at the hearing. She stated in her original application that the Indonesian authorities would in part not protect her because she is a woman and a single mother. The applicant’s claims in relation to this issue are vague and general. The delegate put to the applicant at the interview country information indicating the number of single parent families there are estimated to be in Indonesia and the number of marriages there are estimated to be each year in Indonesia between Indonesian nationals and foreign nationals, indicating there is no real chance the applicant will suffer persecution due to her being a single parent in Indonesia. The Tribunal is not satisfied there is sufficient evidence before it to establish the applicant has suffered in the past and or will suffer in the future any harm due to her being a single mother in Indonesia. Therefore, the applicant does not have a well-founded fear of serious harm. As such, if she returns to Indonesia the applicant does not have a well-founded fear of persecution now or in the reasonably foreseeable future on the basis of her being a single mother.

Organiser of failed attempt to travel to Australia

53. During the departmental interview and at the hearing, the applicant gave evidence of her and her husband being involved in a failed attempt by her and other women in her village to travel by boat to Australia to work. She claimed the person who organised this disappeared. She too was a victim of being tricked by this person. Because her husband had been involved in the organisation too, the other villagers fought with her husband and her for refunds of their money. She claimed that she reported herself to the police to avoid the villagers continued fighting with her and the police. At the departmental interview she claimed she agreed to be placed into jail for 12 months as the police told her it was for her own protection. At the hearing she stated she was sent to prison by a court, after a very short trial. When asked did the villagers continue to fight with her about the refund of her money, the applicant stated since her release from prison, no villagers had troubled her about a refund of their money. On the basis of that evidence that she no longer fears any fighting between her and the villagers regarding this issue, the Tribunal finds there she has no subjective fear of suffering harm and therefore there is no well-founded fear the applicant has a real chance of her suffering serious harm now or in the reasonably foreseeable future on the basis of her being imputed as an organiser of failed attempt to travel to Australia.
54. The Tribunal has also considered the application of s.36(2)(aa) to the applicant’s circumstances.

55. For the reasons below, the Tribunal considers the applicant's claims do not give rise to substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to Indonesia, there is a real risk that she would suffer significant harm.
56. The applicant has not claimed she would face arbitrary deprivation of her life or the death penalty, and the Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant would suffer significant harm in either of these forms.
57. The Tribunal has considered the definitions of "torture", "cruel or inhuman treatment or punishment" and "degrading treatment or punishment" in s.5(1) of the Act. There is insufficient evidence to satisfy the Tribunal that on the basis of the general claims of harm the applicant has made, even considered on a cumulative basis, would involve the infliction of severe pain or suffering, either physical or mental, such as to meet the definition of torture or paragraph (a) of the definition of cruel or inhuman treatment or punishment in s.5(1). Nor is the Tribunal satisfied there is sufficient evidence the general harm that applicant has claimed would be such as to meet paragraph (b) of the definition of cruel or inhuman treatment or punishment in s.5(1) which refers to an act or omission by which "pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature".
58. The Tribunal has considered whether the applicant's claims of being discriminated against due to her being imputed as a rich person harm would involve an act or omission that causes extreme humiliation that is so unreasonable to meet the definition of degrading treatment or punishment in s.5(1). The applicant claims she has to pay extra for things, that she is looked down upon and that she is isolated. The Tribunal accepts that the applicant may regard these acts as humiliating or degrading as they involve her being treated differently from others, cause her increased expense and are socially isolating to her. Considering these claims individually and cumulatively, the Tribunal is not satisfied the harm the applicant claims to fear would cause and would be intended to cause extreme humiliation which is unreasonable. The Tribunal is not satisfied that there are substantial grounds for believing that as a necessary consequence of the applicant being removed from Australia to Indonesia there is a real risk that the applicant would suffer significant harm in the nature of degrading treatment or punishment.
59. For the reasons set out above, the Tribunal is not satisfied the applicant's claims give rise to substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to Indonesia there is a real risk that she would suffer significant harm in the form of: arbitrary deprivation of life; the death penalty being carried out; torture; cruel or inhuman treatment or punishment, or degrading treatment or punishment. Therefore she does not satisfy the requirements of s.36(2)(aa).
60. Because of the findings above, it is unnecessary for the Tribunal to consider whether it is reasonable for the applicant to relocate to another part of Indonesia where she could live safely.
61. The applicant has raised the compassionate issue of her and her Australian citizen son suffering distress and hardship if she is to return to Indonesia but her current husband does not allow her Australian citizen son to travel to Indonesia with her, causing them her and her Australian citizen son to be separated. The applicant has not requested the Tribunal to refer her compassionate circumstances to the Minister for consideration and his public interest

powers. The Tribunal has determined not to refer her compassionate circumstances to the Minister for exercise of his discretion under the public interest powers, but notes the applicant can still make an application to the Minister should she wish to avail herself of such an application.

CONCLUSIONS

62. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
63. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
64. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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