1011310 [2011] RRTA 584 (14 July 2011)

DECISION RECORD

RRT CASE NUMBER: 1011310

DIAC REFERENCE(S): CLF2010/102961

COUNTRY OF REFERENCE: Indonesia

TRIBUNAL MEMBER: Patrick Francis

DATE: 14 July 2011

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decisions not to grant the

applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

- 1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
- 2. The applicants, who claim to be citizens of Indonesia arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2010 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] August 2010.
- 3. The delegate decided to refuse to grant the visas [in] November 2010 and notified the applicants of the decision and their review rights by letter dated [on the same date]. The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
- 4. The applicants applied to the Tribunal [in] December 2010 for review of the delegate's decisions.
- 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 applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
- 9. 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'

10. 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.

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

- 17. 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.
- 18. 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.
- 19. 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

20. The Tribunal has before it the Department's file relating to the applicants Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Background

21. Submitted with the protection visa application form was a written statement on behalf of the applicants and signed by their migration agent (exactly) as follows:

APPLICANT BACKGROUND:[Name], date of birth [date]

Applicant claims that the followings:

Applicant and his family member came to Australia as the tourist visa and entering Australia on [date] of April 2010.

Applicant, [name] claims that both of their relatives/parents were the victim of the May 1998 riots that cause their parents passed away. In 1999 [the applicant] married [Ms A], they married (on [date] April 1999) and was trying to move on with their life.

During the incident of May 1998, his parents house were raided by mob of people, looted and robbed, applicant parents asked him to ran away and they too will ran away, applicant due to his fear, ran with the thought that his parents were behind him. He kept running and running outside, he was waiting for his parents, and thought they might gone to a different directions, applicant intend to go to his friend house. On the street, he was bashed, robbed, kicked and punched, bleeding. He could not go anywhere, so he went to a motel and hide there for a few days.

He was black and bruised and didn't get up for a couple of days. He lost contact with his parents.

After couple of days, he went back and found out his parent's house were burned down and found out that his parents could not escape the mob and were burned alive inside. The mob looted and clean every single things in the house, the mob of people then throw LPG gas and close the door from outside. They throw the fire and it exploded with the parents inside.

This was coming from the witness of one of his neighbours.

Before the incident happened, applicant work at [Company], for production section of a [industry], (1991-1993), then he worked as salesman at 1993 - 1998 with [Company], this company too, was burned down during the riot and applicant could not go back to work there.

Then Applicant was trying to find another job as marketing on 1998 (end of 1998) - 2002 at [Company], this company was looted and robbed and went back to business at the end of 1999, so applicant continue to work until 2002.

On April 1999 as applicant didn't have any family, he decided to marry his fiancee, [Ms A]. Then he started his family. On [date] his first daughter born, which completed his happiness.

On 2000-2001 - applicant were helping the building of his church, the Moslem people/native indigenious, came and forced them to stop the building of the church. They came with cleaver, bamboo, basket ball wood, applicant and his other Christian members of congregation could not go to the church for almost period of 1 year. They had to go to one place to another, to one house to another's house of the congregation just to have the place of gathering and worship.

After 1 year, with long pray and help from the Lord (he claims), they got their permit back and start to build the church again.

On the year of 2001 - there were flood, big flood, his house were flooded, applicant and his family went to other place for refugee, by the time he went back to his house, everything were looted (again). Also due to the flood applicant got Typhus at that time.

Applicant then open his own business in year 2002 - 2004 and joined venture business.

During his business venture, again in his area, he still must pay the "protection money" to the mob of people nearby his business area. Applicant had so much trauma in his life, whenever he sees lots of people, he shook and froze.

These people vandalised his business. Due too much pressure from the mob, no matter how many times they have reported to the authority, nothing has been done.; at the end of the day, applicant decided to stop working in that area and move again.

Applicant then tried again to open his [Company] at [location], doing the business as the home industry, garment. They employed about 10 employees. The cheapest employees to saw and made garment are the native Indonesian, so all of their employees are Indonesian, no Chinese. Applicant thought he was providing the employment for these people, maybe everything will be ok or at last, something good will come out from his life.

Applicant business they established from bottom, since 2005, and it started to flourish and growing well. Applicant took care all his employees well and thought if he took everyone well, he will get everything back in return, their loyality and commitment in the work.

Later on applicant found out that some of his garments's productions were stolen a lot. He was suspecting the lost coming from the inside, but didn't know from which one or from whom.

He started to put the camera hidden camera, watch over everyone closely. Later on he found out that 2 of his employees stealing these. He fired them completely.

weeks later, his two employees came with several big men to his office. They started threatening him and saying of discrimination and unfair termination of job. Applicant argued and told them because they were stealing.

The men were feeling insulted and said in abusive words: you Chinese always think you are better than anyone else in this country. You are nothing and we owned this land, not you. You only stay in this country we allow you so. But you always think you are better than us. We will teach you lessons.

Applicant report this to the authority, they took all verbal and written notes of what applicant claims.

A few week later, the mob came again, this time, with more people. They came in front of the office, playing.football, kicking the balls to all window glasses. The window glasses broken. Applicant call the "hansip"/local police area, and hansip came, and sit down with these people smoking. Applicant called the handyman to fixed the window. But the next day it was broken again. They did it again.

Everyday, they were all in front of his office. Applicant feels he has been intimidated. Every time they see applicant passed by, they spat on the floor, with their burning eyes looking at him.

Applicant could not stand the pressure and the indication, applicant claims he lives on fear day and nite. He is traumatized by his past life experiences, and he decided to sell everything he has, packed his back and want to move to Australia.

Applicant claims he is a hardworking man all his life, but he could not have any safety feeling in Indonesia, no matter what he is doing there. He tried his best to move on with his life, but the atmosphere and circumstances very hard. The Chinese are not allowed to make simple or single mistakes, they always must to swallow any unfair treatment.

Perhaps if applicant never have any bad experiences, he will not feel too much, but due to his bad experiences, applicant feels that he can not cope with any of this anymore.

Especially now he has his own family and he does not want any of his family become the victim of this unfair treatment. He wants his children to have a better future without any racist and broad injustice and discrimination to live by.

For this reasons applicant is applying for the protection visa as he feels that he has the ground to claims due to his past bad experiences and persecution that he suffered in the

past. Therefore applicant is seeking the protection of Australia so they can remain in this country permanently.

Primary Decision

22. [In] November 2010 the delegate rejected the applicant's protection visa application. In summary the delegate reasoned as follows:

The applicant has described instances of being physically assaulted and harassed by the local populace in Indonesia. He claims that this has been perpetrated against him because of his Christian religion and Chinese ethnicity.

I also accept that he has faced ongoing instances of harassment in trying to operate his business and occasional instances of physical abuse. I accept that he may continue to face harassment and discrimination in the future.

Nonetheless, I am not satisfied that the applicant would be denied protection by the authorities upon return Indonesia. Since the riots of 1998, successive Indonesian governments have put in place measures that I consider adequately address the lack of security that was so evident during the unrest of 1998. At interview, he was asked if he reported the matter to the authorities. He explained that he reported it to the security guards at the estate his premises were located in, rather than to the Indonesian government authorities. I consider that if he reported it to the Indonesian police, he would receive effective state protection from persecution. He did not do this when his business premises were being attacked. The country information indicates that the Indonesian authorities are committed to providing ethnic Chinese with protection, albeit not perfect protection.

I consider that the applicant does not face a real chance of being persecuted should he return to Indonesia.

Application for review

- 23. [In] December 2010 the applicant lodged an application for review with this Tribunal.
- 24. Hearings were arranged for [two dates in] February 2011 however they did not proceed on the basis of the medical certificates provided by the applicant, from a [general practitioner], the most comprehensive of which stated:

In my opinion, he/she is/was suffering from _ Depression & Post traumatic stress _ and is currently unfit for Tribunal hearing till his mental state stabilises (approx.. three months). He's currently undergoing counselling and on antidepressant medications.

25. On [a date in] February 2011 the Tribunal wrote to the applicants to advise them that the hearing had been postponed until [a date in] March 2011. In part the notification of hearing letter also set out:

Should you consider a further adjournment necessary please notify the Tribunal of that as soon as possible That request will then be considered. If a further adjournment is sought the Tribunal may also consider making arrangements for you, [the applicant] to be medically assessed as to your fitness to attend the hearing. In the

interim the Tribunal invites written submissions detailing the claims and any evidence in support of those submissions.

26. On [a date in] March 2011 the Tribunal received the Hearing Response Form indicating that the applicant, his wife and representative would attend the hearing scheduled for [a further date in] March 2011. The applicants did not seek to reschedule the third scheduled hearing.

Hearing

- 27. The [applicants] appeared before the Tribunal [in] March 2011 to give evidence and present arguments. The other two applicants, their children did not attend the hearing. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.
- 28. The applicants were represented in relation to the review by their registered migration agent.
- 29. At the hearing a document was provided to the Tribunal consisting of a number of typed questions and handwritten answers to those questions, signed by [Ms B], a consulting psychologist, dated [in] March 2011. An original of that document was subsequently provided to the Tribunal, as was a patient history report, and an extract of a translated business registration.
- 30. At the hearing [the applicant] (the primary visa applicant) told the Tribunal about the medication he was taking and his consultations with doctors and a psychologist. The psychologist he consults is [Ms B]. He was initially seeing her once per fortnight but currently sees her once per week and has seen her on a total of approximately 6 occasions.
- 31. [The applicant] said that he was born in Brebes, Indonesia. Prior to leaving Indonesia he was living in Tangerang, and had been so since 2001. He said that he had been a member of the Pentecostal charismatic church since he was young. In response to a question from the Tribunal he said that he was able to practice his religion in the few years before leaving Indonesia. He travelled briefly to Malaysia, Thailand and Singapore in December 2009 at the suggestion of his wife to help with the depression he was experiencing.
- 32. [The applicant] said that since his arrival in Australia he has undertaken some employment. He worked as a [kitchen hand] working for 3 to 4 hours on some weekends. He said that he is unable to work for long periods of time because of his condition. He described working in a [shop] close to [suburb deleted: s.431(2)] for 4 hours per day on 4 days per week. He ceased working there two weeks prior to the hearing so that he could prepare for the hearing and not be tired. He had worked at the [shop] for five months. In response to a question from the Tribunal [the applicant] said that he had told his counsellor, [Ms B], about his employment.
- 33. [The applicant] said that his older sister lives in [suburb deleted: s.431(2)]. Sometimes he leaves his wife and children to stay with his sister, when he needs to be calm and some quite time. His friends in Australia are from the Church that he attends, the [church and suburb deleted: s.431(2)].
- 34. The Tribunal asked the primary visa applicant about the delay between his arrival in Australia, in April 2010 and his visa application, in August 2010. [The applicant] said that when he arrived in Australia he felt calm and peace. He did not know how to stay in Australia or what kind of visa he could apply for. It was through the community church that he found

out. He found his migration agent through a magazine. The Tribunal asked the primary visa applicant why he came to Australia. He replied that there were many people who came to Australia and other countries because of the revolution in Indonesia in 1998. The Tribunal then asked why he in particular came to Australia. In response the primary visa applicant said because he had a sister in Australia. When asked if he intended, in coming to Australia, to stay for a short time or a longer time, the primary visa applicant said that he would like to stay here forever. The Tribunal asked the primary visa applicant about his intention at the time he applied to come to Australia. The primary visa applicant said that in Indonesia it is difficult to apply for permanent residence and his sister told him to come to Australia and everything could be handled from here. He intended to come to Australia for a longer time for the future of his family.

- 35. The Tribunal referred to the statement lodged with the applicants' protection visa application that was signed by the applicants' agent. [The applicant] said that the statement had been read to him and that he knew what was in it. He did not have any disagreement with what was written in that statement.
- 36. The primary visa applicant told the Tribunal that he had sold land in Tangerang just prior to leaving Indonesia. The business was located on this [land]. He and his family rented a residence which was two blocks away from the business. They started the clothing business in 2005. [The applicant] said that his wife was not involved in the business, just himself and a number of employees. The Tribunal referred to the translated business registration certificate which showed a total number of 15 employees. On that issue the primary visa applicant said that when he first applied for business registration there were 15 employees but there were not a fixed number of employees.
- 37. The Tribunal referred to the statement accompanying the protection visa application and asked when he found employees stealing from his business. In response the primary visa applicant said it was around June 2009. He realised that he had lost a few things and then installed a handy cam which revealed two employees stealing clothes from him. He had a meeting with them and fired them at that meeting. Two weeks later they came back with some friends who tried to threaten him and asked him why he had fired the two employees. [The applicant] said that he explained to these friends of the employees that the employees had stolen from him. He said that these people called him names, referring to him as Chinese. He expressed the concern that he had treated the employees well and questioned why they were doing this to him.
- 38. In response to a question from the Tribunal as to whether he went to the police to report the thefts, [the applicant] said that he did report the thefts to the police. (He later said that he reported it to the security guards and to the police). When he did so he was asked what he was doing there and he was asked why, as a Chinese person, he was reporting indigenous people and told that he was making their life more difficult. [The applicant] said that he felt sad and disappointed by this response and went home.
- 39. In response to a question from the Tribunal [the applicant] said that he did not obtain a permit to dismiss his employees. He said that had obtained legal advice about his rights and obligations as an employer. When asked what advice he had obtained [the applicant] said that as a small business he could fire employees as he saw fit. The Tribunal noted an International Labour Organisation summary of Indonesian employment law relating to terminations and dismissals which appeared to require a permit before an employer could dismiss a worker. The primary visa applicant said that because it was a home industry he was able to fire

- employees as he wished and that the rule which the Tribunal had referred to only applied to big companies. He agreed that he was employing up to 15 people.
- The Tribunal noted that on the one hand the primary visa applicant's evidence might be seen 40. as concerning racial issues however, on the other hand, it might be seen as a dispute over workplace entitlements. In response to this the primary visa applicant referred to his background and events of 1998. He expressed that he is scared that the events of 1988 will happen again. He said that he still has the events of 1998 in the back of his mind and how he was threatened at that time. The Indonesian people think that they are not good enough to stay there. The Tribunal noted that when it considers whether there is persecution on racial or religious grounds that there are certain factors that must be considered. The Tribunal noted that it did not intend to question the primary visa applicant much about the events of 1998 but indicated that the events of 2009 and 2010 as described by the applicant raised questions about whether those events were Convention related. That is, the discovery of two employees stealing from him and the response of the employees and their friends appeared to be related to an employee- employer dispute. The Tribunal asked the primary visa applicant's response to this point. [The applicant] said after that they still came to him and terrorised him and said to him that if he wanted to live he should treat them in a better way. He questioned how he could treat them in a better way when he had given them jobs and a place to stay. He stated his concern that the incident of 1998 would occur again when he was hit and indicated that his teeth were damaged. He said that he keeps remembering events that occurred to him in the past. (Tribunal's note - the applicant was distressed at this point and a further short break in the hearing was taken).
- On reconvening the Tribunal asked the primary visa applicant whether he believed he could 41. relocate and live safely elsewhere in Indonesia. In response he said that he could not because the majority of Indonesians are Muslim and he is a Christian. He is also Chinese. There is racism. Because of the events of 1998 he cannot survive; he still has this in his memory where his whole family was ruined. He will still be the black sheep where ever he goes. When asked how he believed that his ex-employees could find or locate him if he relocated elsewhere in Indonesia, the primary visa applicant said that they were indigenous and they hate Chinese people and are racist. The Tribunal noted that given the primary visa applicant had sold his property and queried how, if he relocated in Indonesia, he would be found by the ex-employees. In response the primary visa applicant said that, as he employs indigenous people, whenever there was a problem, they would blame him, the Chinese guy. He believes that he would face harm because of his Christianity and his Chinese ethnicity. He has his wife and children to think of. He does not want the 'accident' of 1998 to happen again but believes it will happen and that there will be another revolution in Indonesia. Many Chinese were targeted and bashed. The Tribunal suggested that there was little in the way of general country information to suggest that the events of 13 years ago would re-occur. The primary visa applicant said that it is 'like a time bomb'. He feels peaceful in Australia and has medical care. The Tribunal noted that on one view, prior to leaving Indonesia he was able to continue with his business but was subject to being taunted and having broken shop windows at times. In response the primary visa applicant said they were still terrorising. The Indonesian business people he said were not terrorised, just him because he was Chinese. The Tribunal noted that it was required to consider whether this met the level of serious harm.
- 42. The Tribunal queried whether just prior to leaving Indonesia he was subject to serious harm. The primary visa applicant said he was. When asked what serious harm occurred, he referred to the events that happened to him in 1998/1999 he did not want that to happen again

- 43. When asked whether he had been persecuted because of his religion the primary visa applicant said that there were Chinese and Javanese in his church who weren't persecuted, but because he is Chinese, he asked why this was happening to his life.
- The Tribunal queried whether police could provide sufficient protection for him if others 44. were threatening or causing serious harm. In response the primary visa applicant said that they could but they asked for money. In the past he had to pay the money for his safety. He also paid money to the head of the village to keep the safety of his workplace. Despite these payments "this thing happened" When he went to report the incident the police sneered at him. The Tribunal asked the primary visa applicant whether he reported the incident to the police or the local security guards. The primary visa applicant said that he made a report in 2009 to both the police and the local security guards but that the police didn't do anything. He made reports about the breaking of shop windows, among other things. The Tribunal asked what 'other things' he referred to. The primary visa applicant said that they were persecuting him, he complained to the police about the broken shop windows amongst other things. When asked what other things he referred to the primary visa applicant said that he complained about them persecuting him. He said that a month after the accident when the windows were broken he was beaten and lost all his teeth. The Tribunal asked the primary visa applicant whether there was any reason this significant fact was not in his written statement. In response the applicant said that whenever he talks about things that have happened that makes him feel worse. The primary visa applicant said that when he told his migration agent about the problems in Indonesia he did not go into detail. The Tribunal noted that he had made reference to quite upsetting matters in his statement, being the murders of his parents, and queried why he would not mention such a significant assault. The primary visa applicant said that he was not asked by his migration agent about the evidence that he had.
- 45. The primary visa applicant, when asked, said that he had nothing further to tell the Tribunal about his claims.
- 46. [Ms A] gave evidence in indicated that she did not have separate claims to her husband. She said that she was severely stressed but did not have anything else to add to her husband's evidence, except that she could see her husband is living a better life in Australia and she would like his therapy to continue.
- 47. The applicants' representative made the submission that [the applicant] did not tell her about suffering broken teeth from an assault in 2009. [The applicant] then stated that he was too embarrassed to tell his agent about it.
- 48. On [a date in] April 2011 the applicant submitted further statements and photographs:

By means of this letter I lodge an application for protection and permission to remain in Australia because I have experienced persecution for reason of race and religion, injustice and treatment which has harmed my family.

In 1998 in May, on the 13-14th at around 4.00 pm there was a mass uprising against the government of President Soeharto, and the Indonesian people and in particular the ethnic Indonesians destroyed, rampaged and persecuted as well as killed those who were of Chinese descent. Both my parents became victims of their cruelty.

That day at around 6.00 pm I had arrived home. We lived in a shop and with a residence above in [location], and I went up to the third floor to hide because I felt afraid given the

events that had occurred in the street. With the cries of the masses outside shouting: "Allahu akbar!! [God is Great!!] Kill the Chinese!!"

The masses began to break down our door and they battered at it until the door burst open and they took whatever they could find in the lounge room, the bedrooms, the bathroom, and they ransacked it and we were all extremely frightened.

In coarse words that said "Chinese out...!!" We hugged each other in fright. My parents aid "Simon run and save yourself, just leave mummy and daddy here...!". I said "No...!! Let us die together...!! Mummy said in tears: "You are still young and have a long life before you." I said "Let's go out together. I will guard you"

We tried to escape down the outside stairs but the people headed us off. They pulled at my parents shouting: "Hay, you Chinese, where do you think you are going...!!". They roughed us up. They grabbed at us forcefully. I ran out and managed to get away and then hid awaiting my parents to come out.

Suddenly a group of other people came and intercepted me, and they hit me and carried me off. They treated me with a complete lack of humanitarianism until I lost consciousness. In the middle of the night I awoke feeling extremely sore all over my body and walked with difficulty, finally finding a place where I could overnight and went inside. There were many victims there. I stayed there a few days to recover.

On [date] May in the morning I went out to find out the whereabouts of my parents. I walked towards home but it had been burnt to the ground. People nearby said that when that had occurred, a crowd had been plundering and had engaged in arson by throwing LPG gas cylinders inside, and then throwing fire in after the cylinders. There had been an explosion inside were my parents had been.

I cried hysterically calling out from my parents, and the shapeless burnt bodies were found.

My mental condition was not stable for early six months. I was deeply depressed, and stressed like someone insane, feeling I had sinned because I had not been able to save my mother and father, and whenever I met up with a crowd of ethnic Indonesians, I shook, was fearful, and had a deep feeling for revenge.

Before the Revolution, I worked at the "[Company]" workshop from 1991 to 1993 in the production section. At the [Company] from 1993 to 1998 I worked as a salesman. His company also fell victim to writing and plundering during those events. The head of the company and his family fled to Singapore. I worked at [Company] in marketing until I left in 2002.

In 1991 I married [Ms A] and we began a new life together. On [date] our first daughter was born and this completed our happiness.

In 2000-2001 I helped in church construction. Muslims/ethnic Indonesians came to force us to cease the church construction. They came with machetes, bamboo and basketball timber. I and the rest of the Christian congregation could not go to church for almost one year. We had to go from one place to another, from the house of one of the congregation to another just to find a place together and pray. After a year, with prayers and God's help, the church again received permission and we began construction again.

In 2001 and floods. I and the family had to take refuge because the house was inundated to a height of about 1.5 m which quickly flooded into the house, and all we could think of was to save ourselves. When we returned to look at the condition of the house, our goods had

been plundered and even our important documents had disappeared. On top of that I caught typhus for two weeks while at the place of refuge.

From 2002 to 2004 I tried with a friend to open a [business], but this only lasted two years. There was a group of local people who always came to extort "security money" from us. If we refuse their demands, they were not averse from chasing away our customers with coarse words and even often destroyed our equipment.

There as been so many traumas in my life that whenever I see crowds a feeling shock and perspire.

These people destroyed my business, and there was much pressure which we experienced from these people and even though we kept reporting this to the responsible authorities/the police, there were however no steps taken to help me, and in the end we decided to close down the business at a loss and move on again.

In 2005 with whatever I still had I began [business] in Tangerang. I began by using our residence where there were just a few machines and workers.

We used ethnic Indonesians as workers rather than ethnic Chinese, because of cheaper costs and we also hoped to have good relations with the neighbourhood of the majority of whom were Muslims/ethnic Indonesians.

The business went well. We increased the number of machines and workers until there was no longer enough space for the family to live there, and so we rented a house where we could live which was about two blocks from the business. There were 10 permanent workers and five day labourers.

Our relationship with the workers was reasonably good, and every year at the Muslim Ramadan holidays we always gave them a bonus to cover the cost of the holiday and frequently gave financial support to workers who had fallen on hard times.

We started to get reports from customers the total number of goods we had sent them were not in accordance with the accompanying documentation. I thought that possibly there were mistakes being made when they were dispatched in the following days we got similar reports from a few of our other customers. We raised the matter with our employees but none of them knew anything about it.

Secretly while the workers were on holidays we set up a hidden camera in the goods packing section. Via the camera we finally learnt that there were two new employees who are committing theft. Before I fired them, I gave them a warning. Because I did not want to make the problem worse, I did not report the theft to the police.

Two weeks later the two men I had fired came to our office with a few large friends and came up to me and rudely said "hey, you China and why did you fire are friends for no reason whatsoever?" We had a heated debate. I said they had committed theft! One of them thump the table saying: "you Chinese think you are better than us, I'll teach you a lesson ...!! You are just a guest here, go back to your country ...!" My heart was a flame hearing their words, and I could barely hold back my emotions. All the employees just watched and didn't do anything.

Once again this event gave me headaches, I couldn't sleep, I felt very afraid, my body shook and I felt faint if I saw/heard a crowd shouting as if the events of the past were repeating themselves in my life. My wife always had to calm it down.

I reported what had happened to the authorities and wrote a report that there was no response. In fact they asked for Rs.5 million as a guarantee of safety

A few weeks later the same people came and this time they brought even more people, and they interfered with our workers on purpose. Some of them played ball outside and then kicked it on purpose at our windows breaking them all.

I reported this to the local Civil/local district Security and they came in fact sat down on smoking joked with those people.

The next day called a tradesman to repair the broken windows. This often happens repeatedly. Every day they turned up at the office. I was feeling intimidated. Every time I passed, they spat on the ground and stared at me with a hateful glare in their eyes.

From time to time my daughter came from home from playing was often crying because she had been teased and made fun of by the kids she was playing with, who would shout "And unclean Chinese ... She eats pig... Don't play with her...!!!)"

A the end of June 2009 Around 8:30 PM, I was coming back from town after meeting customers on a quiet street heading home ([street]), I was stopped by two former workers of mine. I got out of the car but suddenly there were five more people who came out of the bushes carrying bamboo and sharp objects.

They straightaway kicked me, hit my body and face breaking a few of my teeth, and my left hand was cut by a sharp object.

This event gave me a fever for two weeks because of the bruises I suffered on my body and face.

Two weeks after that incident, full of feelings of revenge and hate I went to the place where the people who had mistreated me, with a machete (although my wife had forbidden me to go), but I did not find them. I did not report it to the police because I no longer had faith in the police.

I am a hard worker and feel responsible for my wife and children and tried to continue my life despite the pressures, threats and fear, the constant interruptions to my business, and not being able to concentrate because of the continuing vexation. As a result I often become angry because of the stress. Whatever I did to try and help you get Indonesians, I always ended up being a victim of injustice is an atmosphere of my life felt heavy.

I desired a better future for my family, particularly for our children's future. I did not want my children to experience what I had, to live under pressure, intimidation and unjust discrimination.

That is why I have applied for a protection visa, because I believe, they are persecuting me because of my Chinese race. They will not persecute their own race (ethnic Indonesian) but because I am Chinese, they always take advantage, continually harming me. I have become profoundly traumatised by the events that have befallen my family, my parents, and I am continually haunted by fear of being persecuted by them, and every time I see a group of ethnic Indonesians, I shake, and there is an extraordinary feeling of anger in my soul. I have asked for legal protection from the police, the civil defence force but they just ask for money without providing any meaningful protection.

This is the reason I'm asking for a protection visa, because of the continual persecution as a result of ethnic race..... I can no longer live in Indonesia, because the background have experienced has been too intense.

I thought before that I could begin a new business and life, but clearly it happened again. I ended up with broken teeth, and I did not tell about this at the beginning because I was ashamed.....

...

Please consider my case because of what I have experienced, the death of my parents, burnt alive which at present I cannot let go from my innermost self and soul.

- 49. A document signed by [Ms B] was also submitted to the Tribunal. It took the form of one page with ten typed questions (from the representative) with hand written answers from [Ms B] as follows (in part):
 - 1. What is the stage of [the applicant] in the present time (medically/psychologically):

Currently [the applicant] is suffering from Anxiety, Depression, Insomnia and Post traumatic Stress Disorder

- 2. What is the symptoms of his conditions?
 - -Flashbacks of his parents burnt to death
 - nightmare screaming
 - Guilt
 - Regret that he didn't save his parents
- 3. What is the cause of [the applicant] mental and depression conditions?

His mental and his depression are triggered by his memories of how his parents were robbed, looted and invaded at their family home by the rioters in 1998, Jakarta. He felt he abandoned his parents

4. Is this related to his past? Yes/no? If yes, Please kindly advise your opinion in this matter.

It will be a long time before [the applicant] will be able to be free from his feelings of guilt, anger and rage.

5. What is his prognosis of his stage

In my experience, prognosis will be favourable if [the applicant] attends regularly (preferably weekly) counselling and therapy. It may take years or more depending on the review

6. What is the effect of [the applicant]'s health and mental stage, if he must return to his country of origin?

If [the applicant] goes back to Indonesia, it will be damaging and will exacerbate his post-traumatic conditions. It will also have a negative impact on his relationship with his family.

.....

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FINDINGS AND REASONS

50. The applicants travelled to Australia on Indonesian passports. Each of them arrived in Australia [in] April 2010 having been granted a subclass 676 tourist visa [in] March 2010. The applicants claim to be nationals of Indonesia. Copies of their passports are contained on the departmental file, which the Tribunal has considered. The Tribunal accepts that the applicants are nationals of Indonesia and has assessed their claims against Indonesia as the country of nationality.

- 51. The primary visa applicant has made claims that he fears persecution on account of his race, being his Chinese ethnicity. He claims also that he fears persecution on account of his religion, being a Christian in Indonesia. He refers to the injustice and treatment that has harmed his family. The claims further encompass ethnic Chinese people operating businesses in Indonesia which employ ethnic Indonesian staff.
- 52. The three other review applicants essentially rely on the claims of the primary visa applicant. No evidence or submissions suggest that any of them have specific claims other than that referred to by the primary visa applicant.

Fear for reason of religion - Christians in Indonesia

- Tribunal has no reason to doubt it. The Tribunal accepts that claim and finds that the applicants are Christian. The primary visa applicant's declaration refers to difficulties in constructing a church in 2000/2001. He states that he and the congregation were threatened with machetes and other weapons, with the result that they ceased church construction for one year. He states that "After a year, with prayers and God's help, the Church obtained received permission and we began construction again." When asked at hearing whether he had been persecuted because of his religion, the primary visa applicant said that there were Chinese and Javanese in his church who weren't persecuted, just him. The Tribunal asked the applicant whether he had been persecuted because of his religion. In response the primary visa applicant said that what he meant was that he is Chinese and that is why this is happening to his life.
- 54. The applicants do not contend that they are unable to practice their religion in Indonesia despite referring to temporary difficulties in construction of a church some 10 years ago. They have not expressed similar fears for the future or that they fear future harm on account of their religion. When this issue was specifically addressed at hearing the primary visa applicant narrowed his claims to persecution on account of his Chinese ethnicity. There is no suggestion that the other applicants have fear of harm on account of their religion outside of the concerns expressed by the primary visa applicant. Country information, such as the US Department of State's International Religious Freedom Report 2010 identifies that there are instances of discrimination on the basis of religion that occur in Indonesia. Conversely there is a significant minority of Christians in Indonesia able to practice their religion with little restriction. The US Department of State Report, above, refers to a census undertaken in 2000 showing almost 9 per cent of the population was Roman Catholic or Protestant with a further smaller percentage of other Christian groups. The Indonesian Constitution protects the right to worship according to one's own religion or belief. There have been past reports of difficulties in obtaining permits to construct churches and even temporary limits on churches at particular locations from holding services, such as that between June 1999 and December 1999 in respect of the Baptist Christian Church of Jakarta in Tangerang (which is a district that the applicants in this matter lived in).
- 55. The primary visa applicant's own evidence was that there were Javanese and Chinese in his church who were not persecuted and he identified ethnicity as the cause of harm, rather than religion. He later referred to both reasons. As pointed out above the applicants have not referred to any recent serious difficulties experienced on account of their religion. Taking into consideration the available country information and the applicants' evidence the Tribunal finds that the applicants are not restricted in their practice of religion in Indonesia. The Tribunal further finds that the applicants have suffered no recent harm on account of their

religion and nor has there been recent threats against them on account of their religion. Nor is there evidence warranting a finding that there is risk of future harm on account of their religion.

56. The Tribunal therefore concludes that there is no real chance that the applicants will be persecuted on account of their religion on return to Indonesia.

Fear for reasons of race

- 57. The applicants claim to fear discrimination and harm on account of their race. As set out above, there is no suggestion that, apart from the reasons put forward by the primary visa applicant, any of the other family members have suffered harm or fear harm on account of their race. For example there is no suggestion that they have been denied essential medical services or access to education because of their Chinese ethnicity.
- 58. Much of the primary visa applicant's evidence concerning his fears refers to events of 1998. The events in Indonesia at that time have been well documented. Detailed reports of the May riots indicate that violence affected many, if not all, parts of Jakarata, with a death total of over 1,000. The Chinese minority bore the brunt of attacks. As recounted in a report appearing in *Indonesia Today*:

Jakarta's death toll was initially put at 499 (army spokesperson, 17 May), then at 293 (police spokesperson, 23 May). A team led by the well-known Jesuit Sandyawan Sumardi said on 18 May that 1188 had died in Jakarta and Tangerang, including deaths by shooting and beating. The same report also mentioned Chinese being stripped and raped by rioters. Most deaths were of looters trapped in burning supermarkets.

Coordinating Minister for Finance and Economy Ginanjar Kartasasmita on about 18 May put the damage in Jakarta at Rp 2.5 trillion (about US\$ 250 million at prevailing rates). He said 2479 shop-houses had been damaged or destroyed mostly by fire. (The shop-house is the typical, small, almost invariably Chinese, retail business upon which urban society depends). In addition he listed 1026 ordinary houses, 1604 shops, 383 private offices, 65 bank offices, 45 workshops, 40 shopping malls, 13 markets, 12 hotels, 24 restaurants, 11 parks, 9 petrol stations, 11 police posts. Then there were 1119 cars, 821 motorcycles, 8 buses, 486 traffic signs and lights. The police later (22/5) gave considerably lower figures: 1344 buildings of all kinds, 1009 cars, 205 motorcycles....

Let's look at a map of Jakarta and see what happened. Immediate trigger for the Jakarta riot was the shooting of four students at the elite Trisakti University in Grogol, West Jakarta, on 12 May. The shootings shocked democracy activists around the country. They had been demonstrating persistently and entirely peacefully (with Medan as the only exception) for weeks against the Suharto government. After a commemorative ceremony at the campus ending late in the morning of Wednesday 12 May, rioting broke out around the campus. Some reports mention lots of angry shouts against the armed forces.

Rioters – the young urban poor, not students – spread out in several directions and start setting fire to car showrooms, hotels, shops, a hospital. The following important roads are mentioned: Kyai Tapi, Gajah Mada, Hayam Wuruk, Daan Mogot, Latumeten, Pesing, Cengkareng, Kedoya arterial, Kebon Jeruk, the Grogol-Kali Deres road, also Jalan Juanda behind the presidential palace, and the Cawang-Grogol flyover.

Electronics shops in Glodok, the Chinatown of Jakarta, are looted. All shops in nearby Senen close down, and pretty soon all business and traffic in the entire city close down. There is also an angry demonstration in the elite business district of Jl Sudirman, a long way to the south of Grogol.

Rioting mostly spreads westward toward and into Tangerang – past the international airport. A hospital is attacked, as are two churches in Tangerang. Cars are stopped on tollways and checked for Chinese – many cars are put to the torch on the tollway, whose operators are soon told to abandon their post. Even though no one is collecting fees, the toll roads are soon deserted. Tens of thousands of rioters far outnumber the security forces, who mostly stay away from trouble rather than risk defeat or a bloody massacre.

The rich flee to luxury hotels at the airport, Jalan Thamrin in the city heart, in Jalan Sudirman and at Ancol.

Tangerang to Jakarta's west, like Bekasi to its east (where rioting breaks out the next day) is Jakarta's industrial belt. Hundreds of labour-intensive, temporary factories erected by foreign capital looking for cheap labour and a quick return on investment have become magnets for an urban proletariat. These are the people worst affected by the economic crisis – bearing the brunt of the huge increase in unemployment (an additional 13 million this year alone?).

Rioting goes on right throughout the night. The next day, Thursday 14 May, it continues in Hayam Wuruk and Gajah Mada, Jalan Samanhudi, Suryopranoto ('Krekot'), but spreads to many other areas of Jakarta than just West Jakarta where it had started. On this day the large malls seem to become particular targets – this is where many looters die when fires are lit and they are unable to escape. The worst is Yogya Plaza in Klender, East Jakarta, with 174 charred bodies recovered.

Places mentioned in the reports now range all over Jakarta: Kebayoran Lama-Cipulir-Cileduk, Jalan Kosambi Raya, Cengkareng Ring Road, Jalan Salemba, Jalan Sahari (including tycoon Liem Sioe Liong's house), Jalan Matraman, to the east of Freedom Square, up to Pluit and the Tanjung Priok harbour area, down to Tanah Abang, Senen, Cikini, and east to Kalimalang, Kranji, and Bekasi. There is even some in Depok in the south.

By Friday 15 May the city is exhausted but rioting continues in a new area: Cinere, near the elite Blok M area of South Jakarta. Actions on some toll roads continue – Kampung Rambutan- Cawang, Grogol-Kampung Rambutan. Mostly, Jakarta is counting its dead. Scavengers are having a field day with the rubble. Thousands mill around to observe the damage, leaving police edgy about the potential for more trouble. Over a thousand looters have been arrested in the later stages of the riots ('The May riots' 1998, Inside Indonesia online edition, 29 May http://www.serve.com/inside/digest/dig63.htm – Accessed 22 June 2006).

A comparable report by Professor Dadan Umar Daihani, Director of Trisakti Research Instuitute, and Angus Budi Purnomo, notes that "the damage to buildings during the May 1998 riot was concentrated in [ethnic Chinese] villages with dominant commercial activity" ('The May 1998 Riot in Jakarta, Indonesia, Analyzed withGIS' 1998, ARC News online, May http://www.esri.com/news/arcnews/fall01articles/may1998riot.html – Accessed 14 June 2006)

- 59. In his evidence about his experiences in recent years the primary visa applicant consistently referred to the events of 1998 in explaining his claims for protection.
- 60. The primary visa applicant claims that he commenced his most recent business in 2005. In his written submission he states that initially the business went well and that the number of machines and workers increased such that they needed to rent a separate house from the business to accommodate themselves given that there were 10 permanent workers and five day labourers in the business. The Tribunal has considered the business registration documents and the primary visa applicant's evidence and finds that the primary visa applicant conducted a clothing business in Indonesia employing approximately 15 people. The Tribunal further finds that business was conducted from rented premises nearby.
- 61. The primary visa applicant's own account that was that "Our relationship with the workers was reasonably good, and every year the Muslim Ramadan holidays we always gave him a bonus to cover the cost of the holiday and frequently gave financial support workers who had fallen on hard times." The Tribunal accepts that evidence and finds that the business, which formed in 2005, expanded and successfully continued operation for some years.
- The evidence is that at some later stage the primary visa applicant confronted two workers 62. with evidence that they were stealing from the business. At hearing he said this occurred "after June 2009". His first written submission states that he fired the workers "completely" but gave no date. At hearing the primary visa applicant gave evidence that he fired two employees at the first meeting with them. There was no mention of an initial meeting in which he warned them. Indeed at hearing he told the Tribunal that after he found out about the theft he had a meeting with his employees and at that initial meeting he dismissed them. In his declaration submitted after the hearing the primary visa applicant asserts that "before I fired them, I gave them a warning." He asserts that he did not want to make the problem worse so did not report the theft to the police. The Tribunal is satisfied and finds that the primary visa applicant discovered two employees stealing from the business. The Tribunal does not accept that the primary visa applicant gave them a warning. That information was in contradiction to the evidence he gave at hearing. Further, there is no explanation as to what prompted him to fire them, after having given an initial warning. He makes no allegation that the thefts continued after the initial warning so as to warrant termination of employment. The Tribunal finds that having discovered the theft the primary visa applicant terminated the employment of the two employees immediately.
- 63. The Tribunal accepts the primary visa applicant's consistent evidence that he suffered verbal abuse from friends of the ex-employees. Further the Tribunal finds that some of that verbal abuse included racial taunts. The Tribunal accepts the consistent evidence of the primary visa applicant that he had shop windows broken by friends/acquaintances of the two exemployees. The Tribunal accepts and finds that the primary visa applicant reported this to the local district security personnel who did little to assist him. The primary visa applicant's evidence and description of events from this point onwards is however more contradictory and less reliable.
- 64. In the written statement accompanying his protection visa application the primary visa applicant set out that the insults and abusive words were reported to the authority but the authority did nothing but take his report. At hearing the applicant clarified that the reference to "hansip" was reference to the village security rather than to the police. In neither written statement is the claim that the verbal abuse was reported to the police. At hearing the primary visa applicant said that he reported the abuse to both the police and the hansip. He said that

the police could provide protection but money would have to be paid to them. He said he did that in the past, that he paid money to the police and to the head of the village to keep the safety of his workplace. Despite making such payment to the police he asserts that they took the report from him but would do nothing about the reported "persecution". In giving his evidence at hearing he then referred to reporting that the shop windows had been broken as well as having lost all of his teeth. The primary visa applicant said that about a month after the windows were broken he was hit. The Tribunal asked the primary visa applicant why that detail was not in his written statement. He responded that it made him feel worse. The Tribunal noted that the statement had referred to sensitive matters such as the death in 1998 of his parents. The primary review applicant said that his migration agent had not asked him. He later said that he was embarrassed to tell her about it. In the post-hearing submission the primary visa applicant refers to being physically assaulted by five or more people at the end of June 2009 and that the assault involved kicking, hitting and breaking of a few of his teeth and the cutting of his left hand. He asserts that some two weeks later, armed with a machete he went looking for the people but did not find them. His signed statement says "I didn't report it to the police because I no longer had faith in the police."

- 65. At hearing for the first time the applicant gave evidence that he was physically assaulted in 2009 subsequent to the sacking of the two employees. There was no reference to a violent assault in his initial written claims that accompanied the application form.
- At hearing the primary visa applicant waved a dental plate in the air. Subsequent to the 66. hearing he provided photographs showing that teeth were missing (in addition to a scar on a part of his body). The sheets of paper that the photographs were attached to had the stamp of a medical general practitioner on them. The Tribunal is satisfied that the primary visa applicant is missing a number of teeth and has had dental work. No medical or dental reports however have been provided to the Tribunal which could assist in identifying when and in what circumstances the primary visa applicant lost a number of his teeth. In the post-hearing submission the primary visa applicant asserts his left hand was cut by a sharp object. Whilst one of the four photos he has provided shows a scar, the photo is not of a hand. The Tribunal has concerns about the reliability of the primary visa applicant's recollection, which is distinct from an adverse concern about his honesty. The psychologist's report refers to the primary visa applicant suffering from flashbacks and that his mental condition is triggered by his memories of the events of 1998. That is consistent with the Tribunal's observation that the primary visa applicant tended in his evidence at hearing to merge events of 1998 with more recent events. For example, when asked if he was subject to serious harm just before leaving Indonesia, the primary visa applicant said that he was. When asked what particular harm, he replied that the serious harm which has happened to him in his life. In response to a question he agreed that he meant the events of 1998/1999. The psychologist's report refers to the cause of the primary visa applicant's post-traumatic stress disorder as arising from those events. Her report makes no reference to a more recent physical assault.
- 67. Taking the above matters into account, including the conflicting evidence as to whether the physical assaults were reported to police, the Tribunal finds that the primary visa applicant was not physically assaulted in 2009 as he described. However the Tribunal finds that the primary review applicant suffered serious assault (including dental injury) and that his parents died as a result of riots/ civil disturbance in 1998.
- 68. Taking into account the above sources, the primary visa applicants' written and oral evidence as well as the psychologist's report, the Tribunal accepts the primary visa applicant's account of what happened to him and his parents in 1998, when he was about [age deleted: s.431(2)]

years of age. The impact of those events is clearly with him today. The Tribunal accepts [Ms B]'s report concerning [the applicant]'s diagnosis and the cause of those conditions. The Tribunal finds that he is suffering from Anxiety, Depression, Insomnia and Post Traumatic Stress Disorder. The Tribunal further finds that the symptoms of his conditions are flashbacks of his parents' deaths, nightmares, guilt and regret that he didn't save his parents.

- 69. The Tribunal notes that [Ms B]'s report makes no reference whatsoever to traumatic events of recent years, which might have caused the condition. It is clearly the events of 1998/9 which are the cause of the primary visa applicant's current medical conditions, according to her report.
- 70. In respect of the primary visa applicant's capacity to give evidence and make submissions in support of his application, the Tribunal is satisfied that he had such capacity even taking into account his medical condition. The primary visa applicant attended the third scheduled hearing without requesting a further adjournment. Short breaks were taken to enable him to compose himself at times during the hearing. The Tribunal's observation was that the applicant participated in the hearing and was able to respond to questions in a meaningful manner. The Tribunal finds that the primary visa applicant did not lack the capacity to give evidence and make submissions in support of his application.
- 71. The applicants' claims are made in the context that the family apparently ran a successful garment business from 2005 until 2009. The primary visa applicant's post hearing statement refers to his relationship with the workers as "reasonably good". His business prospered such that new premises were required. The Tribunal finds that the verbal abuse and racial taunts (and the smashing of windows) that the primary visa applicant suffered in mid-2009 arose in the context of an employment dispute. The Tribunal has found that the primary review applicant dismissed the two employees without warning for theft from his business. The Tribunal finds that any subsequent conflict arose as a result of those terminations. The Tribunal does not accept or find that the conflict arose in the context of a dispute between ethnic Indonesian and ethnic Chinese, rather it arose in the context of employment dispute. As set out above, his business had operated successfully for some years employing ethnic Indonesians. That was not the cause of the applicants' problems in 2009.
- 72. The Tribunal took account of country information which reflects that low-level discriminatory practices exist in Indonesia and that the country has achieved significant progress in reducing such practices. There is no doubt that Indonesians of Chinese ethnicity faced danger and harm in the rioting of the late 1990's. Unfortunately the primary visa applicant remains significantly affected by those events, as set out in the report of [Ms B]. The Tribunal accepts that the primary visa applicant experiences considerable anxiety and depression related to the death of his parents in 1998. The risk of such events reoccurring is now remote.
- 73. The primary visa applicant claims fear of persecution on account of his Chinese ethnicity. This is clearly a claim that falls within the Convention ground of "race". The other applicant's claims rest entirely on the primary visa applicant's claims. The Tribunal however finds that the issues arose as a result of sacking two workers, which was an employment-related dispute. Despite being accompanied by racial taunts, that dispute and therefore the applicants' claims, are essentially and significantly about the employment dispute, not for a Convention reason. The Tribunal is therefore not satisfied that any harm that might be caused to the primary visa applicant in the reasonably foreseeable future for reason of this dispute would be for a Convention reason.

74. The Tribunal does not accept that the applicants will suffer serious harm for reason of their Chinese ethnicity now or in the reasonably foreseeable future.

Membership of a particular social group - Indonesian business people of Chinese ethnicity employing ethnic Indonesians

- 75. The Tribunal also considered the issue of whether the applicants have suffered or would suffer harm on account of the primary visa applicant's membership of a particular social group of Indonesian business people of Chinese ethnicity. The primary visa applicant's evidence refers to difficulties he experienced in running businesses since 2002. In his written statements he claims that between 2002 and 2004 he paid protection money to "the mob of people nearby his business area." He claims that, no matter how many times reports were made to authorities about vandalism of his business, nothing was done. The applicants make no claims (about that time) beyond vandalism, which in the Tribunal's consideration, does not amount to serious harm. The primary visa applicant then opened another business in Tangerang in 2005 which according to his own account "flourished and grew well" until sometime in 2009 when he found employees stealing from the business. The primary visa applicant claims that he will face harm in the future because he is a business person who employs ethnic Indonesians and would face similar harm in the future.
- 76. In accordance with his own evidence, the primary visa applicant operated a successful clothing business for some years in Indonesia prior to closing it down in 2009 before coming to Australia. The Tribunal has found he did so in the circumstances of an employer-employee dispute. The Tribunal is satisfied that the harm suffered by the primary visa applicant from his former employees and their supporters was for the essential and significant reason of the employment dispute between the primary visa applicant and his former employees. The evidence does not support a finding that Indonesian business people of Chinese ethnicity employing ethnic Indonesians face serious harm for reason of membership of a particular social group. In the circumstances of this application the Tribunal finds that there is not a real chance that the applicants would suffer serious harm for the reason of the primary visa applicant's membership of a particular social group of Indonesian business persons of Chinese descent.
- 77. The Tribunal accepts that the primary visa applicant has post-traumatic stress disorder as a result of the events of 1998/9 in Indonesia. He is still markedly affected by those events. His fragility however does not convert what is essentially an employment-related dispute to become a Convention reason.
- 78. Having considered the applicants' claims singularly and cumulatively, the Tribunal finds that there is no real chance that they will be persecuted for a Convention reason if they return to Indonesia now or in the reasonably foreseeable future. The Tribunal finds that the applicants do not have a well-founded fear of persecution.

CONCLUSIONS

The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

79.

The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.