

1002915 [2011] RRTA 615 (14 July 2011)

DECISION RECORD

RRT CASE NUMBER:	1002915
DIAC REFERENCE(S):	CLF2010/5709
COUNTRY OF REFERENCE:	Fiji
TRIBUNAL MEMBER:	James Silva
DATE:	14 July 2010
PLACE OF DECISION:	Sydney
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 claim to be citizens of Fiji. The first-named applicant ('the applicant') arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2009. The other applicants arrived [in] December 2009. They applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] January 2010. The delegate decided to refuse to grant the visas [in] April 2010 and notified the applicants of the decision and their review rights by letter dated [the same date].
3. The applicants applied to the Tribunal [in] April 2010 for review of the delegate's decisions.
4. 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

5. 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.
6. 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).
7. 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.
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or

insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

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

Primary applications

20. The applicants are a man aged [age deleted: s.431(2)], born in Levuka, Fiji (the 'applicant husband' or the 'applicant'), who has submitted refugee claims, and the members of his family unit. These are his wife, a woman aged [age deleted: s.431(2)] from Suva, and their 2 daughters aged [ages deleted: s.431(2)].

The applicant husband

21. The applicant gives his ethnicity as Melanesian, and his religion as Catholic.
22. The applicant lived at one address in Suva from at least July 1994 until October 2009. He attended primary and secondary school in Levuka. He worked as a [clerical officer] in Suva (1991-1997), as a processing officer and storeman in 2 [companies] (1998-2004) and most recently as a [vocation and company deleted: s.431(2)] in Suva.
23. The applicant identifies as close relatives, apart from his immediate family, a cousin in Australia, and his siblings, including a brother in [country deleted: s.431(2)], a sister in [country deleted: s.431(2)] and 3 who remain in Fiji.
24. The applicant holds a Fijian passport issued [in] October 2009, and indicates that he does not have the nationality of any other country. The applicant states that he has never had a previous travel document, although he also states that he made previous journeys to New Zealand (2000) and Australia (2009), which must have been on an earlier travel document.
25. The applicant left Fiji [in] October 2009, entering Australia on a subclass 676 Tourist visa. His stated purpose was to visit family in Australia.
26. The applicant's refugee claims are, in summary:
 - The applicant claims that he is a Fiji citizen, and 'one of the Blackbirder descendants from the Solomon Islands'. He and his family lived in a 'Solomon settlement' in Newtown, in the suburb of Nasinu.

- The applicant states that many children in his community leave school early, and some girls fall pregnant. He is concerned that his daughters should have a better future than that.
- He states that he does not own land in Fiji, and also does not have a permanent job to meet his family's needs.
 - The applicant states that he worked as a [vocation and company deleted: s.431(2)], but due to declining business, he was able to work only 1 or 2 days a week, earning only about \$62 a week. This was not enough to support his family.
 - He claims that costs are high, and he cannot provide for his family in Fiji.

Other applicants

27. The applicant wife holds a Fijian passport issued [in] March 2009. She attended primary and secondary school in Suva, up to [year deleted: s.431(2)]. From 2003 to 2005, she undertook further courses, mainly in [subjects deleted: s.431(2)]. She states that she did domestic duties before coming to Australia.
28. The applicant daughters obtained their Fijian passports [in] October 2009. They attended [school deleted: s.431(2)] in Suva.
29. The secondary applicants entered Australia together [in] December 2009. Their protection visa applications were submitted [in] January 2010.
30. Attached to the protection visa applications are copies of the applicants' passports (front pages only) and birth and marriage certificates.
31. The Department file contains various documents related to the applicants' health assessments and applications for Asylum Seekers' Assistance. Relevantly, the documents include the following:
 - A letter dated [in] December 2009 from [an office holder] of the Fiji Melanesian Community Development Association (FMCDA), [Ms A], who states that the applicant and his family are persons of 'blackbirder descents' Unlike Australian South Sea Islanders (ASSI), members of the FMCDA are 'marginalised and deprived of land ownership, education and employment, with around 90% of the members living below the poverty line'. The letter is addressed to the Department, requesting assistance for the applicants.
 - A copy of a letter from [company deleted: s.431(2)], dated [in] December 2009, advising that the applicant was a casual worker who was made redundant 'due to less [productivity] of imports and exports'.
32. The applicants gave the following information at a Department interview [in] April 2010:
 - The applicant said that he fears persecution on the basis of race. He identifies as a Solomon Islander, because his great-great-grandfather originated from there.

- As a Solomon Islander, he cannot own land. His family was forced out of the Solomon Islander settlement, to live separately. He worked as a [vocation deleted: s.431(2)], but only 2 days a week. It will now be difficult for him to find work.
- The applicant spoke about an occasion around 2000 when he was involved in a land dispute. He had rented some land from Fijian landowners, and built a small home on it with the agreement of the trustees. They had lived there for about a year. An Anglican pastor had forced them to abandon their home (implicitly, because it was required for another purpose, although the applicant noted that the pastor's wife was related to the landowner). The applicant was unsure whether the land dispute was connected to his race.
- The applicant said that the landowner and 7 or 8 boys from the village assaulted him. The applicant's 3 cousins helped him defend himself, and fighting broke out. The police were called and broke up the fight. The landowner and his mates were charged, but the case did not proceed.
- The applicant said that, while he previously stayed with his in-laws in Fiji, he now has no work and nowhere to stay if he and his family have to return there.

Review application

Pre-hearing submission and documents

33. The Tribunal received a submission [in] June 2009 with the following further information:
- After marrying, the applicant moved to Newtown, where his wife's family lives. His Fijian neighbours targeted him, abusing him as a 'Solomoni', physically assaulting him and damaging his property, by pulling out his crops, water pipes and power lines.
 - The Department of Lands then gave his land to an influential couple, [Mr B] (an Anglican priest from Tonga) and his well-connected Fijian wife.
 - The applicant sought police protection from local harassment, but the police assaulted him because they favour [Mr B]'s family.
 - The applicant's work declined from 3 days a week before the military coup, to just 2 days a week afterwards.
 - The applicant's wife and 2 daughters joined him in Australia because of local violence (the wife's mother chased them away).
 - Even in Australia, the applicant's in-laws abused him, saying that he has nothing because he is a Solomon Islander. His brother-in-law threatened to punch and kill him. The letter gives a police event number, and states that the police took the brother-in-law away that night.
 - A letter from the [Family Violence Service], addressed to the applicant wife, refers to the local police having visited her home recently, and advises her of the available support services.
34. Other supporting documents are:

- [Mr C], Newtown Solomon Settlement, writes that in 1996, a Tongan named [Mr B] assaulted and threatened the applicant and his family. In 2006, the Land Department ordered the family to vacate the land. 'It was from then on the [applicant's] family moved from house to house and family to family for decent living and a better future.' He notes that the police have done nothing to assist the family. He concludes that the applicant has no future in Newtown, or anywhere in Fiji, because he has no land and no employment. He adds, in unclear terms, what appears to be a concern that the applicant may also be at risk if confidential information about the treatment of Solomon Islanders gets back to the Fijian authorities.
- [Ms D], an adjunct associate professor from the Australian Centre for Peace and Conflict Studies, University of Queensland, gives further background information on Solomon Islanders in Fiji. She states that they are marginalised people who do not have the same land rights as ethnic Fijians, and they suffer other social disadvantages.
- An article from the Fiji Times Online, dated 26 May 2010, describing a recent meeting of Solomon Island descendants. The meeting drew attention to a 1997 UNDP/Government of Fiji poverty study that noted that Solomon Islanders are amongst the poorest of Fiji's minorities, and called on the SI minority to join forces to address welfare issues in Fiji.
- A copy of a lease agreement between the Fiji Director of Lands and the Ecumenical Institute Renewal and Resource Centre of Nasinu, which includes [Mr and Mrs B] as co-signatories, dated [in] December 2005, for the 5 year renewable lease of a plot of land in Newtown.

Tribunal hearing

35. The applicant husband and the applicant wife attended a Tribunal hearing [in] June 2010. The hearing was conducted with the assistance of an interpreter in Fijian/English, who participated in the hearing via video conference. The applicant children were not present.
36. The applicants confirmed that only the applicant husband ('the applicant') was seeking a protection visa as a person who fears persecution, and that the other applicants were seeking protection visas as members of his family unit.
37. The Tribunal took evidence mainly from the applicant husband. The applicant wife was present at the hearing as a support person, but gave some evidence to clarify or supplement her husband's statements, and to explain her family background.
38. The applicant said that he feared persecution for 2 reasons: (a) he fears that the current government will persecute him if they come to know about his refugee claims; and (b) he fears persecution on the grounds of race, as a person of Solomon Islands descent.
39. On the first point, the Tribunal assured the applicants that the Australian authorities would not reveal to the Fijian authorities either the fact of them having sought refugee protection or the details of their claims.
40. The applicant gave evidence about his personal and family background. He was born in Levuka, on Ovalau, [details in relation to the applicant's family deleted: s.431(2)].

41. The applicant said that he is of Solomon Islands extraction, through his great-great-grandfather, whose name he does not know. He is Catholic. The applicant wife said that she is an ethnic Fijian, and a Seventh Day Adventist.
42. The applicant said that he went to school in Levuka, [schools deleted: s.431(2)], finishing his education at the age of about 18 years, or the equivalent of Year 10. He left Ovalau for Suva around 1994, to look for work, and for a number of years travelled between the 2 places.
43. The applicants (parents) married in 1995, and have 2 daughters. The applicant said that he worked from around 1994 [details of the applicant's employment history deleted: s.431(2)]. This work had been casual only. Earlier, it had involved a number of days per week, but during 2009 work hours were reduced significantly.
44. The applicant said that his 2 daughters most recently attended [school deleted: s.431(2)]. He said that the fees were around \$100 a year.
45. The applicant parents presented the families' current Fiji passports. The applicant said that he had an earlier passport that he had used for a trip to New Zealand, and for a visit to Australia for 3 months in the first half of 2009. The Tribunal asked for details about that trip. The applicant said that he had been working for 5 years, on a casual basis and without a proper break. He decided that he would like to visit his family members in Australia.
46. The applicant said that the family's last address in Fiji was [address deleted: s.431(2)] (referred to as 'Lot 2'). This was his parent-in-laws' place. This was a modest building made of corrugated iron, and the applicant and his family lived in a structure that had been added on to this. The accommodation was basic, although there was running water, an old style toilet and cooking facilities outside. The applicant wife's parents continue to live in the home, and her elder sister now occupies the adjoining accommodation.
47. The Tribunal discussed with the applicant his claims to have experienced discrimination as a person of Solomon Islands ancestry, although the evidence was piecemeal and it was difficult to establish a clear chronology.
48. The applicant said that when he first moved from Ovalau to Suva, he settled in the Solomons settlement of Newtown, in Nasinu. He and his family lived there through to 2006. The Tribunal asked why he had indicated on his protection visa application that he lived at one address ([Lot 2]) from 1994 to 2009. The applicant replied that he used his in-laws' address for correspondence and the like, but they did not move there until 2006.
49. The applicant said that, both in Ovalau and also later in the Solomons settlement in Newtown, he had leased land, as land ownership was not possible. In 1998, he was leasing land from another Solomon Islander, when the landowners came and tried to move them on, in order to build a road. The applicant said that the leaseholder was the head of the Solomons settlement in Newtown, but could not recall his name. On one occasion, the police came and assaulted him. The applicant gestured to a scar above his left eye. He said that he was unable to make a complaint to the police, as they were the culprits; he did not go to hospital. Police harassment and mistreatment continued through to 2000. The Tribunal asked why the applicant had not mentioned this in his protection visa application. The applicant wife said, without further explanation, that they had not written this down. The applicant added that they had just recorded information about their family, and planned to give more details later, at interview.

50. The applicant said that he suffered another police beating in 2004. He was standing by the side of the road, looking at his home, when the police came. He thought this was in response to a call from someone. The police asked him what he was doing there, and then beat him up. The applicant did not have any further insights into their motives.
51. The applicant said that he and his family lost their home in 2006. He said that an Anglican priest from Tonga (this appeared to be a reference to [Mr B], in the most recent submission) was married to an indigenous Fijian who was well-connected and a 'crimestopper'. They tried to claim the land, this time with the support of the police. This led to the applicant's and his family's expulsion from the land that they had used, and the house that he had built on it.
52. From 2006, the applicant and his family stayed with his in-laws. The Tribunal asked the applicant about the mention in [Mr C]'s letter of the applicant's family having 'move from house to house and family to family for decent living and a better future', as he had earlier told the Tribunal that he stayed with his in-laws from at least 2006. The applicant replied that his family would stay with his in-laws, but, in the event of friction or disputes, move on and stay temporarily with other relatives for a short time, before returning. He suggested that this was common in Fijian culture. The Tribunal expressed puzzlement at what appeared to be a change of the applicant's evidence. The applicant then said that he meant that, after his departure for Australia, his wife and children stayed in various places, depending on the climate in their various households. The Tribunal alerted the applicant that his evidence appeared to be inconsistent and changeable on these points.
53. The Tribunal noted the letter from [Mr C], which indicated that the Land Department issued orders for the applicant's family to vacate the land, thereby suggesting that it was needed for some development purpose. It asked if the applicant knew the planned land use, and whether other people had also been served with such notices. The applicant replied that he did not know the purpose. He said that he had occupied a triangular piece of land, built his home there and established a small plot for some subsistence farming (cassava and taro). The applicant did not explain whether others had to move. However, he said that his case was different, as no-one came to explain to him the background or his options, and he felt unable to pursue the matter because of what had happened to him in 1998. In these circumstances, he had no option but to move home.
54. The Tribunal noted the applicant's evidence that he had visited Australia for 3 months in early 2009 and asked why, if he fears persecution on racial grounds, he nonetheless decided to return to Fiji then. The applicant replied that he was in contact with his wife and missing his family, so he decided to return home. As for his travel costs and income during this period, the applicant explained that his family paid his air travel, and the recent harvest from the plot next to his home (at Lot 2) covered his family's immediate needs. He knew that, on his return to Fiji, he could get his job back.
55. The Tribunal put to the applicant that his readiness to return to Fiji – despite his claims of persistent racism, loss of accommodation and unwelcome attention from the police – strongly suggested that he did not fear persecution, on racial or any other grounds. He did not respond substantively to these concerns.
56. The Tribunal discussed with the applicant parents a range of country information about conditions in Fiji, in particular for people of Solomon Islands descent and other minorities. The key points from this information were:

- Country information indicated that indigenous Fijians received preferential treatment in education, land acquisition, employment and housing. The corollary of this was that minorities sometimes suffered discrimination that led to poverty, lack of education and unemployment.
- Information suggested that Solomon Islander communities were, in some instances, landless, unskilled and poor.
- The Tribunal noted, however, the applicant's evidence about his own family. For instance, his father had been a [vocation deleted: s.431(2)]; he had attended good schools in Levuka; he had had almost uninterrupted employment in clerical and similar fields (albeit sometimes on a casual basis); his daughters were attending a good private school; and he had returned to Fiji from Australia after his first visit. These indicators did not mean that the applicant faced no discrimination. However, it might lead the Tribunal to doubt that what he faces is persecution.

57. The applicant referred to his redundancy notice from [company deleted: s.431(2)]. The Tribunal noted that the Fijian economy was in great difficulty, and the letter stated that the applicant had been made redundant because of lack of [work]. Furthermore, the letter had been written in December 2009. It was not surprising that the applicant's employer would let him go if he had been absent for a period of 3 months, for the second time during 2009. The applicant said that he believed discrimination was indeed at work. He said that he had been one of the longest serving employees, but the Fijians were favouring their relatives and other ethnic Fijians over him.

58. The Tribunal asked about the [Family Violence Service] letter, dated [in] June 2010 and addressed to the applicant wife, that had been presented to the Tribunal. The applicants said that the applicant wife's brother, [name deleted: s.431(2)], had recently come to their [home], threatening to kill the applicant and, in the course of this, abusing him as a Solomon Islander. The applicant daughters had been upset following the incident, with the older one missing school for a few days. The applicant wife had called the police, who had taken statements. In response to the Tribunal's questions, the applicant said that there had been some instances when members of his wife's family had used abusive language.

59. The Tribunal advised that it wished to reflect further on the applicants' oral evidence, and to also examine the submission that had arrived at the Tribunal the previous evening.

Resumed hearing, [in] June 2011

60. The applicant parents attended a resumed hearing [in] June 2011, also conducted with the assistance of an interpreter in Fijian. The third-named applicant, the elder daughter, attended as observer.

61. The applicant husband and the applicant wife both gave evidence in each other's presence, and were reminded that they could speak to the Tribunal individually if they wished. They both confirmed to the Tribunal that they had no further updates in relation to their refugee claims. As for news from Fiji, the applicant husband said that his brother had told him that the land in Newtown was about to be subdivided. The applicant husband confirmed that the whole site had been cleared, but he added that those with enough money had been able to purchase land. The Tribunal noted that, although country information indicated that Solomon Islanders and their descendants, as well as other minorities, suffered some discrimination in Fiji, the land seizure did not appear to be based on race. It reminded the applicants that their employment, education and other circumstances did not appear to indicate discrimination amounting to persecution.

62. Regarding the incident of domestic violence in Sydney, the applicant husband said that there had been an argument about his brother-in-law's affair with a woman who had been living with them, and during this, his brother-in-law had used racist language against the applicant. The applicant husband agreed with the Tribunal's observation that this had really involved a personal and family conflict, and that the trigger was not the applicant's race as such.
63. The applicant husband said that he has been unable to find work in Australia, but the applicant wife is enrolled in a [course], and would like to stay in Australia to complete her qualifications.
64. The applicant husband was concerned that, if the family returned to Fiji, they would have no accommodation and the family's outlook, particularly his daughters' education, would take a step backwards.
65. The applicant wife added that they were also concerned that the Fiji government would learn about the fact of their protection visa application. The Tribunal assured them as to the confidentiality of their applications. It noted country information that there were no reports of the military government targeting Fijians returning from visits to Australia, including those who had sought protection. The applicant husband said that this might be based on ethnic Fijians, and the military government might single him out as a Solomon Islander, and because of the letters of support that he had presented. The applicant wife expanded on this, explaining that the people who wrote their support letters might have divulged information about the family to others. The Tribunal undertook to reflect further on this, but advised that the country information did not indicate that any Fijians – whether ethnic Fijians or minorities – had been harmed because of any known or suspected applications for protection.
66. The applicant husband said that his main concern was to give his daughters the best possible education. While conceding that they had gone to good schools in Fiji, he said that the standards were markedly better in Australia. The applicant wife gave examples of the way that their daughters had thrived in Australia. The Tribunal said that their concerns were understandable, but the scope of its decision was confined to whether or not the applicants were eligible for protection visas.

Independent Information

Fiji – General background

67. It is well-established that Fiji suffers serious political and economic problems. On 5 December 2006, in the fourth coup since 1987, Commodore Bainimarama, then commander of Fiji's military forces deposed the lawfully elected government and installed a military-led interim government of which he was appointed Prime Minister. Former members of the military now occupy key political, civil and judicial posts.
68. On 10 April 2009, the President implemented Public Emergency Regulations (PER). These limit freedom of speech, expand police powers and curb media freedom. The Permanent Secretary for Information has been given the power to control broadcasts and publications. Interim administration personnel accompanied by police have been placed in all major news outlets to act in censorship and compliance roles and outlets can have their licences revoked if they publish stories deemed 'negative'. In June 2010, the Fiji government introduced the Media Industry Development Decree 2010. The decree imposes fines and gaol terms to any

editor, publisher or media organisation that publishes content deemed to be ‘against the public interest or order’, ‘against national interest’, or likely to create ‘communal discord’

69. The PER combined with the desire of the administration to enforce the People’s Charter (before any free elections are held) has meant that those who would normally speak out safely against the government under Fiji’s democracy are now not able to do so. This affects high profile members of the Methodist Church, members of the Soqosoqo Duavata ni Lewenivanua (SDL) Party of Laisena Qarase, journalists, academics and other activists who attempt to criticise or engage in discussion about the current situation.
70. The economy has been in decline since 2007 - a year in which 34.4% of people were assessed as living below the poverty line (FIJ\$177.96 p/w). In 2009, Fiji recorded its worst financial performance in a decade with the sugar industry continuing to struggle and manufacturing output falling. Flooding early in 2009 worsened the situation; vital infrastructure was damaged and economic and agricultural activity severely affected. In 2009, tourism, Fiji’s largest source of foreign exchange, fell by 8%. Some recovery was anticipated for 2010 but the global financial crisis and Cyclone Tomas, which hit Fiji in March of this year, have not aided the situation.

Solomon Island descendants

71. There are numerous reports on the Solomon Island minority in Fiji. A report sourced from *Radio Australia Pacific Beat* indicates that there are about “12,000 descendents of people from the Solomon Islands, Vanuatu and Papua New Guinea who were taken to Fiji during the blackbirding era from 1864.” Many have subsequently married Fijian women and adopted the Fijian language and customs, but cannot own land and mostly live in poverty in squatter settlements in or near Suva. They lack access to education and as a consequence are often unemployed or work on a casual or seasonal basis, often in the cane fields.¹ The latest overview of Fiji from Minority Rights Group International states that “the small Melanesian community – descendents of Solomon Islanders and New Hebrideans – retain a distinct identity”, that “many cannot claim land rights”, and that the community “are organising to claim improved livelihoods.” No further information is provided as to the name or nature of such organisations, or how such improved livelihoods will come about.²

‘Squatter Settlements’

72. A July 2009 report prepared for the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) by Vijay Naidu, an academic at the University of the South Pacific, provides an overview of the attitude of the Fijian authorities to squatter settlements, and government programmes designed to resettle squatters on official, registered land:

...The Ministry of Local Government, Housing, Squatter Settlement and Housing is responsible to oversee the provision of affordable housing. Officials have very ambivalent views on squatters – with some empathising with them and others regarding them as illegal occupants of other people’s land. According to Storey, “It is estimated that some 80% of new housing stock has been built independently of official planning authorities. In essence Fiji’s booming urban areas are being

¹ Seke, S. 2009, ‘Stateless and poor Melanesians in Fiji face costly land purchase’, *Radio Australia Pacific Beat*, 19 March <http://www.radioaustralia.net.au/pacbeat/stories/200903/s2520452.htm> – Accessed 6 May 2010.

² ‘Fiji Islands Overview’ (undated), in *World Directory of Minorities*, Minority Rights Group International website <http://www.minorityrights.org/4371/fiji-islands/fiji-islands-overview.html> – Accessed 28 May 2010.

developed autonomously, outside the control and authorisation of government and planners” (2006, 15). This has been the outcome of government supported organisations such as the Housing Authority and the Public Rental Board’s failure to meet affordable housing.

The policy approach to squatters has three different aspects. First, policy promotes forceful removal of squatters by land owners, local authorities and police. Second, resettlement, denoting relocating to sites designated by local or central government. Third, upgrading of squatter settlement whereby the land is officially subdivided and registered with titles, roads and services such as water supply and electricity are provided and there are efforts to improve the housing conditions. These mixed approaches have been in place for the last fifteen years but have failed to cope with the rate of urbanisation and escalating demand for affordable housing.³

73. According to a September 2009 report sourced from the Fiji Village website, there are more than 20,000 people living in squatter communities in the Nasinu/Suva area. Of these, Nasinu Town Council figures state that 10,449 squatters live in 1,948 households in the Council area. Newtown is in Ward 2 of the Nasinu Council district, which has the third largest squatter population of the Nasinu Council wards; Newtown itself has the fourth largest squatter community in Nasinu. This report does not specify that these are Solomon Islander squatter communities.⁴ However, there are other references to the Solomon Island community in Nasinu. For instance, a 2005 report sourced from *Solomon Star News* refers to the Nasinu soccer team as being “dominated by Solomon Islanders”.⁵

Solomon Island minority - discrimination

74. The Tribunal has found numerous reports indicating that race-based discrimination occurs widely in Fiji This includes information that the descendants of Solomon Islanders face considerable and mostly unreported disadvantages, generally consistent with the views expressed by [Ms A] and [Ms D].
75. For instance, the Freedom House July 2009 *Freedom in the World* report for Fiji states discrimination occurs in Fiji against all non-indigenous Fijians, including those of Solomon Islander descent. The report states that: “Race-based discrimination is pervasive, and indigenous Fijians receive preferential treatment in education, housing, land acquisition, and other areas; some jobs are open only to them”.⁶
76. In January 2008, the *Fiji Times Online* reported the comments of the chief executive of the Fijian Citizens Constitutional Forum (CCF), Reverend Akuila Yabaki, who claims that “the race-based communal voting system in Fiji and lack of national identity for citizens have been identified as major problems of racial discrimination” in Fiji. Yabaki also draws

³ Naidu, V. 2009, *Draft Report Fiji Islands Country Profile on Excluded Groups*, United Nations Economic and Social Commission for Asia and the Pacific, July
http://www.unescap.org/ESID/hds/development_account/mtg/EGM_Bg_doc/Fiji%20Islands%20Country%20Profile%20on%20Excluded%20Groups2.pdf – Accessed 17 May 2010.

⁴ ‘20,000 living in squatter settlements’ 2009, Fiji Village website, 21 September
<http://www.fijivillage.com/?mod=archivedstory&id=210909c6cb971a42df36486e88f29e#> – Accessed 17 May 2010.

⁵ ‘Waita terminates Nasinu’s strength’ 2005, *Fiji World News*, (source: *Solomon Star News*), 9 May
http://www.fijiworldnews.com/news/publish/Soccer_11/Waita_terminates_Nasinu_s_strength_37_printer.shtml – Accessed 28 May 2010.

⁶ Freedom House 2009, *Freedom in the World 2009 – Fiji*, 16 July
<http://www.freedomhouse.org/template.cfm?page=22&year=2009&country=7607> – Accessed 31 August 2009.

attention to the discriminatory effects of “race-based affirmative action in education and other areas, unresolved land issues and growth of squatter settlements.”⁷

77. A July 2009 report prepared for the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) by Vijay Naidu, an academic at the University of the South Pacific, assesses the position of excluded groups in Fiji. According to Naidu, Solomon Islander communities are “at the margins of society – landless, unskilled and poor”:
78. Following the coups of 1987 and 2000, indigenous Fijian ethno-nationalism was accompanied by a number of race-based affirmative action programmes that promoted ethnic Fijians over citizens of other ethnicities.

...Freehold land which comprise less than 8 percent of Fiji’s land area has become extremely expensive and beyond the affordability of a majority of Fiji’s citizens.

...Other minorities such as Solomon Islanders and Ni Vanuatu (‘Melanesians’), Banabans, and mixed race people also are mostly poor and excluded. Being small in numbers they do not have any political influence and therefore remain invisible. They are generally landless and together with other minorities including descendants of Wallisians, they face insecurity of tenure.

...These groups suffer from large scale unemployment, lack of secure access to land and other natural resources and do not have any meaningful voice at the local and national levels.

...At the heart of the issue of disadvantage and exclusion is the enormous inequality in the ownership and control of assets and resources in the country as well as the inequality in access to opportunities.

...The situation of the smaller minorities such as Solomon Islanders and Ni-Vanuatu and mixed race persons can be overlooked by national level data gathering.⁸

FINDINGS AND REASONS

79. The Tribunal, having sighted the applicants’ Fijian passports and considered their other evidence, accepts that they have Fijian nationality. It therefore assesses the applicant husband’s (the applicant’s) claims against Fiji.
80. The applicant husband claims that he is a Solomon Islander (that is, he identifies and is perceived as such), because his great-great-grandfather originated from there. In his protection visa application, he claimed to suffer discrimination, because Solomon Islanders are not permitted to own land, and because of the poor economic and social conditions, and poor employment opportunities in the squatter settlements. More recently, he has claimed that Fijians have in the past forcibly removed him from leased land, and assaulted him, and that the police were complicit in such actions. He cites a domestic violence incident in Sydney as indicative of the attitudes he faces. The applicant fears that, if he returns to Fiji, he will be unable to find employment and accommodation, and meet his family’s other basic needs.

⁷ ‘A paper on racism’ 2008, *Fiji Times Online*, 25 January <http://www.fijitimes.com/story.aspx?id=79513> – Accessed 28 May 2010.

⁸ Naidu, V. 2009, *Draft Report Fiji Islands Country Profile on Excluded Groups*, United Nations Economic and Social Commission for Asia and the Pacific, July [http://www.unescap.org/ESID/hds/development_account/mtg/EGM_Bg_doc/Fiji%20Islands%20Country%20Pr ofile%20on%20Excluded%20Groups2.pdf](http://www.unescap.org/ESID/hds/development_account/mtg/EGM_Bg_doc/Fiji%20Islands%20Country%20Profile%20on%20Excluded%20Groups2.pdf) – Accessed 17 May 2010.

81. **Fears as a Solomon Islander:** The Tribunal accepts that the applicant is, as he claims, a person of mixed ethnic background who is regarded as a Solomon Islander because his great-great-grandfather originated from there.
82. The Tribunal accepts country information, and the supporting statements of [Ms A] and [Ms D], indicating that Solomon Islanders ('blackbirder descendants') face discrimination in Fiji. One aspect of this is the preferential treatment that ethnic Fijians receive in various areas, such as education, housing and land ownership, meaning that non-ethnic Fijians suffer relative disadvantage. These access issues, together with other forms of social marginalisation, mean that Solomon Islanders have high levels of poverty, unemployment and substandard housing.
- While the Tribunal accepts that many Solomon Islanders face some hardship as a result of these conditions, it is not satisfied that such harm involves - without more - serious harm amounting to persecution: s.91R(1)(b) of the Act.
 - In the present case, the Tribunal does not accept that the applicant and his family experienced serious discrimination, at least in the areas of education and employment. The applicant worked as a [vocation deleted: s.431(2)], performing mainly clerical tasks. There is no evidence on the face of it of any discrimination in his education or employment.
 - The Tribunal accepts that his hours were reduced during 2009, to the point where it was difficult for the applicant to make ends meet, and that he was ultimately made redundant at the end of 2009. The applicant's own evidence, as well as the letter from [company deleted: s.431(2)], indicates that the reason for the reduced hours and his dismissal was Fiji's economic woes. As discussed at the hearing, a likely further reason was his prolonged absence in Australia, for 3 months in early 2009 and again from October 2009. In any event, the Tribunal finds that the applicant's reduced hours and then his dismissal were unrelated to his ethnicity.
 - The applicant's other family circumstances – such as his father's previous work as a [vocation deleted: s.431(2)], and his daughters' education at a good private school – also suggest that neither the applicant nor his close relatives (those of Solomon Islander background) suffered serious discrimination on race or other grounds. The Tribunal appreciates that some of these circumstances (such as his daughters' education) might be the result of the applicant parents' efforts to overcome hardship, but it remains unable to be satisfied that the applicant (or his family) suffered discrimination amounting to persecution.
83. The applicant claims that his Solomon Islander heritage and consequent inability to own land have caused particular problems in the past, and will do likewise in the future. The Tribunal found it difficult to establish a clear chronology of where the applicants have lived, and the problems that they experienced, as the applicant gave little detail in the protection visa application, and presented disparate claims during the course of the review. The Tribunal's understanding of his claims – that is, allegations linked directly to his property, associated targeting of him (as a Solomon Islander occupant of the land), and other incidents whose exact causes are unclear – is as follows:
- After marrying (in 1995), the applicant moved from his home area in Levuka (on Ovalau) to Newtown, on the outskirts of Suva.

- Although the family moved there because of the proximity of the applicant wife's family, ethnic Fijians, it appears that they lived in a settlement where there were many Solomon Islanders.
- The applicant built a small home on land leased from Fijian landowners. The applicant claimed to the Tribunal, but not in his protection visa application, to have experienced various problems over a period of time from local ethnic Fijians, including: (a) racist verbal abuse, (b) physical assaults and (c) deliberate property damage, whereby nearby ethnic Fijians destroyed his crops, power lines and water pipes.
- At the hearing, the applicant made a new claim that in 1998, the landowners tried to evict him to build a road, and the police supported them by coming to beat him up. Landowner and police harassment continued through to 2000. The applicant claims that one of the police beatings around this time led to an injury above his left eye. However, it appears that efforts to evict the family – whether formally or through persistent harassment – did not succeed.
- The applicant also claimed, for the first time at the Tribunal hearing, that the police assaulted him on another occasion in 2004, for unknown reasons.
- The applicant and his family were finally evicted from the land in 2006.
 - The applicant claimed that it was an Anglican priest, [Mr B], and his influential Fijian wife, who forced the family off the land. He has claimed that they used force, both directly and by having the police pursue the applicant. Documents that he submitted to the Tribunal show that the Director of Lands allocated the parcel of land to a religious organisation linked with [Mr B].
 - The Tribunal is concerned that the applicant claimed not to know the purpose for the eviction, or whether other local residents had also had to move. He explained that the incidents of 1998, when the police allegedly assaulted him, left him scared, and hesitant to make enquiries. However, in the Tribunal's view, this does not adequately explain his lack of knowledge about such a critical event for him and his family.
 - [Mr C] refers to the trouble with [Mr B] beginning in 1996. It is not clear whether this refers to the applicant's more recent claim that he had been under pressure from about 1998 to 2000 from the landowners, with police backing, or whether [Mr C] had meant to record the date as 2006.
- From this time, the applicants lived in a modest building attached to the wife's parents' home.
 - Again, the statement from [Mr C] (paragraph 34) referred to the applicants being basically homeless or itinerant from this time. Asked about this at the hearing, the applicant said that they stayed with his in-laws and sometimes with other people, moving on if there were disputes or such.

84. The Tribunal has taken into account that the applicant parents may not have strong presentational skills, and that they may not have put forward their claims comprehensively and in a logical (chronological) order from the outset. However, it is concerned that the claims have tended to evolve, and to be imprecise. Adding to the Tribunal's concerns is that

the applicants appear to have attached meanings to their claims that are not necessarily reliable. An example of this was the family dispute in Australia, which the applicant initially implied was linked with his Solomon Islander heritage and perhaps therefore illustrative of the kind of treatment that he would face in Fiji, when in fact it involved a racial slur during an altercation over a completely different matter.

85. On the evidence before it, the Tribunal finds that the applicant lived in a Newtown settlement where many Solomon Islander descendants live, on leased land.

- As the Tribunal has found above, there is no persuasive evidence of the applicants having experienced discrimination in the fields of education or employment, but the Tribunal nonetheless accepts that the applicant husband may have experienced some discrimination on a personal and social level. The Tribunal does not accept that this was serious, and it does not accept the applicant's recent claims that neighbours or others took actions such as cutting off basic services like power or water to the applicant's home.
- The Tribunal accepts that residents in so-called squatter settlements, such as Newtown, face uncertainty with lack of land tenure. It accepts, too, that non-Fijian minorities, including Solomon Islanders, are generally at a disadvantage because of discriminatory land ownership rules in Fiji. Against this background, the Tribunal accepts that the applicant leased land from a Fijian landowner; that he came under pressure at various times to vacate the house that he had built as well as the adjoining plot of farmland; and that he was ultimately evicted in 2006, when the Department of Lands allocated it to a religious group for development. The Tribunal found the applicant's evidence about the eviction itself to be selective and not entirely reliable, but it accepts that he and others are upset by the perceived unfairness and corruptness of what occurred.
- The Tribunal does not accept that the eviction involved Convention-related persecution.
 - First, it found the applicant's evidence about the background and implementation of the eviction to be limited and somewhat selective.
 - Second, the Tribunal finds on the available material that it was part of a wider program of urban redevelopment. The applicant (and his neighbours) were disadvantaged because they occupied land earmarked for such redevelopment, but they were not targeted for any Convention reason, such as race.
 - Third, while the Tribunal accepts that the applicant and his family moved into modest accommodation attached to his in-laws' home, some of the applicant's evidence (including the statement of [Mr C]) was in the Tribunal's opinion exaggerated and misleading. For instance, the Tribunal does not accept that the applicants were in effect 'homeless' or itinerant, as [Mr C] suggested. It also does not accept the applicant's explanation of [Mr C]'s comments, to the effect that the family had only temporary and unstable living arrangements, because they were reliant on the goodwill of others. While the Tribunal accepts that the applicants viewed their accommodation as less than ideal, their continued employment and education during the period adds to the Tribunal's doubts about the truth of [Mr C]'s statement. Furthermore, at the hearing, the applicant said that during his visit to Australia in early 2009, his family relied on income from crops grown on a plot next to his home. While the Tribunal doubts that the applicant and his family relied on income from locally grown crops during this period (the purpose of the applicant's 3-month visit to

Australia was probably to earn money), his reference to having a home and land on which to grow crops adds to the Tribunal's view that the family was not in fact homeless.

- Finally, the Tribunal considers the applicant's return trip to Australia in early 2009 significant. It has had regard to his evidence that he was missing his family and that he was confident, at that time, of being able to resume work. Nonetheless, his return to Fiji amounts to very strong evidence that he has not experienced significant harm on account of his Solomon Islander heritage in the past; that his problems over land ownership were not serious; and that he has also not been subject to mistreatment by the police or members of the community.
86. Taking into account these factors, the Tribunal accepts that the applicant and his family were evicted from their home in Newtown in 2006, and moved into accommodation attached to his in-laws. The Tribunal finds that the Fijian authorities were implementing urban redevelopment plans in a designated area, and were not targeting the applicant and his family for reason of their race or any other Convention ground. Furthermore, the applicants' continued employment, education and other circumstances, as well as the applicant husband's return trip to Australia in 2009, lead the Tribunal to conclude that the situation in 2006 did not result in serious harm amounting to persecution. The Tribunal appreciates that the applicants are upset about Fiji's land ownership rules and the perception that certain people (in this case, [Mr B] and his church) gain at their expense, it does not accept that the eviction amounted to Convention-related persecution.
87. The applicant made a number of supplementary claims, about the landowners' earlier violence, police assaults (sometimes directly linked with the landowners' campaign, and in 2004, for an unknown reason), and similar problems. The Tribunal found it difficult to gain a clear picture of these alleged past incidents - their contexts, seriousness and consequences. It is troubled by the passing reference to these, without details or corroboration, and is therefore not prepared to accept at face value the applicant's account of these incidents and the meaning he attaches to them. Having regard to the evidence as a whole, including applicant's personal and family experiences, and his return to Fiji in early 2009, the Tribunal does not accept that there were any incidents that involved – or that cumulatively amounted to – Convention-related persecution.
88. Prospective fears: The applicant claims that he faces a real chance of Convention-related persecution now or in the reasonably foreseeable future, as a Solomon Islander who is unemployed and does not own property. The Tribunal understands this to mean that, irrespective of its assessment of his past circumstances (including his return to Fiji in early 2009, because [company deleted: s.431(2)] had kept his position for him), his prospects of finding work are poor because of the general economic situation and, critically, even more bleak because of racial discrimination against Solomon Islanders.
89. The Tribunal accepts that the applicant may have some difficulty finding work, or at least full-time or well-paid work that compares with Australian conditions. However, having regard to his and his family's past education and employment records, it does not accept that his Solomon Islander heritage will have any significant impact on his job prospects, or his ability to manage other areas of life (such as accommodation). The Tribunal has carefully studied country information indicating that Solomon Islanders often face poverty and marginalization, in effect excluding them from education, employment and other aspects of life. However, having found that this has not materially affected the applicant or his family in

the past, the Tribunal does not accept that he faces a real chance of persecution (such as the denial of capacity to earn a livelihood of any kind, where this threatens his capacity to subsist: s.91R(2)(f)) on the grounds of his actual or perceived race, in the future.

90. **Fear of return as a failed asylum seeker:** The applicant told the Tribunal that he was concerned that the current government may persecute him and his family if it comes to know of his refugee claims. He and the applicant wife identified some possible risk factors, such as his Solomon Islander background (implicitly, that the Fijian authorities will assume that they claimed persecution on race or similar grounds) and the possibility that their supporters in Fiji or others will have divulged that they have lodged protection visas. The Tribunal does not accept that there is a real chance of the applicants being at risk for reason of their having sought protection in Australia. The Australian authorities protect the identity of applicants for refugee status. The Tribunal does not accept on the available material that the Fijian authorities will assume the applicants to have applied for protection (because of the duration of their stay in Australia, the applicant husband's Solomon Islander heritage, or any other reason), given the significant numbers of Fijian who visit and stay in Australia for a variety of reasons. Nor does the Tribunal accept that the applicants' acquaintances, supporters or others will have had any occasion to inform the Fijian authorities about their visa status in Australia.
91. **Other family concerns:** The Tribunal accepts that, whilst in Australia, the applicant was involved in a domestic dispute with his brother-in-law, resulting in all the applicants, particularly the daughters, becoming upset. Based on the applicant's evidence, the Tribunal finds that the trigger for this was a heated argument about the brother-in-law's conduct. The Tribunal accepts that the brother-in-law used racist language against the applicant, referring to his Solomon Islander heritage. Whilst such slurs are unacceptable, the Tribunal does not accept that they involve persecution or that they indicate that the applicant is at risk of persecution if he returns to Fiji.
92. The Tribunal acknowledges the applicant parents' motivation to get the best possible outlook for their family, including in the children's schooling and the applicant wife's further education in Australia. However, the Tribunal's task is to determine whether Australia has protection obligations towards the applicant on the basis of a well-founded fear of Convention-related persecution.
93. Having considered the applicant's claims as a whole, the Tribunal finds that he faces no real chance of persecution for reason of his Solomon Islander heritage, his having applied for protection in Australia, or for any other Convention-related reasons. The Tribunal accepts that the family was evicted from their home in Newtown, on the outskirts of Suva, but for the reasons stated above, it finds that this did not involve Convention-related persecution and that the applicants left Fiji for unrelated, mainly economic, reasons. The Tribunal does not accept that the applicant's ethnicity or other attributes, his past experiences, or his employment and property situation give rise to a real chance of Convention-related persecution in the reasonably foreseeable future.
94. The Tribunal is therefore not satisfied that the applicant has a well-founded fear of Convention-related persecution, now or in the reasonably foreseeable future, if he returns to Fiji.
95. The second-, third- and fourth-named applicants applied on the basis of their membership of the first-named applicant's family, as persons who did not have refugee claims of their own.

They did not expressly advance any claims of their own during the course of this review. To the extent that some of the first-named applicant's claims relate indirectly to them – for instance, his daughters share his Solomon Islander heritage, and concerns about their having sought protection arguably apply to all members of the family – the Tribunal does not accept that these factors, individually or cumulatively, establish a well-founded fear of Convention-related persecution.

CONCLUSIONS

96. 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

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