

1002507 [2010] RRTA 592 (15 July 2010)

DECISION RECORD

RRT CASE NUMBER:	1002507
DIAC REFERENCE(S):	CLF2009/151210
COUNTRY OF REFERENCE:	Philippines
TRIBUNAL MEMBER:	Jennifer Ciantar
DATE:	15 July 2010
PLACE OF DECISION:	Sydney
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 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 Philippines, arrived in Australia [in] October 2006 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] March 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
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] April 2010 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
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.

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.
20. The applicant arrived in Australia [in] October 2006 as the holder of a Subclass 676 visa, which ceased [in] January 2007. [In] November 2009 the applicant was granted a Bridging visa.

Application

21. On the visa application form, the applicant states that:
 - She left her country because she feared for her life; the people with whom she had outstanding loans had threatened her. She had married soon after graduating from university and she had two children. In 1987, she decided to start her own business as it is difficult to obtain work in the Philippines. She sold house wares, fabric and household furniture, and business traded well at the beginning. However, things started to go bad when there were cheaper imports from China and Vietnam She was finding it hard to make ends meet and her husband was out of work.
 - The applicant met a man in Manila in September 1988 who said he was willing to lend the applicant money, as he was in the finance business. The applicant borrowed 400,000 pesos, which was enough to run her business for a few years. She thinks the interest was about 2% per month. With the new capital, she was able to stock new lines of items and also to pay some back rent.
 - However, in mid-1990 the economy was severely affected by a powerful earthquake, which hit the central part of Luzon where the applicant lived. The applicant's shop and stock were all destroyed and she lost thousands of pesos. It took several months for the area to be restored. The applicant was threatened by the moneylender to keep up with payments but she could not do so. She paid the moneylender as much as she could but it was not enough. She reported the threats to the local police but they did not seem to care.
 - To make matters worse, in July 1996, just as they had started to return to normal business, Typhoon Gloria hit the province and destroyed many houses and shops, and also killed many people. The applicant's business was again disrupted. The applicant had no money to repay the lender and there were constant threats to the applicant and her family. The applicant's marriage ended and her ex-husband took custody of the two children. The applicant was beaten up several times and told to repay the money soon and the amount she had borrowed was now close to 750,000 pesos.
 - In October 2006 the applicant decided to leave the Philippines, to escape the constant harassment and death threats. The applicant fears for her life if she has to return to

the Philippines without having sufficient money to repay the money lenders. She wants to remain in Australia and be allowed to work so that she can save enough money to pay back her debts. She has no contact with her ex-husband and two children and does not know their whereabouts.

- The applicant further states that the moneylenders were classified as dangerous people and they would threaten and kill anyone who does not obey their rules. The local politicians and police are not known to help people like the applicant. The applicant regrets that she has lived illegally in Australia for three years. The applicant does not believe the authorities in the Philippines would protect her if she returned and did not settle the loan problem. She has heard of people in similar circumstances who were severely beaten up and murdered, and the police could not prevent this happening. These people are above the law and local politicians have been known to have connections with these people such as money laundering, people trafficking as well as corruption. The applicant really fears for her life if she returns without having the money to repay the debt.

Interview with Department

22. The applicant was interviewed by the Department [in] February 2010. The applicant provided the Department with some additional documents including the registration of her business name. The applicant confirmed that she had to register the business every 5 years and she had made an application for sole proprietorship; the business had always been a sole proprietorship. The former owner was her ex husband. The person who lent her money was a politician and so she was very scared. The applicant wanted to apply for protection earlier but she had no idea how to go about it until her priest advised her. The applicant confirmed she paid 24,000 in tax in 2005. When asked the business income or turnover, the applicant said that some of the documents provided were not true.
23. The applicant said she has 2 children, one born in [year deleted: s.431(2)] and one born in [year deleted: s.431(2)]. Her ex husband has custody of the children and she has heard that they are living in Canada. The delegate put to the applicant that she had applied for a visitor visa with her daughter. The applicant said that her daughter had been living with her but after the situation happened, her mother in law took her daughter. The Department put to the applicant that her ex husband had given permission for their daughter to travel with the applicant. The applicant said that she was tricked and when her husband discovered that she was running away, he took their daughter.
24. The applicant said that she had worked for [Company A]. The delegate put to the applicant that she told the post she had worked with [Company A] from 2002 and that she was a regional business development manager but on her visa application she says she was an insurance agent for 2 years. When asked if she had documents from [Company A], the applicant said that she lost her bag when she was in [suburb deleted: s.431(2)]. She had stayed in [suburb deleted: s.431(2)] in 2006, with people that she met through an acquaintance who she had met at the airport. The delegate put to the applicant that the Post also recorded that evidence had been provided that the applicant had more than adequate funds to visit Australia. The applicant said that the travel agency had arranged this and she does not know what evidence had been provided. The applicant said that she was only an insurance agent and she needed money to pay her debts. The applicant said that she had provided the travel agent with a piece of paper that had the [Company A] letterhead and the

agent had exaggerated the applicant's work position for the purpose of obtaining a visitor visa.

25. The delegate asked the applicant if she had considered staying in the Philippines after her daughter was unable to accompany her, in order to find her daughter. The applicant said that she had been sent a black ribbon, which she took as a threat, and she had shown the police but she believed she needed to leave the country. She could ask her mother to obtain a copy of the police report about the black ribbon. The delegate put to the applicant that she did not appear to fit the definition of refugee in the Convention, which the delegate read to the applicant. The applicant said that she had initially thought that her matter was too personal to fit the definition but the owner of the finance company was a politician. The delegate put to the applicant that it might be unlikely that such a person would pursue someone like the applicant if he was trying to be re-elected. The applicant said that she could not recall the name of the politician or the name of their company. When asked about her written claim that the money lenders had been classified as dangerous people, the applicant said that she had heard about this from her friend, and her friend had been attacked when she was out jogging and she has a debt to the same people.
26. The delegate put to the applicant that many aid agencies would have been there to assist businesses affected by the calamity of the flood. The applicant said that aid is not well distributed in the Philippines and people often just get food. The delegate said it was hard to believe that the applicant would not have received some assistance in re-establishing her business. The applicant said that they were just given food and that was all. The applicant said that organisations such as Red Cross or Oxfam were not interested in assisting people to re-establish their business and did not even give advice.
27. The applicant said that she might not fit the Convention definition but she wants to save her life. The delegate said it was almost impossible to accept that the applicant could not get advice or assistance regarding her debt. The delegate put to the applicant that if people wanted to kill her, they could be charged with murder. The delegate also put to the applicant that if she was killed, the debt could not be recovered and so it made no sense that the money lenders would try to kill the applicant. The applicant said that she had been repaying the debt little by little but she got sick and [Company A] did not pay her much. The applicant said that she no longer has the business. She closed it when she came to Australia. She returned the stock to the suppliers. She received no money as she only had to pay for the stock she sold. The applicant said that her area is always in flood and the businesses in her area are owned by a foreign company.
28. The delegate said that she could not see that the applicant was being persecuted for a Convention reason and there was no particular social group to which the applicant belonged. The delegate said she could not accept that the applicant could get no advice or that there were no organisations that could have assisted the applicant when there was a concerted effort to re-establish businesses after the flood. The applicant said that she would ask her mother for the police report. The applicant said that her house is her mother's house. The applicant also said that she had no money from the business at the time that she came to Australia. The delegate put to the applicant that the business had made a profit in 2006. The applicant said that she did not have money then and she only had 10,000 pesos when she came to Australia.
29. [In] March 2010 the applicant provided the Department with 2 statutory declarations, in support of her request to be given permission to work.

First Hearing before the Tribunal

30. The applicant appeared before the Tribunal [in] May 2010 to give evidence and present arguments.
31. The applicant's oral evidence can be summarised as follows. She arrived in Australia in 2006 and she first stayed in Melbourne with a friend for about 12 months. She did some cleaning work and was paid \$10 per hour. Her accommodation was free and she used her income to pay for food and medication. She then moved to Sydney to stay with another friend. She began doing some cleaning at the church but they would not pay her as she did not have a tax file number. They gave her food and clothing, and encouraged her to approach the Department and to apply for protection.
32. The Tribunal read out to the applicant the United Nations Convention and told the applicant that the Tribunal had to be satisfied that the applicant has a well founded fear of persecution for one of the five convention reasons. The Tribunal indicated that it had listened to a recording of the interview that the applicant had with the Department's delegate. The Tribunal discussed with the applicant that it may be difficult to see how her claims relate to a Convention reason. The applicant stated that she has thought about this difficulty and she is aware that her claims are personal, however, the person that she fears is very powerful and she also fears what might happen to her family.
33. The applicant stated that after she divorced, she had to support her two children and she met a person who offered to help her establish her own business. He gave her capital and told her to deliver products. Her son was the driver but the police arrested him. The applicant believed that her son was delivering sugar and flour but it turned out to be drugs and her son was jailed for [period deleted: s.431(2)] years. He had served [period deleted: s.431(2)] years of his sentence at the time the applicant came to Australia. Then her daughter was kidnapped and raped, and then she was taken away by the applicant's mother-in-law.
34. The Tribunal put to the applicant that she had not told the delegate about the problems that her children had experienced. The applicant said that she was afraid of the consequences for her family. The Tribunal asked the applicant the name of the person who assisted her to establish her business. The applicant said that she is not prepared to reveal his name, as it might endanger her family. This man was elected only last year.
35. The applicant stated that her daughter's name is [name deleted: s.431(2)] and her date of birth is [date deleted: s.431(2)]. Her daughter lives faraway in the south of the Philippines and the applicant has no communication with her and does not know her daughter's exact whereabouts. The applicant does not communicate with her mother-in-law who does not want the applicant to know where the applicant's daughter is located as this might put her life in danger.
36. The applicant stated that her son's name is [name deleted: s.431(2)] and his date of birth is [date deleted: s.431(2)]. He had been imprisoned in [jail deleted: s.431(2)] and he was released in 2007. He was innocent because he was just a driver and he did not know what he was transporting. The applicant does not know her son's whereabouts, as her mother-in-law and husband took charge of the children. When asked whether she had divorced, the applicant stated that she cannot remember but the children were still young.

37. When asked what year she had established her business, the applicant stated that she thinks it was in 1994. Her business was selling general merchandise; she sold bakery products. She stopped operating the business in 2004 when her son was jailed. The applicant showed the Tribunal the business registration certificate and an application for sole proprietorship. When asked why she had renewed the business registration in 2006, the applicant stated that it was for the purpose of obtaining a visa to come to Australia. She was not operating the business at that time as she was working for [Company A]. The applicant confirmed that the business address was the address specified on the business registration certificate. When asked if she had sold the business, the applicant said that she did not sell it as such but someone took it over and gave her about \$2000, which she used to travel to Australia.
38. The applicant stated that the business only sold bakery products which are used for baking, for example, sugar, flour and yeast. The person she fears had given her the idea and then had provided her with the products, which she sold to different bakeries in Luzon. When the flood came however, she lost business. She had paid her son and a friend to load the trucks.
39. The Tribunal put to the applicant that in her visa application she says that the business sold home wares, fabric and household furniture, and there is no mention of bakery products. The applicant stated that she also had a part-time job selling fabrics which she purchased from Manila. She also sold household furniture. When asked why she had not stated on the visa application that she sold bakery products, the applicant stated that she was too scared to disclose this. She was worried about what would happen to her siblings but her priest has encouraged her to tell the truth. The Tribunal put to the applicant that it was difficult to understand why the applicant would not have said anything on the visa application or at the interview with the Department about her main business and its associated problems. The applicant said that she was frightened of the consequences. She had a problem with the powerful man. When asked when she had first met this man, the applicant stated that she cannot recall exactly when she met him but it was before the elections. He had lent her 400,000 pesos, which she used to buy fabric and furniture but then she had borrowed more from him and he had also provided the bakery products. She had repaid a little of the money she owed when she was working for [Company A]. Now she owes him 750,000 pesos. She has not made any repayments of the debt since she came to Australia as she has not been employed.
40. The applicant stated that she thinks she began the business in 1994. At first she sold fabric and homewares and general merchandise, and she had borrowed 400,000 pesos for this. About two years later she started selling bakery products, which this man supplied to her. The Tribunal again asked the applicant the name of the man that she feared. The applicant stated that she is not prepared to name the person who helped her establish the business and in any case, he does not use his real name.
41. The applicant stated that her son had worked for her after he finished school, when he was studying [subject deleted: s.431(2)]. He was jailed in 2004 when he was aged [age deleted: s.431(2)] and he had been jailed for [period deleted: s.431(2)] years. When asked if she had had any problems with the police because of her son being arrested and jailed, the applicant stated that she did not. Her son used to pick up the products from somewhere in North Luzon. When asked why she had not had problems with the police herself if her son worked for her, the applicant stated that they had not come to look for her and she was in hiding. The Tribunal put to the applicant that at this time she was working as an insurance agent for [Company A] and the applicant confirmed that she had been working as an insurance agent at this time. The Tribunal indicated that it was difficult to understand why, if the applicant's son

was working for her, the applicant was also not of interest to the police. The applicant said she had not been of interest to the police.

42. When asked when there had been an earthquake in Luzon, which affected her business, the applicant said that she could not remember the year. The Tribunal put to the applicant that in her statement she says there was an earthquake in 1990 but the applicant has told the Tribunal that her business did not commence until 1994. When asked why her business would have been affected by the 1990 earthquake, the applicant stated that she cannot remember.
43. When asked why she had come to Australia, the applicant stated that she had planned to come for three months, to hide, but then she had stayed on. When asked why she had not applied for protection earlier, the applicant stated that she did not know about protection visas. When asked why she fears returning to the Philippines, the applicant stated that she fears she will be killed if she returns to the Philippines and that her family will be threatened if she reveals the truth. The person she fears is a powerful politician and her family will be at risk. The applicant stated again that she cannot reveal the name of this person but he is a drug lord. When asked if this person's name had not been revealed when the applicant's son was jailed, the applicant stated that people in the Philippines are afraid, it is a poor country and it is easy to pay someone to kill another person.
44. The applicant stated that when she worked for [Company A], she was based in Manila and she lived with her sister, who is a bank manager and referred clients to the applicant. However, then there had been a tragedy with her children. The Tribunal put to the applicant that at this time, her son was already in jail and the applicant confirmed that this was correct. The applicant stated that about two weeks before she came to Australia her daughter had been raped. The rape had occurred after the applicant had already purchased a ticket for her daughter to accompany her to Australia. The Tribunal asked the applicant why she had still come to Australia if her daughter had been kidnapped and raped. The applicant said that her sister had told the applicant that she was putting the family in danger. Then the applicant's mother-in-law had taken the applicant's daughter. The applicant said that she does not know who raped her daughter, or why they raped her daughter, and she has had no news of her children.
45. The applicant stated that she had repaid some of the debt that she owed to the powerful man while she was employed by [Company A, which] is a branch of [company deleted: s.431(2)] and her commission was deposited into the bank. When she could afford to do so, she would repay the debt at the rate of 20,000 pesos per month and she did this over about a 12 month period but not every month, as sometimes she did not have any clients. The repayments were deducted from her account and deposited into the bank account of the person to whom she owed the money.
46. The applicant further stated that the person who took over her business had done so around 2004. They only took over the fabrics and home ware part of the business, and not the sale of bakery products. The applicant is still owed 100,000 pesos by this person but the person has told the applicant that business is no good and now she has changed her number. The applicant said that the business is still registered in the applicant's name because the person who took over the business has failed to make the full payment.
47. When asked when she had last had contact with the man to whom she owes money, the applicant stated that it was in 2004, about a month before her son was jailed. However, she did have contact with other people regarding the business. The applicant said that she had

stopped paying this man when she found out that he was just using her and that he had set her up. She had found out that he was just using her at the time her son was jailed. The Tribunal put to the applicant that she continued to make repayments to this man after her son was jailed, when she was working for [Company A]. The applicant stated that she still wanted to repay the debt. The repayments were directly deducted from her account and she owed 400,000 pesos.

48. The applicant stated that her family would be in danger if she spoke out. When asked how the person she fears would even know that she had returned to the Philippines, the applicant stated that this person has connections with immigration. He is a drug lord with a syndicate. When asked why this was not revealed at the time that her son was jailed, the applicant did not respond. The applicant said that she would not know if her children have been threatened and she does not have any contact with them. The only member of her family with whom she communicates is her mother and she speaks to her about once a week. She does not speak to her sister and her sister's number has changed. Her mother cries when the applicant rings her because she wants to see the applicant but she has also told the applicant never to return as she will die.
49. The Tribunal asked the applicant about the impact of Typhoon Gloria on her business. The applicant stated that she did not receive payment for the products that she had delivered because the whole city was covered by a flood.
50. The applicant stated that the man she fears lent her 400,000 pesos and the rest of the debt was accumulated because he gave her the bakery products to sell. When asked the brand of the bakery products, the applicant stated that she cannot recall but she thinks the word "republic" was in the name. The products came from China and were collected from the factory once a week, sometimes by the applicant's son and sometimes by another driver.
51. The applicant again confirmed that she had separated from her former husband when her children were young. She last had contact with her former husband when he signed the parental consent form so that her daughter who is [age deleted: s.431(2)], could accompany the applicant to Australia.
52. The Tribunal asked the applicant if she had ever gone to the police. The applicant stated that on one occasion she had been sent a black ribbon with her name on it, in a box. Her family had been very upset and she was frightened, and she had gone to the police. However, the police had not taken her seriously. They had told her that she needed to resolve the problems that she has with the powerful man. She had revealed his identity to them but the police are corrupt. There was nothing else in the box except a ribbon with her name written on it and she thinks that she received this box in June 2006. The box was sent to her home but she was working in Manila. This only happened once and then she decided that she needed to leave the country. There were no other threats or problems.
53. The Tribunal asked the applicant if she would have any problems if she repaid the debt. The applicant stated that this man would be concerned that the applicant might reveal his secret and he might want revenge. He has ruined her life and the lives of her children. She believes that even if she repays the debt he will still want to get rid of her.
54. The Tribunal told the applicant that the Tribunal has serious concerns about why the applicant did not disclose the extent of her business and the problems with her children either on the visa application form or at the interview with the Department. The Tribunal also has

serious concerns about the applicant's delay in lodging an application for protection. The Tribunal has to consider whether the applicant is a credible witness and whether she has a well founded fear of persecution for a Convention reason.

Second Hearing before the Tribunal

55. The applicant appeared before the Tribunal [in] July 2010 to give evidence and present arguments.
56. The Tribunal indicated to the applicant that the Tribunal had invited the applicant to a further hearing as there were inconsistencies in the information that the applicant had given on her visa application, to the delegate and to the Tribunal. The Tribunal was going to give this information to the applicant as this information could be the reason, or a part of the reason, for affirming the decision under review. The Tribunal told the applicant that the Tribunal would explain the information and its relevance, and the consequences if the Tribunal relied on the information. The Tribunal indicated that it would ask the applicant to comment on or to respond to the information, and if she wanted additional time to comment on or to respond to the information she could tell the Tribunal and the Tribunal would then consider whether to adjourn the review to give her additional time.
57. The Tribunal put to the applicant that on her visa application she had not said that the man who lent her money was a politician although she had told the Department and the Tribunal this. The applicant said that when she came to Australia she did not trust anyone and she worried that her story would become known; she was scared and she did not trust anyone, and she was concerned that she would put her family in danger. She thought it was best to hide but after 3 years and considerable financial hardship she confessed to her priest and she realised that she needed to tell her whole story and seek the government's protection. She had been unable to find employment as she was illegal. Now people think that they can use her because she will not dare to complain. She wants to see her aging mother but as she fears for her life she has to stay in Australia.
58. The Tribunal put to the applicant that the Tribunal is concerned that the applicant has claimed that the person to whom she owes money is a politician in order to try to meet the definition of refugee in the Convention. The applicant said that she understood the Convention definition. She believes that the Philippine government is corrupt and will not protect her. She was scared to tell the truth. If a person complains in the Philippines they are ignored. She had tried to obtain further evidence to support her claims, for example, she had thought that there might be information about her children on the internet but she has not found any information. She rang her mother but her mother said that no one wants to be involved. She asked her priest who is from her village to accompany her to the hearing but he was only prepared to provide a reference which she has given to the Tribunal. The Tribunal confirmed that it had received 2 references.
59. The Tribunal put to the applicant that on her visa application and at her interview with the delegate she said nothing about her business selling bakery products or her son being a driver for the business and then being jailed. The Tribunal indicated that it was difficult for the Tribunal to know which parts of the applicant's claims about her business were true, if any,

as the applicant has said that the business sold home wares, and she later claimed it sold bakery products but the business registration indicates that the business is a general merchandise business. The applicant said that in the Philippines it is necessary to do everything so when people asked her to deliver things she did so. As the business had different components she registered it as a general merchandise business.

60. The Tribunal put to the applicant that she has also given inconsistent information about when the business began. On her visa application she said the business started in 1987 but she told the Tribunal that the business began in 1994. The applicant said that the business began in 1987, she began selling bakery products 2 years later and she stopped operating the business in 2004. She has a poor memory due to trauma and she fears for her life; she has no family or employment in Australia. When asked why she registered the business again in 2006 if she ceased operating the business in 2004, the applicant said that the government is corrupt so it was possible to register the business and she needed to do so in order to obtain a visa to come to Australia.
61. The Tribunal put to the applicant that she is claiming to have fled from the Philippines but she delayed applying for protection for nearly 3 years after her arrival. This delay causes the Tribunal to have strong doubts that the applicant was fleeing persecution in the Philippines. The applicant said that she had heard that many people overstayed in Australia for many years. Even a man on the plane had told her this. It was not until she went to the church that she was encouraged to apply for protection. The Tribunal put to the applicant that she now seems to be saying that she came to Australia in order to overstay her visa and that this is different to her previous evidence that she did not know about protection visas. The applicant said that she did not know about protection visas when she first came to Australia and she had needed to leave the Philippines.
62. The Tribunal put to the applicant that the inconsistent information she has given about when the business began, or why she needed to borrow money or when she borrowed money might lead the Tribunal to doubt that the applicant had borrowed money and that she had fled the Philippines because she owed money. The Tribunal put to the applicant that she had told the Tribunal that she began the business in 1994 but on the visa application she has said that she began the business in 1987 and she borrowed money in 1988 but because of the earthquake in 1990, she had been unable to repay the money she borrowed. However, if the business did not commence until 1994 then it would not have been affected by the 1990 earthquake and the applicant would not have had difficulty repaying a loan for this reason. The Tribunal might not accept that the applicant had borrowed money for her business. The applicant said that she cannot remember anything now except that a man gave her money.
63. The Tribunal put to the applicant that she had also given inconsistent evidence about when she went to the police. On her visa application she said that when she could not repay the loan after the earthquake, she was threatened and she reported the threats to the police. However, she had told the Tribunal that she only went to the police once, after she received a black ribbon in the mail. The applicant said that she had gone to the police twice and she had asked her mother to try to obtain a police report but her mother is elderly and unwell, and was unable to do so. When asked when it was that she first went to the police, the applicant said that she cannot recall as it was a long time ago
64. The Tribunal put to the applicant that she claims the business stopped operating in 2004 but she provided a business registration, which indicates that she personally renewed the registration in 2006 and she provided the Department with financial statements that show that

the business had a net income of more than \$539,000 in the year ending 30 December 2005. This might lead the Tribunal to find that the business was still operating profitably when the applicant departed the Philippines and that the applicant had not borrowed money. The applicant said that the financial documents provided to the Department were false in that they were taken from old record books for the purpose of the applicant obtaining a visa to come to Australia. The applicant had paid a person to concoct the statements for her. The Tribunal put to the applicant that she is saying that she deliberately fabricated material in order to obtain a visa to come to Australia, which might lead the Tribunal to not accept her current claims as the Tribunal might not find the applicant a credible witness. The applicant stated that the information given with her visitor visa application was not correct. Her business stopped operating in 2004 and she worked in insurance then for 2 years. She had paid people to prepare materials so that she could travel to Australia.

65. The Tribunal put to the applicant that at the last hearing she had said that her business was taken over by someone else. The applicant said that another person has taken over the business but they applied for another business name and they could do this as the government is corrupt.
66. The Tribunal put to the applicant that she had not told the Department of the problems of her son and daughter, that her son had been jailed and her daughter had been raped. The applicant said that she was afraid to reveal the whole story as it was sensitive and she had received no advice. The Tribunal put to the applicant that the Tribunal had listened to the interview that the applicant had with the delegate and the applicant had told the delegate that she trusted her. The applicant confirmed that she had said this but she had thought that there would be further opportunities to tell the delegate the whole story. The Tribunal indicated that the Tribunal has serious concerns that the applicant has added details to her claims at the interview with the delegate and in her evidence to the Tribunal, in response to questions that were asked. The applicant said that she had not realised that her application would be referred elsewhere, she had not been able to obtain legal advice and she could only rely upon herself. The Tribunal indicated that as the applicant has given inconsistent information on her claim to the Department and to the Tribunal, it is difficult for the Tribunal to know which part of the applicant's claims is true, if any. The applicant said that she only trusts her priest and she had asked him to accompany her but he declined to do more than give her a reference.
67. The Tribunal told the applicant that she was entitled to seek additional time to comment on, or to respond to, the information that the Tribunal had given her in the course of the hearing. She could ask to make a response now or at another time and the Tribunal would consider her request. The Tribunal suggested that the applicant take some time to think about whether she wanted to make a further response.
68. After a short adjournment the applicant told the Tribunal that she had said all that she wanted to say.

FINDINGS AND REASONS

69. Having regard to the applicant's passport and other evidence, the Tribunal finds that the applicant is a national of the Philippines, and it has assessed his claims accordingly.
70. The applicant's claims may be summarized as follows. She began her own business selling house wares, fabric and household furniture, and later she sold bakery products as well. She borrowed money from a person who is a politician and who later made threats when she was

unable to repay the loan. She feared for her life and for that of her family, and she fled to Australia. For the following reasons, the Tribunal does not accept the applicant's claims and does not find the applicant to be a witness of credit.

71. First, the applicant has given inconsistent information about when the business started, what the business sells, why the applicant needed to borrow money, and whether the business is still operating.
72. *In regard to when the business started*, on the visa application form the applicant claimed that she started her own business selling house wares, fabric and household furniture in the Philippines, in 1987. On the visa application the applicant also said that the business was affected by an earthquake in 1990 and Typhoon Gloria in 1996 and that then her marriage ended and her husband took custody of the 2 children. However, the applicant told the Tribunal that after she divorced she had to support her 2 children and she met a man who offered to help her establish her own business and she established her business in 1994. At the second hearing, in response to the inconsistent information about the start date, the applicant said that the business started in 1987 but her memory is poor and she cannot recall. The Tribunal is of the view that there is a significant difference between 1987 and 1994 and that the applicant has not accounted for why she has given 2 such disparate start dates. The applicant has also given inconsistent reasons for why she started her business as on the visa application she says she began the business before she divorced and that her husband took custody of the children after the divorce. However, the applicant told the Tribunal that she began the business because she had to support her 2 children after her divorce.
73. *In regard to what the business sold*, on the visa application form the applicant claimed the business sold house wares, fabric and household furniture. However, the applicant initially told the Tribunal that the business only sold bakery products, which are used for baking, for example, sugar, flour and yeast. She said that the person she fears had given her the idea and then had provided her with the products, which she sold to different bakeries in Luzon. When the Tribunal indicated that the applicant had previously claimed that the business sold general merchandise, the applicant then said that the business sold general merchandise and about 2 years later it sold bakery products supplied by the person that the applicant fears.
74. The Tribunal accepts that the applicant had a general merchandise business as she has provided a certificate of registration to this effect. However, the Tribunal is not satisfied that the business sold bakery products, as this was not mentioned in the original claim or to the delegate at interview. The applicant has claimed that it was the sale of the bakery products that led to her son being employed as a driver by the applicant's business and that he was later imprisoned for [period deleted: s.431(2)] years when it was found he was delivering drugs and not bakery products. The Tribunal is of the view that if the man the applicant fears had been the supplier of bakery products, and this was connected to her son being jailed because he was the driver, then the applicant would have included these details in her original claim, as the role of the man she fears in supplying bakery products and the jailing of her son is a significant component of the claims that the applicant has made to the Tribunal. The applicant is now claiming that the man she fears is a politician and a drug lord, and that her son was set up. When her failure to include this information in her claims was put to the applicant she said that she was too frightened to tell her whole story. However, the Tribunal does not accept that this explanation accounts for why the applicant would have omitted this information from her claim for protection. The Tribunal is of the view that the applicant has embroidered and expanded her claims in response to questions from the Department and the

Tribunal, and in response to concerns expressed by the delegate and the Tribunal that the applicant's claims are not Convention related.

75. *In regard to why she borrowed money for the business*, on the visa application form the applicant said that the general merchandise business she established in 1987 initially traded well but things started to go bad when there were cheaper imports from China and Vietnam and so she borrowed money from a man she met in 1988. However, the applicant told the Tribunal that after her divorce, the date of which she could not recall, she had to support her 2 children and she met a man who offered to help her establish her own business by giving her capital and advising her to deliver products. The Tribunal is of the view that the applicant has given 2 quite different explanations for why she borrowed money for the business and when she did so.
76. The applicant also said on the visa application form that her business was severely affected in mid-1990 by a powerful earthquake, which hit the central part of Luzon where she lived, and her shop and stock were all destroyed and she lost thousands of pesos. However, as noted, the applicant told the Tribunal that she established the business in 1994. The Tribunal is of the view that if the business was established in 1994, the applicant would not have borrowed money for the business in 1988 and the business would not have been adversely affected by the earthquake in 1990.
77. The applicant also said that the moneylender lent her 400,000 which she used to buy fabric and furniture and then she borrowed more from him and he provided bakery products about 2 years later. She now owes him 750,000 pesos. However, as noted, the applicant had not mentioned prior to the Tribunal hearing that the business sold bakery products.
78. *In regard to when the business ceased operating*: The applicant told the Tribunal that she stopped operating the business in 2004. However, she also told the Tribunal that someone else had taken over the home wares part of the business. Although the applicant claims to have stopped operating the business, she provided a Certificate of Business Name Registration, which she gave to the Department and showed to the Tribunal, which indicates that the business certificate was renewed [in] May 2006 for 5 years. The applicant confirmed to the Tribunal that she, as the sole proprietor, had renewed the certificate. However, she said that she is not operating the business and someone else has taken over the business and has registered it in a different name. The applicant also provided the Department with financial statements for the business for the year ending [in] December 2005. In response to the inconsistent information about whether the business is still operating, the applicant told the Tribunal that she was not operating the business in 2005 and she paid someone to concoct the financial statements using old business records; because the government is corrupt, she was able to renew the Certificate of Business Name Registration. The applicant further stated that she deliberately presented herself as a business operator in order to obtain a visa to come to Australia.
79. The Tribunal finds that the applicant deliberately gave false information about her business when she applied for a visa to come to Australia and this also leads the Tribunal to find that the applicant is not a witness of credit. The Tribunal accepts that at the time she came to Australia, the applicant's business was not operating at the level indicated in the financial statements, as the Tribunal accepts the applicant's evidence that she has suffered financial hardship while in Australia. The Tribunal is of the view that if the applicant had a successful business in the Philippines she would have had an incentive to return.

80. The Tribunal has accepted that the applicant had a general merchandise business in the Philippines and that she holds a Certificate of Business Name Registration which is still current. However, the applicant has given inconsistent evidence about when the business began, what the business sold and why the applicant had to borrow money for the business. In her visa application the applicant did not mention that the business sold bakery products, which were delivered by her son and the Tribunal is of the view that this is a significant omission. The Tribunal does not accept that the business did sell bakery products or that the products were supplied to the business by a person who is a politician and druglord. The Tribunal is of the view that the applicant has fabricated her claims regarding the sale of bakery products and the supply of bakery products by a person who she alleges is a politician and drug lord.
81. In addition to finding that the applicant has given very inconsistent evidence regarding her business, the Tribunal also finds that the applicant has given evidence about the person who lent her money that is not credible and the Tribunal does not accept the applicant's claims that she owes money to a person who is a politician or a drug lord for the following reasons.
82. First, the applicant did not claim that the moneylender was a politician on the visa application. On her visa application the applicant wrote that she had borrowed money from a person who had a finance company who she met in 1988, and that she owed money to moneylenders who are dangerous people and they would threaten and kill anyone who does not obey their rules. However, the applicant told the Department that the owner of the finance company was a politician but she could not recall his name or the name of the company. The applicant told the Tribunal that she owed money to a politician but she was not prepared to reveal his name as it might endanger her family and he was elected only last year. The Tribunal is of the view that the applicant has embroidered her claim in order to attempt to establish a Convention nexus and while it is possible that the applicant owed money, the Tribunal does not accept that she owed money to a politician.
83. Second, the applicant did not mention in her written claims or to the Department the role of her son in her business or his imprisonment. She claimed to the Tribunal that her son was employed as the business's driver and he delivered the bakery products but instead of delivering sugar and flour products, which had been supplied to her by the politician to whom she owes money, her son was caught delivering drugs. The Tribunal is of the view that the failure of the applicant to include this information in her written claims or at the interview with the Department casts serious doubt on the truth of the claim. When this omission was put to the applicant at hearing she said that she was frightened to tell her whole story and she thought there would be further opportunities to do so. The Tribunal does not accept this explanation. As discussed with the applicant, at her interview with the delegate the applicant indicated that she trusted the delegate. The applicant confirmed to the Tribunal that she had expressed this view to the delegate. The Tribunal is of the view that as she has done with other aspects of her claim, the applicant expanded her claims in response to questions from the delegate and the Tribunal. The Tribunal does not find the applicant to be a truthful witness, as she showed a propensity to embroider and tailor her evidence. The Tribunal does not accept that the applicant's son was employed in the applicant's business as the driver or that he delivered bakery products on behalf of the business.
84. Third, the Tribunal does not find it credible that although her son was employed by her as a driver at the time he was caught delivering drugs, the police took no interest in the applicant. The Tribunal is of the view that if a driver of a business was caught delivering drugs, the police would have made enquiries of the employer, for example, to ascertain if the business

was somehow involved in the supply of drugs. The Tribunal does not find it credible that the police would not have made enquiries of the applicant if her son had been employed by her business at the time of his arrest. The applicant was unable to account for why the police were not interested in her in her capacity as her son's employer. This also leads the Tribunal to not accept that the applicant's son was employed as a driver by the applicant's business at the time he was jailed for [period deleted: s.431(2)] years.

85. Fourth, the Tribunal is of the view that if the person who was supplying the applicant with bakery products was a drug lord who had supplied her son with drugs instead of bakery products, as the applicant claims, this information would have been revealed when her son was charged and jailed. When the Tribunal asked the applicant why this information was not revealed at the time of her son's arrest, the applicant did not respond.
86. The Tribunal has found that the applicant has fabricated her claim that her business sold bakery products. The applicant's evidence that the police took no interest in her when her son was arrested also leads the Tribunal to not accept that the applicant's son was employed by the applicant as a driver, with responsibility for delivering bakery products, or that the business sold bakery products. The Tribunal also finds that the applicant did not mention her son's role in the business in her visa application or to the Department and this omission also leads the Tribunal to not accept that the applicant's son was employed by the applicant's business or that he was jailed for the reasons that the applicant claims.
87. The applicant also gave inconsistent evidence about how often she went to the police. On the visa application she said she received threats after she was unable to repay the loan following the earthquake in 1990, and she reported the threats she received to the police. However, the applicant told the Tribunal that she only went to the police after she received a black ribbon in the mail, and it was this incident which caused her to flee to Australia. When the Tribunal put this information to the applicant she claimed that she had been threatened twice but she could not recall when she first went to the police. This leads the Tribunal to not accept that the applicant did receive any threats prior to the claimed incident where she received a black ribbon in the mail. While the applicant may have received a black ribbon in the mail, the Tribunal does not accept that this incident is related to the applicant's failure to repay a loan to a person who is a politician, as the Tribunal does not accept that the applicant owes money, borrowed for her business, from a politician.
88. The applicant also gave inconsistent evidence about when she last made loan repayments. She told the Tribunal that she had stopped repaying the loan when her son was jailed in 2004, as she discovered that the person from whom she borrowed the money was just using her and he had set her up. However, this is not consistent with the applicant's evidence that she continued to repay the loan for 2 years after her son was jailed, while she was working as an insurance agent for [Company A] from 2004 to 2006. The applicant said that she continued to repay the debt when she could, and that repayments of 20,000 pesos per month were deducted from her bank account into which her commissions were deposited. This appears to the Tribunal to be a common loan repayment arrangement whereby repayments are directly deducted from the borrower's bank account. The Tribunal accepts that the applicant continued to repay a loan during the time that she worked as an insurance agent from 2004 to 2006 but the Tribunal does not accept that the money was owed to a politician who was also a drug lord.
89. The Tribunal also does not accept that the applicant fled the Philippines because she feared persecution because she delayed lodging a protection visa for more than 3 years after her

arrival. The applicant arrived in Australia [in] October 2006 but she did not apply for a protection visa for more than 3 years, until [a date in] November 2009. When this information was discussed with the applicant at the second hearing she said that she did not know about protection visas when she came to Australia, she was scared to tell her story and she needed to leave the Philippines. The Tribunal does not accept that the applicant delayed lodging a protection visa application because she was scared to tell her story or that she did not know about protection visas, as this is not consistent with her coming to Australia in order to flee persecution. The Tribunal is of the view that the applicant could have made enquiries about applying for protection after she arrived. The applicant speaks and writes English, she has a history in business and she went to some trouble to put together her visitor visa application, all of which indicates to the Tribunal that the applicant had the capacity to make enquiries about her status in Australia. The Tribunal is of the view that the applicant came to Australia as she had heard that she would be able to work indefinitely even if she overstayed her visa and that she only lodged a claim for protection when finding work proved difficult.

90. In summary, the Tribunal accepts that the applicant operated a general merchandise business and that she had a loan which she had been repaying when she worked as an insurance agent from 2004 to 2006. However, the Tribunal does not accept that the loan was owed to a politician who was a drug lord or that this person made threats to the applicant and her family. The Tribunal does not accept that the applicant has given truthful evidence about her claims or that she or her family have been threatened or targeted or that she feared for her life.
91. The Tribunal does not accept that the applicant has a well-founded fear of being persecuted in the Philippines for the reasons that she claims. The Tribunal does not accept that the applicant has suffered persecution or fears persecution in her country because of her race, religion, political opinion, or imputed political opinion, membership of a particular social group or for any other Convention reason. The Tribunal is not satisfied that there is a real chance that the applicant will be persecuted for reasons of her political opinion, her imputed political opinion or her membership of a particular social group, or any Convention reason if she returns to her country of nationality. At the time of decision the Tribunal concludes that there is not a real chance that the applicant will face serious harm for reasons of her race, religion, membership of a particular social group or political opinion or imputed political opinion or any other Convention reason, either now or in the reasonably foreseeable future, if she returns to her country.
92. For the above reasons the Tribunal is not satisfied, on all the evidence before it, that the applicant has a well-founded fear of persecution within the meaning of the Convention.

CONCLUSIONS

93. 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) for a protection visa.

DECISION

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