

1203929 [2012] RRTA 819 (5 October 2012)

DECISION RECORD

RRT CASE NUMBER:	1203929
DIAC REFERENCE(S):	CLF2012/2019
COUNTRY OF REFERENCE:	Fiji
TRIBUNAL MEMBER:	Melissa Bray
DATE:	5 October 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Fiji, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2012.
3. The delegate refused to grant the visa [in] February 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has read the Department's file relating to the applicant and has had regard to material referred to in the primary decision or otherwise cited below.

Background

20. According to his protection visa application, the applicant was born in [locality deleted: s.431(2)], Fiji in [year deleted: s.431(2)], is a citizen of Fiji and holds a Fijian passport issued in 2008 and valid to 2018. He is of Fijian ethnicity and Roman Catholic religion. He speaks, reads and writes English and Fijian and has twelve years of education. His last job in Fiji was as a [shop] manager from 2002 to 2011. His wife and children live in Fiji and he resided at a single address in Nadi for around ten years before his travel to Australia in late 2011. He most recently arrived in Australia [in] November 2011 on an Australian visitor visa valid to [a date in] January 2012. The applicant previously visited Australia [in 2008 and 2009].
21. The application form indicates as follows. The applicant left Fiji due to his political affiliation as a strong member of the "SDL government in the [Nadi] area". He firmly believes in democratic government, and his lack of freedom to speak out against the military government's running of Fiji is a crime. The applicant is an area leader in the

church - community meetings occur every two weeks and the military requests information on the reason and topics for the meetings. It is difficult to have big social and family gatherings and home church meetings – the military camp is ten minutes from his home and his family is living in fear. In 2007, [Sakiusa Rabaka was tortured] and later died. The applicant is at peace in Australia and feels free to express his opinion. He hopes his wife can join him here in the near future. He is in telephone contact with his family in Fiji, who advise him not to return “because the government/military has been torturing people who are against the government” The applicant did not respond to specific questions in the application form about what harm he feared in returning to Fiji or whether the Fijian authorities could protect him if he returns.

22. A copy of the applicant’s Fijian passport is on the DIAC file, together with copies of his Fijian birth and marriage certificates.
23. The applicant provided:
 - a) a letter of support from [a relative] in Australia, dated [in] February 2012 (DF folio 83), which indicates the applicant is well-respected and involved in charity work and assisting those in need in his church and local community;
 - b) an undated letter of support by [Mr A] indicating he supports the applicant’s work permit application, and states:

(The applicant) is a member of [a certain] branch of the SDL Government; we do not support the Military Government.

(The applicant) often called meetings at his residence; he is also a member of our Catholic Community and President of our Fijian Community. We were interfered on several occasions by the Military in our meeting to be told that our meetings illegal without any permit. In the year 2006, my [son] was taken up to Black Rock with Sakiusa Rabaka and was beaten up by the Military. Sakiusa later died.

(The applicant has) to be careful when he comes back to Fiji
 - c) letter of [name and occupation deleted: s.431(2)], undated, indicating he has known the applicant for ten years as a Community Leader who has served as a sector leader in the Catholic community for the past three years and an area leader for the past five years.
24. The applicant also provided to DIAC a range of media reporting and material regarding Fiji, in my summary as follows:
 - a) Internet-sourced report posted March 2009, regarding the Fijian government’s decision to grant early release to soldiers and officers found guilty of the manslaughter of Sakiusa Rabaka. The report indicates Rabaka and other youths were detained at a military camp and Rabaka was abused and tortured after he was suspected of purchasing drugs - and later died. The report cites the incident as an example of military abuse and military protection from prosecution for abuse and a lack of judicial independence;
 - b) Undated Facebook post, offering advice and instruction to Fijians detained by police. The post outlines detention and interview processes under military rule, and indicates:

If we could trust in the independence of the police from the military, or the independence of the prosecution (...) or the judiciary, we could trust that injustices would be prevented by the checks and balances in our criminal justice system. In other words, now we cannot trust these arms of the law (...) to act fairly, especially when the regime feels threatened.

- c) Undated internet post (no source indicated) by Sai Lealea, describing the lifting of the Public Emergency Regulations (PER) is a sham, and that all prohibitions in the PER are now embedded in the Media and Crime Decrees;
 - d) (at DF folios 19-52) `Monitoring Framework of the violation of the freedom from arbitrary arrest and detention and freedom from cruel or degrading treatment by the Republic of Fiji Military Forces since its Coup d'etat of 5 December 2006' – Updated 26 January 2007
25. The decision record indicates the applicant attended an interview with DIAC to discuss his protection claims.

Primary Decision

26. The primary decision record indicates that the delegate refused the protection visa application, finding that the applicant was never an SDL member and had not been politically active or expressed political views publically in Fiji, and had no significant political profile there. The delegate did not accept that the applicant would be politically active on return to Fiji. The applicant's delay in seeking protection was relevant. On these bases, and having regard to cited independent information, the delegate did not accept that the applicant's fears of persecution in Fiji in the reasonably foreseeable future were objectively well-founded.

Review Application

27. On the day of the hearing, the Tribunal received a written submission from the representative arguing in summary as follows. The applicant is an SDL member. Coup critics in Fiji are effectively silenced by the military. A source (cited) indicates that the military regime targets politicians, civil society activists and outspoken lawyers, and that specific individuals have been detained, intimidated and harassed – and in one case killed- at military barracks. Reiterating the applicant's written claims to DIAC, the representative argues the applicant faces a real chance of serious harm or a real risk of significant harm (in the form of torture and/or inhumane and degrading treatment) at the hands of the military in Fiji as a result of his political opinion and “stemming from the preaching allegations committed during the church meetings that he held fortnightly with the community and the SDL group” The state will not protect the applicant due to corruption within state apparatus, and relocation is not reasonable because the authorities will locate and punish the applicant.
28. Two new letters of support were also provided, as follows:
- a) Letter of Father [name deleted: s.431(2)], Associate Pastor, [parish deleted: s.431(2)] dated [in] June 2012, indicating the applicant has been an active and supportive member of the parish in [a town in Australia].

- b) Letter of [name deleted: s.431(2)], Victoria Police member, dated [in] April 2012, indicating in my summary as follows. The author has known the applicant since [year deleted: s.431(2)], when they attended school in Suva. The applicant is a reputable and community-minded person who is an area church leader in Nadi, offering pastoral care and counselling to [a number of] families in [a certain] area. He conducts regular social and church gatherings but these meetings are forbidden and the fear of being arrested and severely reprimanded by the authorities is a constant hindrance to the applicant in performing his duties. Most Fijians do not have a right to basic free speech. The author fears for the applicant's safety and welfare if he returns to Fiji, especially "when the regime gets wind of the contents of his application for a visa to stay in Australia".

Tribunal Hearing

29. The applicant attended a Tribunal hearing [in] July 2012 to give evidence and present arguments. His registered migration agent represented him in the review and attended the hearing. An interpreter in the English and Fijian languages assisted at the hearing. I welcomed the applicant and explained the Tribunal's procedures and legal concepts relevant to the application.
30. The applicant confirmed his personal details consistently with material before the Tribunal. [Information regarding extended family in Australia deleted: s.431(2).] His wife and [children] lived in Fiji and that all the children were married and the wife lived alone. His occupation in Fiji had been a [shop] manager for the past three years, and he had supported himself in Australia through farm work.
31. In relation to his visits to Australia, the applicant said that he had visited [Australia on three occasions before this visit]. Asked about the purpose of his current visit, the applicant said that he came to Australia to escape Fiji where he feared harm. The visa had been issued for 2 months duration and he had applied for protection one week before the visa expired. He said he had not had any past problems leaving Fiji to travel to Australia. The applicant said he had lost his Fijian passport in Australia but intended to apply for a new one and had reported the matter to police here.
32. I asked the applicant about his relationship to his church in Fiji. He said he belonged to the Catholic Church in [a certain parish] in Nadi. [Information regarding the applicant's role within the church deleted: s.431(2)]. I referred to the applicant's written statement to DIAC, which indicates that his house is located [close to] a military camp. I asked what problems or effects the military camp's proximity had on him. He said that the church held meetings every fortnight and that soldiers and police came and asked why the group was meeting, because they were not supposed to congregate. Asked if he had any problems at these meetings because of the military, the applicant said the military came round and asked the group what it had discussed.
33. I asked the applicant if he did discuss the government at his meetings. He said yes usually unofficially at the meeting but that they did not tell them (the military). He usually spoke about the government with men after the women had left the meeting. Asked what types of political issues the group discussed he said they talked about the political climate and life in Fiji and especially which rights had been taken away from Fijians - their human rights. Asked if there were particular human rights problems that affected the applicant or his church members, the applicant asked me to rephrase the

question. I asked what sort of problems the group talked about regarding human rights. The applicant asked me to clarify the question. I said that he had referred to human rights been taken away from Fijians and I asked which rights he was referring to. The applicant said he wanted to discuss his perspective about what was going on and the current government in Fiji had not allowed Fijians to do that. I asked the applicant what his perspectives on the Fijian government were. He said that the way the current government made decisions showed it did not listen to Fijians. I asked if he could give examples of things the Fijian people wanted which the government was not allowing or providing. The applicant said he would give one example. He said the cyclone ravaged areas relied on the government to give support and help but that there was no support at all.

34. I asked the applicant if there had been any problems as a consequence of him talking with his church group about his views of the government. He said he was really touched about an example he read or heard of where young girls who had been abused had turned to prostitution. He said to his church group that he wanted to [harm] Bainimarama for allowing this to occur. He said someone had told the police. This occurred in [mid] 2011. Asked if he had any views about who from his church group went to the police, he said he could only guess. Asked why he thought a church member would do that, he said that those in the church group thought they knew one another but one never really knows who is supporting the government and someone may have been paid to listen to church conversations.
35. The applicant said the police came and took him into the police station and he was told he was lucky because the person leading the interrogation was known to him. Asked to name the person he offered a name reluctantly and after pausing. He said the person was a member of the congregation and lived in the same area. He said he was held at the station for about one and a half hours before being released.
36. I asked the applicant if he had any other problems with police or members of the government in Fiji. He said after that incident he was released and was concerned and frightened that he would be taken to Blackrock which was a place where they tortured people. He said he was referring to the military and that sometimes the police helped them. Asked if he was aware of specific examples of people being tortured at Blackrock he said yes, [a person he knew of] (Sakiusa Rabaka) and another person who had died as a consequence. Asked if he knew [this person]'s background or why he had been tortured, the applicant said he thought that the two had been taken up there because they had been drinking in the group. Asked what made the applicant fear that he would be treated in the same way, he said because he thought about what he had said at the Church meeting, speaking directly against Bainimarama.
37. Noting the applicant's evidence that the police incident had occurred in [mid] 2011 and he came to Australia in October 2011, I asked the applicant why he thought nothing had happened to him in that period if the government knew about or was concerned by his comments at the Church meeting. He said he was so lucky when he went to the police station that he knew the police officer and had been warned that if he "breached the leader" he would need to be careful, so he escaped from Fiji. I asked whether, besides the specific comments he made in church in [mid] 2011, the applicant had made any other comments about Bainimarama or his government. The applicant said he was talking about Bainimarama's leadership, saying the rights of Fijians were being taken

away, and also that Bainimarama is the one who chooses which developments occur without regard to available funding. He gave the example of roads being built.

38. Asked what he feared if he returned to Fiji now, the applicant said he would be severely punished by the military because of what he had said to his church group in [mid] 2011.
39. The applicant said he had been in contact with his family since he had departed Fiji. Asked if there were any problems for them, he said his children were at their houses and his wife was alone. They had discussed what happened and they feared that they would lose their jobs. [Information regarding the jobs of the applicant's wife and their children deleted: s.431(2)]. Asked if anything had happened specifically to make the family fear losing their jobs, the applicant said this was the experience of workers in Fiji. He said his children worked in Nadi and were in contact with the military and police and lawyers were easily transferred. He said if you are seen as related to that person (that is, someone who criticises or opposes the government) they (the family members) would lose their jobs.
40. I noted the applicant had said he was critical of the government's approach to the cyclone reconstruction and development issues and asked if there was anything else of which he was critical. He said there were lots of aspects of the government of which he was critical - the most important criticism is that the government is not listening to the people of Fiji.
41. I noted the applicant's evidence that he came to Australia in October or November 2011 and applied for protection in January 2012 and asked why he had not applied sooner given he said he left in fear for his circumstances in Fiji. The applicant said he came to Australia on a one-way ticket with the intention of applying for protection. He said he listened to advice before he applied. Asked who advised him, he said one of his friends. Asked when he first spoke to the friend about wanting to apply for protection, he said straight after he arrived. I asked why, if the applicant came with the intention of applying for protection and spoke to his friends straight after arriving in October or November 2011, he delayed until January 2012. He said that his friend told him to wait until his visitor visa was about to expire. Asked why he thought his friend had told him that, the applicant said he was not sure but his main aim was to live in Australia permanently.
42. Observing that the applicant's written claims to the Department indicated that he was an SDL supporter, I asked the applicant why he had not mentioned any connection to the SDL during the hearing so far. The applicant said the reason he supported the SDL party was to elect it to government in 2006 because it was democratically elected and the party listened to what Fijian citizens wanted. I asked if, since 2006, the applicant had supported the SDL. He said when the government was seized by Bainimarama he supported a group of SDL supporters who did not return to work. I asked the applicant if he had been involved in or supported the SDL in other ways since 2006. He said SDL members came to his house to ask for donations and he gave a donation. He said in Fiji people were not allowed to protest.
43. Asked if he was aware of any SDL members having problems with the government in Fiji, the applicant said 'yes'. Asked to give examples, he said the objectives of the SDL and the Bainimarama government were entirely two different things. When SDL party members spoke against the government they were taken to military camps.

44. I said I was aware from country information of some examples of problems and harm occurring to some SDL members and anti-government critics with established profiles in Fiji. I said that the information did not, however, suggest there was necessarily systemic harm for ordinary people with anti-government views, including SDL members. The applicant said at the moment the media was censored and did not allow that type of thing to be reported in the media. I said I was aware of reports citing examples of the Fijian government censoring the media, but that I was referring to independent information from diplomats and human rights groups and organisations in Fiji which reported independently from the government. The applicant said he did not understand why these reports did not cover these incidents.
45. I said I had not made up my mind about the case - but that if I did not accept that the applicant had a public profile or known anti-government views and if I relied on the country information before me, I may not accept that the applicant was in need of protection in Australia. Asked to comment on this, he said he had nothing else to say. Invited to comment on any other aspect of his claims, he did not comment further.
46. I referred to the five supporting letters before the Tribunal. I noted the letter from the applicant's [relative] referred to his church and community activities and to his wish that the applicant be allowed to live in peace in Australia. The applicant confirmed his [relative] knew that he had applied for protection and knew of the applicant's fears about returning to Fiji.
47. I referred to the letter from [Mr A]. The applicant said this was [someone he knew] in Fiji. I noted that the letter said the applicant was an SDL member and that this seemed different from what the applicant himself had told the Tribunal. I asked him to comment on the difference. The applicant said that he voted for SDL in 2006 and had donated money at his home when doorknocked. I noted the letter referred to the applicant's church meetings being interfered with by the military and the applicant being told that they were illegal without a permit. I asked if this was the case. He said they were supposed to have a permit for all meetings. I asked if the applicant or his church had ever had any problems as a result of permit issues or interruptions by the military. He said the church met every fortnight and the military want a permit and they always look for one and the military always came in and interfered and asked if they (the group) were discussing the government. I asked the applicant what he said when the military asked these questions. He said he always said that they were discussing parish activities.
48. I noted that two other support letters referred to the applicant's church and community activities in Fiji and Australia. I noted a fifth letter from the applicant's friend (a policeman in Australia) indicated the author was concerned about the applicant's situation if he returned to Fiji - particularly if the government found out about his protection application. I noted the applicant had not mentioned any such concern himself in the hearing so far. He said he did not mention it because he did not know that I would ask about his safety. I asked him if he was concerned. He said he thought the government could trace his application. I said given the confidentiality of the application process and given that there would be no evidence in his Fijian passport that he had applied for protection, I may not accept that the government would find out about it. I noted particularly that the applicant's presence in Australia as a visitor this time was consistent with his previous visits to Australia.

49. Nevertheless I asked the applicant what he thought would happen if the government did know about his protection application. He said he would be persecuted. Asked what he thought would happen, he said that the military would interrogate him and ask what he was doing in Australia. I said I would consider this matter further but may not accept that the government would know about his application and also noted that he had not mentioned this matter at all during the application process, until I raised the matter.
50. The hearing resumed after a brief adjournment. The representative said that in the break the applicant had indicated that he was able to obtain country information which would support the view that people are harmed for anti-government views regardless of public profile. I allowed one week for the applicant to provide any such information. I said I would need to nevertheless still consider how any information provided by him sat with the other country information I had cited at the hearing.
51. The representative said that he would like me to ask the applicant again about the reasons for the delay in his protection visa application between October 2011 and January 2012. I invited the review applicant to comment on the matter. The applicant said he had been advised by a friend to lodge the application close to the time when his visa expired. He also said that he wanted to tell me that he came to Australia to find a way to come and stay permanently. I said I was confused about how this related to get timing of his protection visa application and asked if he would like to clarify anything. He said he came to Australia to seek a way to stay permanently.
52. I said I would have regard to the written submissions of the representative, and invited any further oral submissions. The representative said the applicant had told him that his position as a leader in the church meant he had a high community profile and was at the forefront of his community. He said the applicant was not sure how to say it or prove it but culturally, he may be considered a village leader. The representative said the applicant's political opinions therefore had significant weight within the community.
53. I noted I had asked the applicant detailed questions about his church role earlier in the hearing and would have regard to the evidence he had given. Even if I were to accept that he had a significant church role within his community, I still needed to consider how that role interacted with his claims about political opinion and any profile he had with the Fijian authorities. I would have regard to all the evidence and how the church role in the political opinion might interact, however I needed to consider whether the applicant in fact had a political profile. Asked to comment further, the applicant said he wished to reiterate that he was really fearful of returning to Fiji. The hearing ended.

Post-hearing Submissions

54. On [a date in] July 2012, the Tribunal received from the representative a number of RRT country advice documents relating to Fiji, in summary as follows.
 - RRT country advice as follows:
 - Fiji FJ138639 dated 3 May 2011, addressing the matter of government monitoring of the SDL and other critics of the military regime in Fiji;
 - FJ 137176 dated 13 August 2010 relating to the treatment of political activists against the military regime and SDL members in Fiji;

- SJ 136946 dated 12 of July 2010 relating to a Bill targeting asylum seekers and treatment of overseas regime critics and SDL supporters and sedition;
- Report of the Immigration and Refugee Board of Canada dated 6 February 2008, 'Fiji: treatment of members and supporters of the SDL, in particular treatment of non-elite indigenous Fijians';
- News reports sourced from Radio New Zealand International website (<http://www.rnzi.com>), as follows:
 - 'Former Fiji politician glad to have escaped country', posted 28 February 2011 - indicating in summary that the former Fiji politician who was beaten savagely by members of the Fiji military said he was glad to have left Fiji in one piece, and that not long after he left Fiji the military started searching for him to the extent that they raided the SDL party office in Suva - which was shut down and had computers and files seized;
 - 'SDL party official says Fiji police conduct aggressive raid on HQ', posted 1 March 2011 - indicating in summary that a senior executive of the SDL party in Fiji confirmed Fiji police searched the party office and removed its main computer. The SDL representative confirmed that nobody was taken for questioning, that the search occurred with a search warrant and that documents were seized which "will lead to some charges being laid against some people";
 - 'SDL party member threatened by Fiji military', dated 15 May 2007, indicating a member of Fiji's former government claimed she was intimidated and frightened when she was taken to a military camp and threatened. The news of the warning followed a report by a Fijian businessman and that he was beaten by the military the previous week for alleged involvement in an antimilitary website.
 - SDL member alleges assault by Fiji military, posted 21 May 2007, indicating that the acting director of Fiji's ousted SDL party claimed he was assaulted by the military when summoned to the army camp for questioning.

55. No submissions or arguments accompanied the material.

56. [In] September 2012, the representative forwarded to the Tribunal a letter signed by the applicant, dated [in] July 2012, which indicates in my summary as follows:

- the applicant believes in freedom and democracy and the right of human beings to make choices and at the moment these things have been violated in Fiji. People are afraid to speak out and the 2012 decrees have ensured that fear continues with the people;
- on 1 January 2012, Bainimarama scrapped martial law that came with tough censorship but broke that promise and introduced a Public Order Decree 2012. The decree gives new power to the Fiji military forces and the police to use weapons to break up meetings and hold people for weeks without allowing them access to courts; arrest civilians and conduct the duties of police and prison officers if directed by the Commissioner of police - who is himself a highly placed military officer. The new

laws restrict Fijians from assembling or convening political or church meetings and police are immune from criminal or civil liability if actions under the decree cause death;

- the rule of law no longer operates in Fiji and the independence of the judiciary cannot be relied on and there is no freedom of expression, according to a report by the Law Society charity chair Nigel Dodd. Media censorship is widespread. A draft media decree will ensure that nothing is included in Fijian media services which is against public interest or order or national interest or creates communal discord.
- former Fiji politician Dr Mere Samisoni was arrested by the military recently, charged with conspiracy and released on bail. Several union delegates were detained by Fijian authorities in early 2012 and said the Fijian regime was showing an increasingly hostile attitude to human rights, particularly labour rights. Since the 2006 coup, scores of Bainimarama opponents have been hauled to the barracks where they have been held for days (sometimes weeks), beaten and (in the case of some women) had their heads shaved before being marched to exhaustion.

RELEVANT INDEPENDENT INFORMATION ON FIJI

57. The Department of Foreign Affairs and Trade's website includes a *Country Brief*, dated February 2011, about Fiji which summarises the country's recent political history:

On 10 April 2009, the President of Fiji, Ratu Josefa Iloilo, announced that he had abrogated Fiji's 1997 Constitution and declared himself Head of State. He said Fiji would be ruled under a New Legal Order. Under the order, all judicial appointments were revoked pending new appointments for all judges, magistrates and other judicial officers. President Iloilo subsequently reappointed Interim Prime Minister Commodore Bainimarama and all nine members of the previous Interim Cabinet. The Interim Government has since confirmed the President's declaration that elections may not be held until 2014.

The abrogation of the Constitution followed a decision by Fiji's Court of Appeal that the dismissal of former Prime Minister Qarase in December 2006 had been unlawful and therefore invalid. On 5 December 2006 Commodore Bainimarama had assumed executive power in a military coup. Following the coup, Bainimarama dismissed the duly elected government of Fiji and declared a state of emergency. He subsequently claimed to have returned executive authority to the President, who then appointed Bainimarama 'Interim Prime Minister'. On 9 April 2009, the judges found that the dismissal and appointment was illegal. The court made the decision on the basis that if the President's powers of prerogative to appoint Bainimarama Prime Minister did exist after Fiji became independent, they did not exist after the 1997 Constitution came into effect. The issue of the President's powers of prerogative, through which the interim administration was appointed, was the crux of the appeal brought by Qarase ...

The international community has joined Australia in its condemnation of the regime. The United Nations Security Council, the Commonwealth Secretary General and the United Nations Secretary General have all called for a prompt return to constitutional democracy in Fiji and a respect for the values of free speech, human rights and the rule of law which underpin it.

The impact of the abrogation on the Fijian people's political rights has been profound. On 10 April (2009), the President implemented a set of Public Emergency

Regulations (PER) that limit freedom of speech, expand police powers and curb media freedom. Critics of the regime have been threatened, harassed, detained, questioned and/or assaulted. Journalists continue to be harassed, censored and in some cases deported. The Permanent Secretary for Information has been given the power to control broadcasts and publications. Interim administration personnel accompanied by police have been placed in all major news outlets, which may be shut down if they publish stories deemed 'negative'. The independence of the judiciary has been undermined and judges who are considered unsympathetic to the regime have been removed. Military personnel have the power to use arms to break up gatherings and have detained individuals without charge.

58. Limitations on freedom of speech imposed by the Fijian government have been widely reported. The United States Department of State's 2011 human rights report on Fiji reports as follows in respect of developments in 2011 (in Section 2(a)):

Status of Freedom of Speech and Press

The abrogated constitution provides for freedom of speech and press, but the government generally did not respect these rights in practice. The PER give the government the power to detain persons on suspicion of "endangering public safety or the preservation of the peace"; the government used this provision to intimidate and in some cases detain persons who criticized the government. In addition the PER and the Media Decree provide for government censorship of the media.

Freedom of Speech: The Crimes Decree includes criticism of the government in its definition of the crime of sedition. This includes statements made in other countries by any person, who can be prosecuted on return to Fiji. Two former military officers and several labor leaders and graffiti vandals were charged with sedition during the year.

At year's end the 2010 case of former politician Peceli Rinakama, charged in connection with comments he reportedly made to a passing bystander relating to the conviction of eight persons charged with conspiring to assassinate Bainimarama, had not yet come to trial. Rinakama was charged under the Public Order Act with uttering words calculated to bring death or physical injury to a person or injury to the lawful authority of the government.

Freedom of Press: Independent media could not operate freely. The government published fortnightly supplements in the Fiji Sun newspaper. The country's television news program production was owned and operated by Fiji One, one of two national noncable television stations. A company whose board is appointed by the minister for indigenous affairs (a position held by Prime Minister Bainimarama during the year) on behalf of the provincial councils owned 51 percent of Fiji One; the remainder was privately held. The government owned the Fiji Broadcasting Corporation, which operated six radio stations and launched a television station in November. The Ministry of Information news bulletin was broadcast daily on both the FBC TV station and the third station, Mai TV.

Violence and Harassment: On February 18, the government detained journalist Felix Chaudhry and two trade union officials after the Fiji Times newspaper published an article on maintenance problems at Fiji Sugar Corporation's Rarawi sugar mill. Chaudhry was released the same day. Soldiers warned him not to publish any more articles about Fiji Sugar Corporation or certain other corporations in which the government held a significant share.

Censorship or Content Restrictions: The PER authorize the Ministry of Information, military media cell officers, and police to vet all news stories before publication, resulting in the removal of all stories the government deemed “negative” and “inciteful,” and therefore, according to the government, a threat to national security. All radio stations were required to submit their news scripts to the permanent secretary for information, a military appointee, before each news bulletin was broadcast, and the print and television media were censored on a daily basis by Ministry of Information and military media cell officers, accompanied by police officers, who were placed in media newsrooms.

The Media Decree penalizes the media for “irresponsible reporting.” Under the decree the directors and 90 per cent of the shareholders of locally based media must be citizens of, and permanently resident in, the country. The Fiji Media Industry Development Authority is responsible for enforcing these provisions. The authority has the power to investigate journalists and media outlets for alleged violations of the decree, including powers of search and seizure of equipment. The decree also establishes a media tribunal to decide complaints referred by the authority, with the power to impose jail terms of up to two years and fines of up to F\$1,000 (\$565) for journalists, F\$25,000 (\$14,116) for publishers and editors, and F\$100,000 (\$56,465) for media organizations. The tribunal is not bound by formal rules of evidence. The decree strips the judiciary of power to challenge the decree itself or any proceedings or findings of the Media Authority, the tribunal, or the information minister.

At year’s end the tribunal provided for in the decree had not yet been appointed.

The Media Council, a voluntary private watchdog group of media and academic figures, received and resolved complaints of bias and malfeasance within the media. However, the continuous extension of the PER and the promulgation of the Media Decree gave the government control over media content through censors.

During the year the attorney general initiated a lawsuit against the *Fiji Times* newspaper for publishing a quote from an international soccer official questioning the independence of the country’s judiciary.

Internet Freedom: There were no government restrictions on general public access to the Internet, but evidence suggested that the government monitored private e-mails of citizens. The government monitored Internet traffic in an attempt to control antigovernment reports by anonymous bloggers.

A 2010 decree requires all telephone and Internet service users to register their personal details with telephone and Internet providers, including their name, birth date, home address, and photographic identification. The decree imposes fines of up to F\$100,000 (\$56,465) on providers who continue to provide services to unregistered users and up to F\$10,000 (\$5,647) on users who do not update their registration information as required under the decree. Vodafone, one of two mobile telephone providers, also required users to register their nationality, postal address, employment details, and both thumbprints.

Academic Freedom and Cultural Events: Academic freedom was generally respected, but government work-permit stipulations prohibit foreigners from participating in domestic politics. Contract regulations of the University of the South Pacific effectively restrict most university employees from running for or holding public office or holding an official position with any political party. During the year the university terminated its contract with Wadan Narsey, a prominent Fijian economist

and long-time critic of the military government, allegedly at the direction of the government.

59. During a televised New Year's address on 1 January 2012, interim Prime Minister Bainimarama announced that the PER would cease to be in effect from 7 January 2012 (2012 New Year's Message by Prime Minister Commodore Voreqe Bainimarama' 2012, Fiji Government Online Portal, 1 January). On 6 January 2012, it was announced that the *Public Order Act*, which has been in force since Fiji's independence in 1970, had been "modernised" through the *Public Order (Amendment) Decree 2012* (Fact Sheet: Public Order (Amendment) Decree 2012' 2012, *Fiji Sun*, source: *Ministry of Information*, 10 January). The introduction of the *Public Order (Amendment) Decree 2012* has been criticised on the grounds that it has incorporated the provisions of the ceased PER into the *Public Order Act* (Welch, D. 2012, 'Fiji freedom backflip', *The Age*, 11 January). Australia's Department of Foreign Affairs and Trade (DFAT) has stated that the provisions carried over from the PER into the Decree "include restrictions on the freedom of assembly and movement", as well as "wide powers of detention, arrest and search" and restrictions on the ability of persons "to seek judicial redress for decisions made by the interim government under the decree." (Department of Foreign Affairs and Trade 2012, 'Fiji: Safety and Security', *smartraveller.gov.au*, 13 January).
60. While the primary targets for detention by the authorities are high profile, vocal critics of the government, DFAT advice from 20 April 2010 (DIAC Country Information Service 2010, *Country Information Report No. 10/19 – FJI 10150: Fiji Democracy and Freedom Movement*, (sourced from DFAT Advice of 20 April 2010), 21 April) addressed the expression of anti-regime opinion in private and reported that any anti-regime information, including comments made in a private settings, which reaches authorities could be of interest and may be investigated. The information indicates that in extreme cases, when a group or individual poses a real threat to the regime, the treatment could be harsh. The report states:
- The domestic threshold for anti-regime activity is low. Private comments made in social settings in Fiji have been reported back to military officers and been responded to with threats and questioning...
- If an individual or group was perceived to be a domestic threat then typical responses might include threatening phone calls and messages, aggressive questioning at a military barracks including threats (including those made publicly), legal action under laws promulgated by decree against sedition and incitement, or in extreme examples longer-term detention at military barracks and/or physical abuse (most likely in the form of slaps, shaking, forced exercise etc rather than serious beatings) and/or loss of employment.
- Anti-regime activists could find employment with the interim government, public service, or any private firm with the interim government as a large client closed to them. Economic opportunities for regime critics in Fiji are limited. Non-Fiji citizens may risk deportation or refusal of entry into Fiji.
- ... People in Fiji who publicly oppose, or participate in political activity against, the regime would expect to be subject to varying levels of intimidation.
61. In the context of the restrictions placed on the media, blog sites have emerged as 'one of the few avenues for publishing dissent' since the 5 December 2006 coup. Prominent

blogsites are Raw Fiji News; Fiji Democracy Now; and Soli Vakasama (DIAC Country Information Service 2009, *Country Information Report No. 09/61- Fiji: Imputed Political Opinion*, (sourced from DFAT advice of 18 August 2009), 18 August). Intelligentsiya is another such site.

62. In advice dated 6 July 2010 the Australian Department of Foreign Affairs and Trade (DFAT) provided the following observations on the risk of harm to ‘people who are or were simply members of the SDL (Soqosoqo Duavata ni Lewenivaqnuaa – United Fiji Party), FLP (Fiji Labour Party) or other parties, and who may have provided limited practical support for their party in some way in the past (e.g. during elections)’:

We are not aware of ordinary or past-members of Fiji political parties being subjected to harm unless they are also high-profile politicians or vocal opponents of the regime. We consider harm to these ordinary or past members fairly unlikely...

An individual who is, or was, simply a member of a political party could be subject to monitoring and intimidatory threats. Higher levels of harm may come about if they have a high profile role in a political party or speak out against the regime publicly. Members of political parties who are also public servants could also potentially be at some risk of reduced opportunities for promotion or other career development, or being demoted or dismissed. (*DFAT Report No. 1167 – Fiji: RRT Information Request: FJI36727*, 6 July 2010).

63. In relation to ‘people who are not activists or religious leaders but who are nevertheless known to be opposed to the military regime’, the 6 July 2010 DFAT advice stated:

We are not aware of reports of ordinary individuals who are ‘known’ to be opposed to the regime being subject to harm unless they have also publicly express opposition to or criticism of the regime.

It would be difficult to identify such individuals unless they were associated with a particular political group or organisation. They would also be identifiable if they have publicly expressed opposition to or criticism of the regime.

Non-vocal opponents of the regime could potentially be subject to monitoring and intimidatory threats. If the individual is a public servant, harm could also involve reduced opportunities for promotion or other career development, or possibly demotion or dismissal. Harm is less likely to include detention and/or restrictions on travel as these are generally only applied in limited cases to high profile individuals.

64. In respect of more prominent opponents of the regime, the DFAT advice was as follows:

We are aware of a number of cases where prominent individuals who are (or seen as) regime opponents have been subjected to harm by the regime. This is particularly so if they have publicly expressed criticisms of the regime. Those most at risk include politicians who were party to the court case challenging the coup (this case was against Bainimarama and members of his regime), high profile members of the Methodist Church, and high profile chiefs.

High profile figures who have opposed the regime are well known through Fiji, including to the regime. It would therefore not be difficult for the regime to identify or target these individuals.

Such individuals would most likely be subject to monitoring and intimidatory threats. A number have also been charged with offences by the regime, often under the Public

Emergency Regulations or subject to politically-motivated investigations by the Fiji Commission Against Corruption (FICAC) as a form of harassment. Individuals targeted in this way include politicians, chiefs, Methodist church leaders, journalists, and human rights activists. As a result of such charges, individuals have also been subject to restrictions on their travel. Public servants who become known as regime opponents are likely to be subject to economic harm in the form of reduced opportunities for promotion or other career development, or demotion/dismissal. While detention is less likely for individuals in this category, there have been a number of cases, including more recently, where some high profile individuals have been detained for shorter and longer periods of time. Although verbal abuse could occur in such instances, more severe forms of physical mistreatment would be unusual.

65. With regard to the position or family members of people in other categories referred to in its request, DFAT stated:

Family members of those in each of the above categories face a similar, but generally lower, threat of harm. We are aware of a few cases where family members, particularly on high profile regime opponents, have also been targeted by the regime.

The regime could identify family members through similar methods described in the previous answers. Where public records are not available, the regime would often be able to identify family members because of the information flow through the small close-knit Fiji community.

It would be unlikely that family members would be subject to harm beyond monitoring and intimidatory threats. However, for more high profile cases, they may also face demotion or dismissal if they are public servants.

66. The Tribunal's October 2010 Issues Paper on Fiji included the following information about travel restrictions:

Watch lists operate in Fiji in the form of a list maintained by the Interim Government which imposes restrictions on persons from leaving and entering the country. The terms 'blacklist' and 'watch list' are used synonymously to refer to an immigration exit/entry watch list maintained by the Interim Government, rather than to a list of persons targeted by, or of interest to, the military or police within Fiji.

Travellers discover they are on the list only when they are denied exit or entry at the airport. Those on the list have included human rights activists and lawyers. While the blacklist/watch list was in existence prior to the Public Emergency Regulations (PER), enforced in April 2009, the PER also provide for the prohibition and regulation of people into, or out of, Fiji. In July 2010 DFAT advised that travel restrictions are generally only applied in limited cases. Such travel restrictions tend to be limited to high profile individuals such as political opponents, Methodist Church leaders, public servants and traditional chiefs. In September 2007, DFAT advised that if a Fiji national on the watch list returned to Fiji, the person may be unable to leave Fiji again until approval was obtained from the listing-agency (Immigration, Home Affairs, police etc) for the name to be removed.

There is uncertainty about the number of names placed on the watch list with reports varying from less than 10 (noted by the Director for Immigration Commander Viliame Naupoto in August 2007), to "many" (according to newspaper reports published over the period 2007-08), to 8,000 (noted by the same Director for Immigration in October 2007). In July 2007, Naupoto also stated that the agencies that can request a name be placed on, or removed from, the list included the courts,

police, Home Affairs and the Fiji Islands Revenue & Customs Authority, and that those who had spoken against the Interim Government had been targeted for inclusion. He also indicated that people can seek information on whether they are on the list by paying a small fee, and that names on the watch list are taken “on and off”, making it necessary for people to continually check their status.

67. The DFAT advice of 6 July 2010 also addressed the treatment of people who return to Fiji, including after making unsuccessful asylum claims in Australia:

Ordinary Fijians participating in anti-regime protest activities outside of Fiji could potentially be subject to harm upon returning to Fiji, although generally only high profile activists are targeted by the regime. We are aware of some cases where human rights activists have been threatened by the regime after participating in high profile activities where views critical of the regime were expressed (for example, two representatives of Fiji civil society organisations who attended Fiji’s UN Universal Periodic Review in Geneva were threatened by the regime).

If the protest activity was a public event, it would be easy for the regime to identify people involved in protest activity. It would be more difficult for the regime to obtain information about less public protest activities (such as anonymously writing blogs).

The most likely form of harm to individuals in this category would be monitoring and intimidatory threats. In some cases, where the individual is high profile, the regime may also place restrictions on travel and potentially even impose short periods of detention, or charge them with offences by the regime as a form of harassment ...

We are not aware of cases where unsuccessful protection visa applicants have been subject to harm by the regime unless they are also otherwise high profile regime opponents.

Given applications for protection visas are confidential, it would be difficult for the regime to become aware of these individuals unless the applicant chose to reveal information about their application to others in the Fiji community.

In the event unsuccessful applicants were identified, they would most likely be subject to monitoring and intimidatory threats and potentially restrictions on travel ...

We are not aware of cases where individuals have been subject to harm simply as a result of travelling abroad, including to Australia.

Such individuals could be easily identified through the Fiji Immigration Department’s records, although travel abroad alone would be very unlikely to result in harm.

FINDINGS AND REASONS

Country of Reference

68. A copy of the applicant’s Fijian passport is on the Department’s file, and evidence supports the view he entered Australia on the passport. I accept that the applicant is a Fijian national, and nothing in the claims or evidence supports the view that the applicant has a right to enter and reside in any third country. Accordingly, I have assessed his protection claims in reference to Fiji.

Protection Claims

69. The applicant's claims are as follows. The applicant expresses anti-government and pro-human rights views informally to his local Catholic community, which he leads in Nadi. He supports the SDL by voting for it in 2006 and donating money in a doorknock appeal. He made anti-Bainimarama comments informally to his church group in [mid] 2011. These views were reported to the police, resulting in a brief stay at a police station. He was released due to a personal police connection but may not be so lucky in the future. His high-profile community role as a [leader] in the Roman Catholic Church compounds the chances that his views will be known to his community, and the authorities – and therefore increases his profile and the chances of harm. He fears that the government and military torture people who are against the government in Fiji. [He knew a person whose] son was killed following torture at a military camp. The applicant has no freedom to express his political opposition to the current military government in Fiji. It is difficult to hold large social and church events at his home, as it is proximate to a military camp as the military intervene to question the premise of the gatherings. His church group requires permits to hold religious meetings and the military intervene in services to question their political content. He fears his family members may lose their jobs as a result of the applicant's adverse political profile.

Assessment of Refugee Claims

70. On the basis of the applicant's evidence to the Tribunal and letters of support before me, I accept that the applicant lives in Nadi and has a leadership role in his local Catholic church, with pastoral care responsibility for [a number of] church members in his community, who meet fortnightly. While I accept the applicant may be viewed as a religious and pastoral leader to his divisional church congregation – a culturally valued role - I do not accept that his profile amounts to a village leader or “president of the community”, as has been asserted in one letter, but not by the applicant himself.
71. Aspects of the applicant's evidence relate to his religious community role in Fiji, however his stated fears of returning to Fiji relate specifically to his expected treatment due to his real or imputed political opinion, expressed in religious meetings, rather than his religion itself. On this basis, I find political opinion to be the essential and significant reason for the persecution claimed by the applicant. I consider further below how the applicant's church role informs his political claims.
72. The applicant's written account to DIAC was that he was a “strong member” of the SDL in the [Nadi] area and left Fiji due to his political affiliation, as there is no freedom in Fiji for him to speak against the current government. However, at the hearing, the applicant said that he is not an SDL member and has not engaged in pro-SDL activities. A letter of support from [Mr A] indicates the applicant is an active member of the SDL. However, I attach no weight to the letter on this point – as it is incompatible with the applicant's own oral evidence. On the applicant's own oral evidence, I accept that he supports the SDL's aims but is not actively or publicly connected to the party or its activities. I accept that he may have donated money to the SDL through doorknock appeals, but I do not accept that his voting history or money donations mean the authorities have any interest in the applicant due to his broad SDL support. Nor do I accept that the applicant has any community profile as an SDL supporter. I note from cited country information that SDL support is widespread in Fiji.

73. At the hearing, I put to the applicant country information about the treatment of SDL members in Fiji. I acknowledge the country information cited above, and also that submitted by the applicant and representative, indicate instances of harassment, intimidation, detention and harm to high-profile human rights advocates and anti-government activists in Fiji— including sometimes due to high-profile SDL activities. I find the country information cited does not support the view that a person who is generally supportive of the SDL would be of interest to the authorities.
74. The applicant says he holds anti-government views which he talks about with men in his congregation in informal discussions after their fortnightly church meetings have ended. Asked at the hearing about the nature of his objections to the government on human rights issues, the applicant said the government did not listen to the people or do what the people wanted, and the people had no human rights or freedom of expression. Asked what human rights he was referring to, he first gave the example of the government’s deficient efforts to address the community needs of Fijians in post-cyclone restoration and funding, and later gave the example of the government pushing forward on community development regardless of funding or community views. I accept that the applicant may be generally critical of the military government in Fiji, and that the examples he cited may be matters of local dissatisfaction with the government. However, I do not accept that the views he describes are on issues of which would lead him to be of interest or concern to the authorities as someone capable of galvanising strong anti-government sentiment and dissent in his church community on human rights matters.
75. The applicant said that once, he had been affected by reports that neglected teenage girls had resorted to prostitution. He had commented informally to the men in his church group in around [mid] 2011 that “if I had [the means] I would [harm] Bainimarama for what he has done” (related to [this] issue). He believes a congregation member who supports the government reported his words to police. The applicant said he was taken to the police station for questioning but luckily the investigator assigned to question him knew the applicant, and released him with warning.
76. I give the benefit of the doubt to the applicant’s account that he expressed these views to members of his church group informally after a church meeting in mid-2011, and was taken to the police station briefly then released due to a personal connection. I find it implausible that the applicant’s comment (made once, in [mid] 2011) was officially reported beyond his local police station, or led to any adverse profile with the Fijian government. I find the applicant’s comment about Bainimarama was an off-the-cuff comment in the context of discussing a matter which is very unlikely itself to be of sensitivity to the Bainimarama government – particularly when considered against the backdrop of very substantial allegations of human rights breaches being made against that government inside and outside Fiji. Any adverse official interest in the comment would very likely to be in reaction to the personal threat to Bainimarama rather than because of the matter of child prostitution itself. If the police or government had actually construed the comment made by the applicant in [mid] 2011 as an active or meaningful threat against Bainimarama’s personal security, or leant the applicant a profile as an agitator, the country information cited suggests that the applicant would likely have been subject to further adverse attention by the authorities in the months before he departed Fiji. His evidence does not suggest that he had any attention at all

from the authorities between [mid] 2011 and his departure, or that his family have been of interest to the authorities during his absence from Fiji.

77. The applicant arrived in Australia [in] November 2011. He says he left Fiji in fear that he would be tortured or otherwise seriously harmed due to his anti-government views. He said he spoke to people in Australia about seeking protection immediately on arrival, but did not lodge an application until early January 2012 – shortly before his visitor visa was due to cease. The applicant said at the hearing that he delayed in applying for protection as he was acting on his friend’s advice that he should wait until his visitor visa ceased. I do not accept as plausible or logical that the applicant – being aware of the possibility of protection and intending to apply – would delay the application in order to await the expiry of his visitor visa. The timing of the application compounds my view that the applicant did not face serious harm prior to his departure from Fiji.
78. The applicant has said he fears being detained, tortured and seriously harmed by the military or police in Fiji due to his political opinion.
79. I accept that independent information regarding Fiji suggests that there are regular examples of very significant and wide-ranging systematic human rights breaches by the military government in Fiji – including torture and arbitrary detention, and curbs on judicial independence, rule of law, freedom of public expression and media censorship. Fiji’s exclusion from the Commonwealth derived from international concerns over such reports. I also accept that the applicant privately opposes the military government, and wants the SDL in government. I accept that the 2012 media and civil decrees cited by the applicant may facilitate anti-democratic behaviour by the police and military. I accept, on the consistent oral and material evidence, that [the son of a person known to the applicant] was detained by the military at Blackrock on suspicion of drug-use, with a friend who later died of injuries inflicted on him by military members who were later exonerated of manslaughter. Further, I accept – on the basis of news reports provided by the applicant - that a number of ex-government members have been harassed, detained and threatened by the police and/or military. Accordingly, I accept the applicant genuinely opposes the current regime and has developed a subjective fear for his own safety in Fiji, based in part on these reported events. However, I find there is no parallel or conclusion to be logically drawn from these instances in relation to the applicant’s own protection claims, given my findings above about his own political standing and profile.
80. The country information cited suggests that those expounding political views in private can be identified by the authorities, and separately, that church leaders may be of sufficient profile to attract adverse attention from the authorities. However, on the applicant’s evidence, I have not accepted that his informal political comments to his church group after meetings have been – or will be – of interest to the authorities, given their nature, context and the reaction of the authorities to date. It follows that I do not find there is a nexus between the political views he holds or is likely to express in Fiji, his non-active SDL support and his local church leadership role, such that he will be regarded as a threat to the authorities.
81. For the collective reasons above, I do not accept the applicant has any ongoing, adverse anti-government profile or will be of interest to the Fijian state authorities if he returns to Fiji.

82. The applicant's written claim is that holding social and church events at his home is difficult because his house is close to a military camp. Asked further about this at the hearing, his account was that he had meetings with individuals either at his home or at others' homes when instructing on [certain matters], and that congregation meetings were held elsewhere. He was unable at the hearing to pinpoint any past or expected harm relating to the military camp's proximity. On the evidence, I find that the applicant's church meetings are held outside the home, that a large part of the applicant's pastoral activities are also conducted outside the home, and that neither his pastoral or social activities at his home have been impeded – or resulted in harm - due to the proximity of the military camp.
83. The applicant said the military interrupted the fortnightly meetings in the community hall to question whether politics was being discussed, and to check if permits were held. The applicant said he usually had permits, and otherwise told the military that only church matters were being discussed. The applicant gave no account that he or his congregation had experienced harm by the military in the context of their church gatherings. I accept the applicant's account and find there is no past serious harm regarding this aspect of the claim. I find this strongly suggestive that the applicant and his congregation will not suffer future harm as a result of conducting church meetings. A supporting letter cited above suggests the applicant's church group suffers intimidation and harassment by the authorities which curbs the applicant's ability to perform his church role. I attach only very minor weight to this, given it differs from the applicant's own account.
84. The applicant argues that he has no freedom of expression in Fiji. I accept – in line with Australian judicial authorities - that any self-modification of the expression of political beliefs which is motivated by a fear of harm could itself amount to serious harm in some circumstances. For the reasons expressed elsewhere above, I have found the applicant's anti-Bainimarama comment in [mid] 2011 to be an off the cuff-comment which has not resulted in harm to him or ongoing adverse interest by the authorities. I do not accept that the applicant has in the past expressed other anti-government views which would be known to - or are of ongoing interest, concern or sensitivity to - the authorities in Fiji. I accept that if the applicant returns to Fiji, he may continue to express informally to local church members his opinions – as he has in the past – on local matters which are very unlikely to be of significance or sensitivity to the government, or be seen as “breaching the leader”, or attract the authorities' adverse interest or result in harm. On this basis, I do not accept that the applicant would need to modify his political expression in order to evade harm. The applicant entered Australia as a visitor and has visited Australia twice before. He did not in any of his evidence to DIAC or the Tribunal indicate that he had expressed any political opinion while in Australia or that he has been involved in any political activities here. On these bases, I do not accept that the applicant's conduct or presence in Australia would be of interest or concern to the Fijian authorities.
85. At the hearing, the applicant provided to the Tribunal a letter of support from a friend who is a policeman in Australia and has known the applicant in Fiji. The author expressed a fear that the Fijian authorities would know the applicant had sought asylum in Australia and would be harmed on that basis. The applicant did not at all refer to this matter in his written or oral evidence to DIAC or the Tribunal, including in the course of a lengthy hearing where he was offered opportunities to discuss his fears in returning

to Fiji. I do not accept there is any real chance that the Fijian authorities will either know or impute that the applicant has made a protection application in Australia – particularly as I have found he has no anti-government profile with the Fijian authorities.

86. Asked if his family had experienced difficulties in Fiji since his departure to Australia, the applicant has said his family members fear they may lose their jobs as a result of the applicant's anti-government comment to his Church congregation in [mid] 2011. However, on the basis of his account at the hearing that they are all currently employed in ongoing work – [employment details deleted: s.431(2)] – I find the evidence does not support the view that his family are at risk of any harm at all as a result of the applicant's past comment in [mid] 2011.
87. On the applicant's cumulative evidence and for the collective reasons above, I find there is no real chance that the applicant will be persecuted by reason of his real or imputed political opinion, his church role and/or his asylum seeker status if he returns to Fiji. It follows that I find the applicant does not have a well-founded fear of persecution in Fiji for any Convention reason, either now or in the reasonably foreseeable future.

Assessment of Complementary Protection Claims

88. I have considered the applicant's whole evidence in relation to the Act's complementary protection provisions in s. 36(2)(aa).
89. I have found elsewhere above that the applicant will not face Convention-based persecution now or in the reasonably foreseeable future in Fiji. I have considered whether the applicant's evidence suggests he would nevertheless face a real risk of significant harm in Fiji, having regard to the exhaustive definitions of that term in the Act.
90. Having regard to the applicant's account and independent country information cited above, I have found the applicant has not been harmed in the past in Fiji and I have not accepted that he has any adverse real or imputed political opinion with the Fijian authorities which would lead to any real chance of any serious harm in the future. The applicant has not claimed that he will be harmed in the future in Fiji other than in relation to his political opinion and for the reasons claimed by him above. I have had regard to the exhaustive definitions contained in s. 36(2)(aa), to the country information cited above, and to the accepted evidence about the applicant's church profile and political opinions. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, there is a real risk that he will suffer significant harm – including in the form of arbitrary deprivation of life, torture, or inhuman and degrading treatment.

CONCLUSIONS

91. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

92. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa)
93. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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