

**1003210 [2011] RRTA 759 (15 September 2011)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1003210
<b>DIAC REFERENCE(S):</b>	CLF2010/5666
<b>COUNTRY OF REFERENCE:</b>	East Timor
<b>TRIBUNAL MEMBER:</b>	James Silva
<b>DATE:</b>	15 September 2011
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	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 East Timor. They are the first-named applicant, his son (the second-named applicant) and his nephew (the third-named applicant). The applicants arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] September 2006 and applied to the Department of Immigration and Citizenship for the visas [in] January 2010. The delegate decided to refuse to grant the visas [in] April 2010 and notified the applicants of the decisions.
3. The applicants applied to the Tribunal [in] May 2010 for review of the delegate's decisions.
4. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
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 visa applications**

20. The application includes the primary applicant, who seeks a protection visa as a person who has refugee claims of his own, and 2 secondary applicants, a son born in [year deleted: s.431(2)] and a nephew (also referred to as the applicant's adopted son) born in [year deleted: s.431(2)], both of whom seek protection visas as members of the primary applicant's family.

#### *Primary applicant*

21. The primary applicant ('the applicant') is a [age deleted: s.431(2)] man born in [town deleted: s.431(2)], Ermera, East Timor. He gives his languages as Tetum and Indonesian, and states that he is a Catholic Timorese.
22. The applicant attended primary school and later secondary school in Ermera, from 1978 to 1986. He worked as a truck driver in East Timor, for the [Organisation 1] (1999-2001), [organisation deleted: s.431(2)] (2001-2002) and the [Organisation 2] (2002-2004, in [department deleted: s.431(2)]). From 2004 to 2006, he was unemployed in East Timor.
23. The applicant married in January 2001, in Dili. His wife remains in East Timor, together with 5 remaining children. He states that he remains in contact with family members by telephone.
24. In addition to the secondary applicants, his son and nephew, the applicant indicates that his 3 brothers are living in Australia. His deceased sister was the mother of his adopted son.
25. The applicant holds an East Timorese passport issued [in] February 2009, in Sydney. He entered Australia [in] September 2006, on a passport issued in Dili [in] December 2002.
26. Department records show that the applicant was first granted a subclass 676 (Tourist) visa [in] December 2002, and visited Australia from [a date in] December 2002 to [a date in]

January 2003. He obtained a second visitor visa [in] September 2006, and arrived in Australia [in] September 2006. Since his most recent arrival, he held a further visitor visa from [a date in] November 2006 until [a date in] September 2007, and from that time on various bridging visas. He sought protection [in] January 2010.

27. The applicant's refugee claims are, in summary:

- He left East Timor in 2006 because he feared harm from remnants of the East Timorese Army, who were in fighting with each other at that time.
  - The applicant gives background information about the conflict. He mentions that the East Timorese military shot military police affiliated with Reinado, houses were burnt and hundreds of people were killed. The police killed his friend [Mr A].
  - The warring factions burnt down the house of the applicant's sister (who is the mother of the secondary applicant, the adopted son).
- The applicant also states that he worked as a truck driver for the [Organisation 2] transporting [people] from West Timor to East Timor.
- The applicant states that he also came to Australia to look after his elderly mother, who was sick.
- These factions continue to fight, and the situation remains volatile. He refers, among other things, to the shooting of President Ramos Horta several years ago, and claims that the military police continue to support Reinado.
- The applicant states that he fears harm from warring police and army factions. The authorities are disunited and cannot maintain law and order, and cannot protect him from harm. He cites the attempted killing of President Ramos Horta as an example of their limited powers.
- He claims to fear that former militia members from West Timor may kill him. He points to militia members who remain opposed to people who worked for independence, including those working for international organizations. He believes that some of the refugees whom he transported are members of the pro-Indonesian militia who clashed with the Australian Army in 1999.
- He also refers, more generally, to fears that 'outlawed members of various gangs' may target him if he returns to East Timor.
- The applicant mentions interracial conflict in East Timor, without specifics.
- The applicant claims that he also has no family or means of making a living if he returns to East Timor, and will be destitute. The government lacks resources, and will be unable to support him.

#### *Secondary applicants*

28. The applicant's son was born in Dili, East Timor, in [month and year deleted: s.431(2)]. He states that uses only Tetum, and is literate in Indonesian. He holds an East Timorese passport issued [in] August 2006.
29. The applicant's nephew, [age deleted: s.431(2)], was born in Posto Dili, East Timor, in [month and year deleted: s.431(2)]. He variously indicates that his natural parents are deceased and missing. He has 2 siblings in Australia, and 3 in East Timor, all listed as missing.

30. He entered Australia on an East Timorese passport issued [in] November 2003, which has since expired. He obtained a fresh passport in Sydney.

*Delegate's consideration*

31. At interview [in] March 2010, the primary applicant gave the following information:
- The applicant said that he worked as a driver for [Organisation 1] from 1999 to 2001, distributing food. From 2002 till 2005, he worked for [Organisation 2] transporting [people] in Indonesia who were returning to their home districts in East Timor. He provided cards supporting these claims.
  - The applicant claimed that in 2006, East Timorese military from the East and West of the country were fighting. The applicant supported neither side, but got caught up in the fighting. Like others, he and his family fled into the mountains sometime around March 2006. They stayed there for about a month.
  - The military did not target or injure the applicant, but he was scared of being caught up in revenge attacks. He believes that the military and police fight among themselves, with no regard for the civilian population.
    - The applicant said that Reinado and his officers (from the Western group) deserted the Army, and formed armed gangs. He was linked with them. After the arrival of the Australian troops, he returned to Dili, but was afraid of being targeted by the Eastern group.
  - The applicant said that he initially arrived in Australia on a tourist visa, and then sought a carers visa to take care of his sick mother. He said that he has 2 Australian brothers, but there were unable to care for their mother, as they work.
  - The applicant did not directly explain the reason for the delay in his seeking protection.
  - As for his current concerns, he claimed that he transported Alfredo and his soldiers into the mountains when they fled in 2006. Even despite the passage of time, he considers that East Timorese people are vengeful. He believes that people from both the West and the East will have their reasons for killing him, as he used to go everywhere as a driver.
  - The applicant said that his wife and children are working and at school, and feel safe because of the police. Asked whether the police and UN peacekeepers would provide him protection if he returned, he said (obliquely) that anything can happen. He feels unsafe everywhere in East Timor.
  - The applicant said that he also feels that he will be unable to make a living in East Timor, because his [work] contract has finished and he has been in Australia already for a number of years.
  - The applicant said that he is in regular contact with his wife and children. He is worried about the situation in East Timor because it is unstable and there are many rumours. Among other things, there are martial arts groups, civilian gangs dressed like *ninjas* who fight amongst themselves. The applicant himself was once a member of such a group. Originally fostered by the Indonesian occupiers, they have now turned on each other. These people are the applicant's former friends, and very dangerous. He is worried that

they might target him. Later, the applicant also commented that politicians are using these gangs. He applicant gave some examples of gang violence in several districts but, in response to the delegate's observation that these did not involve his own area, said that they operate all through the country.

#### *The delegate's decision*

32. The delegate took into account that the applicant had not suffered past harm either during the conflict around May 2006 or as a result of his work as a driver for the [Organisation 1] or [Organisation 1], as well as evidence of the East Timorese authorities' efforts to restore security. She found that the applicant did not have a well-founded fear of Convention-related persecution. She also found that the significant delay in lodging the protection visa application further showed that he did not genuinely fear persecution.

#### *Other documents on the Department file*

33. The Department file includes documents relating to the (primary) applicant's application for a bridging visa with permission to work, and the applicants' medical assessments, security clearances and similar. These are not directly related to his refugee claims.

#### **Review application**

34. A brief pre-hearing statutory declaration from the primary applicant, dated [in] June 2010, contained the following text (in full). It includes new claims based on the applicant's relationship with his brothers.

1. I left East Timor because I feared that I would be harmed by remnants of the militia in East Timor as a result of my relationship to my brothers who have since fled to Australia and been granted Protection visas.
2. I fear that I will be harmed by remnants of the militia who currently reside in East Timor.
3. I have no family or economic livelihood in East Timor. I will be destitute and impoverished.
4. Remnants of the militia will harm me for my association with my brothers.
5. I have no family or economic livelihood in East Timor. I will not be able to care for my children and wife.
6. I will become destitute and impoverished.
7. The authorities cannot and will not protect me as they cannot even protect themselves. There is much inter-racial conflict between various groups in East Timor. The violence escalated again several years ago and the Australian Army was required to restore peace to East Timor.

#### *Tribunal hearing*

35. The applicants attended a Tribunal hearing [in] June 2010, conducted with the assistance of an interpreter in Tetum and English. The primary applicant gave evidence as the person with refugee claims of his own. The Tribunal also took evidence from the third-named applicant,

who is currently [age deleted: s.431(2)] and was around [age deleted: s.431(2)] at the time of the upheaval in Dili in 2006.

36. The applicant said that his representative was not attending the hearing. The Tribunal noted that the applicant's written claims on his protection visa application, his statements at the Department interview and his recent statutory declaration had been a little difficult to follow. The applicant said that he had spoken with his representative in English, without an interpreter. In response to the Tribunal's questions about the recent statutory declaration, the applicant said that he had been misunderstood, and he does not fear persecution through any association with his brothers. The Tribunal offered the applicant an adjournment to contact his representative and discuss these matters, using the interpreter if he wished. The applicant declined to do so, for financial reasons.
37. Following the Tribunal's introduction, the applicant said that he came to Australia in 2006 not to seek refugee status, but to take care of his sick mother. His brothers in Australia suggested that he apply for a carer visa, and that he would be eligible for permanent residency in about 2 years.
38. The applicant said that his main preoccupation about returning to East Timor is that he will be unable to find work and provide for his family. In response to the Tribunal's questions about his oral and written refugee claims, the applicant said that he became involved in the March/April 2006 violence, and he fears that militias and gangs associated with the *Lorosae* (in the east of the country) could exact revenge on him.
39. The applicants presented their East Timorese passports to the Tribunal.
40. The applicant said that his wife and 5 of his children live in Dili. His wife does not work. The children attend Catholic schools in Dili, [schools deleted: s.431(2)]. His brothers in Australia send them money, perhaps \$100 or \$200 a month.
41. The primary applicant said that the two secondary applicants are his dependents. The third-named applicant is his nephew, and has lived with the family for many years as their de facto adopted son. The nephew has 5 siblings, 2 in Melbourne and another 3 remaining in East Timor.
42. The applicant said that he has 3 brothers in Australia, [name deleted: s.431(2)], who arrived around 1980, and [names deleted: s.431(2)] who arrived around 1994. The applicant said that he lives with the latter 2, and looks after the household and the 2 dependent applicants.
43. The applicant said that he was born in [town deleted: s.431(2)], Ermera, but moved to Dili around 1975. He has no more relatives in Ermera. The applicant said that he worked as a driver for the [Organisation 2] up till June 2004, when he was made redundant as their [work] wound down. He presented a laminated employee's pass as evidence of his past employment.
44. The Tribunal asked the applicant for an account of his 'involvement' was in the March/April 2006 conflict. The applicant gave brief, piecemeal responses, which the Tribunal has consolidated and summarized below. The applicant said that there was always an expectation that people from the West (the *Loromanu*) show support for their own people, but it was not until March/April 2006 that this came to a head, when Alfredo Reinado led rebels from the military in opposing the then government. Around the first week of March 2006 ([date deleted: s.431(2)] March), the applicant and his family left Dili in a truck that he borrowed



from a neighbor, and drove into the mountains. There, they stayed with an uncle of the applicant's wife for about a month. Shortly after they arrived there, Alfredo Reinado and his men appeared. The applicant knew Reinado from when they were younger, when they hung around at the beach together with others. Reinado was aware that the applicant had worked as a truck driver for [Organisation 1]. The rebels had access to 3 trucks at the time, Unimogs that had previously been used by the Portuguese military and later the UN. Reinado persuaded the applicant to use one of these vehicles to make trips between [Village 1] and Dili, essentially to provide food and basic supplies for the rebels.

45. The applicant said that after a month, his family returned to the family home in Dili, where they now continue to live. However, it was unsafe for him there, so he remained in hiding up to the time of his departure from East Timor in September 2006.
46. The Tribunal also took evidence from the third-named applicant (the applicant's nephew), who confirmed that he lived with the family throughout this period. He said that, when the fighting broke out, the family went to the airport. After further queries from the Tribunal, he said that the family then went in the applicant's car to [Village 1], where they stayed for a few weeks. They all returned to Dili after that. The Tribunal asked the third-named applicant what activities the (primary) applicant was engaged in around that time. He replied that he transported people – all sorts of people - between the capital and [Village 1].
47. The Tribunal put to the (primary) applicant that there appeared to be differences between the third-named applicant's evidence and his own. The applicant replied that he drove a neighbour's truck to [Village 1], after borrowing it. The family first went to the airport, but only overnight, and then continued on to [Village 1]. The applicant said, in response to the third-named applicant's evidence, that he did not disclose to him that he was providing logistic support for the rebels (but he implied that other people knew of it). The applicant said that he did return to Dili with his family, but he returned to [Village 1] at night, fearing that the military may find and punish him.
48. The Tribunal asked the applicant why he thought that these events, now more than 4 years ago, might cause him problems if he returned to East Timor in the reasonably foreseeable future. The applicant replied that members of the military could well still associate him with his past role, and seek to exact revenge on him. The Tribunal, noting that the applicant's family continued to live in Dili, asked if they had experienced any problems. The applicant replied that members of the military had come to the family home, threatening and abusing his wife because he had joined Reinado.
49. The Tribunal noted that the applicant had brought 2 dependents to Australia, and left his wife and 5 others back. The applicant, in explaining this, said that they decided to bring the 2 oldest boys, as they were most at risk of being drawn into the conflict and violence.
50. The Tribunal noted the applicant's comment in his recent statutory declaration that he feared persecution because of his association with his brothers. As noted above, the applicant said that he did not fear persecution on this basis. He said that they had all obtained permanent residency in Australia. The Tribunal asked about the applicant's mention in his statutory declarations to his 2 younger brothers having been granted protection visas. Department records showed that they had sought protection visas, unsuccessfully, but had been given humanitarian visas instead. The applicant said that he had been referring to permanent residency. He said that one had returned to East Timor around 2005 or 2006, briefly, without

problems. Both had made regional trips, to Singapore and Thailand, without venturing on to East Timor.

51. At the end of the first session, the applicant told the Tribunal that his brothers had encouraged him to stay in Australia for 2 years on a carer visa, and then seek permanent residency. However, this had not eventuated, and this had prompted them to seek legal advice. The Tribunal noted that a genuine refugee would normally be expected to seek protection as quickly as possible, particularly given that this would provide safety and certainty, and also allow for family reunification. The applicant's conduct appeared to differ from this, and could indicate that he had sought protection not because of any genuine and well-founded fear of persecution, but rather as a means of securing residency in Australia. The applicant acknowledged, but did not reply substantively to, this concern.
52. The Tribunal said that, having now heard firsthand the applicant's claims, it wished to undertake some further research that could shed light on the veracity of his claims and whether they established a real chance of prospective harm.

*Post-hearing correspondence – Comments at interview*

53. The Tribunal wrote to the applicants [in] September 2011, inviting their comments/responses to potentially adverse information, at interview [in] September 2011. The information, its relevance and the applicant's comments/response at interview (only the primary applicant offered comments) are below. At the interview, the applicant said that he had received the letter, but had been too busy at work to go through it with his migration agent. The Tribunal discussed each point with the applicants at the hearing.
  - The primary applicant and the third-named applicant had given different information about the vehicle from [Village 1] to Dili, whether the family first stayed at the airport, and whether the (primary) applicant drove goods or people between the two places. This could cast doubt on the veracity of his role. At interview, the applicant said that the family first went to Dili Airport, on hearing that Australia was offering flights for refugees. They overnighted then, and then returned home before heading off to [Village 1]. He drove his own car to [Village 1]. Once there, Reinado asked him to drive a Unimog vehicle into Dili to collect rice.
  - The applicant had referred to incidents in March 2006, whereas country information about Reinado indicated that he did not abandon his post as chief of military police until 3 May 2006. At interview, the applicant explained that he had confused the months, but indicated that he was well aware of the sequence of events.
  - The applicant had told the Department that his wife and children are safe in Dili because the police protect them, whereas he had told the Tribunal that the military had come to his home looking for him and threatening his wife. At interview, the applicant said that his wife had once telephoned him from East Timor, telling him that the military had come around asking his whereabouts.
  - The significant gap between the applicants' arrival in Australia (September 2006) and their application for protection (January 2010), coupled with the fact that the primary applicant's brothers had applied for protection many years ago, could cast doubt on whether he genuinely needs protection. The applicant said in response that he thought that his brother had lodged a visa application on his behalf (he later clarified that he meant the carers visa application). Time passed, and nothing happened. The applicant asked his

brother about it, and eventually took the initiative to seek the assistance of a migration agent.

*Resumed hearing, [in] September 2011*

54. The applicants attended a resumed hearing [in] September 2011, held immediately after the interview. The second-named applicant said that he had a school examination on the same day, and therefore left at the early stages of the interview (hence, before the hearing itself began). The applicants' representative did not attend.
55. The applicant provided some further evidence, clarifying some points that had emerged from the first hearing session and from the Tribunal's post-hearing correspondence. He said that his main concern now is that East Timor military personnel, including those who were imprisoned and have now been released, would recognise him as a person who had helped Reinado, by transporting rice from Dili to [Village 1] during May 2006. He stressed that there is a great deal of hatred and vengeance among the people of East Timor.
56. Expanding on his evidence at the interview, he said that he drove the Unimog vehicle to Dili to collect rice that had become available after the UN warehouse was broken into. He delivered it to Reinado, who distributed to his men and local civilians. He did this on occasion only, and did not have any problems during the trip. The delivery involved only rice, but some people scrambled on top of the rice sacks for a free ride.
57. The Tribunal discussed with the applicant recent country information, drawing on the information in paragraphs 60 to 70 below. It noted that it had consulted a range of sources, but found no information to indicate that former [Organisation 1] or [Organisation 2] workers, or civilians who provided practical support for Reinado in mid-2006, are subject to persecution.
  - The applicant said that he met men in the East Timor military, both before and after the 'occupation', who told him that they could exact revenge if they wanted to. He no longer has contacts with these people. He added that one of them told him, several years ago, that his name was on a list, and he should not return to East Timor. Asked for details of the list, the applicant said that he was told to be careful because he had driven a military vehicle for Reinado. He did not clarify what kind of list he was allegedly on.
  - In response to the Tribunal's advice that it had found no reports that the security forces have targeted civilians who supported Reinado in mid-2006, for that reason, the applicant said that this happens, without being reported. The Tribunal observed that foreign governments, human rights groups and others were likely to have reported on this if it was occurring.
  - Country information indicated that East Timor continued to face security problems, including from a lack of discipline and accountability in the security forces, and ongoing gang violence. However, the security situation was reported to have improved markedly in recent years. The information as a whole did not suggest that the applicant was at risk of persecution for a Convention reason. The applicants did not respond substantively to this information.
58. The applicant said that he has recently found work in Australia, and the third-named applicant said that he no longer studies, but is working in the same factory as the applicant.

The applicant contacts his wife every month or 2, and sends money back for his family. His children are attending local schools.

59. The applicants confirmed that they had presented their claims and evidence. The primary applicant indicated that, if this application did not succeed, he may seek Ministerial intervention. The Tribunal recommended that, if its decision was not favourable, he should discuss his and the other applicants' options with his migration agent and relatives.

### **Information from other sources**

60. The Tribunal found background information on the conflict in 2006, when Major Reinado abandoned his post as the chief of military police and led rebel forces into the area around Dili, with significant social and political instability. The applicant agreed with information that a large proportion of the population in the areas around Dili supported Reinado. The Tribunal has been unable to find references suggesting that the security forces or others target those who were displaced from Dili, or those who assisted Reinado during this period.

#### *Events during early 2006*

61. During March and April 2006, Major Alfredo Alves Reinado was still in Dili, in his position as the head of the military police in the Timor-Leste army, or FALINTIL – Força de Defesa de Timor-Leste (F-FDTL).
62. According to an October 2006 report from the United Nations Independent Special Commission of Inquiry for Timor-Leste, on 3 May 2006, Reinado deserted his post as chief of the F-FDTL military police and moved into the hills south of Dili with other military police officers, Polícia Nacional de Timor-Leste (PNTL) officers and weapons. He travelled to Ermera District, where he met with the petitioners (a group of defectors from the F-FDTL), and on 8 May travelled to Aileu where he established a base. On 23 May 2006, Reinado, some of his followers, members of the Police Reserve Unit (Unidade de Reserva da Polícia – URP), and civilians had an armed confrontation with soldiers from the F-FDTL at Fatu Ahi, on the outskirts of Dili.<sup>1</sup>
63. Most of Reinado's force made it back to Aileu following the May 2006 altercation at Fatu Ahi, and by June 2006 Reinado was based in Maubisse. Reports vary on when Reinado moved his base to Maubisse, however this may have occurred in May 2006. *Time* magazine reports (based on interviews with Reinado carried out in Maubisse in May) that while Reinado was based there he was directing operations in the hills above Dili and that his men held "the heights overlooking the three main access roads into the capital".<sup>2</sup> The Tribunal has found no mention of Dare as a location of Reinado's base or activities in 2006. However, it is located on the main road south of Dili leading to Aileu and Maubisse – two locations where Reinado had established bases.

#### *The risks people who were displaced to [Village 1]*

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<sup>1</sup> United Nations Independent Special Commission of Inquiry for Timor-Leste 2006, *Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste*, Office of the United Nations High Commissioner for Human Rights website, 2 October, pp. 29, 31, 47  
<http://www.ohchr.org/english/docs/CoIReport-English.pdf>.

<sup>2</sup> Callinan, R. 2006 'The Rebel Commander: "They Know Where to Find Me"', *Time*, 29 May  
<http://www.time.com/time/magazine/article/0,9171,1198948,00.html>

64. The Tribunal has found no reports to indicate that Reinado's group or the East Timorese military targeted displaced people (in [Village 1] or elsewhere) in the aftermath of the violence of May 2006. Some reports indicate that youth gangs *affiliated* with Reinado's group and members of the security forces *supportive* of Reinado were responsible for some of the violence and intimidation of internally displaced persons (IDPs) in Dili at this time; however, the violence was generally attributed to opportunistic conflict between youth gangs, or clashes between East Timorese from the eastern and western regions of the country.
65. Reinado's men reportedly held positions above the main roads out of Dili in May 2006, including the road to [Village 1].<sup>3</sup> This suggests that it is possible that displaced persons travelling between Dili to [Village 1] were caught up in fighting between Reinado's followers and East Timorese security forces (or at least were afraid of this happening). The Tribunal has found no reports indicating that this actually occurred.

#### *Risks to displaced people*

66. The social and political instability caused in part by the existence of Reinado's group, and which manifested itself in street violence and widespread damage to urban areas, was a cause of the large-scale internal displacement in and around Dili. Many of those living in IDP camps were unwilling to leave the camps and return home due to the sense of impunity with which Reinado and his followers operated, and the lack of security which his continuing liberty implied. Following Reinado's death in February 2008, several reports suggested that the remaining IDPs in Dili would be likely to return home due to the improved security situation.<sup>4</sup>

#### *Reinado's supporters*

67. The Tribunal has found no information on the logistical arrangements made by Reinado and his followers. However, they are reported to have enjoyed popular support among the highland villages in which they were based, and it is feasible that civilians assisted Reinado and his supporters in various logistical capacities.<sup>5</sup>
68. Reinado and his rebel soldiers enjoyed widespread popular support among the people of the hill towns and villages south of Dili. This suggests that it is unlikely that any civilians who

<sup>3</sup> [Information deleted: s.431(2)].

<sup>4</sup> See: 'IDPs begin to return home as security improves' 2008, *Integrated Regional Information Network (IRIN)*, 20 March ; Internal Displacement Monitoring Centre 2008, *Timor-Leste: IDPs returning home, but to ongoing poverty and lack of access to basic services*, IDMC website, 31 October, pp. 16, 193 [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/504ACA7476A44544C12574F30043BEC4/\\$file/Timor-Leste+-October+2008.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/504ACA7476A44544C12574F30043BEC4/$file/Timor-Leste+-October+2008.pdf) – Accessed 28 June 2010; International Crisis Group 2008, *Timor-Leste's Displacement Crisis*, Asia Report No. 148, 31 March, p. 7.

<sup>5</sup> See: Callinan, R. 2008, 'A Last Meeting with East Timor's Rebel Leader', *Time*, 12 February <http://www.time.com/time/world/article/0,8599,1712214,00.html?iid=sphere-inline-bottom>; Murdoch, L. 2008, 'Timor rebels vow to never surrender', *The Age*, 15 February <http://www.theage.com.au/news/world/timor-rebels-vow-to-never-surrender/2008/02/14/1202760491044.html>; Callinan, R. 2008, 'A Frustrating Manhunt in Timor', *Time*, 17 February <http://www.time.com/time/world/article/0,8599,1714159,00.html?iid=sphere-inline-bottom> – Accessed 30 June 2010. 'We will protect Major Alfredo: Eduardo' 2006, UNMIT Daily News Review, 8 September.

were loosely linked with Reinado, or who provided logistical support to his forces, would be at particular risk of retribution from their communities.

69. The Tribunal also found no reports of security forces taking action against civilians who provided services or shelter to Reinado and his followers. Similarly, no reports were located which suggests that former [Organisation 1/Organisation 2] workers are presently at risk of harm in East Timor.

#### *Current security situation in East Timor*

70. Country information from numerous sources indicates that the security situation in East Timor is now significantly improved.<sup>6</sup> Nonetheless, there remain general law and order problems, including gang violence, though these would not ordinarily involve persecution for a Convention reason. There are also discipline and accountability problems in the security forces.

#### *Economic situation*

71. The US State Department's Bureau of East Asia and Pacific Affairs recently summarised East Timor's dire economic situation as follows:

Timor-Leste is one of the poorest countries in the world, with basic income, health, and literacy levels similar to those of countries in sub-Saharan Africa. Both infrastructure and resources are lacking in urban and rural areas. Unemployment and underemployment combined are estimated to be as high as 70%. Half of the country's population lives below the poverty line.<sup>7</sup>

### **FINDINGS AND REASONS**

72. The Tribunal, having sighted the applicants' East Timorese passports and considered their evidence, is satisfied that they have East Timorese nationality, as claimed. Accordingly, it assesses the primary applicant's refugee claims against that country.
73. The primary applicant's main refugee claim, at the time of this decision, arises from the assistance he gave to Major Reinado in May 2006, by transporting food from Dili to [Village 1], to support the attempted rebellion. The applicant fears that East Timor military personnel, including those who were imprisoned but have since been released, will target him for having assisted Reinado.
74. The applicant has presented a number of other claims, sometimes diffuse, unclear or speculative. The recurrent theme is that East Timor is a deeply divided and unstable society, with high levels of violence. Among his claims are that he may become embroiled in fighting between rival factions within the military and the police; in communal fighting; and in gang violence. He claims to be at particular risk from various groups, because of his past work as a driver for the [Organisation 1] and [Organisation 2]. He fears harm from formerly displaced persons from the west (*Loromonu*) who opposed independence and resent his work for the [Organisation 2] in resettling displaced persons to East Timor. He also claims to be at risk from eastern East Timorese (*Lorosae*) militias and others, mainly because of his association with Reinado. He mentioned at the Department interview that he had been associated with gangs, and some people might regard there as being unfinished business.

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<sup>6</sup> For instance, Freedom House, 'East Timor: Freedom in the world 2011', 20 June 2011.

<sup>7</sup> Background Note: Timor-Leste, February 11, 2011. <http://www.state.gov/r/pa/ei/bgn/35878.htm>

75. In his pre-hearing submission, the applicant also claimed that the militias may harm him because of his association with his brothers, who fled to Australia and have been given refugee status. [The applicant incorrectly thought that his brothers had been granted protection in Australia, but that is not material to this particular claim.] At the Tribunal hearing, the applicant seemed to be unaware of this claim, and, in response to the Tribunal's questions, said that he did *not* fear persecution for this reason. The Tribunal is therefore satisfied that the applicant has withdrawn this claim.
76. In assessing the applicant's claims, and the oral of the primary and third-named applicants, the Tribunal is mindful that they do not appear to have strong presentational skills. Although they nominated a migration agent as their authorised recipient and representative, they appear to have had only limited communication with and practical assistance from their agent. The Tribunal formed the view that this may have been in part due to the applicants' financial situation and, more recently, the primary applicant's focus on his new job. In any event, the Tribunal takes these factors into account in assessing the applicants' evidence.
77. In the Tribunal's view, the applicant's main concerns relate to his and his family's prospects from a general economic and security perspective, and his future prospects for finding work and providing for his family. This was particularly evident in his pre-hearing submission, which highlighted his fear of future poverty. The applicant's decision to travel to Australia with the 2 secondary applicants, his nephew and eldest son, is consistent with his generalised concerns about the family's economic future and his wish that they avoid all association with gangs and militia. These fears concern general conditions in East Timor that affect all citizens to some extent. The Tribunal is not satisfied that, without more, they have a nexus to one or more of the Convention grounds (as required by s.91R(1)(a) of the Act) or that they involve systematic and discriminatory conduct (s.91R(1)(c)). They do, however, form essential backdrop to the assessment of the applicant's claims as a whole.
78. The significant delay between the applicants' most recent arrival in Australia, in September 2006, and their lodgement of protection visa applications, in January 2010, is of concern. The applicant said that he had left matters to one of his Australian brothers; that their initial focus had been on securing permanent residency by means of a carer visa; and that he became worried about the lengthy delay in processing that application. As the Tribunal put to the applicant, his brothers had sought protection in Australia, and it is reasonable to expect that he would have had access to information about refugee protection if that is what he genuinely needed. In the Tribunal's view, this delay casts some doubt on the (primary) applicant's need for protection.
79. The Tribunal found the applicant's claims to be changeable and uncertain. There appeared to be a blurring of his general concerns (as noted above), potential sources of harm and specific fears that arose from his personal circumstances. Despite this overall impression, and the concerns about his delay in seeking protection, the Tribunal considers it appropriate to address in some detail his refugee claims, as articulated to the Department and the Tribunal.
80. The Tribunal found the applicant and the third-name applicant to be generally truthful witnesses. Despite some credibility concerns about apparent discrepancies between his and the third-named applicant's evidence at the first hearing session, the applicant explained these at the resumed hearing, to the Tribunal's satisfaction.
81. The Tribunal accepts the applicant's account of his employment with the [Organisation 1] (1999-2001) and later the [Organisation 2] (2002-2004), and that this brought him into direct

contact with displaced persons and various militias in the border areas of West Timor and East Timor. The applicant claimed that various groups – people from either the western or the eastern parts of East Timor (the *Loromonu* or *Lorosae*), associated militias or those who continue to oppose independence – might be aware of his past work as a driver, and be motivated to target him for that reason. The applicant has not presented, and, as indicated at the hearing and in its correspondence, the Tribunal has not found, evidence to support that persons who were involved in food distribution or resettlement work during this period are at risk of persecution. The applicant did not press claims based on these activities at the hearing, although he referred generally to the East Timorese having long memories and prone to settle scores. The Tribunal finds, on the available evidence, that the applicant does not face a real chance of persecution arising in the reasonably foreseeable future from his past employment in East Timor.

82. The Tribunal accepts, having particular regard to the applicant's and the third-named applicant's recent clarifications, that the applicant and his family fled their home in Dili in early May 2006. They initially went to the airport, having heard rumours that Australia was evacuating refugees, but then returned to their home and shortly afterwards, left for [Village 1]. Although the Tribunal has found no specific information that Reinado and his men used [Village 1] as a base for their activities, it accepts that they enjoyed widespread support among the local population and the displaced persons in that general area. The Tribunal accepts that, on one occasion, the applicant drove a Unimog from [Village 1] to Dili, to collect rice from a UN warehouse that had been raided, for distribution by the rebels to people in [Village 1]. According to his evidence, some people hitched a ride on top of the vehicle, and the trip was incident-free.
83. The Tribunal accepts that the applicant's family returned to their home in Dili about a month later. The applicant said that he remained in [Village 1], later qualifying this by saying that he spent time at home in Dili but avoided staying there overnight because of the security situation. The Tribunal accepts his account of his activities between May 2006 and his departure for Australia in September 2006, given information about Dili's generally unstable environment at that time.
84. The Tribunal finds that the applicant's claims about this period are generally consistent with the large number of ordinary East Timorese, in particular residents of Dili, some of whom were caught up in the fighting, and a larger number who had to leave their homes and were affected by the violence and instability in other ways. The Tribunal accepts his account of the violence during the conflict, including the loss of life and property, and that the police killed a friend of his, [Mr A]. (The applicant presented his friend's death in the context of the overall violence, see paragraph 27 above, and did not present any specific refugee claims linked with [Mr A]'s death.) Country information indicates that, in the aftermath of the May 2006 conflict, the local population in Dili continued to experience violence and intimidation, often involving fights between gangs acting on criminal, personal and/or ostensibly racial grounds, sometimes with the complicity of individual members of the security forces (those associated with Reinado), and sometimes endangering internally displaced persons.
85. The applicant claims that his childhood acquaintance with Reinado, and the fact of his having delivered rice from Dili to [Village 1] in mid-2006, at Reinado's request, may motivate the East Timorese security forces or others to target him if he returns to East Timor.



- The Tribunal finds that the applicant's claimed association with Reinado when they were growing up, even taken at face value, would not cause anyone to consider them close friends, and would therefore not give him an adverse profile.
  - As discussed at the hearing, reports indicate that Reinado enjoyed popular support in the areas around Dili, yet there is no indication of the security forces or others targeting civilians merely for having been in that area or for having supported Reinado. The Tribunal is mindful that the absence of such reports does not necessarily mean that there were no such incidents. However, the security situation in Dili during 2006, and the impacts on the civilian population, received extensive coverage. This, together with the applicant's low profile as a displaced person who provided only limited support to locals in [Village 1], indicates that he did not experience and was also not at risk of serious harm for any reason arising from his acquaintance with Reinado or his activities in mid-2006.
  - At hearing, the applicant said that military personnel had told him on different occasions of their propensity for revenge, and then went on to say that one of them had actually told him that he should not return to East Timor because he was 'on a list'. These were brief, vague comments. The Tribunal gained no sense of who the applicant's military friends are (he commented briefly that he no longer has contact with them), the context in which they spoke about their vengeful nature, what list the applicant's name was allegedly on, or the occasion in which he was warned (presumably sometime after his arrival in Australia). The Tribunal does not accept, on the basis of these vague statements, that the applicant's name is on any wanted list.
86. The applicant initially claimed to fear harm from fighting factions with the East Timorese military, and later voiced concern that the East Timorese authorities are unable to protect him from harm from other sources. For the reasons given above, the Tribunal does not accept that the applicant faces a real chance of harm for any Convention reason, including from the East Timorese security forces. The applicant stressed that the members of the security forces (like East Timorese in other walks of life) are vengeful, and may therefore settle scores with their enemies. However, the Tribunal does not accept that the applicant has any unresolved disputes that could lead to such action.
87. As noted at the hearing, overall security in East Timor has improved in recent years, but significant law and order issues remain. Country information indicates that the security forces are stretched, and sometimes lack discipline and accountability in the performance of their duties. However, the Tribunal is satisfied, however, that the East Timorese authorities do not condone or tolerate such criminal or similar conduct, such that it results in the selective and discriminatory withholding of protection for a Convention reason.
88. The Tribunal finds that the applicant's fear of being targeted for reasons of his past association with Reinado and his activities in mid-2006, if he returns to East Timor, is not well-founded. This follows in part from the Tribunal's assessment that neither the security forces nor anyone else (militias, gangs or others) had an adverse interest in him when he left East Timor in September 2006. The passage of time further reduces the risk. At the first hearing session, the applicant said that military personnel came to the family home, threatening and abusing his wife because of the applicant's association with Reinado. At the Tribunal interview, when providing his comments on the apparent discrepancy between this claim and his statements to the Department, the applicant said that his wife once told him by telephone that the military had called by asking about the applicant's whereabouts. The Tribunal accepts that an East Timorese official made such an enquiry. However, it is not

satisfied that this single enquiry over 5 years was done in a menacing way, or that it signals any ongoing adverse interest in the applicant, for any reason. The applicant emphasised the volatile, vengeful and sometimes hateful, nature of East Timorese society. However, the Tribunal finds on the available evidence that there is no real chance of the applicant facing persecution, for any associated reason, now or in the reasonably foreseeable future.

89. As noted above, the applicant referred, sometimes in passing, to other circumstances, such as the comment at the Department interview of his having been associated with gangs, through some friends, and to members of militias, ethnic groups (the *Loromonu* and the *Lorosae*), or others perhaps targeting him for other reasons. These claims were vague and somewhat amorphous, and the Tribunal considers these to have been a general description of East Timor's security situation. It is satisfied, in light of his evidence before the Tribunal, that he has not had any past association with gangs, or any other personal experiences. The applicant referred to interracial conflict several times, in his protection visa application (paragraph 27) and his pre-hearing submission (paragraph 34). The Tribunal accepts that ethnic tensions have triggered or contributed to past conflicts. It has considered above, at paragraph 80, the applicant's claims that one or other of the main ethnic groups, with their own political agendas, could easily misconstrue his past employment. The Tribunal does not discern in the applicant's comments, or the other evidence before it, any claim to suggest that he is at risk of persecution for reasons of his race.
90. The Tribunal has considered the applicant's claims individually and cumulatively. It accepts that East Timor's political, security and economic problems have caused him and his family hardship, but it does not accept that he has suffered persecution for any Convention reason. It accepts that he knew Reinado from his childhood, and that he once helped transport food from Dili to [Village 1], during the mid-2006 conflict. Although it was potentially dangerous, nothing untoward happened during that trip, and the Tribunal finds that there is no real chance of the applicant experiencing any consequences, let alone persecution for a Convention reason, if he returns to East Timor. Having considered all of his other circumstances, the Tribunal is not satisfied that he has a well-founded fear of Convention-related persecution, now or in the reasonably foreseeable future, if he returns to East Timor.
91. The secondary applicants did not present any refugee claims of their own. The applicant's rationale for bringing them, rather than his wife and other children, to Australia, appears to have been related both to security concerns in East Timor as well as the critical timing in their education and employment, compared to the rest of the family. The Tribunal does not discern in this any implied claim that they are at risk of persecution for any Convention reason.
92. The applicant flagged that he may seek the Minister's intervention in this case, if this application were to fail, but he did not seem well-prepared to discuss the circumstances that he might rely on. The applicants may make a request directly to the Minister referring, as appropriate to any circumstances such as their family ties in Australia, the secondary applicants' futures, and the economic and security situation in East Timor.

## **CONCLUSIONS**

93. 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**

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