

0803919 [2008] RRTA 333 (2 September 2008)

DECISION RECORD

RRT CASE NUMBER: 0803919

DIAC REFERENCE(S): CLF2008/53352

COUNTRY OF REFERENCE: Sierra Leone

TRIBUNAL MEMBER: Giles Short

DATE DECISION SIGNED: 2 September 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship refusing an application by the applicants for Protection (Class XA) visas. The applicants were notified of the decision and the application for review was lodged with the Tribunal. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicants named first and second on the cover sheet are a husband and wife. They claim to be citizens of Sierra Leone and they arrived in Australia on temporary visas. They applied for Protection (Class XA) visas. The applicant named third on the cover sheet is their child, who was born in Australia and who is taken to have applied for a Protection (Class XA) visa in accordance with r.2.08 of the Migration Regulations 1994 (the Regulations).

RELEVANT LAW

3. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Regulations have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

‘(2) A criterion for a protection visa is that the applicant for the visa is:

- (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
- (b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.’

4. Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the ‘Refugees Protocol’ as ‘the Protocol relating to the Status of Refugees done at New York on 31 January 1967’. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

5. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a ‘refugee’ as a 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.’

6. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.
7. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear ‘persecution’. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve ‘serious harm’ to the person and ‘systematic and discriminatory conduct’. Subsection 91R(2) states that ‘serious harm’ includes a reference to any of the following:
 - (a) a threat to the person’s life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person’s capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.
8. In requiring that ‘persecution’ must involve ‘systematic and discriminatory conduct’ subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of ‘persecution’ that an individual be the victim of a series of acts:

‘A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is “being persecuted” for the purposes of the Convention.’
9. ‘Systematic conduct’ is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:

‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’ Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’ It should be remembered, however, that, as the Australian courts have observed, persons may be

persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

11. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'
12. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

CLAIMS AND EVIDENCE

13. Only the applicants named first and second on the cover sheet (referred to in these reasons for convenience as 'the applicant' and 'the applicant's wife') made specific claims under the Refugees Convention as amended by the Refugees Protocol. As referred to above, their child, who was born after their application was lodged, is taken to have applied for a Protection (Class XA) visa at the time the child was born and the child's application is taken to be combined with their applications in accordance with r.2.08 of the Regulations.
14. The Tribunal has before it the Department's file CLF2008/53352 relating to the applicant and his wife and their child. The applicant and his wife appeared before me to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Mandingo language (for the applicant) and in the Krio language (for the applicant's wife). The applicant and his wife were represented by a solicitor and registered migration agent. The representative did not attend the hearing.

The original application made by the applicant and the applicant's wife

15. According to the details in their applications they left Sierra Leone in the late 1990s, making their way to Country 1. In a statutory declaration accompanying his original application the applicant said that in the late 1990s rebels who had been opposed to the then president of Sierra Leone had stormed his family's house and he had fled. He said that he had later found out that his father had been killed by the rebels. He said that his family had been targeted because they were Mandingo. The applicant said that he had travelled to City X and from there to Country 1. He said that his wife (who he said was his relative) had also fled to Country 1 via City X after their home city had been attacked by rebels in the late 1990s.

16. [Information about the applicant's and the applicant wife's in Country 1 deleted in accordance with s.431 as it may identify the applicants] He said that in City Y he had been arrested by the police who had thought he was a rebel from Sierra Leone. He said that when the authorities had been satisfied that he was not involved with the rebels they had released him. He said that he had travelled through various countries to Country 2.
17. The applicant said that although he had not had a passport he had been able to obtain a series of permissions to remain in Country 2. According to the details in his original application he lived and worked in Country 2 for several years. In his statutory declaration the applicant said that he had then travelled to Country 3 from where he had travelled to Country 4. He said that he had again been able to get temporary visas enabling him to work there. According to the details in his original application he lived and worked in Country 2 until he came to Australia.
18. The applicant's wife said in her application that she had left Country 1 several years ago and had lived in City Y until she and the applicant had married and she had joined him in Country 4. The applicant said in his statutory declaration that although he and his wife had been married officially in Country 1, he had not been present in Country 1 at the time. He said that his wife had been attacked by a number of men in Country 1 because she was from Sierra Leone. He said that she was identifiable as being from Sierra Leone because she did not speak the local language although he also suggested that she had been attacked specifically because she was a Mandingo woman. He said that his wife had been the victim of a serious assault, that she had still had marks from the attack and that she had been traumatised by this event.
19. The applicant said that his wife had obtained travel documents of Country 1 for them. He said that they had been able to obtain these documents because their ancestors had been from Country 1 but he said that he was uncertain if he was actually a citizen of Country 1. He said that he feared that if they returned to Sierra Leone he and his wife and their child would be killed or seriously harmed because they were Mandingos. He said that he feared that if they returned to Country 1 they would 'suffer the same fate as other people from Sierra Leone'. He said that he feared that they could be killed or otherwise seriously harmed by ethnic people from Country 1. The applicant's wife said in her original application that she feared that she would be seriously harmed in Sierra Leone or Country 1 because she was a Mandingo woman. She said that the authorities and private individuals did not like Mandingos.
20. The applicant and his wife travelled to Australia on passports of Country 1, which indicate that they were both born in Country 1. In a covering submission their representative said that they maintained that they were not citizens of Country 1. After their child was born the applicants' representatives submitted a Form D to enable the child to be added to the application in which they described the child as of unknown nationality and possibly stateless. The applicants' representatives submitted birth certificates for the applicant and his wife giving their nationality as Sierra Leonean. The applicants' representatives submitted a further statutory declaration made by the applicant which, however, is identical to the statutory declaration accompanying his original application except that it has been updated to refer to the birth of their child.
21. The applicants' representatives also submitted a statutory declaration made by the applicant's wife in which she said that she had left Sierra Leone at around the same time as the applicant and in roughly the same circumstances. She said that she had travelled to Country 1 with her

relatives. She said that while she had been living in Country 1 she had often been harassed because she was a Mandingo and because people in Country 1 suspected that she was a member of the rebels in Sierra Leone. She referred to the incident which the applicant had mentioned in which she had been the victim of an assault and she said that she still had the scars from this incident. The applicant's wife said that she feared that she would be attacked in Sierra Leone as someone who was from the same group as the former president, because she was a Mandingo and particularly because she was a Mandingo woman. She said that in Country 1 she would be suspected of being a Sierra Leone rebel.

The applicant's evidence at the Departmental interview

22. The applicant was interviewed by the primary decision-maker in relation to his application with the assistance of an interpreter in the Mandingo language. The applicant confirmed that he claimed to be a citizen of Sierra Leone. He said that he was not a citizen of Country 1. He said that he had had a visa enabling him to live in Country 4 but he did not have a visa enabling him to return to Country 4. He said that besides speaking Mandingo he had 'pidgin' French. He said that he had no documents from Sierra Leone apart from the birth certificate which he had produced. He said that he had lived in his home city in Sierra Leone from birth up until the war. [Information about the applicant in Country 1 deleted]
23. The primary decision-maker referred to the applicant's claims regarding his travel from Country 1 to Country 2. The applicant said that it had taken him several months to reach Country 2. He confirmed that he claimed that he had not had a passport at this time. He said that he had had a Sierra Leonean identity card and a vaccination card which he said you could use when travelling in Africa. He said that thieves had stolen these documents when he had been living in the Country 2. The applicant said that he had never had a passport before the current passport which he had used to travel to Australia. He said that his wife's relatives had assisted her in 'making' the current passports which they had used to travel to Australia. He said that the passports had cost a sum of money each. He said that his wife had brought the passports from Country 1 when she had joined him in Country 4. The applicant said that he had heard that his great-great-grandparents had come from Country 1.
24. The primary decision-maker put to the applicant that along with his application for the visa on which he had travelled to Australia he had submitted a passport of Country 1 which had been issued in the 1990's and renewed a couple of years later. The applicant said that the 'real' passport which he held was the one his wife had obtained but that a friend in a neighbouring country had obtained this other passport for him to assist him to get his Australian visa. He said that he had lost this passport in Country 4. He said that this passport had only been 'prepared' in a particular year. He said that none of the dates in this passport were accurate. He said that the people who had been assisting him had told him that if he had a new passport he would not be granted a visa. He said that this had been why the old passport had been backdated. The applicant said that in Africa if you had money you could get documents. He denied again that he was a citizen of Country 1. The primary decision-maker put to the applicant that the documents he had submitted along with his application for the visa also suggested that he had had a visa to enter Country 4, valid until a particular year. The applicant said that this visa had been issued only to help him to get away from Country 4.
25. The applicant said that he had not been involved in politics in Sierra Leone nor had he ever been involved in any faction or group in Sierra Leone. The primary decision-maker put to the applicant that the civil war in Sierra Leone had ended in 2002. The applicant said that he

thought that if he returned to Sierra Leone he might be killed because his father had been killed and they might still be looking for people from his family. The primary decision-maker put to the applicant that there were no reports of ethnically-motivated violence against Mandingos. The applicant said that you had to live there to know what was going on. He said that people were creating problems there still. With regard to his fears of returning to Country 1, the applicant said that he had been detained for a short period of time in Country 1. He said that Country 1 lacked security and that it was not possible for him to return there.

The applicant's wife's evidence at the Departmental interview

26. The applicant's wife was also interviewed by the primary decision-maker. The same interpreter was used but he indicated that he was interpreting in the Krio language and the applicant's wife indicated that she preferred to use that language. She said that her great-grandfather had come from Country 1. She said that her relative had assisted her to obtain the passports of Country 1 on which she and the applicant had travelled to Australia. She said that she believed that the passports had been obtained lawfully. She said that the passports had been obtained in City Y. She said that each passport had cost a sum of money. She said that she had paid this money to her relative. She confirmed that she had been living with her relatives in Country 1 and she said that they were still there.
27. The applicant's wife said that she had been a teenager when she had left Sierra Leone but that she did not really remember. She said that after her family's house had been destroyed she had made her way on foot with her relatives to City X where they had gone to Country 1. The applicant's wife said that the applicant was her relative. She said that she had been able to obtain a passport of Country 1 because her great-grandparents had come from there. The applicant's wife agreed that she had a visa that allowed her to remain in Country 4 until a particular year. She said that she spoke Mandingo and Krio. She said that her schooling in Sierra Leone had been conducted in English but she did not understand English well.
28. The applicant's wife said that she had had problems in Country 1 because her relative had maltreated her. She said that her relative had given her food to sell and if she had not managed to sell the food her relative had beaten her and insulted her and had prevented her from eating when she had returned home. She said that this had been the only work she had done in Country 1. She said that sometimes she had slept on the streets but then she had risked being beaten by people. She said that if she went on the street she would be labelled a rebel and told that she should get out of the country. She said that she had been insulted and that she had scars from the injuries she had sustained there. She said that she feared that she would be killed if she returned to Country 1 because the people there knew she was not from Country 1.
29. The primary decision-maker put to the applicant's wife that the civil war in Sierra Leone had ended. The applicant's wife said that she feared harm in Sierra Leone because people think that she was a rebel or a former rebel. However she then said that she feared harm from the rebels. The applicant's wife confirmed that she also feared persecution as a Mandingo woman. She said that she did not wish her child to experience the same things she had experienced.
30. The applicants' representative submitted that the applicant had obtained various documents so as to put himself out of harm's way preparatory to getting to a country where he could apply for refugee status. He submitted that the visas for Country 4 which the applicant and his wife held did not amount to 'quasi-protection'. He said that the applicant and his wife

maintained that the situation in Sierra Leone had not improved to the extent the independent evidence suggested.

Submission from the applicants' representatives to the Tribunal

31. In a submission to the Tribunal the applicants' representatives said that the applicant and his wife feared being persecuted in Sierra Leone for reasons of their ethnicity (Mandingo and Krio), their imputed political opinion (pro-SLPP (Sierra Leone People's Party) or in favour of the former president Kabbah), the applicant's wife's membership of the particular social group of Mandingo women and their child's membership of the particular social group comprised of young children. The applicants' representatives said that the applicant and his wife maintained that they were citizens of Sierra Leone despite being issued with passports of Country 1. They said that the applicant and his wife maintained that they had acquired these passports fraudulently, through intermediaries. They noted that the information on which the primary decision-maker had relied to the effect that a non-citizen could not obtain a passport from Country 1 had been obtained from a representative at an embassy of Country 1 and they submitted that this cast doubt on its veracity. They submitted that corruption was rampant in Country 1 (referring to the US State Department *Background Note* on Country 1).
32. The applicants' representatives referred to an IRIN report suggesting that, although human rights abuses had decreased substantially since the end of the civil war in Sierra Leone, poverty was still widespread and there was severe youth unemployment and a lack of basic services. They referred to comments with regard to the human rights situation in Sierra Leone which they attributed to the UK Home Office but which in fact come from the US State Department *Country Reports on Human Rights Practices for 2004* in relation to Sierra Leone. They quoted from the 2007 edition of the Freedom House report, *Freedom in the World*, in relation to Sierra Leone, noting that protection for women was currently inadequate. The applicants' representatives referred to claims made by the SLPP in relation to violence against SLPP supporters around the time of the parliamentary and presidential elections in August and September 2007 and ahead of forthcoming local council elections in June 2008. They also quoted from a report published by Amnesty International in May 2006 on human rights abuses faced by women in the informal legal sector.
33. The applicants' representatives produced a further statutory declaration from the applicant in which he said that he did not have any photographs of himself in Sierra Leone. He submitted copies of what he said were photographs of his wife when she was growing up in Sierra Leone and a report card issued to her by her primary school in Sierra Leone. The applicant said that his passport of Country 1 had been sent to him in Country 2 when he had been living there. He said that he had paid a friend in a neighbouring country a certain amount of money for this passport. He said that he had used this passport when he had entered Country 4 but that he had lost this passport in Country 4. He said that he had travelled to Country 4 via certain countries. He said that his wife had obtained the new passports from Country 1 for them both with the assistance of her relative.
34. The applicant said that his father had been a wealthy man in Sierra Leone and that the rebels had thought that his father had supported the former president Tejan Kabbah financially. He said that this idea had been reinforced because they were from the Mandingo ethnic group. He said that because his father had been well-known in his home city and known as a supporter of Tejan Kabbah it would be easy for people to know that he was associated with the SLPP. He said that the APC (All People's Congress) which was now in power was targeting people who they thought were former supporters of the SLPP.

35. The applicant said that his wife had been physically abused while living with her relatives in Country 1 and that one night she had been assaulted in the street. He said that he believed that these men had targeted his wife because she was a Mandingo and from Sierra Leone. He said that people in Country 1 thought that if you were from Sierra Leone you must have been one of the rebels. He referred to his claims that he had been arrested by the authorities in City Y. He said that he had been detained for a period of time because the authorities had thought that he was a rebel from Sierra Leone.
36. The applicant said that even though the war was over in Sierra Leone there was still a great deal of racial tension there. He said that people knew about your former associations and used these to harass you and harm you. He said that members of the government disguised themselves as civilians and went into towns to listen to people talking and this was how they gathered information to use against you. He said that it was impossible to understand the level of violence that still existed in Sierra Leone unless you had experienced it yourself. Besides the documents already referred to he submitted a letter from the '[Organisation]' stating that he and his wife were from Sierra Leone and a letter from a pastor at a Christian church stating that the applicant and his wife were citizens of Sierra Leone.

The evidence of the applicant and his wife at the hearing before me

The evidence of the applicant

37. At the hearing I took evidence from the applicant assisted by the interpreter in the Mandingo language and then from the applicant's wife, assisted by the interpreter in the Krio language. The applicant confirmed that he claimed to be a citizen of Sierra Leone. He said that he was not a citizen of any other country although he had used the passport of Country 1 to travel to Australia. I noted that when the applicants' representatives had submitted a form adding the applicant's child to their application they had described the child as being of unknown nationality or stateless. I put to the applicant that the information available to me suggested that if both he and his wife were nationals of Sierra Leone then his child would be a national of Sierra Leone provided that the child likewise had no other nationality (UK Home Office, *Country of Origin Information Report - Sierra Leone*, March 2006, paragraph 5.04). The applicant said that they were all from Sierra Leone.
38. The applicant confirmed that he claimed that he went to work at an early age in a factory in his home city. I noted that in the statutory declaration which the applicant had submitted to the Tribunal he had said that his father was a wealthy man and that he had had a successful business. The applicant said that this was true and that this had been their profession from his great-grandfather. I asked the applicant why he himself went to work at an early age. The applicant said that he had not been able to depend solely on his father's wealth: he had had to look for his own by his own means.
39. I asked the applicant what he feared would happen to him if he returned to Sierra Leone now. The applicant said that he believed that if he went back to Sierra Leone what had happened to his father might happen to him because his father had been a supporter of the former president, Tejan Kabbah, and Mr Kabbah's party, the SLPP, which had been in power at that time, was no longer in power. He said that all the people who had been creating the problems - the so-called rebels - might do the same thing to him which they had done to his father. The applicant said that the current ruling party was the APC whereas his father had been a supporter of the SLPP. He said that when they had been campaigning these people had killed each other and if he went back to Sierra Leone these people would be looking for people like

him because they knew he was his father's son and his father had been well-known. He said that these people might harm him.

40. I noted that in his application the applicant had also referred to the fact that he was from the Mandingo ethnic group. I noted that I knew that the former president, Mr Kabbah, had been from the Mandingo ethnic group. I asked the applicant if he had other fears on the basis of his being a member of the Mandingo ethnic group besides being identified as a supporter of the former president. The applicant referred again to the fact that his father had been a great supporter of the former president, He said that this had been the main reason why, when the rebels had entered his home city, they had killed his father. He said that they had known that his father had been a supporter of the former president. He said that the present ruling party, the APC, knew that his father had been a great supporter of the former president. He said that there had been great trouble between these two parties in political life so it was not a convenient place for him to go.
41. I asked the applicant again if he feared that he would have any problems as a result of his membership of the Mandingo ethnic group apart from the problems he claimed he would have because his father had been a supporter of the former president, Mr Kabbah. The applicant said that he was afraid on both sides, because he was a Mandingo and because his father had been a supporter of the former president and the former ruling party. He said that these people knew his family and there were still grudges among these people because people had been killed during campaigning. He repeated that if he went there he would be identified as the son of his father.
42. I put to the applicant that what this suggested to me was that he feared persecution because of his relationship with his father. The applicant said that, even apart from his father, he himself had been known in Sierra Leone because as a young man he had been involved in campaigning and he had gone up and down making noise in the streets. I indicated to the applicant that I was still not clear what fears, if any, he had specifically because he was a Mandingo. The applicant said that it was not because he was a Mandingo: he knew the mentality of people in Sierra Leone and because he had no close relatives there that he could rely on, his family had been killed, his parents had been killed and their house had been burned down, he was certain that it would not be good for him if he returned to Sierra Leone.
43. I explained to the applicant that the fact that he did not have family support in Sierra Leone was not directly relevant to his claims for refugee status. The applicant repeated that apart from his father's support for the SLPP he himself had been involved as a young man in campaigning for Mr Kabbah and his party and people knew him. He said that these were the reasons he feared returning to Sierra Leone. He said that the rebels had killed his parents because his parents had had no way to escape but as a young man he himself had tried to escape. He said that if he had been caught he would have been killed like his parents. He said that he did not want to put his life back in danger.
44. I indicated to the applicant that what I had been trying to explain was that the fact that someone did not have family in their home country did not in itself make them a refugee. I noted that we had dealt with the applicant's fears based on his own activities and his father's involvement as a supporter of the SLPP. I noted that I was still not clear if the applicant had any specific fears because he was a Mandingo other than the fears we had already discussed. The applicant referred again to the fact that the rebels who had entered his home city had been looking for supporters of the former president, Mr Kabbah, and the SLPP. He repeated that these people had known him because of his own involvement in

campaigning as a young man and they had known his father. He repeated that his father had been a well-known man.

45. The applicant confirmed that he was from the Mandingo ethnic group. I noted that the applicants' representatives had suggested that he might also be part of the Krio ethnic group. The applicant said that he was fully and completely Mandingo, born and bred in Sierra Leone.
46. I indicated to the applicant that I was going to give him some information which I considered would be the reason, or a part of the reason, for affirming the decision under review. I indicated that I would explain the information to him so that he understood why it was relevant to the review and that I would also explain the consequences of the information being relied upon in affirming the decision under review. I indicated that I would ask him to comment on or to respond to the information. I indicated that if he wanted additional time to comment on or to respond to the information he could tell me and I would then consider whether to adjourn the review to give him additional time.
47. I noted that when the applicant had been interviewed by the primary decision-maker he had initially said that he had never had a passport before the current passport which he had used to travel to Australia. I noted that, when the primary decision-maker had referred to the fact that the applicant had submitted an old passport issued in Country 1 in the late 1990s along with his application for a temporary visa, the applicant had claimed that a friend in a neighbouring country had obtained this passport for him. I showed the applicant the copy of the passport of Country 1 issued in the late 1990s. The applicant repeated his explanation that this passport had been sent to him when he had been in Country 2. He said that the passport had been renewed in the same embassy in which it had been made but there some writings in the passport to show it had been handled by different people.
48. I indicated to the applicant that the point I was trying to make was that he had given different explanations. First he had denied that he had had another passport at all. Then, when the primary decision-maker had referred to the passport issued in the 1990s, the applicant had said that this passport had been sent to him in Country 4. I noted that the third explanation he had given was the one he had just mentioned, that this passport had been sent to him in Country 2. The applicant said that it had been the current passport which he had received in Country 4. I noted that it had been the old passport which he had been talking about at the Departmental interview. The applicant reiterated that this passport had been sent to him in Country 2. I noted that this was not what he had told the primary decision-maker at the Departmental interview.
49. The applicant claimed that he had been asked whether he had used this old passport to travel to Country 2 and that he had said that he had not. He repeated that he had received this passport in Country 2 and that he had used it when he had arrived in Country 4 to get a visa to stay in the country. I put to the applicant that what he had told the primary decision-maker was that the old passport had been sent to him in Country 4 because the people who had been assisting him to get the visa to come to Australia had told him that he would not be able to get the visa if he had a new passport. The applicant repeated that he had gone to Country 4 with the old passport and then his wife had sent him another passport 'to make a visa' He said that he had had to present the old passport to show that it was the same name on the passport. He said that the old passport had had his visa for Country 4 in it. He said that he had lost this passport but luckily he had had a copy of it and he had taken this to get his Australian visa.

50. I put to the applicant that even his latest explanation did not appear to be correct because the visa permitting him to reside in Country 4 which was in the passport had been issued to him before the passport had last been renewed in the following year. The applicant said that he could not remember the dates because he had been completely traumatised and also because he was illiterate. He said that he had been afraid and his identity alone had been giving him big problems. He said that he had been afraid of exposing himself too much to the public. I noted that the other thing which the applicant had produced along with his application for his Australian visa had been the evidence of his resident status in Country 4. The applicant said that people had assisted him in getting these documents because he was illiterate.
51. I put to the applicant that the evidence of his resident status in Country 4 which he had produced suggested that he had entered Country 4 in the early 2000s. The applicant said that he was not aware of this. He said that all these documents had been prepared because he had been seeking a place where he could be fully protected and where he could be with his family. He said that he was not aware of how these documents had been 'made' or where they had come from. He repeated that he was illiterate. He said that his life had been in danger and some of the countries he had visited had been in an even worse situation than Sierra Leone so there had been nowhere for him to stay. He repeated that he was not from Country 1, he was a Sierra Leonean. He said that there had been no way for him to get documents from Sierra Leone at that time.
52. I asked the applicant if he understood that the different explanations he had given were relevant to whether his evidence could be believed. The applicant said that as long as he was here and as long as he and his wife and child were not fully protected, he was really afraid. He said that since he had learned that his application had been refused he had not been sleeping because of his worries about his future and the future of his wife and child. He said that Sierra Leone was not a place for him to go. He said that he needed the Tribunal to assist: he needed protection. He said that most of the errors to which I had referred had been created by illiteracy and because he had been afraid of the danger to his life.
53. I noted that it was true that there had been violence at the time of the parliamentary and presidential elections in Sierra Leone in 2007. I put to the applicant, however, that the information available to the Tribunal suggested that the polls themselves had been generally free and fair and that the police and the army had acted professionally to put a stop to violence generated by all sides (Human Rights Watch, *World Report 2008* (relating to events of 2007) in relation to Sierra Leone). I put to the applicant that this information was relevant to the review because it made it difficult for me to accept that there was a real chance that he would be persecuted because of any perception that he was a supporter of the former president, Mr Kabbah, or the SLPP, if he returned to Sierra Leone now.
54. The applicant said that he did not believe that there was democracy in Sierra Leone because according to the news there had been many incidents of violence during the election. He said that having been born and having grown up in Sierra Leone he knew the history of Sierra Leone better than the Tribunal, he knew the mentality of the people of Sierra Leone and these people did not practise democracy and human rights. He said that racism was still existing there. They might say that there was democracy in Sierra Leone but this was not what was happening.

The evidence of the applicant's wife

55. The applicant's wife confirmed that she was a citizen of Sierra Leone. She said that she was not a citizen of any other country although she had used the passport of Country 1 to travel to Australia. I asked her what she feared would happen to her if she returned to Sierra Leone now. The applicant's wife said that she was afraid to go back to Sierra Leone because she believed that if she went back there she would be killed by enemies of her father who had been a wealthy man and a businessman and who had been a great supporter of the SLPP, the party of the former president, Mr Kabbah. She said that these same people would be looking for her to kill her.
56. I noted that the applicants' representatives had also suggested that the applicant's wife feared being persecuted as a Mandingo woman. The applicant's wife said that most of the violence she had experienced had been because she was a Mandingo woman. I asked her if she feared she would have particular problems because she was a Mandingo woman if she went back to Sierra Leone. The applicant's wife said that the Sierra Leoneans did not love people who were wealthy and they did not love her tribe, the Mandingos. She said that even before the war people had been against her parents because they had been a bit wealthy so when the war had started they had started killing all her family. She said that her ethnic group had been ruling and all this had contributed to the enmity between her ethnic group and the other ethnic groups.
57. The applicant's wife said that when the war had come the enemies of her parents had gone directly to her family's house and had started killing people. She said that these same people would be there now hunting for members of her family. She said that she believed that these people might know her and this was why she feared that she and her husband and their child would be killed. She said that this was why she was seeking protection in Australia. The applicant's wife referred to the fact that she had also experienced violence in Country 1 because of her nationality as a Sierra Leonean. I indicated to the applicant's wife that I was looking at her situation if she returned to Sierra Leone. The applicant's wife repeated that the same people who had hated her family even before the war had come looking for her family when the war had begun and she had been lucky to escape. She said that these same people still held the same grudge so she was afraid for her safety and the safety of her husband and their child.
58. I indicated to the applicant's wife that I was going to give her some information which I considered would be the reason, or a part of the reason, for affirming the decision under review. I indicated that I would explain the information to her so that she understood why it was relevant to the review and that I would also explain the consequences of the information being relied upon in affirming the decision under review. I indicated that I would ask her to comment on or to respond to the information. I indicated that if she wanted additional time to comment on or to respond to the information she could tell me and I would then consider whether to adjourn the review to give her additional time.
59. I noted that it was true that there had been violence at the time of the parliamentary and presidential elections in Sierra Leone in 2007. I put to the applicant's wife, however, that the information available to the Tribunal suggested that the polls themselves had been generally free and fair and that the police and the army had acted professionally to put a stop to violence generated by all sides (Human Rights Watch, *World Report 2008* (relating to events of 2007) in relation to Sierra Leone). I put to the applicant's wife that this information was relevant to the review because it made it difficult for me to accept that there was a real chance

that she or her husband or their child would be persecuted because of any perception that they were supporters of the former president, Mr Kabbah, or the SLPP, if they returned to Sierra Leone now. The applicant's wife indicated that she understood. I invited her to comment on or to respond to the information.

60. The applicant's wife said that it was true that there was peace in Sierra Leone and the police and the army were doing well. She said, however, that there were still some secret killings. People who held old grudges might kill you overnight. She said that the enemies of her parents could still be her enemies. She said that she did not know if her parents were alive or not. She said that these people might kill her, her husband and their child. She said that people hated her family because they had been supporters of the Kabbah regime, they were from the same ethnic group and they had been a bit wealthy. The applicant's wife said that if she were to return to Sierra Leone it would be known because people passed information on to each other and there would be nowhere for her to hide. She said that it was not really safe for her and her family. She said that if she thought about all the violence she had suffered in Africa she became traumatised. She said that she had been the victim of a serious assault by a gang in Country 1 and she had been called names there on the streets like 'rebel'.
61. I emphasised again to the applicant's wife that I was looking at what her situation would be if she were to return to Sierra Leone, not to Country 1. The applicant's wife repeated that if she were to return to Sierra Leone she believed that she and her husband and their child would be easily identified by her parents' enemies and they would still have trouble. She repeated that people had hated her father and her family because of the support they had been giving to former president, Mr Kabbah.
62. I noted that one of the other things I had to look at was the general situation of women in Sierra Leone. I put to the applicant's wife that in June 2007 the Parliament had passed a number of laws significantly strengthening women's rights in rural areas. The applicant's wife repeated that her own and her husband's and their child's lives would still be in danger from her family's enemies. They might be killed secretly despite the presence of the police and the army. I noted that the applicant's representatives had suggested that the applicant's wife feared being persecuted specifically because she was a woman. The applicant's wife said that whatever they did to the men they could do to the women. She said that you could not know what was going on in Africa unless you were there. She said that as a woman she could not defend herself and women were not really constantly protected in Sierra Leone. She said that she alone could not fight against the enemies of her family in Sierra Leone.
63. I indicated to the applicant's wife that I accepted that women faced discrimination in Sierra Leone. I put to her, however, that it was difficult for me to accept on the evidence available to me that there was a real chance that she would be persecuted for reasons of her membership of the particular social group of women in Sierra Leone or Mandingo women specifically if she returned to Sierra Leone now. The applicant's wife repeated that she believed that they would do bad things to her. She said that she knew all the ins and outs of the Sierra Leoneans and how they treated people in Sierra Leone.

Adjournment of the review

64. I indicated to the applicant and his wife that, as I had mentioned earlier, they were entitled to seek additional time to comment on, or to respond to, the information I had given them in the course of the hearing. They asked for additional time to talk to their representative (who, as referred to above, was not present at the hearing). I agreed to give them additional time to

comment on or to respond in writing to the information I had given them in the hearing. The applicant's wife repeated that their lives would be in danger if they went back to Sierra Leone. She said that she was sure that she and her husband and their child would be killed. She said that if she even thought of going back she became traumatised. She said that she did not sleep well at night because she thought about going back. The applicant repeated that they feared persecution because of the enmity that was growing between the parties, their ethnicity and the wealth their parents had had. He said that if they returned to Sierra Leone they might end up dying at the hands of their enemies. The applicant's wife said that they loved their country and if their lives were not in danger they would have returned but because of this they were afraid of going there.

Response received from the applicant and the applicant's wife

65. Under cover of a letter the applicants' representatives produced a statutory declaration signed by the applicant that day and a photograph of the applicant's wife in front of her father's business in their home city. In his statutory declaration the applicant repeated that he had obtained his passport of Country 1 which had been issued in the late 1990s through a friend in a neighbouring country and that the passport had been sent to him in Country 2 where he had been living for several years. He said that he had been very traumatised in Country 2, that he found it difficult to remember exact dates and that he might have gone to Country 4 in a particular year, when the visa permitting him to live in Country 4 had been issued. He said that the evidence which he had produced suggesting that he had entered Country 4 in the early 2000s had been arranged through connections. He reiterated that he claimed that he had been in the Country 2 in the early 2000s.
66. The applicant said that he did not believe that it would be safe for him and his wife and child to return to Sierra Leone. He said that even though it might appear that the violence was now under control and that the 2007 elections had been free, a lot of bad things that happened were not publicised. He repeated that he was known as a supporter of the SLPP and that his father had been a financial supporter of Tejan Kabbah. He said that now the APC was in power there was nothing to stop them from harming their enemies and the government could send informers disguised as civilians to gather information against you or could prosecute you for nothing. He said that even though Sierra Leone was supposed to be a democratic country the government had complete power.
67. The applicant repeated that he and his wife were from the Mandingo ethnic group, the same group as Tejan Kabbah. He said that the current president, Ernest Koroma, was from the Temne ethnic group. The applicant said that the Mende and Temne tribes resented the Mandingo and sought to persecute them because the Mandingo had most of the financial power in Sierra Leone and there was a feeling that the Mandingo came from outside the country. The applicant said that even though it was said that the police were now acting professionally you could not stop violence happening in Africa. He said that his father had been killed in the war, their house had been burned and he did not know whether his family members were still alive. He said that he knew that if he returned to Sierra Leone with his family they would be targeted and persecuted and that it was not safe for them to return.

FINDINGS AND REASONS

Nationality

68. I accept that, although the applicant and his wife travelled to Australia on passports of Country 1, they are nationals of Sierra Leone as they claim. The applicants' representatives have produced a number of photographs of the applicant's wife said to show her in Sierra Leone, including one taken in front of her father's business in their home City. Moreover the language which the applicant's wife speaks as her first language (Krio) is most closely associated with Sierra Leone. The language which the applicant speaks as his first language (Mandingo) would be equally consistent with a finding that he is from Country 1. However, as referred to above, besides their own evidence they have submitted a letter from the '[Organisation]' stating that they are from Sierra Leone and a letter from a pastor at a Christian church stating that they are citizens of Sierra Leone.
69. I find on the evidence before me that the applicant and his wife are nationals of Sierra Leone. Although both of them have said that their distant ancestors came from Country 1 I accept that neither the applicant nor his wife is a national of Country 1. The applicant's wife said when she was interviewed by the primary decision-maker that passports of Country 1 which she had obtained for herself and the applicant had been obtained lawfully but it transpired that she had paid a sum of money to her relative for each of the passports. While I accept that they are genuine passports of Country 1 the inference must be that they were fraudulently issued.
70. Although the applicants' representatives described their child as being of unknown nationality or stateless, as I put to the applicant in the course of the hearing before me the information available to me suggests that if both the applicant and his wife are nationals of Sierra Leone then their child will be a national of Sierra Leone provided that the child has no other nationality (UK Home Office, *Country of Origin Information Report - Sierra Leone*, March 2006, paragraph 5.04). The applicant said that they were all from Sierra Leone and I find on the evidence before me that their child is also a national of Sierra Leone.

Claims in relation to Sierra Leone

71. In their original applications the applicant and his wife said that they feared persecution if they returned to Sierra Leone because they were from the Mandingo ethnic group. In their submission their representatives identified their ethnic group as both Mandingo and Krio but at the hearing before me the applicant and his wife confirmed that they belonged to the Mandingo ethnic group. Although I gave the applicant every opportunity to identify any fears he claimed to have specifically because he was from the Mandingo ethnic group he kept returning to his claims based on his real or imputed political opinion (as a supporter of the SLPP and the former president, Tejan Kabbah) which he extended to include persecution because he would be identified as the son of his father and his father had been a supporter of Mr Kabbah. The applicant's wife said that Sierra Leoneans did not love the Mandingo tribe but like the applicant she suggested that the persecution she claimed to fear arose from the fact that her father had been a supporter of the SLPP, the party of the former president, Mr Kabbah. She said that her ethnic group had been ruling and that this had contributed to the enmity between her ethnic group and the other ethnic groups.
72. In his statutory declaration the applicant repeated that he and his wife were from the Mandingo ethnic group, the same group as Tejan Kabbah. He said that the current president,

Ernest Koroma, was from the Temne ethnic group. The applicant said that the Mende and Temne tribes resented the Mandingo and sought to persecute them because the Mandingo had most of the financial power in Sierra Leone and there was a feeling that the Mandingo came from outside the country. In their submission the applicants' representatives did not refer to any information suggesting that the Mandingo were being persecuted for reasons of their race in Sierra Leone. There is nothing in the information available to me which would suggest that that is the case. Putting to one side the fears which the applicant and his wife have expressed based on the imputation that they are supporters of the SLPP and the former president, Tejan Kabbah (who I accept is from the Mandingo ethnic group), I do not accept that there is a real chance that the applicant or his wife or their child will be persecuted for reasons of their race as members of the Mandingo ethnic group if they return to Sierra Leone now or in the reasonably foreseeable future.

73. The applicant's wife said in her original application that she feared that she would be seriously harmed if she returned to Sierra Leone because she was a Mandingo woman. In their submission the applicants' representatives said that the applicant's wife feared persecution for reasons of her membership of the particular social group comprised of Mandingo women. They referred to comments with regard to the human rights situation in Sierra Leone which they attributed to the UK Home Office but which in fact came from the US State Department *Country Reports on Human Rights Practices for 2004* in relation to Sierra Leone. They quoted from the 2007 edition of the Freedom House report, *Freedom in the World*, in relation to Sierra Leone, noting that protection for women was currently inadequate. They also quoted from a report published by Amnesty International in May 2006 on human rights abuses faced by women in the informal legal sector. However, when I referred in the course of the hearing before me to the claim that the applicant's wife feared being persecuted as a Mandingo woman, she referred, as mentioned above, to her claims that she feared the enemies of her father who had been a wealthy man and a supporter of the SLPP.
74. I accept that, as indicated in the extract from the US State Department *Country Reports on Human Rights Practices for 2004* in relation to Sierra Leone which the applicants' representatives quoted, violence, discrimination against women and prostitution remain problems in Sierra Leone although, as I noted in the course of the hearing, and as referred to in the Human Rights Watch *World Report 2008* in relation to Sierra Leone (a copy of which I provided to the applicant and his wife after the hearing), four important Bills were passed by the Parliament in 2007 prohibiting early marriage, military conscription of children and child trafficking, creating a legal framework criminalising domestic violence, ensuring women's property rights, setting the minimum age for customary marriage at 18, requiring such marriages to have the consent of both parties, and recognising rights to inheritance without interference from extended family. I also accept that, as referred to in the same report and in the Amnesty International publication quoted by the applicants' representatives, the only legal system accessible to some 70 per cent of the population is a network of 'customary' courts controlled by traditional leaders and applying customary law which is often discriminatory, particularly against women. However, as McHugh J said in *Haji Ibrahim*, referred to above, at [55], not all discrimination amounts to persecution. I do not accept on the evidence before me that there is a real chance that the applicant's wife will suffer harm amounting to persecution for reasons of her membership of the particular social group of women in Sierra Leone, or specifically Mandingo women, if she returns to Sierra Leone now or in the reasonably foreseeable future.

75. In their submission the applicants' representatives also said that the applicant and his wife feared serious harm in Sierra Leone because of their child's membership of the particular social group comprised of young children. While I accept that young children may constitute a 'particular social group' for the purposes of the Convention in Sierra Leone, the applicants' representatives did not refer in their submission to any information suggesting that this group was being singled out for persecution in Sierra Leone. As noted above they did refer to information suggesting that poverty is still widespread and that there is severe youth unemployment and a lack of basic services. The existence of such problems, however, does not establish that young children as a particular social group are being singled out for persecution. I do not accept on the evidence before me that young children in Sierra Leone are being singled out for persecution for reasons of their membership of that particular social group. I do not accept, therefore, that there is a real chance that the child of the applicant and his wife will be persecuted for reasons of the child's membership of the particular social group of 'young children' in Sierra Leone if the family returns there now or in the reasonably foreseeable future.
76. There remains what I regard as the main claim made by the applicant and his wife which is that, if they return to Sierra Leone now or in the reasonably foreseeable future, they will be persecuted for reasons of their real or imputed political opinion in support of the SLPP and the former president, Tejan Kabbah. At the hearing before me the applicant said that he had himself been involved as a young man in campaigning for the SLPP in Sierra Leone. The claim was otherwise presented as one of imputed political opinion, arising from the fact that both the applicant and his wife belong (as referred to above) to the same ethnic group, and both their fathers were wealthy men who supported the SLPP and the former president financially. Both the applicant and his wife said that they feared that if they returned to Sierra Leone they might be killed by the enemies of their respective fathers. The applicant said that the main reason his family had been targeted by the rebels in the late 1990s had been that his father had been a great supporter of the former president and the SLPP while the applicant's wife offered the additional reason that people had been against her parents because they had been a bit wealthy.
77. I accept that both the applicant's father and his wife's father were wealthy men by the standards of Sierra Leone and that they supported the SLPP and the former president, Tejan Kabbah. I accept that this association will be known to many people and that both the applicant and his wife will be able to be identified as members of their respective families if they return to Sierra Leone. I accept that the applicant himself campaigned on behalf of the SLPP as a young man and that he may wish to continue to support the SLPP if he returns to Sierra Leone now. I accept that both the applicant and his wife and the former president are come from the same ethnic group. All of this may be used to found a claim that if they return to Sierra Leone they will be regarded as supporters of the SLPP and former president Kabbah. It can also be used, as I noted in the course of the hearing, to found a claim based on their membership of the particular social group constituted by their respective families, at least to the extent that their families were targeted for Convention reasons, for example, once again, their respective fathers' support for the SLPP and the former president or their respective fathers' relative wealth (seen in this context as membership of a particular social group in Sierra Leone defined as wealthy men or successful businessman).
78. As I indicated to the applicant and his wife in the course of the hearing before me, I accept that there was violence at the time of the parliamentary and presidential elections in Sierra Leone in 2007. As I put to them, however, the information available to me suggests that the

polls themselves were generally free and fair and that the police and the army acted professionally to put a stop to violence generated by all sides (Human Rights Watch, *World Report 2008* in relation to Sierra Leone). The applicant said by way of response at the hearing that he did not believe that there was democracy in Sierra Leone because he had grown up there and he knew the mentality of the people there. He said that the people there did not practise democracy and human rights. The applicant's wife said by way of response that it was true that there was peace in Sierra Leone and that the police and the army were doing well but she said that there were still some secret killings. She said that people who held old grudges might kill you overnight.

79. In his statutory declaration the applicant said that even though it might appear that the violence was now under control and that the 2007 elections had been free, a lot of bad things that happened were not publicised. He said that now the APC was in power there was nothing to stop them from harming their enemies and the government could send informers disguised as civilians to gather information against you or could prosecute you for nothing. He said that even though Sierra Leone was supposed to be a democratic country the government had complete power. He said that even though it was said that the police were now acting professionally you could not stop violence happening in Africa.
80. The difficulty which the applicant and his wife face is that they fled Sierra Leone in the late 1990s and they either have no family there or they do not know where any members of their respective families may be living. While the applicant says that he knows the mentality of the people in Sierra Leone and that one cannot stop violence happening in Africa, there is nothing in the information available to me with regard to what is happening in Sierra Leone which would suggest that supporters of the SLPP or the former president, Tejan Kabbah, or people who may be perceived to be such supporters, are being singled out to be attacked, prosecuted or killed by the present government, the present ruling party, the APC, or its supporters.
81. In their submission the applicants' representatives referred to claims made by the SLPP in relation to violence against SLPP supporters around the time of the parliamentary and presidential elections in August and September 2007 and ahead of forthcoming local council elections in June 2008. I consider that, if supporters of the SLPP or the former president had been being attacked, prosecuted or killed by the present government, the present ruling party, the APC, or its supporters following the change of government in 2007, the SLPP would have drawn attention to this. I obviously cannot rule out the possibility that some people in Sierra Leone may hold old grudges but what I have to consider is whether there is a real chance that the applicant or his wife or their child will be persecuted for one or more of the five Convention reasons if they return to Sierra Leone. I do not accept on the basis of the evidence before me that there is a real chance that the applicant or his wife or their child will be persecuted for reasons of their real or imputed political opinion (in support of the SLPP or the former president, Tejan Kabbah) or their membership of the particular social group constituted by their respective families if they return to Sierra Leone now or in the reasonably foreseeable future.

CONCLUSIONS

82. I am not satisfied on the evidence before me that either the applicant or his wife has a well-founded fear of being persecuted for a Convention reason if they return to Sierra Leone. It follows that I am not satisfied that they are persons to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore

neither the applicant nor his wife satisfies the criterion set out in paragraph 36(2)(a) of the Act for a protection visa. Their child's application was combined with their applications as referred to above on the basis of the child's membership of their family unit. The fate of the child's application depends on the outcome of their applications. As neither the applicant nor his wife satisfies the criterion set out in paragraph 36(2)(a), it follows that their child cannot satisfy the relevant criterion set out in paragraph 36(2)(b) and cannot be granted a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.
Sealing Officer's I.DPRRT42