

1421400 (Refugee) [2015] AATA 3232 (30 July 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1421400
COUNTRY OF REFERENCE:	Vietnam
MEMBER:	Marten Kennedy
DATE:	30 July 2015
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal sets aside the decision under review and substitutes a decision to refuse to grant the applicant a Temporary Protection (Class XD) visa.

Statement made on 30 July 2015 at 4:49pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who I accept is a citizen of Vietnam, applied for the visa [in] June 2014 and the delegate refused to grant the visa [in] December 2014.
3. The applicant applied for a Protection (Class XA) visa. However, by operation of s.45AA of the Act and r.2.08F of the Migration Regulations 1994, from 16 December 2014 the application is taken to be, and to have always been, a valid application for a Temporary Protection (Class XD) visa and is taken not to be, and never to have been, a valid application for a Protection (Class XA) visa. Although the delegate refused the application as an application for a Protection (Class XA) visa, the effect of r.2.08F is such that the application the Tribunal must consider is one for a Temporary Protection (Class XD) visa.

CONSIDERATION

4. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of 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).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
8. The issue for me to decide therefore is whether the applicant is a person in respect of whom Australia has protection obligations.
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –

PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Claims

10. The applicant arrived in Australia as an irregular maritime arrival [in] April 2013. He was first interviewed by the Department [in] May 2013. In the course of that interview he was asked why he had left Vietnam.
11. At that interview the applicant said that he did not wish to live with the communist regime and with the regime in Vietnam's there is no human rights. When asked specifically what happened to make him leave Vietnam the applicant said he had never been assaulted but his family had been oppressed as the Catholic community. As to how they had been oppressed the applicant did not provide specific details but said that if they had dared to stand up and fight against them they would be hit with batons and he would have been sent to prison. The applicant provided an example of the communist party demolishing a church, but not his church. The example cited by the applicant related to an incident in July 2012 that he was not involved in. As at the date of the example cited by the applicant the applicant confirmed that he was in his parish and he had heard that a brother and sister had been assaulted. The applicant provided limited detail about his Christian faith. He was asked what rituals he had undertaken in the church and referred to his own baptism.
12. The applicant was asked whether the police and security or intelligence organisations impacted on his day-to-day life in his home country. He responded that if he were to approach the security forces they would want to get money from him.
13. In support of his application for a protection visa, the applicant provided a more detailed statement of his claims prepared with the assistance of his former solicitor. The statutory declaration of 6 June 2014 is declared to have been translated by an accredited interpreter.
14. In that statement the applicant describes his home village and home province in Vietnam. He says that his religion is Roman Catholic and that he has resided in Vietnam his entire life except for ten months in 2012 when he travelled to [Country 1].
15. In his statement the applicant said he fled his country because he was Catholic. He says he was the leader of the youth group in his church. The applicant describes confiscation of land from the Catholic Church in recent years by the Vietnamese authorities.
16. He says that the priest in his area encouraged him to show support for the dioceses of [his region] by organising meetings and gatherings. The applicant says his role was to encourage the youth to participate. The applicant describes a protest with forty police officers attended and says he was badly beaten and arrested. The applicant said he was arrested because he had encouraged others to attend the protest. The applicant said that he did not think he would survive during the two days of his arrest, but [in] January 2012 a Catholic priest came and signed a guarantee for his release. The applicant said he was summonsed to attend the police station two weeks later but instead he went to [Country 1] for ten months.
17. The applicant said he decided to return to Vietnam hoping the authorities had forgotten about him, but he was summonsed again [in] January 2013. He did not attend and the police raided his house that night. The applicant then made arrangements to flee the country.

18. In his statement the applicant fears he will be killed or subjected to serious harm by the Vietnamese authorities and gangsters employed by the Vietnamese authorities. The applicant fears he would be targeted due to his faith given he was involved in arranging members of the church to attend protests against the government. The applicant says the authorities would not protect him because it is the authorities that he fears and they controlled the entire country, and he is unable to relocate to avoid the harm he fears.
19. The applicant was interviewed by a delegate in relation to his claims. I set out the following exchange, of importance to my subsequent reasoning in this review, where the applicant discussed the events of the protest:

Approx: 58:00

Delegate:

Tell me about what happened then

Applicant :

At 10am on [a date in] January 2012 our home parish was forcibly taken by the authorities of the possession of a block of land behind the church. The authorities used a vehicle with a hoist and started to do some work on the block of land. At that time the parish priest learned about what was happening so he rang the bell to alert all the parishioners to come and stop the work being carried out. Then I received the news so I called to all the youth members in the area to come together –we were carrying out a peaceful demonstration 40 police members arrived and nearly 20 uniformed police officers and 20 other in civilian clothes and soon afterwards they started to attack those who were there at the moment. They savagely and violently beat us. I was hit on the hand and shoulder and to my right cheek causing a cut and my body still bears many scars of that attack. After that they took me to the Police station and I was arrested for encouraging others to take part in the demonstration. I never wanted to cause something violent but I wanted to stand up and fight for the right of the Vietnamese Catholics. I was arrested detained for 2 days and during those two days I was savagely beaten. I was psychologically traumatised....

20. I have had regard to the delegate's decision record which was provided to the tribunal by the applicant. The delegate noted that the applicant had not mentioned the demonstration, his arrest, the beating or receiving a summons in his initial entry interview. The delegate also considered aspects of the applicant's claims regarding the events of the demonstration were implausible, and in particular the applicant's claim that he was arrested whereas members of the parish council and the priest were not. The delegate also noted that the applicant's claim to have departed Vietnam lawfully a number of months after he was summonsed was not consistent with the Vietnamese authorities having any interest in him. While the delegate accepted the applicant's Catholicism and that he was a youth leader for the church the delegate did not accept that the applicant was arrested detained or beaten or summonsed by police. The delegate also considered whether the applicant may face harm as a failed asylum seeker on return to Vietnam, concluding that he would not.
21. I have also examined carefully a statutory declaration of the applicant dated 29 April 2015. I have had regard to the responses made by the applicant to some of the adverse findings of the delegate set out in that statement.
22. The applicant stated that there was no priest present at the protest at the time of his arrest. The applicant says that during the interview with the Department he was depressed and confused. The applicant said that the priest of his parish did not wish to confront the government and it was not his role to be in the active protest.

23. As to the delegate's concerns regarding his failure to disclose his arrest the applicant said that he was afraid to talk to Australian officials given his previous confrontations with authorities in Vietnam. The applicant said he was fearful that they would tell the Vietnamese police things or send him back to Vietnam. The applicant said he considered the conditions of detention in [immigration] were similar to those in Vietnam and this mentally affected him.
24. As to do his delay in leaving Vietnam the applicant described returning to Vietnam from [Country 1] to celebrate Christmas and the reissuing of the summons. The applicant then describes going into hiding to arrange his departure. The applicant confirmed he left on his own passport but says he flew out of Ho Chi Minh city some distance from his village and did not think the authorities therefore paid him much attention.
25. As to his fear of returning to Vietnam the applicant says that he does not think he will experience problems at the airport but fears what will happen when he returns to his home area. The applicant describes his parents being visited by police in August 2014. The applicant says that the police asked his mother where he was but also told his mother that they knew he was in detention in Australia. The applicant also described being aware that Vietnamese officials visited some people in immigration detention although not him. The applicant said he forgot to explain what had happened in the detention centre or what his parents had told him when he discussed his case with the delegate.
26. The applicant also recounted earlier difficulties with the police when he was involved putting up posters for a candlelight prayer event in September 2011, he said the police dispersed everyone on this occasion and he voiced his opinion that people should be able to do this. The applicant said he was not harmed on this occasion.
27. The applicant restated his fears that he would be harmed by the authorities or government in Vietnam due to his participation in political protest, and he believes they would be even angrier with him now because he had tried to escape Vietnam to come to Australia as a refugee.

Hearing

28. Before the tribunal the applicant has provided a detailed statutory declaration. I note from records before the tribunal that the applicant appears to have received limited assistance from [a support agency]. However, the detailed submission to the tribunal is signed by the applicant and is written in fluent English. The applicant does not speak English. There is no record on the face of the document that its contents have been interpreted to the applicant, or explaining how otherwise it was prepared.
29. I therefore had cause to explore with the applicant at the hearing how this document came to be drafted, and how he came to provide his instructions as to its contents, and his knowledge as to its content. The applicant told me that the statement had been prepared with his lawyer and an interpreter. The applicant said he had told his lawyer what he wanted in the statement. The applicant confirmed the document was read back to him before he signed it, and confirmed everything in the document was true, complete and correct.
30. I invited the applicant to comment on the concerns raised by the delegate, indicating I shared those concerns. In the course of the hearing, where necessary and as recorded in the audio recording of the hearing, I used the procedure provided for in section 424AA of the Act to raise applicable adverse information with the applicant. He elected to respond immediately to those concerns and I have taken his responses into account.

31. I invited the applicant to address the concern that there were many aspects of his claims that he did not mention when first interviewed by the Department, and also that aspects of what he did say tended to contradict the claims that he had now put forward.
32. I pointed out that about a month after the applicant arrived in Australia he participated in a lengthy interview with an immigration officer, and in the course of that interview he was asked why he had come to Australia and what he feared about returning to Vietnam. The answers he had given did not address some of the critical matters now put forward as to why he feared returning to Vietnam. The applicant had mentioned that he was Roman Catholic, and that he had been baptised in his church, but didn't mention that he was in charge of the Youth Movement. The applicant hadn't mentioned that he had attended a protest, but had mentioned a protest in another parish that he had not attended. The applicant didn't mention being assaulted by the Police, but did give an example of other people being assaulted at a different parish he did not attend, and in fact said specifically that he had never been assaulted.
33. I explained I was very concerned to know why, if his claims were true, he had not mentioned them on that earlier occasion. The applicant said that when he first came to Australia he did not understand the new country or the culture, and did not know it to be a country where human rights were respected. He didn't tell the truth, but then after that felt he could say what he feared and what he was worried about.
34. I asked the applicant why he had come to Australia if he didn't know it was a country that respected human rights and he was free to tell the Australian government what he feared. The applicant said he had heard about Australia but was scared the first time he met an Australian officer because he was in a detention centre.
35. I observed the interview I was referring to had taken three hours, he had a meal break, and he had an interpreter assist him throughout that interview. I observed that the applicant provided detailed information about his family and travel arrangements, including where he had stayed in Indonesia and for how long. I asked the applicant why he was able to mention other detailed information about these matters but not basic information about why he feared returning to Vietnam.
36. The applicant said the main reason was he feared he would be sent back to Vietnam, and it would be made worse if he said what had happened to him. I explained I had difficulty accepting that explanation, given he had addressed harm suffered by communities other than his, and feared oppression as a Catholic generally. I said I couldn't really understand his explanation about why he did not mention his particular claims then but did mention them later on. The applicant reiterated his fear when he first spoke to an immigration officer.
37. I explained to the applicant that I was concerned to ensure he understood that I may conclude from the fact that the claims were not advanced until later that the claims were made up. I explained that in his particular case I had other reasons to be concerned they have been made up.
38. The applicant made reference to documents he had provided to the tribunal, and was critical of the delegate for concluding they were not genuine without checking. (In this regard, the most relevant document is a document purporting to be a police summons, untranslated). I explained to the applicant that fake and fraudulently issued documents were common in Vietnam, but I was conscious that this did not mean that all documents from Vietnam were fake. I explained I had no way of checking the validity of documents such as Police summonses in his name in the context of a claim for protection from Vietnamese authorities. I explained that I may conclude that the document is of no assistance to me either way, and based my conclusions instead on his evidence and the concerns we would discuss in the

hearing. In response the applicant pointed to the document containing his name and date of birth and said the document was not fake.

39. I turned to discuss further concerns I had regarding the summonses. I confirmed the applicant's evidence that after the protest he was arrested and held in detention for a few days, and was then issued a summons to return to the Police station – but then he left for [Country 1] for 10 months. I confirmed that the applicant's evidence was that he returned then to Vietnam for Christmas and was then issued another summons. The applicant also confirmed that the same day when he happened to be out of his house the Police raided it to look for him. The applicant confirmed this was his evidence. I suggested to the applicant that this was a very strange course of events. I explained that if the applicant had failed to respond to a summons for 10 months, and then his presence became known to the Police, then I could not understand why they would issue a second summons, and then come along later that day to attempt to arrest him. I explained that I would expect that the Police would just come and arrest him. I explained that my concern was that this part of his narrative did not make any sense.
40. The applicant said that he had protested in peace for human rights and was not a criminal, and that was why they only gave him a summons. He said that in Vietnam if you protest for human rights you cannot live in Vietnam. I clarified if the applicant was saying that because he was only protesting, he was not a criminal and therefore only summonsed to go to the Police station. The applicant said yes. I asked why then they came the same day to try and arrest him. The applicant said they gave him a second chance, but then the Police and gangsters came to his house. I explained I didn't really understand why the Police would give a person a second chance to comply with a summons when it had been ignored for 12 months. The applicant, in a non-responsive answer, said he escaped to [Country 1] hoping they would forget.
41. I turned to raise concerns arising out of the applicant's narrative concerning the involvement of the parish priest. I noted the delegate had indicated they could not understand why the applicant had been arrested over the protest but not the parish priest. I noted the applicant's answer to that in his statutory declaration of 29 April 2015 had been that the parish priest was not there because he did not want to confront the government and it was not his role to be in the active protest. I then raised the evidence of the applicant to the delegate set out at paragraph 19 above.
42. The applicant said his time in the detention centre had affected his memory and could not recall things. I told the applicant it was not a detail he had missed but rather something he had actually said i.e. that the priest had called the people to the protest by ringing the church bells. I explained I was concerned by the multiple inconsistent accounts of the same situation.
43. The applicant responded by explaining he was the leader of the youth group. The priest could not confront the government because he is responsible for the whole diocese. I asked the applicant if it was true or not true that the priest had called people to the protest by ringing the bells as he had described. The applicant said it was true. I observed that rather than not being involved in the protest he was actually calling everyone to the protest. The applicant said the priest looked after other church goers and encouraged young people to do the protest.
44. I returned to the concern as to why the applicant was arrested but not the priest. I explained I would have thought the Police would arrest the priest for starting the protest if he had called everyone out to protest by ringing the bells. The applicant said that the local government would not arrest the priest because it would involve a lot of paperwork and going to the city.

45. I explained again that the matters we had discussed in the hearing so far were leaving me very concerned as to whether he had ever participated in the protest or whether his claims were fabricated. I explained I had very grave concerns about his credibility generally, and I may not accept any aspect of his case, even though the delegate had accepted some aspects of it.
46. I asked the applicant about his mention of being spoken to by Police during a candlelight prayer event, but that he had not been arrested or harmed. I also asked the applicant about his practise of Catholicism. The applicant confirmed his parents attend church and had not been stopped from attending church.
47. I invited the applicant to comment on country information I had regarding the treatment of Catholics in Vietnam, to the effect that freedom of religion is protected, there is a large Catholic community in Vietnam, there are some incidents of Police harassment but they related to priests and leaders who had organised protests against the government. I indicated I had to consider whether the applicant would protest against the government and place himself at risk of harm, or would he be an ordinary practising Catholic.
48. The applicant said that if he went back to Vietnam he would protest for human rights. I indicated to the applicant that I may not accept that actually would do that if I formed the view that he had fabricated his story about protesting in the past.
49. I turned to discuss the applicant's claims regarding being a failed asylum seeker. I noted the applicant had said he departed Vietnam on his own passport (and the applicant confirmed this) and asked why the Vietnamese authorities would suspect he had failed in an asylum application if he were to return.
50. The applicant said that since he had been in Australia the government had gone to his house and told his parents that they knew he was in detention in Australia. The applicant referred to Vietnamese law to the effect that leaving Vietnam without permission can result in imprisonment. I explained to the applicant that he did not appear to have left Vietnam without permission, because he had left on his own passport. The applicant said his passport only allowed him to go to Indonesia, and the Vietnamese would know he had gone on to Australia.
51. I told the applicant that passports do not just permit travel to Indonesia. The applicant said the date of his return would result in his arrest. I told the applicant I did not understand. He had lawfully left Vietnam on his own passport, and would be returning at some later date. I explained I could not see the problem. The applicant referred to the presence of Vietnamese authorities in Australian detention centres.
52. I confirmed with the applicant that the Vietnamese officials who had visited the detention centres had not spoken to him. I explained I may not accept that the Vietnamese government would know he had sought asylum in Australia. The applicant said the authorities already knew, and he knew this based on what his friends in the detention centre had told him.
53. I explained to the applicant that I may conclude he would not be identified as a failed asylum seeker if he returned to Vietnam. The applicant said he believed that everyone in his local area would know where he is now.
54. I returned to the applicant's evidence regarding the visit of the Police to the applicant's parents. I noted that his evidence was that the Police had gone to his parent's house and asked about his whereabouts, and then told his parents that they knew he was in detention

in Australia. I observed this to be an implausible exchange between the Police and the applicant's parents

55. The applicant said he believed he was on a black list, and the exchange with his parents was to make sure his parents were aware that they would do something to him if he came back. I asked the applicant why the Police would do that. The applicant said it was their job to know all the details about people who had escaped from the country and to warn the family that he would be in trouble if he returned.

CONSIDERATION

Credibility

56. I do not accept the applicant has provided a truthful account of his experiences in Vietnam. I reject each material particular of the narrative he has put forward as a foundation for his claimed fear of harm in Vietnam. I am prepared to accept that the applicant is a practising Roman Catholic.
57. My reasons for comprehensively rejecting the applicant's account of circumstances in Vietnam are cumulative. My reasons note the inconsistency in the applicant's accounts of circumstances in Vietnam and the reasons why he feared returning to Vietnam, and also aspects of the narrative ultimately relied upon that I consider to be incongruent and implausible. Each concern in this regard of itself would have led me to reject the truthfulness of the applicant's narrative.
58. First, I place significant adverse weight on the applicant's inconsistent account of his reasons for fearing harm in Vietnam. I consider the absence of any reference to participation in a protest, assault, arrest or summons by the applicant in his first interview indicates that subsequent references to these matters are a fabrication.
59. While I am conscious not to place inappropriate weight on minor inconsistencies or the absence of details between initial interviews and subsequent written claims, the interview in question was not brief, was conducted with an interpreter and the applicant had a break. The applicant demonstrably was able to recount very detailed information about his family and his travel to Australia. The applicant positively denied being the subject of an assault.
60. I do not accept that in these circumstances the applicant would fail to mention the very incident that gave rise to his later claimed fear of harm in Vietnam if it had occurred. I have considered the applicant's explanation to the effect that he was fearful of Australian authorities, but I reject that explanation. It is not consistent with the applicant being able to provide detailed information in response to the interviewers questions.
61. Furthermore, I consider the applicant's explanation in response to the delegate's finding that it was implausible that the applicant and not the parish priest was targeted by the authorities to be inconsistent with an earlier account of the event he had provided. This reinforces my conclusion that the account of the incident in its entirety is a fabricated one. In this regard, I refer to the applicant's description of the commencement of the protest activity taking place when the parish priest rang the church bells with his later explanation that the priest was not present. I did not find the applicant's explanation as to why the parish priest was not arrested – to the effect that there would be too much paperwork – to be convincing. I consider the accounts to be fundamentally inconsistent, and the implausibility of the applicant being targeted for arrest while the organising priest was not remains unaddressed.
62. I consider the applicant's narrative of receiving summonses from the police to be implausible. I do not accept that if the applicant had failed to respond to a summons for 10

months, and the Police then learned that he had returned to Vietnam, that they would first issue a second summons, and then raid his home later the same day. The applicant's explanation to the effect that because he had committed no crime he would be subject only to summons action, and the second summons served as a 'second chance', to be unconvincing. I consider that this important component of the applicant's account of his experiences is implausible. I place little weight on the existence of a document purporting to be a summons in these circumstances. The existence of such a document that is not amenable to verification carries little weight in my view against the implausibility of the applicant's account. I have considered the applicant's reference to the document bearing his name and date of birth, but I do not agree that these features enhance its probative value.

63. I also consider that the feature of the applicant's narrative where the Vietnamese authorities approached his parents to ask about his whereabouts, then informed them that they knew he was in an Australian detention centre, and that the purpose for this activity was to ensure the parents knew there will be trouble for the applicant if he returns, is an implausible feature of the narrative. I find the exchange recounted by the applicant in this regard to be incongruent in terms of its purpose and content.
64. So, as a consequence of my concerns as to the inconsistency in accounts of the applicant's experiences in Vietnam leading to his claimed fear of harm, and important elements of the narrative that I have concluded are not plausible, I have decided the entire account is fabricated and I reject it.
65. I do not accept that the applicant is a leader of a youth group. I do not accept he played any role in encouraging others to participate in any protest. I do not accept that he was involved in any protest in Vietnam. I do not accept that he was arrested by Vietnamese authorities. I do not accept he was assaulted by Vietnamese authorities. I do not accept he was subjected to a summons, or a further summons 10 months later when he returned to Vietnam from [Country 1]. I do not accept he avoided being arrested when the Vietnamese authorities raided his house later the same day. I do not accept that the applicant left Vietnam motivated to avoid any harm as a consequence of this narrative. I do not accept that the Vietnamese authorities approached the applicant's parents to ask of his whereabouts, then told them that they knew he was in an Australian detention centre. I do not accept that the applicant has a genuine fear of harm at the hands of the Vietnamese authorities as a consequence of the events he has described, because I do not accept the events actually happened.

Assessment of claims

66. I turn to apply my findings to the claims raised by the applicant to engage Australia's protection obligations.
67. As to the applicant's claims to fear harm as a consequence of his religion, I accept he is a practising Roman Catholic, and I accept his parents are also practising Catholics. For the reasons outlined above, I do not accept that the applicant has any further profile as a Catholic. I do not accept he holds a leadership role, and I do not accept he has either organised or involved himself in any protests.
68. The US Departments of State *Vietnam 2013 International Religious Freedom Report* states around 7 per cent of the population of Vietnam is Catholic, and that Catholicism is growing with over 6 million followers in 26 diocese around the country. The US report provides the following information on the treatment of Catholics and other religious minorities in Vietnam.

The constitution and other laws and policies provide for religious freedom but, in practice, the government restricted religious freedom. Many requests by religious groups for registration remained unanswered or were denied, usually at the provincial

or village levels. Many unregistered religious groups reported abuses, with a particularly high number of reports coming from the Central and Northwest Highlands. These included allegations of beatings, arrests, detentions, and criminal convictions. The government, however, registered an increased number of religious groups and generally respected the religious freedom of those registered groups, to the extent the groups complied with regulations.

...

The 2004 Ordinance on Religion and Belief and the revised Implementation Decree (Decree 92), which came into effect on January 1, serve as the primary documents governing religious practice. Both the ordinance and decree reiterate citizens' rights to freedom of belief and religion, but warn the "abuse" of freedom of belief or religion "to undermine the country's peace, independence, and unity" is illegal, and religious activities may be suspended if they "negatively affect the cultural traditions of the nation."

...

The government recognizes 37 religious organizations affiliated with 11 recognized religions. The 11 recognized religions are: Buddhism, Islam, the Bahai Faith, Catholicism, Protestantism, Hoa Hao, Cao Dai, the Pure Land Buddhist Home Practice, the Four Debts of Gratitude, the Threefold Enlightened Truth Path, and the Threefold Southern Tradition.

...

On July 31, a group of Catholics stated police beat them and removed them from the area in front of a church in Ho Chi Minh City as they were praying. The group had travelled to the church from other southern provinces to pray after their land and property had been seized by local authorities. Several followers reportedly required hospitalization due to the beatings.

...

On July 2, airport police in Hanoi stopped Nguyen Hoang Duc, a Catholic literary critic, from attending the concluding meeting in Rome for the beatification of the late Cardinal Francois-Xavier Van Thuan. In 2012, international media reported Vietnam had revoked visas for a Vatican delegation planning to speak to people who had known the cardinal. Eglises d'Asie (Churches of Asia), the Foreign Missions Society of Paris information agency, stated the beatification plans had angered Hanoi. Thuan, the nephew of Ngo Dinh Diem, South Vietnam's anti-communist first president, was forced into exile in Rome after he was freed from a Vietnamese detention camp in 1989.

69. The Freedom House stated that, 'Catholic leaders continued to be arrested around the country in 2013, and in September, Vietnamese authorities forcibly broke up a protest by Catholics in a town south of Hanoi, injuring at least 40 people.'¹ The Human Rights Watch World Report 2014, stated, 'The January 2013 conviction and imprisonment of 14 mostly Catholic activists by the People's Court of Nghe An province initiated the year's upsurge of government attacks on critics. The vehicle this time was article 79 of the penal code, prohibiting activities aimed at "overthrowing the government," even though the 14 activists were exercising fundamental human rights, such as participating in volunteer church activities and peaceful political protests.'²

¹ Freedom House, Freedom in the World 2014 - Vietnam, 22 August 2014, <http://www.freedomhouse.org/report/freedom-world/2014/vietnam-0>,

² Human Rights Watch (HRW), World Report 2014 (Events of 2013), 21 January 2014, p401, http://www.hrw.org/sites/default/files/wr2014_web_0.pdf

70. So while the country information, such as that extracted above, supports the notion that Roman Catholics who agitate against the government may be at risk of harm, I do not accept that the applicant has the necessary profile to attract harm for reason of his religion. As the applicant has said, his parents continue to practice their faith freely.
71. As to the applicant's claim at hearing that if returned to Vietnam he would protest for human rights, and thus have the profile that might attract harm for reason of his religion, I reject the applicant's evidence in this regard. I do not accept that if returned to Vietnam he would engage in any such activity, because he has not engaged in any such activity before. In respect of his religion, I find that the applicant would continue to practice his Catholic faith in the same manner as his parents, and this would not attract the adverse attention of the authorities. I consider that the applicant's evidence of his intention to protest in the event of his return to Vietnam to be self-serving and not genuine.
72. I do not accept that the applicant faces a real chance of harm for practising his religion as a Roman Catholic should he return to Vietnam in the reasonably foreseeable future. I find that the applicant's fear of harm should he return to Vietnam because of his religion is not well-founded.
73. For the same reasons, I find that I do not have substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there is a real risk that he will suffer significant harm for any reason connected with his religion.
74. As to the applicant's claim to fear harm as a consequence of a political opinion (imputed or actual), his claim in this regard is founded on his evidence of the events surrounding the protest, and as a failed asylum seeker. As I have rejected each material particular of the applicant's evidence of the protest event and its aftermath, I do not accept that the applicant would be imputed with an adverse political opinion by the Vietnamese authorities as a consequence of his involvement. Furthermore, it is a consequence of my finding that the applicant's expressed fear of harm for this reason is not genuinely held and in that sense is not well-founded.
75. Furthermore, it also follows as a consequence of my rejection of each material particular of the applicant's evidence of this event and its aftermath that I find I do not have substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there is a real risk that he will suffer significant harm for any reason connected with the events that I have found did not happen.
76. As to the applicant's claim to fear harm as a member of a particular social group of failed asylum seekers, or that being identified as a failed asylum seeker will carry with it an imputation of a political opinion that would attract harm, I do not accept that the applicant would be perceived to be a member of any such group.
77. I find on the basis of the applicant's evidence that he departed Vietnam on his own validly issued Vietnamese passport that he did not depart Vietnam illegally, and his subsequent return would attract no interest. I do not accept that in the event that the applicant were to return to Vietnam on a replacement passport issued by Vietnamese authorities he would be suspected of being a failed asylum seeker.
78. I have taken into account the applicant's concerns as to the presence of Vietnamese officials in Australian detention centres. I am generally aware of the controversy associated with that practice. However, in light of the applicant's evidence that he was not interviewed by any Vietnamese officials, I do not accept that his presence in Australian immigration detention would be known to the Vietnamese authorities (and by reasonable inference therefore the

existence of a protection visa application). I do not accept that the Australian government would inform the Vietnamese government of the existence of a protection visa application. I prefer to rely on the longstanding practice of the Australian government not to disclose such matters than the speculation of the applicant informed by other immigration detainees that in his case his protection visa application has been disclosed to Vietnamese authorities.

79. As to the applicant's claims that his parents were visited by Vietnamese authorities who disclosed to them that they knew the applicant was in immigration detention, I have rejected that evidence for the reasons outlined above.
80. I find that the applicant would not be perceived to be a member of a group of failed asylum seekers, nor would be suspected of being a failed asylum seeker in the event that he were to return to Vietnam. I am not satisfied he faces a real chance of harm for this reason.
81. In any event, as outlined by the delegate, I agree that country information does not sustain the proposition that failed asylum seekers are targeted for harm in Vietnam for reason of their membership of any such group, or for any political opinion that may be imputed to them adverse to the Vietnamese government for having made a claim for asylum overseas. In this regard, had I accepted that there was a real chance the applicant may be identified as a failed asylum seeker, I would accept the advice offered by the Department of Foreign Affairs and Trade in CX311927, 24 July 2013, and elaborated upon in and extended research papers prepared by the Department in November 2014: VNMCI141021190659563 and VNMCI141030170314445 on this question, to conclude that:
- The Vietnamese government views persons who pay money to organisers of people smuggling operations as victims of criminal activity rather than criminals themselves.
 - Persons in these circumstances may be held for short periods for the purpose of interview by the Ministry of Public Security in order to obtain information for the purpose of investigating people smuggling and trafficking. Detention in these circumstances, if it occurs at all, will be several hours only.
 - There is no information indicating different treatment being applied by the Vietnamese Government to persons known or believed to have sought asylum in other countries.
 - The Vietnamese Government's view is that Vietnamese citizens who make asylum claims are generally doing so to achieve residence in countries such as Australia for economic reasons.
 - Ordinary citizens, known or suspected to have made asylum claims in other countries are not treated differently on that basis after their return, including Vietnamese Catholics.
82. I also find I do not have substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there is a real risk that the applicant will suffer significant harm for any reason connected with having claimed asylum in Australia.

Conclusion

83. For the reasons given above, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

84. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), in the course of my deliberations I have also considered the alternative criterion in s.36(2)(aa). I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
85. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

The Tribunal sets aside the decision under review and substitutes a decision to refuse to grant the applicant a Temporary Protection (Class XD) visa.

Marten Kennedy
Member