071316825 [2007] RRTA 128 (29 June 2007)

DECISION RECORD

RRT CASE NUMBER:	071316825
DIAC REFERENCE(S):	CLF2007/11214
COUNTRY OF REFERENCE:	Israel
TRIBUNAL MEMBER:	Antoinette Younes
DATE DECISION SIGNED:	29 June 2007
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Israel**,** arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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.

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 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

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

In the application for a protection visa, the applicant who is of Jewish ethnicity and religion, claimed that he belongs to the pacifists' movement. He claimed that he was persecuted and discriminated against by the Israeli authorities. He fears that if he were to return, he could be jailed and the authorities would not protect him.

In support of the application for a protection visa, the applicant provided a Statement in which he claimed that:

- He has been against violence all his life. Prior to the 2000 intafada, he participated in many demonstrations against the Israeli Army's presence in South Lebanon.

- A number of years ago he was called for military duties and he was discharged three years later. Prior to being discharged, a friend was killed and two others were wounded when a tank was blown up. The incident made him look at life from "*another angle*". Although before he was against military operations, he now became a peace advocate.

- After his discharge from the army, he began to participate in pro-peace demonstrations. He is a pacifist and he participated in many pro-peace demonstrations.

- On a particular date he was arrested and detained overnight. He was discharged following interrogation. The police were surprised that a recently-discharged soldier took part in the demonstration.

- Several weeks later, the police went to his workplace. Immediately after the visit, he was asked by management for an explanation. He was sacked.

- In a particular year, he knew that he was going to be called for service as a reservist. Just before receiving the letter, he went to Country X and came to Australia in the following year.

- When the war with Lebanon started, all his units received calls to serve in the army but he was in Australia. When he left Israel, he notified the authorities that he was going on holidays for a number of months. His parents received a letter demanding his return to serve in the army.

- He is a deserter in the eyes of the Israeli authorities and if he were to return, he would be sent to jail.

HEARING

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hebrew and English languages. The applicant was represented in relation to the review by his registered migration agent, who did not attend the hearing.

The applicant advised the Tribunal that he wished to make amendments to the statement that he provided in support of the application for a protection visa, namely that during specific years, he undertook compulsory military service and that the tank exploded in a named year. He said that he suffers from dyslexia and hence there are mistakes in his statement.

The Tribunal asked the applicant about his claim that he had participated in demonstrations in Israel. The applicant stated that subsequent to the completion of compulsory military service he started to participate in demonstrations. He said that it was after the completion of compulsory military service that he started taking an active role in demonstrations. The Tribunal asked him about the demonstrations in which he was involved. He said in a particular year there was a specific demonstration. He said it was a peaceful but large demonstration. He said there were several hundred demonstrators. He said he was not an organiser. He said he merely attended the demonstration although he was standing at the forefront. He said he was detained for one night. The Tribunal asked him if he thought he was been targeted personally by the police. He said the police "*targeted everybody …*" He said the police overused their powers during the demonstration. He said he was demonstrating which was enough to drag him into it. He said the police came to disperse the demonstrators and they did not care who was resisting. He said he was on the edge and he was physically close to the police. He said he was holding up banners but he was not involved in any extreme activities. He said he was questioned by the police who tried to make him sound like a ringleader. He said they were putting words in his mouth. The Tribunal asked if he was charged with any offences and he stated that he was not. He said subsequent to that however he was dismissed from his job a few weeks after the demonstration. The applicant explained that the factory where he worked had a lot of Palestinian employees but management were Israelis. He said he was one of the very few Jewish employees in the factory. He said the police came to the factory to do their normal checks relating to Palestinian employees. He said such checks were not unusual. He said he was interviewed during the check and he was accused of stuff, such as helping Palestinians to work without permission.

The Tribunal asked what reason he was given for his dismissal. The applicant explained that the owner is the father of one of his friends. He said when they dismissed him they blamed it on work. He explained that he was running a machine at the time and his productivity had been compromised. He said he thinks he was dismissed not because of the decrease in productivity but because he had been spoken to by the police at the time. He said they found out he was pro peace. The Tribunal put to the applicant that the Tribunal needed to consider whether any harm he has suffered was essentially and significantly related to a Convention ground. The Tribunal indicated that he may have been dismissed for other reasons. The Tribunal indicated to the applicant that the fact that his employer had employed a lot of Palestinians might suggest that they have tolerance and as such it would be difficult to understand why they would want to harm him if they perceived him to be pro peace. The applicant stated that the employment of Palestinians is basically for commercial reasons as they tend to be cheaper employees.

The Tribunal indicated to the applicant that there is freedom of speech and association in Israel. The applicant said that the police checked on him periodically; he said they came around to talk to him to see that everything was fine. The Tribunal asked him when the police went to check on

him. He said every few weeks, every few months. The Tribunal put to the applicant that it is difficult to understand why the police would have wanted to check on him periodically given that he does not appear to have a profile that would have warranted their attention. The applicant said "*That's what I was thinking*". The Tribunal asked the applicant what the police talked to him about when they went to check on him periodically. He said they chatted with him casually; they did not charge him with any offences or arrest him.

The applicant stated that his problem is essentially serving as a reservist. He said he does not want to return to Israel. The Tribunal indicated to the applicant that generally- speaking compulsory military law is a law of general application and that generally-speaking, harm consequential to the application of such a law does not constitute persecution.

The Tribunal confirmed that apart from the applicant's involvement in demonstrations he was not involved in any other political activities.

The Tribunal asked the applicant about any other incident of harm that he wished to tell the Tribunal about. He said that it is difficult to live in Israel as the right wing group are quite militant. He said he prefers to stay in Australia that has a more relaxed attitude.

The Tribunal asked the applicant about his political views. The applicant stated that there are better ways of Israel's handling of the conflict with the Palestinians and Jordanians. He said there has to be a better way to handle the conflict. He said he loves Israel and he is not anti-military. He said he is pro peace but being pro peace is perceived to be pro Palestinians and anti Israeli authorities.

The Tribunal discussed with the applicant the death of the friend during the blowing up of the tank and the Tribunal indicated that such death is an unfortunate incident relating to war/general level of insecurity, which the applicant accepted.

The applicant told the Tribunal that he wanted to travel and get peace of mind. He said he wanted to get away from Israel. He went to Country X. He did not seek a protection there as he did not like it. He said he also had been told that if he were to apply for a protection visa, he would be ill-treated in Israel. He said he wanted to stretch his visa to the limit. The Tribunal indicated that it would consider further his reasons for the delay in lodging the application for a protection visa. He said he feels that being pro peace means that he would receive bad vibes which would constitute a low level of persecution and that the only protection from such persecution is to be out of Israel. The applicant stated that from a particular time he has joined a peace organisation.

FINDINGS AND REASONS

On the basis of the available information, the Tribunal is satisfied that the applicant is a citizen of Israel and that he is outside that country.

On the basis of the applicant's own evidence and the Tribunal's observations, there are differences between the written claims and the applicant's oral testimony. The applicant stated that he suffers from dyslexia which accounts for the difference. Even without expert evidence, the Tribunal gives the applicant the benefit of the doubt and accepts that he suffers from dyslexia. The Tribunal also gives the applicant the benefit of the doubt that accepts the condition accounts for the differences. However, in consideration of the evidence as a whole and having observed the applicant in the course of the hearing, the Tribunal is satisfied that the applicant is a competent witness who did not have any difficulties in putting his case in full before the

Tribunal. In any case, at no stage of the review, did the applicant suggest or imply that dyslexia has or could impact on his ability to put his case in full.

In light of the above, the Tribunal has not relied on any inconsistency between the written claims and the applicant's oral testimony.

Fear of harm based on political views/activities

In consideration of the evidence as a whole, the Tribunal accepts as being plausible that subsequent to the completion of compulsory military service, the applicant participated in demonstrations. The Tribunal accepts as being plausible that in a particular year, the applicant participated in a specific demonstration. The Tribunal accepts as being plausible that the applicant was not an organiser. The Tribunal accepts as being plausible that the applicant was detained for one night, that he was questioned, that the police were putting words in his mouth and tried to make him sound like a ringleader. On the applicant's own evidence, the police "*targeted everybody* …" and overused their powers during the demonstration; the police came to disperse the demonstrators but did not care who was resisting. The Tribunal accepts as being plausible that the applicant was not charged with any offences. The Tribunal is of the view that given that the police are responsible for, amongst other things, maintaining peace and order in society, they had the right to intervene and attempt to disperse the crowd, including arresting those whom they considered or perceived, rightly or wrongly, to be problematic participants in the demonstration. On the basis of the available information, the Tribunal is satisfied that the fact that the applicant was released without any charge, means that the applicant was not of any adverse interest to the authorities and that his arrest and detention are consequential to law enforcement. Police have a legitimate role to play in intervening in circumstances, which for security reasons are considered to be appropriate and within their powers. The Tribunal has accepted as being plausible that the police overused their powers during the demonstration. However, in consideration of the evidence as a whole, the Tribunal is not satisfied that such overuse of power means that they did not have a legitimate role in intervening and taking action. In consideration of the evidence as a whole and on the basis of the available information, the Tribunal is not satisfied that the applicant's detention and subsequent treatment by the police, were essentially and significantly related to any Convention ground, including but not limited to actual/imputed political opinions and/or membership of a particular social group. It is entirely plausible that the applicant was arrested and questioned because he was involved in a demonstration which the police, most likely for security reasons, wanted to disperse and arrest those whom they believed to be a security concern. On his evidence, the applicant was on the edge, physically close to the police and he was holding up banners.

The Tribunal accepts as being plausible that the applicant was dismissed from his job a few weeks after the demonstration. On the applicant's own evidence, when they dismissed him they blamed it on work namely his productivity that had been compromised because of a machine. The applicant claimed that he was dismissed not because of the decrease in productivity but because he had been spoken to by the police at the time. Whilst the Tribunal accepts as being plausible that the police spoke to the applicant, given his evidence that the police came to the factory to do their normal checks relating to Palestinian employees and that there were issues, correctly or incorrectly, about his productivity, on the basis of the available information, the Tribunal does not accept that his dismissal was essentially and significantly related to any Convention ground and or that he was of any adverse interest to the authorities when the police spoke to him about the Palestinian employees.

The applicant has claimed that the police checked on him periodically; he said they came around to talk to him to see that everything was fine. The applicant was unable to give the Tribunal details about when the police went to check on him; he said every few weeks, every few months. He said they chatted with him casually; they did not charge him with any offences or arrest him. In explaining his political views, the applicant stated that there are better ways of Israel's handling of the conflict with the Palestinians and Jordanians. He said he is pro peace but being pro peace is perceived to be pro Palestinians and anti Israeli authorities. The Tribunal accepts that the applicant is pro peace and that the applicant joined a peace organisation and whilst the Tribunal is prepared to give the applicant the benefit of the doubt and accepts as being plausible that the police saw him on various occasions and chatted with him, on the basis of the available information, the Tribunal does not accept that they were 'checking' on the applicant as such, or that they spoke to him because he was of any adverse interest to them. On the basis of the evidence as a whole and in consideration of the evidence as a whole, the Tribunal is not satisfied that the applicant has a profile, despite his involvement in *the organisation* and demonstrations that would have warranted the ongoing attention/interest of the police; the Tribunal is of the view that it is difficult to understand why the police would have wanted to check on him periodically, a matter that also puzzled the applicant who said "*That's what I was thinking";* on his own evidence, these were casual chats. The Tribunal also notes that in Israel, the law provides for "*freedom of speech and of the press, and the government generally respected these rights in practice, subject to restrictions concerning security issues*" and the law provides for "*freedom of assembly and association, and the government generally respected these rights in practice*" (US Department of State, *Israel and the Occupied Territories, Country Reports on Human Rights Practices - 2006* , Released by the Bureau of Democracy, Human Rights, and Labor March 6, 2007).

On the basis of the available information and in consideration of the evidence as a whole, the Tribunal is not satisfied that any harm suffered by the applicant by chatting to the police, is essentially and significantly related to any Convention ground, including but not limited to including but not limited to actual/imputed political opinions and/or membership of a particular social group or that the chats were.

[Country information and sources relating to the *peace organization* deleted in accordance with s431 of the Migration Act].

Given the above country information, on the basis of the available information and in consideration of the evidence as a whole, the Tribunal is not satisfied that any harm suffered by the applicant, is essentially and significantly related to any Convention ground, including but not limited to his actual/imputed political opinions and/or membership of a particular social group. For the same reasons, the Tribunal is not satisfied that there is a real chance of such harm occurring to the applicant in the reasonably foreseeable future.

Fear based on compulsory military service

The applicant has completed compulsory military service but claims that he would be perceived as a deserter and fears being sent to jail. He also fears having to serve as a reservist. However, he told the Tribunal that is not anti-military per se.

The enforcement of laws providing for compulsory military service, and for punishment for desertion or avoidance of such service, will not ordinarily provide a basis for a claim of persecution within the meaning of the Refugees Convention (*Mijoljevic v MIMA* [1999] FCA 834 (Branson J, 25 June 1999) at [23], referring to *Murillo-Nunez v MIEA* (1995) 63 FCR 150; *Timic*

v MIMA (unreported, Federal Court of Australia, Einfeld J, 23 December 1998). This is primarily because it lacks the necessary selective quality (e.g. Mpelo v MIMA [2000] FCA 608).

Without evidence of selectivity in its enforcement, conscription will generally amount to no more than a non-discriminatory law of general application. Such a conclusion will however, be dependent on the evidence in each case.

The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR 1979) provides some guidance on the issue. The Handbook states:

> 167. In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. … The penalties may vary from country to country, and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft-evader.
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> 168. A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons, within the meaning of the definition, to fear persecution.
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> 169. A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion.
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> 170. There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, ie. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.
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> 171. Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.

The Court in *Mehenni v MIMA* ((1999) 164 ALR 192 at page 19) noted that the Handbook does not suggest that that the mere requirement that a person serve, in opposition to genuine religious convictions, in itself necessarily amounts to persecution for a Convention reason. What is required is that it be demonstrated that the punishment feared be imposed discriminatorily for a Convention reason, such as religion or political opinion, or membership of a particular social group such as "*conscientious objectors*". The mere holding of a political opinion or membership of a particular social group by an applicant facing the prospect of harm (including serious harm) is not sufficient to bring that person within the Convention definition. The Federal Court has fairly consistently held that liability for conscription - even of conscientious objectors - will not of itself found a Convention claim. (*Mijoljevic v MIMIA* [1999] FCA 834 (Branson J, 25 June 1999) and cases there cited, cited with approval by Callinan J in his dissenting judgment in *Applicant S v MIMA* (2004) 206 ALR 242 at [103]). As was stated in *Applicant S* (*ibid*) the objective of a conscription policy is, generally speaking, an entirely legitimate national objective.

There is no evidence before the Tribunal suggesting that the applicant had to refrain from expressing his views or modify his conduct in order to avoid harm. Looking at the evidence cumulatively, the Tribunal is not satisfied that if the applicant were to perform reservist duties or

face penalty for potentially being perceived as a deserter, there is anything in his profile that would lead to him suffering serious harm amounting to persecution as contemplated by the Convention It must be acknowledged that the main task of defence forces of a country is to defend that country from invasion and other threats to its territorial integrity and its citizens, and it is legitimate for a country to expect citizens of military service age to participate in the achievement of that objective. Looking at the evidence as a whole, the Tribunal is satisfied the Israeli National Defence Service Law is a law of general application and its application in the applicant's case does not amount to persecution as stipulated by the Convention.

Looking at the evidence cumulatively, the Tribunal is satisfied that there is nothing in the applicant's profile that would result in him being persecuted if he were to return to Israel and serve as a reservist. The Tribunal is satisfied that if he were to return to Israel, although it is plausible that he would have to perform reservist military service and/or face penalty for potentially being perceived as a deserter, that would be by virtue of the administration of a law of general application and in his circumstances would not amount to persecution as stipulated by the Convention. The Tribunal is satisfied that the applicant would not receive disproportionate ill-treatment amounting to persecution.

In relation to the claim that a friend died and others were injured during the blowing up of a tank, the Tribunal is satisfied that the incident is related to a general level of insecurity and not a Convention ground. It is settled law that the hardship and dangers to persons affected by war or civil disturbance do not, without more amount to persecution within the meaning of the Convention (*Rahman v MIMA* [2000] FCA 73). Looking at the evidence as a whole, the Tribunal is not satisfied that any fear on this basis amounts to persecution as contemplated by the Convention.

The applicant told the Tribunal that it is difficult to live in Israel as the right wing group are quite militant. He said he prefers to stay in Australia that has a more relaxed attitude. Whilst it is plausible that there are individuals in Israel who hold strong views, on the basis of the available information, the Tribunal is not satisfied that the applicant would suffer serious harm in the reasonably foreseeable future on this basis. His desire to remain in Australia is irrelevant to the Tribunal's determination of his refugee claims. The applicant stated that he feels that being pro peace means that he would receive bad vibes which would constitute a low level of persecution and that the only protection from such persecution is to be out of Israel. In consideration of the evidence as a whole, the Tribunal is satisfied that this claim is speculative. Furthermore, as found by the Tribunal and for the stated reasons, the Tribunal does not accept that the applicant had suffered any harm essentially and significantly related to a Convention-related ground, or that there is a real chance of this happening to the applicant in the reasonably foreseeable future.

In essence, the Tribunal is satisfied that there is no Convention-related reason as to why the applicant could not return to Israel**.**

On the basis of the evidence as a whole, the Tribunal does not accept that the applicant had suffered any harm essentially and significantly related to a Convention-related ground, or that there is a real chance of this happening to the applicant in the reasonably foreseeable future.

Therefore, the Tribunal finds that the applicant does not have a well-founded fear of persecution. as contemplated by the Convention.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958.* PRRRNM