

DECISION RECORD

RRT CASE NUMBER: 1103376

DIAC REFERENCE(S): CLF2010/95735 clf2011/50870

COUNTRY OF REFERENCE: Philippines

TRIBUNAL MEMBER: Catherine Carney

DATE: 22 June 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant (the applicant), who claims to be a citizen of the Philippines, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2008 and applied to the Department of Immigration and Citizenship for the visas [in] July 2010. The delegate decided to refuse to grant the visas [in] March 2011 and notified the applicants of the decisions.
3. The second named applicant arrived in Australia on a student visa in May 2008. She has applied as a member of the family unit of a refugee and has no claims of her own.
4. The delegate refused the visas on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
5. The applicants applied to the Tribunal [in] April 2011 for review of the delegate's decisions.
6. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

7. 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.
8. 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).
9. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 (the Regulations) for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include spouse.

10. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Regulations.

Definition of ‘refugee’

11. 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.
12. 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.
13. 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.
14. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
15. 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.
16. 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.
17. 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.

18. 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.
19. 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.
20. 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

21. The Tribunal has before it the Department's file relating to the applicants. 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.

Application for Protection visa

22. The applicant lodged an application for a protection visa [in] June 2010. The applicant is a [age deleted: s.431(2)] year old male. He was born [in the] Philippines. He speaks reads and writes English and Tagalog. He first entered Australia [in] July 2008 on a student visa. He has had twenty two years of education. He entered a seminary when he was thirteen years of age. He has lived in the same province in the Philippines since birth.
23. Attached to his application are his claims. He claims he was a Catholic Priest in the Philippines. While he was a parish priest he mounted a campaign against illegal fishing and illegal gambling. He conducted community forums and spoke out in public. He mounted a successful campaign against the owners of the commercial fishing companies. He claims the owners were linked to powerful political families in the Philippines. He claims they had the protection of the military and their own militia.
24. The applicant anchored two Radio Programs. On those programs he spoke out against illegal fishing, illegal gambling and the corruption of government officials. He claims he educated the people about the corruption which was endemic in the area. He said

that his broadcasts went beyond the local area and he criticised the local and national government officials.

25. He claims that he was tagged as a rebel priest in November 2006. He claims that the government tried to claim he was a communist priest. He claims this was so they would then have an excuse to move against him. He claims that he was visited by members of the military who interrogated him. He claims they came to his parish in army vehicles with arms. He claims that in December 2006 he received a present. The present was empty bullet shells and one piece of live ammunition. He claims this was a common threat in the Philippines. He claims it was meant to warn him that he would be the next killed. He claims that in 2008 the car of the Parish was vandalized. He claims this was at the time that the maritime police acted against the illegal fishermen and brought them to court. He claims that his parishioners organized a body guard for him. He claims he was planning a grand rally to try to pressure the government to implement the law against illegal fishing. He claims he continued to receive threats. He claims that a concerned local congressman offered him an armalite to protect himself from ambushes. He claims that the Bishop suggested he leave the Philippines for his own safety. He was given leave by the Bishop and told to apply for a safe haven. He claims that the idea of transferring him to another diocese was canvassed however it was not feasible or practical as his enemies have the resources to find him throughout the Philippines.
26. He claims, with the help of the Bishop and other clergy he applied to go to the USA as a priest. He states that the responses were very slow and he eventually heard about a student visa being the fastest way to get to a safe haven in Australia.
27. The applicant provided a large number of correspondences. He provided copies of correspondence between him and the clergy in USA and the Philippines. He provided information on his rallies and protests. He provided information on his radio programme including a letter from the Managing Director confirming he was the anchor-man of a program that [aired] from the period April 2005 to August 2007. He provided letters from the [Bishop] and other clergy. He provided a large amount of information which related to his campaign against illegal fishing. The applicant provided a large amount of country information relating to his campaign and killings of other priests.
28. The Tribunal conducted its own enquiries which confirmed he was a [parish priest] until he left the Philippines in 2008.
29. The applicants appeared before the Tribunal [in] June 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [the Bishop]. The Tribunal hearing was conducted with the assistance of an interpreter in the Tagalog and English languages.
30. The applicants were represented in relation to the review by their registered migration agent.
31. The Tribunal went through the introductions and explained that it was looking at whether the applicant was a refugee. The Tribunal read out the definition of refugee and asked the applicant if he understood the definition. He indicated that he did.

32. The Tribunal then asked the applicant to state his name and date of birth. He confirmed his name was [name and date of birth deleted: s.431(2)]. He was educated at the same place where he was born. He entered the seminary when in high school at 13 years of age.
33. His parents at first opposed him entering at such a young age and then they supported him. He has two brothers in the Philippines and one in Canada, one in South Korea and one in the United States of America.
34. He says that he was told to leave the Philippines by his bishop. He claims his Bishop told him that he (the Bishop) had been approached by political forces and the applicant's outspoken behaviour was putting him at risk.
35. He claims he was told to leave the Philippines and there was one diocese in America trying to help him but it was a long process and he was very concerned. He said he heard about Australia and a student visa and started applying. He said he was helped by a private immigration company and the diocese.
36. He said the application did not involve a fee it was all written communication. He said that when he applied for Australia he had to use his money and the diocese also gave me money.
37. The Tribunal asked the applicant why he became involved in political matters.
38. He replied that he had witnessed so much poverty in his parish; he claimed he was deeply affected by the suffering of the people he administered to. He said that the Bishop sent pastoral letters condemning the political system that kept so many of the people impoverished.
39. He said at first he read the pastoral letters out to the people however he then went beyond that and started to educate the people. He said he had witnessed so much suffering it was difficult to witness and do nothing, he said that he was convinced the economic situation which led to the suffering was the effect of political corruption in all levels of government. He said that when he was in the pulpit he could preach however he went outside that and organised rallies and spoke on the radio. He said that he wanted to explain the situation to the common people so they would understand about ballooning debt and the level of corruption. He said he spoke about the powerful families that were involved in the illegal gambling and fishing. He said the result of the illegal fishing was that whole ocean floors were swept clean of everything even coral and the local fishermen and their families had no fish. He claims that they came to him and showed him their catch of one small fish with which to feed their families.
40. He claimed that the illegal activities involved the husband of the then president and others all connected to powerful families. He said that they used their political connections and asked the bishop to stop him and his campaign. The Tribunal asked who "they" were. He replied that they were the local politicians and congressmen. He said that the whole province was run as a dynasty and all the dynasties relatives filled the positions of power.
41. He claims the Bishop never told him to stop. He said he mainly spoke about illegal fishing. He said that local politicians connected to commercial fisherman were taking

all the fish illegally. He claims they were protected by the governor and the governor was protected by the government.

42. He recalled that at one gathering of fishermen, the powerful owners attended, the military were holding umbrellas up over the powerful owners of the commercial fishing fleet that was conducting all the illegal fishing. He claims the military were used as servants and protectors of these powerful corrupt individuals. He said that the ordinary villagers could no longer get any fish.
43. He said that people were scared of speaking out. He said many journalists have been killed for speaking out. The Tribunal asked the applicant why he decided to leave the Philippines and stop his activities.
44. He said that his parish is a very small parish and when he spoke out he felt very brave and did not care about dying however during his moments of being alone he was very scared. He stated that in 2007 before he left he was concerned when on his own. He said that the electricity was controlled by the corrupt politicians and they would turn it off to the parish and he would sit there in the dark holding his armalite waiting for something to happen. He said he was afraid to sleep when there was no light.
45. The Tribunal asked the applicant if he would continue to speak out if he returned to the Philippines. He said that he has now left the priesthood and has married. He said that his wife has [an illness] and he would be concerned for her welfare as well as his own.
46. He said that he did not feel he would be safe as he has already been labelled a communist priest. He said that this was done so the military would have an opportunity to assassinate him. He said he was never a communist priest he was a rebel against the government corruption but not a communist priest. He said that the corrupt forces are just waiting for the right moment.
47. He said he did not apply immediately for a refugee visa as he thought his wife would get a skilled visa and he would be safe as her spouse. He said she has now got [an illness] and cannot get the visa. He said when he first arrived in Australia he was traumatised and was trying to forget all that happened to him. He said that he did speak to an advisor who told him he needed to collect all his information and newspaper articles. He said that he had left all that information behind and it has taken him a long time to collect the information needed.

[Bishop]

48. The Tribunal spoke to the [Bishop]. He confirmed that the applicant was a priest with his diocese. He confirmed the evidence of the applicant.

[Applicant 2]

49. The Tribunal then took evidence from the second named applicant. She confirmed the evidence of the applicant. She indicated that she was currently suffering from [an illness]. She said that she did not think that re-location within the Philippines was an option as she needed medical care. She said that the first named applicant is still in danger and the influence of the corrupt clans and government officials in the Philippines is such that they would continue to be a threat.

50. The applicant then indicated that he would continue to be a target as he was outspoken. He said that his radio broadcasts were national and he was trying to educate the people. He said that he was a leader and had a high profile.

INDEPENDENT COUNTRY INFORMATION

World report 2011: The Philippines Human Rights Watch

Extrajudicial Killings and Enforced Disappearances

Hundreds of leftist politicians and political activists, journalists, and outspoken clergy have been killed or abducted since 2001. So far only 11 people have been convicted of these killings-none in 2010-and no one has been convicted of the abductions. While soldiers, police, and militia members have been implicated in many of these killings, no member of the military active at the time of the killing has been brought to justice.

In December 2009 the Philippines enacted the Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity Act (Republic Act 9851), which defines and penalizes war crimes, genocide, and crimes against humanity. It provides for senior officers to be held criminally liable for abuses committed by subordinates if they knew or should have known of the abuses and did not take the necessary steps to stop them.

At least five witnesses and family members of witnesses to Ampatuan family abuses, including the Maguindanao massacre have been killed since December 2009. On June 14 an unidentified gunman shot and killed Suwaib Upahm, an Ampatuan militia member who had participated in the massacre and had offered to testify for the government if afforded witness protection. Three months before he was killed, Human Rights Watch had raised concerns with Justice Department officials in Manila about his protection. The department was still considering his request for protection at the time of his killing.

President Aquino has proposed an 80 percent budget increase for the witness protection program, but his administration has not taken steps to make the program independent and accessible and to extend protection from the onset of a police investigation until it is no longer necessary, including after the trial.

Optimism over Supreme Court writs to compel military and other officials to release information on people in their custody and take steps to protect people at risk continued to be dampened by hesitancy to grant inspection orders and difficulty in enforcing them. In two cases, the Supreme Court held that investigations had been inadequate, but simply referred the case to the national Commission on Human Rights for further investigation and monitoring-a role that the commission should already be carrying out. One of these cases involved the 2007 abduction of leftist activist Jonas Burgos who remains missing.

"Private Armies"

In numerous provinces, ruling families continue to use paramilitary forces and local police as their private armies. By recruiting, arming, and paying members of these various militias, often with national government support, local officials ensure their continued rule, eliminate political opponents, and engage in corruption. The

Maguindanao massacre, the most egregious atrocity implicating a ruling family in recent years, was allegedly carried out by a private army consisting of government-endorsed paramilitary members, as well as police officers and soldiers.

In 2010 the government created task forces to dismantle private armies in Masbate and Abra provinces, but they continue to operate. In July President Aquino directed the police and military to take control of paramilitary forces, properly train them, and ensure that all forces are insulated from political entities. Aquino continues to defend the use of these forces, which often provide manpower for private armies and have a history of perpetrating rights abuses.

Conflict with the New People's Army

Military clashes between government forces and the communist New People's Army (NPA) continued in 2010, especially in Central and Northern Luzon, Southern Tagalog, Bicol, Eastern Visayas, Negros, and on Mindanao. Around 1,100 people in Surigao del Sur, Mindanao, were displaced twice this year for several days each time after government forces moved into their area.

On February 6 the military and police arrested 43 men and women on firearms charges, and accused them of being NPA members. All but five of the detainees say they are health workers and deny links to the armed group. The arresting officers detained them blindfolded and without access to communication for the initial 36 hours, and refused them legal counsel during this time. Rather than investigating these allegations of abuse, the military granted awards to the two officers that led the arrests.

The NPA continued to kill civilians and extort "taxes" from individuals and businesses. For example, on July 13, NPA members killed the former mayor of Giporlos, Mateo Biong, Jr., in Eastern Samar province. The NPA said that it killed Biong after he was sentenced to death by a rebel "people's court."

2010 Human Rights Report: Philippines

Bureau of Democracy, Human Rights, and Labor

[2010 Country Reports on Human Rights Practices](#)

April 8, 2011

The Philippines, with a population of 94 million, is a multiparty republic with an elected president and bicameral legislature. On May 10, approximately 75 percent of registered citizens voted in automated elections for president, both houses of congress, and provincial and local governments. The election was generally free and fair, but was marked by some violence and allegations of vote buying and electoral fraud. Long-running Communist and separatist insurgencies affected the country. Security forces reported to civilian authorities.

Arbitrary, unlawful, and extrajudicial killings by elements of the security services and political killings, including killings of journalists, by a variety of state and non-state actors continued to be serious problems. Concerns about impunity persisted. Members of the security services physically and psychologically abused suspects and detainees, and there were instances of torture. Pretrial detainees and convicts were often held in overcrowded, substandard conditions. Disappearances occurred, and arbitrary or warrantless arrests and detentions were common. Trials were delayed, and procedures were prolonged. Corruption was endemic. Leftist and human rights activists reported harassment by local security forces. Problems such as violence against women, abuse of children, child sexual exploitation, trafficking in persons, child labor, and ineffective enforcement of worker rights were common.

In addition to killing soldiers and police officers in armed encounters, rogue elements of the separatist Moro Islamic Liberation Front (MILF) and terrorist Abu Sayyaf Group (ASG), Jemaah Islamiya (JI), and New People's Army (NPA)--the military wing of the Communist Party--killed local government officials and other civilians. These same groups also were linked with bombings that caused civilian casualties and kidnappings for ransom. The MILF, ASG, and NPA reportedly used child soldiers in combat or auxiliary roles.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

Security forces and antigovernment insurgents committed a number of arbitrary and unlawful killings, including in connection with combat operations between government forces and Muslim rebels in parts of Mindanao (see section 1.g.). The Commission on Human Rights (CHR), an independent government agency, investigated 53 new complaints of politically motivated killings involving 67 victims during the year. The CHR suspected personnel from the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) in some killings of leftist activists operating in rural areas. Suspects in other cases were ordinary citizens or remained unknown. The nongovernmental organization (NGO) Task Force Detainees of the Philippines (TFDP) also reviewed allegations of summary executions by government security forces. The TFDP was unable to investigate all allegations it received but counted nine cases involving 11 victims of summary executions by government forces during the year. Karapatan, another NGO, recorded 44 victims of extrajudicial killings.

The PNP's Task Force Usig (TFU), responsible for monitoring extrajudicial killings, has recorded 161 cases of killings since 2001. The TFU, which uses different criteria than the CHR, identified nine new cases of extrajudicial killings during the year. Of the 161 cases monitored by the TFU, 99 were filed in court and prosecutors' offices, 61 were under investigation, and one case was closed. There were no convictions of state actors during the year.

Killings of activists, judicial officials, and local government leaders continued to be serious problems. On March 1, two unidentified armed men shot and killed antimining activist Gensun Agustin in Calamegatan, Cagayan. On June 14, two armed men shot and killed peasant worker and human rights activist Benjamin Bayles in Buenavista, Himamaylan City, Negros Occidental. Two members of the AFP were arrested and charged with the murder. On July 5, Fernando Baldomero, a municipal councilor of Lezo, Aklan, and provincial coordinator of a leftist group, was shot and

killed in Kalibo, Aklan. Murder charges were filed against two suspects on August 2, but no arrests were made. In separate incidents on July 9, unidentified armed men shot and killed peasant leader Pascual Guevarra in San Isidro, Laur Town, Nueva Ecija, and elementary school teacher-activist Mark Francisco in Malibas, Masbate. Both cases remained under investigation at year's end.

On May 18, unidentified armed men shot and killed Judge Andres Cipriano in Aparri, Cagayan. There were no available witnesses, and no case was filed. On October 4, Judge Reynaldo Lacasandile was shot and killed in Vigan City. The National Bureau of Investigation filed murder charges against seven persons on November 8 in connection with the killing.

On May 9, the day prior to national elections, two persons were killed and 12 wounded when a hand grenade was thrown inside a mosque in Pikit, North Cotabato. No group claimed responsibility for the attack, which authorities viewed as politically motivated.

Vigilante groups, including those with suspected ties to state actors, were suspected of summary killings of adult criminals and minors involved in petty crime in major metropolitan areas. The Coalition Against Summary Execution recorded 74 cases of apparent vigilante killings in Davao City from January through October. The CHR concluded its public hearings on the Davao killings in 2009 but had not released its report by year's end. The international NGO Human Rights Watch's April 2009 report on the Davao killings concluded that members of the police and local officials were involved or complicit. Authorities made no arrests in vigilante killings cases.

On September 8, the trial started for 19 suspects accused of involvement in the November 2009 massacre of 58 individuals in Maguindanao. An additional 32 suspects were arraigned and in pretrial detention. An additional 146 suspects remained at large, including 10 police officers and four soldiers.

Government forces, terrorist groups, and armed groups killed a number of civilians during clashes (see section 1.g).

Role of the Police and Security Apparatus

The Department of National Defense directs the AFP, which shares responsibility for counterterrorism and counterinsurgency operations with the PNP. The DILG directs the PNP, which is responsible for law enforcement and urban counterterrorism; however, governors, mayors, and other local officials have considerable influence over local police units. The 132,577-member PNP has deep-rooted institutional deficiencies and suffered from a widely held and accurate public perception that corruption remained a problem. The PNP's Internal Affairs Service remained largely ineffective. Members of the PNP were regularly accused of torture, soliciting bribes, and other illegal acts. Efforts were underway to reform and professionalize the institution through improved training, expanded community outreach, and pay raises. During the year, there were 69 administrative cases filed against 97 members of the police force, including administrative officials and police officers, for various human rights violations. Out of the 69 cases filed, 61 were resolved and eight were undergoing summary proceedings. The PNP dismissed 12 persons in connection with these cases. The deputy ombudsman for the military received 67 cases involving alleged human rights abuses by the military and law enforcement officers from January to July, the majority of which were filed against low-ranking police and military officials. All of the cases were under investigation by the Deputy Ombudsman's Office as of August.

The police and military routinely provided human rights training to their members, augmented by training from the CHR. The PNP maintained a network of 1,636 human rights desk officers at the national, regional, provincial, and municipal levels. The CHR noted that senior PNP officials appeared receptive to respecting the human rights of detainees, but rank-and-file awareness of detainee rights remained inadequate. The Commission on Appointments determines whether senior military officers selected for promotion have a history of human rights violations and solicits input from the CHR and other agencies through background investigations. A promotion can be withheld indefinitely if the commission uncovers a record of human rights abuses. Negative findings do not, however, preclude promotion, and there were no reports of promotions withheld on human rights grounds during the year.

Human rights groups and the CHR noted little progress in implementing and enforcing some reforms aimed at decreasing the incidence of killings, and cooperation and coordination between police and prosecutors remained limited. On July 16, the Department of Justice instructed prosecutors to coordinate closely with local law enforcement agencies in resolving political and media killings, violence, or harassment. The CHR approved operational guidelines and rules of procedure for its witness protection program on April 8, but funding for the CHR and government witness protection programs remained inadequate. Potential witnesses were at times unable to enter the program due to funding constraints or procedural delays. On June 14, a potential witness in the November 2009 massacre in Maguindanao, Suwaib Upahm, was shot and killed in Parang, Maguindanao, while his request for entry into the witness protection program was pending with the Department of Justice. Police arrested two suspects on July 4.

The AFP did not aggressively pursue internal investigations into alleged serious human rights abuses by some of its members. From January to July, the AFP Human Rights Office monitored four new cases of killings, two cases of torture, illegal detention, and illegal arrest, and one case of enforced disappearance. Murder charges were filed in civilian courts in one of these cases (see section 1.a).

Government-armed civilian militias supplemented the AFP and the PNP; the AFP held operational control of Citizens' Armed Force Geographical Units (CAFGU), and Civilian Volunteer Organizations (CVOs) fell under PNP command. These paramilitary units often received minimal training and were poorly monitored, tracked, and regulated. Some politicians and clan leaders, particularly in Mindanao, maintained their own private armies and at times co-opted CVO and CAFGU members into these armies. Human rights NGOs have linked state-backed militias and private armies with numerous human rights abuses, including the 2009 massacre of 58 people--family members and supporters of a gubernatorial candidate, 31 media members, and six passersby--in Maguindanao Province.

a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, and the government generally respected these rights in practice.

The government owned several television and radio stations; however, most print and electronic media were privately owned. The independent media were active and expressed a wide variety of views without restriction, but they were freewheeling and often criticized for lacking rigorous journalistic standards. They tended to reflect the particular political or economic orientations of owners, publishers, or patrons, some of whom were close associates of present or past high-level officials. Special interests often used bribes and other inducements to solicit one-sided and erroneous reports

and commentaries that supported their positions. Journalists continued to face harassment and threats of violence from individuals critical of their reporting.

Journalists continued to be killed. The Center for Media Freedom and Responsibility (CMFR) reported eight journalists killed during the year. The CMFR claimed that four out of the eight were killed in the line of duty. The TFU, which also tracks killings of media practitioners, classified two of these cases as work-related killings. The TFU has recorded 39 media practitioners slain in work-related killings since 2001; this total does not include the 31 media members killed in the Maguindanao massacre, which was monitored by a special task force.

On June 14, a gunman shot and killed local broadcaster Desiderio Camangyan, an anti-illegal logging activist, in Manay, Davao Oriental. On July 21, murder charges were filed against a local police officer and a local village chief in Camangyan's death. The police officer is under restrictive custody pending preliminary investigation. On July 9, two gunmen shot Iriga City-based radio broadcaster Miguel Belen in Nabua, Camarines Sur; he died 20 days later. Murder charges were filed against two suspects on August 6.

On July 21, two gunmen shot and killed local radio broadcaster Jovelito Agustin in Laoag City, Ilocos Norte. On the same day, murder charges were filed against a local government official and his aide.

Cases of journalist killings for 2009 and 2008 remained ongoing.

On August 6, a local court acquitted a former police officer and another suspect in the 2004 killing of Laoag City-based radio broadcaster Roger Mariano.

Human rights NGOs frequently criticized the government for failing to protect journalists. The National Union of Journalists of the Philippines accused the police and the government of failing to investigate adequately these killings and of subjecting journalists to harassment and surveillance. In some situations it was difficult to discern if violence against journalists was carried out in retribution for their profession or if these journalists were the victims of random crime.

FINDINGS AND REASONS

51. The applicant arrived in Australia on a Republic of the Philippines passport. There is no evidence that the applicant has the right to enter and reside in a safe third country under section 36(3) of the *Migration Act 1958*. The Tribunal finds on the basis of the applicant's evidence and passport that the applicant is a national of the Republic of the Philippines and has assessed his application against that country.
52. The applicant fears that as a high profile political campaigner who spoke out against powerful clans, the local and national government and who has been labelled a "communist priest" he will be killed if he was to return to the Philippines. He claims he could not go to the police for protection as they and the military are the protectors of the corrupt clans and government officials he campaigned against.
53. The Tribunal notes the Department delegate at primary decision accepted the applicant's claims that he was a priest who had spoken out about illegal fishing, gambling and spoke out about corruption. The delegate found that he did not face serious harm and if he was at risk of harm he could get protection from the authorities.

The delegate also found he could avoid harm by ceasing his activities and ceasing his radio campaign against illegal gambling. The delegate found that the applicant would face shame if he were to return as he has left the priesthood and married a woman.

54. In determining whether the applicant's fear of persecution is well founded, the Tribunal must weigh all of the evidence before it and determine whether it accepts the applicant's account of the circumstances leading to the applicant's departure from the Philippines. In doing so, it is entitled to have regard to the overall plausibility of his account (Chan's case, per Dawson J at 396, and per McHugh J at 428; Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, Geneva, January 1992, at 47 and 48).
55. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the claimed fear or that it is "well founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be provided by the applicant. A decision maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the claims made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169 70.)
56. Although an applicant is not obliged to provide corroboration of his or her statements, a decision maker is not required to accept uncritically his or her unsupported assertions: *Randhawa v MILGEA* (1994) 124 ALR 265.
57. An assertion by an applicant, that he or she faces persecution for a particular reason, is not sufficient to establish refugee status. The Tribunal is not required to accept an applicant's evidence, even in the absence of other evidence which specifically disproves that of the applicant; the Tribunal must consider the objective and subjective evidence, consider inconsistencies and determine which evidence it finds credible: see *Chen Xin He v MIEA* (unreported), 23 November 1995, Nicholson J at p11. An applicant's account should be accepted if it is credible, plausible and does not run counter to generally known facts: Handbook at par.204.
58. The Tribunal accepts that the applicant is a [age deleted: s.431(2)] year old citizen of the Philippines. The Tribunal accepts that the applicant is a Roman Catholic Priest who has been a high profile leader involved in and organising protests against illegal fishing, gambling and corruption.
59. The Tribunal has considered the applicant's evidence given in his statements, at interview and at hearing. The applicant is a credible witness. He has provided a large amount of documents which support his claims. He has provided corroborative evidence of his priesthood and his efforts to educate the people of his province particularly in relation to the corruption of the government authorities. The Tribunal has before it evidence of the applicant's public efforts. The Tribunal accepts that he was a high profile leader and organiser of rallies and made regular public pronouncements on radio. The Tribunal conducted its own enquiries which confirmed the above.

60. The Tribunal further accepts that he was the subject of threats and the Bishop was so concerned for his safety that he and other clergy provided some assistance for the applicant to leave the Philippines. The applicant gave convincing evidence of his fears. He claims he was interrogated by the military and sent bullets. He claims he travelled with an armalite firearm which was provided by a supporter. He said that at rallies the military would be standing next to the owners of the commercial fishing enterprises and holding umbrellas over them. The Tribunal accepts that he was at risk of serious harm.
61. The Tribunal also accepts that the Bishop no longer sees the applicant as one of his priests. In his evidence he referred to the applicant as not being one of his priests any longer. The applicant in his oral evidence said that due to his trauma and loneliness in Australia he formed a relationship with a woman. He claims that he told his Bishop this and he is no longer considered a priest. The Tribunal finds that the applicant will not if he returns to the Philippines be offered any assistance from the Catholic Church.
62. The Tribunal finds that because the applicant was an outspoken leader who organised rallies and was regularly on radio criticising the authorities for corrupt behaviour and protection of powerful clans that he would be at risk of serious harm.
63. This is underscored by country information which indicates that corruption is endemic in Philippines and that journalists and clergy who have spoken out against the government authorities and or powerful political clans have disappeared and been killed. The Tribunal accepts the applicant's evidence that the military has labelled the applicant "a communist priest" and has indicated a willingness to protect the powerful parties he criticised. The Tribunal accepts that being labelled "a communist priest" provides the authorities with a reason for any harm they may inflict on the applicant.
64. The existence of such harm however does not necessarily mean that an applicant is a refugee under the Convention. Whether a person is a refugee depends on an assessment of the applicant's claims to determine if the harm feared is for a Convention reason, as well as an assessment of the effectiveness of state protection in the Philippines.
65. The Tribunal finds the applicant to be a credible witness. There is a sound level of consistency in the applicant's claims and circumstances contained in his protection visa application, his interview with the delegate and his oral evidence to the Tribunal. The Tribunal is of the view that the applicant has not attempted to embellish or exaggerate his claims. Furthermore a significant amount of corroborating evidence was provided. Corroborating evidence which the Tribunal confirmed was correct through its own enquiries.
66. The Tribunal accepts the evidence of the applicant that he fears serious harm to himself if he was to return to the Philippines. The Tribunal considers that country information is consistent in highlighting the problems high profile anti-corruption campaigner's face. The Tribunal finds that the applicant could face persecution due to a convention reason which is the applicant's political opinion and his actions in organising and leading anti-corruption campaigns.
67. After considering the Independent Country Information together with the following evidence. That the applicant is an outspoken ex-priest, who also acted as a journalist, organised public events and was the anchor man on a radio show that was heard nationally in which he criticised the authorities for illegal fishing, gambling and

corruption. That he was interrogated by the military, threatened and labelled a “communist priest” by the authorities. The Tribunal finds there is a chance which the Tribunal finds is not remote, and is therefore a real chance, that effective state protection for the harm feared by the applicant may not be available to him. The Tribunal accepts that this could amount to serious harm amounting to persecution as outlined in s.91R of the *Act*.

68. A further consideration for the Tribunal is whether the applicant would be reasonably able to relocate to another part of the Philippines. The applicant has told the Tribunal that relocation is not a safe option. He said that the powerful clans and military he criticised could find him. His wife is [sick] and relocation with her would mean that she would not be able to access medical assistance. The Tribunal has heard evidence from the applicant’s former Bishop that he is no longer considered “one of his priests” The Tribunal has also heard evidence that the Bishops did not consider relocation in the Philippines a realistic option when they were trying to assist the applicant.
69. The Tribunal considers that relocation would not be a reasonable option as he has left the priesthood has a sick wife and is not able to access adequate state protection. The Tribunal accepts the country information set out above that the powerful clans operate in and control significant sections of the country and their influence is insidious and far-reaching.
70. Having considered the applicant’s claims both singularly and cumulatively the Tribunal finds that the visa applicant has a well-founded fear of serious harm on return to the Philippines. The Tribunal also finds that on the basis of the information above, given the applicant’s high profile as an anti-corruption campaigner that there is more than a remote chance, that is, a real chance, that he will face serious harm were he to return to the Philippines now or in the reasonably foreseeable future.

CONCLUSIONS

71. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria for the visa.
72. The Tribunal is not satisfied that the other applicant is a person to whom Australia has protection obligations. Therefore she does not satisfy the criterion set out in s.36(2)(a) for a protection visa. The Tribunal is satisfied that the second named applicant is the wife of the first named applicant and is a member of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of her application depends on the outcome of the first named applicant’s application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicant will be entitled to a protection visa provided she meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

73. The Tribunal remits the matter for reconsideration with the following directions:

- (i) That the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) That the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.