

1419893 (Refugee) [2016] AATA 4338 (19 August 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1419893

COUNTRY OF REFERENCE: Indonesia

MEMBER: Nicole Burns

DATE: 19 August 2016

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act; and
- (ii) that the other applicants satisfy s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family

Statement made on 19 August 2016 at 3:21pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of Indonesia, applied for the visas [in] September 2013 and the delegate refused to grant the visas [in] November 2014.
3. The applicants appeared before the Tribunal on 14 July 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.
4. The applicants were represented in relation to the review by their registered migration agent. She attended the hearing.

PROTECTION VISA CRITERIA

5. The criteria for a protection visa are set out in s.36 of the Act and 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. 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 in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
8. 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 in respect of 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').
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information

assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Member of the same family unit

10. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa of the same class as that applied for by the applicant. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include parent and step-parent (upon whom the applicant in this case is dependent).

CONSIDERATION OF CLAIMS AND EVIDENCE

11. The first named applicant (the applicant) is [an age] year old single woman born in Medan, Sumatra Province, Indonesia who came to Australia on a [temporary] visa on 22 March 2011. Her mother, the second named applicant, was also born in Indonesia (in 1964) and came to Australia on a [temporary] visa [in] September 2009. Her step-father, the third named applicant, was born in [Country 1] in [year] and came to Australia in [year]. The third and second named applicants married in [Australia] on [date], evidenced by a copy of their marriage certificate on the Departmental file.
12. The applicant has a daughter, born on [date] in Australia to an Australian citizen father. The applicant claims she is no longer in contact with her daughter's biological father and that he does not want anything to do with them. The Tribunal accepts her evidence in this respect. The applicant's half-brother, [named], arrived in Australia with their mother [in] September 2009 also on a [temporary] visa, and has not left.
13. The applicant set out her initial claims for protection in the visa application dated [in] September 2013 and a statutory declaration provided to the Department dated [in] September 2013. In summary she stated that she fears being physically and psychologically abused and ostracised from the community in Indonesia because she has a disability (and uses a wheelchair), because she is ethnic Chinese, because she is Buddhist and because she is a single unmarried mother. She also claims to fear the mafia in Medan because she is unable to pay her former [Relative A's] ([Mr A]) gambling debts. The applicant fears being separated from her daughter, whom she claims has no right to live in Indonesia, and claims such separation would constitute serious psychological harm. The applicant claims she will be unable to survive in Indonesia because there is nobody there to support her.
14. In a written submission to the Department the representative submitted that the applicant will suffer persecution and/or substantial discrimination amounting to a gross violation of her human rights in the form of serious physical and psychological harm from the authorities, the Medan mafia and non state actors on account of her:
 - Membership of the following particular social groups, 'single, unwed mothers', 'disabled persons', and 'family members of [Mr A]';
 - Buddhist religion; and
 - Chinese ethnicity.

15. In that submission the representative refers to country information from a variety of sources about discrimination against single/unwed mothers, discrimination and lack of services for disabled people, and persecution of ethnic Chinese Buddhists in Indonesia. The applicant's representative provided to the Department an article from *Inside Indonesia* about the problems people with disabilities face in Indonesia.
16. These assertions were reiterated by the representative in her written submission¹ provided to the Tribunal, with a request that the Tribunal considered the applicant's claims cumulatively. She submits that the applicant, as an unwed single mother, with a significant physical disability that directly impacts her physical mobility, from an ethnic and religious minority, is at a heightened risk of harm due to these interconnected and inseparable characteristics. In that submission the representative referenced country information about discrimination against single mothers and people with disabilities (and lack of services). Also referenced was country information about discrimination of ethnic Chinese in Indonesia and an article which provides anecdotal evidence of persecution against ethnic Chinese women in Indonesia.
17. A statutory declaration² by the applicant was submitted to the Tribunal in which she claims primarily that:
 - She continues to fear physical and psychological harm amounting to persecution in Indonesia on account of her disability, status as an unmarried mother, ethnicity and religion.
 - She also fears the Medan mafia will physically harm her because she will be unable to pay them money her [Relative A] owes.
 - She fears she will not be able to subsist in Indonesia and continues to be completely dependent financially and emotionally on her mother and step-father (the second and third named applicants).
 - In Indonesia she was not able to live like a normal person and was not able to go out alone or care for herself or continue her education, obtain employment or have a social life. She was a prisoner.
 - The roads are poor in Indonesia, most buildings do not have disabled access or toilets. She does not think she could use her motorised scooter there.
 - She would be forced to live at home with her family and have no independence.
 - Because she will not be able to leave the house she will not be able to take her daughter to school.
 - She fears her mother and step-father would not be able to find work in Indonesia and if they did, the money earned would be very little. She fears they would live in poverty.
 - Her [Relative B] who lived with them in Indonesia is getting old, does not work, and will not be able to provide her with support for much longer.
 - Her daughter would be denied an education, the applicant cannot work and support her and they would be prisoners in the house together.

¹ Dated 11 July 2016

² Dated 30 June 2016

Particular social group of 'disabled persons'

18. It has been submitted that since childhood the applicant has suffered from [Condition 1] and [Condition 2], a disorder of the spine, resulting in a curvature of her spine. Her condition was not adequately diagnosed and she was not therefore treated as a child. As her backbone became increasingly skewed her ability to walk became increasingly compromised. Further, both of her legs are significantly affected by [Condition 1]. After traveling to [Country 1] for surgery to ostensibly remove the [Condition 2] in her spine in 2003, the applicant could not afford the requisite post-operative physiotherapy and as a consequence became wheelchair-bound.
19. Regarding her disability, the applicant told the Tribunal the effect of contracting [Condition 1] when small was that whilst her upper body grew bigger her lower body remained small and thin, which made her depend on her back to walk and caused her to develop [Condition 2]. Her back was straightened by a [medical procedure] in [Country 1] in 2003 however she has not been able to walk since then. That is because she had been dependent on her spine to walk previously and was unable to afford the post-operative therapy required to (possibly) be able to walk. She said she was given a wheelchair in [Country 1] after her surgery, donated by members of a Buddhist temple there. She has been wheelchair-bound since, in Indonesia and Australia. When asked how she managed a wheelchair when she lived in Medan, the applicant said she rarely left her house and would ask others to buy her things as needed. The applicant said her legs are also badly damaged from the [Condition 1], are very small and have no power.
20. The applicant presented as a credible witness. Her oral evidence to the Tribunal was spontaneous and coherent, supported by the oral evidence of her mother and step-father. She provided a letter from a rehabilitation physician from [a section within a named hospital]³ to the Tribunal after the hearing. In that letter the doctor confirms that the applicant had [Condition 1] at approximately 5 years of age and described the late and residual effects of the disease including [two medical conditions] of both her legs. The Tribunal accepts that the applicant is disabled, that she is unable to walk as a result of having [Condition 1] as a child and the late effects including [a medical condition]. It accepts that she has been confined to a wheelchair since 2003 and remains reliant on her wheelchair.
21. The applicant told the Tribunal she stopped school at grade [number], primarily due to severe teasing and harassment by children and others in her neighbourhood because she found it difficult to walk. She experienced verbal taunts in the past as well as having rocks thrown at her, for example. After she was unable to walk following her surgery in [Country 1] in 2003 she mostly stayed at home in Medan. She told the Tribunal she did not have any friends. She fears she will go back to the condition she was in on return, staying at home and having limited access to go anywhere or do anything. She said there are limited road and footpath access for people in wheelchairs or motorised scooters and no building access in Indonesia. She said she has no idea if there are specialised medical services for people with disabilities, noting that she never accessed them in the past. Her mother told the Tribunal that she was not aware of any either, noting that perhaps they were available to those who had a lot of money.
22. The applicant said she is also afraid of returning to Indonesia as a single mother who has had a child out of marriage, which is taboo. In combination with her disability she is afraid her daughter will be taunted by community members, or other children at school (when she starts.) She said there is a lot of community ignorance around people with disabilities in Indonesia, noting as an example that some of her relatives in Indonesia did not believe she

³ Dated [in] July 2016

actually has a daughter because they are of the view that a person like the applicant is unable to give birth.

23. The applicant said for financial reasons her mother and step-father will likely move to [Country 1] if her review application is unsuccessful, to find work there. If so the applicant said she will not have any support, financially or otherwise, from her mother and step-father on return to Indonesia, whom she (and her daughter) are dependent upon.
24. For the reasons that follow, the Tribunal finds that the applicant has a well-founded fear of persecution for reason of her belonging to a particular social group of disabled persons in Indonesia. It considers her status as a single mother exacerbates her vulnerability in this regard. Given this finding it has been unnecessary to consider the applicant's claims and submissions on the other grounds.
25. Australia's Department of Foreign Affairs and Trade (DFAT) in their most recent country information report on Indonesia relevantly state about people with disabilities as follows:

Indonesia ratified the United Nations Convention on the Rights of Persons with Disability in 2011 but has not yet enacted legislation to give its provisions effect in domestic law. National data on the number of people with disability in Indonesia is weak. However, the 2011 World Report on Disability estimates that 21 per cent of all people in Indonesia live with a disability, a quarter of whom are considered extremely poor.

People with disability in Indonesia face significant legislative, administrative and institutional barriers to accessing their rights. For example, in March 2014, the Association of Public Universities announced that people, who are blind, deaf, and mute, physically disabled, or partially or fully colour blind would be excluded from applying to sit the entrance exams (the State Universities Enrolment Test) required for admission to public universities.

Most public buildings and public transport remain physically inaccessible. In the justice system, interpreters are not provided to deaf witnesses, victims or suspects during police interrogation. Foreign media stories regularly detail the widespread practice of physically restraining people with psychiatric disability ("pasung"). Many banks will not issue mortgages and small business loans to people with disability, despite the applicants fulfilling every other criterion. Life insurance companies often refuse to provide policies to people with visual impairments, even when they are otherwise healthy.

...

Overall, DFAT assesses that societal norms, compounded by difficulties in accessing employment, facilities and services, mean that people with disability in Indonesia face a high degree of societal and official discrimination.⁴

26. This information is supplemented by other independent and reliable sources of country information, including that provided by the representative. For example, a comprehensive 2014 research report by the University of Indonesia and *Tim Nasional Percepatan Penanggulangan Kemiskinan* (TNP2K) found (as submitted) that:
 - Higher education is not accessible for persons with disabilities
 - Employment is legally protected, however in practice the right to employment is not guaranteed

⁴ DFAT 2015 *DFAT Country Information Report*, 9 June at 3.103 – 3.106

- Husbands have the legal right to divorce their disabled wife if she does not perform the (subservient) duties of a wife
- Persons with disabilities may face barriers to full participation in family and social life
- Public accessibilities is very poor
 - Roads are poor, making travel for mobility impaired disabled persons extremely difficult, if not impossible
 - Public transport is not accessible for physically disabled persons
 - Very few buildings are accessible for physically disabled persons
- There is a positive correlation between disability and poverty.⁵

27. In terms of accessing social protection and health coverage the report states:

The social protection and health coverage of people with disabilities was problematic. People with disabilities complained about the difficulty of applying for and inaccessibility of benefits. The low rate of programme participation and the large unmet need for assistive devices indicate that coverage is too low, and mechanisms to reach the most vulnerable are not adequate⁶.

28. As submitted, the report concludes that persons in Indonesia with a disability are less likely to attend education, less likely to be employed and less likely to participate in family and community life. It is submitted that the report indicates that persons with disabilities in Indonesia are not able to live in a way that respects their human rights, which is the situation the applicant and her daughter would be returning to.

29. The United States Department of State Country Report on Human Rights Practices for 2015 in Indonesia highlights the situation for young people with disabilities in the country as follows:

The law provides children with disabilities with the right to an education and rehabilitative treatment. According to one NGO, there were 1.4 million children with disabilities in the country, and fewer than 4 percent had access to education. According to 2008-09 government statistics, there were 1,686 schools dedicated to educating children with disabilities, 1,274 of them run privately. According to NGOs, more than 90 percent of blind children were illiterate. Some young persons with disabilities resorted to begging for a living. According to a 2015 report by the magazine *Inside Indonesia*, children with disabilities were seven times less likely to attend school than their non-disabled counterparts.⁷

30. An earlier US Department of State report about international religious freedom in Indonesia discusses disability access in Indonesia as follows:

Disability access was an issue for religious buildings and houses of worship, as it was for many buildings throughout the country. The government did not effectively

⁵ Adioetomo, S.M.D. Mont and Iwanto, 2014, *Persons with Disabilities in Indonesia: Empirical Facts and Implications for Social Protection Policies*, Jakarta, Indonesia, Demographic Institute, Faculty of Economics, University of Indonesia in collaboration with Tim Nasional Percepatan Penanggulangan Kemiskinan (TNP2K), Jakarta, Indonesia
[http://www.tnp2k.go.id/images/uploads/downloads/Disabilities%20report%20Final%20Sept2014%20\(1\).pdf](http://www.tnp2k.go.id/images/uploads/downloads/Disabilities%20report%20Final%20Sept2014%20(1).pdf)

⁶ Ibid p 132

⁷ United States Department of State *Country Reports on Human Rights Practices for 2015 - Indonesia*
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

enforce laws requiring accessibility,⁸ in effect restricting the ability of persons with disabilities to practice their religion.

31. An article published in *Inside Indonesia* (referenced by the representative in her submission to the Department) about the challenges for people living with disabilities in Indonesia relevantly states:

Most people with disabilities in Indonesia go without government welfare, specialised medical treatment and assistive technology. The term 'disability' covers a range of physical, intellectual, and psychiatric conditions which may range from mild to severe.

However, disability is determined by the socio-cultural and physical environment. Where minimal specialist services, programs or facilities exist to meet the varied needs of a person with a disability in daily life, a simple impairment may become a significant handicap. This is the case in Indonesia. The Indonesian government is unable to provide for the inclusion and integration of people with disabilities into able-bodied society.

Indonesia's struggling economy means that services and facilities for people with disabilities are minimal. The budget is incapable of providing welfare pensions. Nor can it provide adequate funds to meet the needs of people with disabilities in health, education, employment and public access. Infectious diseases, which could be prevented with vaccinations, contribute to disability, illness and death. For example, hearing loss can be attributed to iodine deficiency while cerebral palsy can result from unsafe birthing practices.

Furthermore, in Indonesia, there are few legal or social pressures to promote a non-discriminatory stance on disability. This is not to say that all people with a disability experience discrimination. In some communities, particular disabilities are perceived as a form of naturally occurring diversity and not as handicaps. In one community in Bali, for example, hereditary deafness is common and both hearing and hearing-impaired members of the community regularly use an ethnic sign language to communicate. Local cosmology and legend even incorporate devotion to a deaf god. Deafness is considered a part of the diversity of nature in this region, and deaf members of the community are integral to the shared community culture and ritual.

However cases such as these remain the exception. People with disabilities are more often considered an embarrassment. A significant barrier faced by people with disabilities is the belief that their disabilities are a punishment from God for sin. In Java and Bali in particular, the person with a disability is believed to be possessed by a supernatural spirit which must be exorcised. Disability is also often seen as a matter of fate. There is little empathy for people with disabilities for whom 'nothing can be done'.

This kind of judgment and stigma affect the lifestyles of people with severe disabilities. People with disabilities are generally not encouraged to develop personally. They are not considered valuable members of their community and many remain housebound, uneducated and unskilled. They generally do not earn a reliable income and therefore depend upon able-bodied family members to provide for their livelihood. These individuals are considered the responsibility of the family to be cared for as a dependent member of the family unit⁹.

32. Other more recent reports confirm a high level of discrimination and stigma faced by Indonesians with disabilities. For example a 2013 report by the International Labour Organisation (ILO) and Irish Aid stated that:

⁸ United States Department of State *International Religious Freedom Report – Indonesia 2013*, <http://www.state.gov/documents/organization/208444.pdf>

⁹ *Inside Indonesia*, Janene Byrne, 'Disability in Indonesia', Edition 75 Jul-Sep 2003, <http://www.insideindonesia.org/disability-in-indonesia>

Disabled persons are often socially excluded and face considerable discrimination in accessing health and other services, education and employment¹⁰.

33. Handicap International Indonesia have also reported that:

In 2011, the Indonesian government ratified the United Nations Convention on the Rights of Persons with Disabilities following an intensive campaign by disabled people's organisations with active support of Handicap International. Despite this progress, Indonesians with disabilities face a high level of discrimination and stigmatization, particularly those who live in isolation and poverty. As a whole, Indonesia offers very little in the way of disability services, and of the services that do exist, the majority are inaccessible and staffed by under-qualified technicians¹¹.

34. These reports indicate that, whilst laws and programmes exist for people with disabilities Indonesia, they are not well implemented and many gaps in coverage and enforcement exist. Progress was heralded with the ratification of the United Nations Convention on the Rights of Persons with Disability in 2011 by the Indonesian government however they have not yet enacted legislation to give its provisions effect in domestic law. Persons with disabilities in Indonesia continue to face significant difficulties in accessing employment, health care, education and social services. Reports indicate that most facilities remain inaccessible to persons with disabilities. The country information also indicates that disabled persons are stigmatised to a high level owing to pervasive discriminatory views, including a belief that their disabilities are punishment from God for sin.

35. The Tribunal accepts the applicant's claims that she was adversely affected by her disability in the past in Indonesia. It accepts that she left school before finishing primary school because of almost constant harassment due to her disability (and in some occasions physically harmed with rocks thrown at her for example); that she never worked in Indonesia; and that she was largely house-bound because of the shame surrounding her disability combined with poor access to services and other basic living requirements such as shopping given the poor roads and limited wheelchair access. The Tribunal accepts, based on the independent country information, that discrimination against persons with disabilities presents a substantial obstacle to her finding employment in Indonesia, among other things. The Tribunal accepts the applicant's claims that it is likely that her mother and step-father will return to [Country 1] to find work if their review is unsuccessful and finds that the applicant's ability to survive without the support of her mother is also threatened due to lack of state resources and support for people with disability. The Tribunal acknowledges this in part is due to the state's inability to provide welfare support in general; however the Tribunal also considers that the stigma and discrimination surrounding disability in Indonesia is an additional component in the lack of effort made by the state to provide actual useful support and access to people with a disability.

36. The letter from the applicant's treating doctor indicates that her condition is currently stable however she may experience further weakness, fatigue and pain and has been referred to rehabilitation services to minimise her falls risk and maintain her independence. The doctor states that the applicant may need assistance in the future should her limb strength deteriorate.

37. Given these considerations and country information and for reasons below, the Tribunal finds that the applicant as a disabled person has a well-founded fear of the following harm in

¹⁰ International Labour Organisation and Irish Aid, 'Inclusion of People with Disabilities in Indonesia' p1 http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_210477.pdf

¹¹ Handicap International, Indonesia <http://www.handicap-international.us/indonesia> Accessed on 19 August 2016

Indonesia: significant economic hardship that threatens her capacity to subsist. Moreover, the Tribunal finds that she will be subjected to discrimination in the sense of prejudice and social stigma because she is disabled.

38. The Tribunal will now consider if the harm feared is for a Convention ground, in particular her membership of a particular social group of disabled persons, as submitted.
39. The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...
40. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. Therefore, the Tribunal has looked to country information for assistance in determining whether the applicant is in a particular social group in Indonesia.
41. The Tribunal accepts that in the applicant's case she meets the definition because first, the identifiable characteristic is the applicant's disability; second, this is not the shared fear of persecution; and third, her disability distinguishes the group from society at large. The Tribunal finds that disabled persons in Indonesia constitute a particular social group and that the applicant is a member of this group.
42. Discrimination will not always be serious enough to rise to the level of persecution. According to the UNHCR Handbook paragraph 54, discrimination may amount to persecution if the "measures of discrimination lead to *consequences of a substantially prejudicial nature for the person concerned*, e.g. serious restriction on his right to earn his livelihood, his right to practice his religion, or his access to normally available education facilities" (Tribunal emphasis added).
43. In this case the country information set out above, including a recent comprehensive study undertaken by University of Indonesia and TNP2K highlights significant difficulties and obstacles for people with disabilities in Indonesia to access employment and public services. Further, the Tribunal notes DFAT's assessment that societal norms, compounded by difficulties in accessing employment, facilities and services, mean that people with disability in Indonesia face a *high* degree of societal and official discrimination. [Tribunal emphasis]
44. Another factor that increases the seriousness of the harm on the applicant is the fact that she is a single mother and the commensurate stigma and discrimination attached to that on return to Indonesia. The Tribunal has had regard to country information, including that submitted by the representative about discrimination and stigmatisation of single mothers in Indonesia. Country information indicates that single mothers, in addition to social exclusion, face discrimination from the authorities, are often neglected by the authorities and as such face financial hardships and severe challenges in providing for their children. The applicant would have some family support from her [Relative B] however noting she is now aged and does not work, this would be limited. The applicant has claimed that her mother, who has been her primary support, would be compelled to move to [Country 1] with her husband to find work and therefore she would be without her support on return to Indonesia. The

Tribunal accepts the applicant would have limited support networks in Indonesia that may mitigate the impact of the lack of medical care or access to other support services.

45. Taking into account these considerations and for reasons above the Tribunal finds the applicant faces a real chance of serious harm in being denied the opportunity for employment because of her disability on return to Indonesia. Without her mother's care and support, and given she is a single mother with a disability, the Tribunal considers she would lack the ability to subsist in Indonesia. The applicant left school in grade [number] and has never worked in Indonesia. She has been subjected to bullying and ridicule most of her life in Indonesia, which is a good indicator of future harm.
46. The Tribunal finds that because of the applicant's disability on return to Indonesia she will suffer significant economic hardship that threatens her capacity to subsist (s.91R(2)(d) of the Act). This type of harm constitutes serious harm amounting to persecution for the purposes of s.91R(1)(b). The Tribunal further finds that the essential and significant reason for the harm will be her membership of this particular social group of disabled persons as per s.91R(1)(a) and the country information assessed above makes it clear that the denial of services and barriers to employment including discrimination against disabled persons is systematic and discriminatory conduct that applies throughout Indonesia. The Tribunal is therefore satisfied that the requirements of s.91R(1)(c) are met.
47. The Tribunal finds, for the reasons set out above, that the applicant has a well-founded fear of persecution for reason of her membership of the particular social group of 'disabled persons in Indonesia'.
48. The Tribunal has considered the issue of state protection but given the country information about reported high levels of corruption, poor discipline and under resourcing (as submitted) combined with indications of inadequate provision of services and support for disabled persons and very poor accessibility, the Tribunal is not satisfied that she will be able to obtain protection from the authorities from the harm she fears.
49. The Tribunal is not satisfied that there are any parts of the country where the applicant would be able to obtain employment to ensure her capacity to subsist. Nor does the Tribunal consider it would be reasonable for the applicant to relocate as a single disabled (wheel-chair bound) mother with no employment prospects, as submitted. Therefore a real chance of persecution exists in the country as a whole and safe relocation within Indonesia is not reasonably open to her.
50. Given the Tribunal's finding it is not necessary to consider the applicant's other claims and submissions.
51. For reasons above, the Tribunal is satisfied that the applicant has a well-founded fear of persecution for reason of her belonging to a particular social group, disabled persons in Indonesia, and she therefore meets the definition of a refugee in s.36(2)(a).

CONCLUSION

52. For the reasons given above the Tribunal is satisfied that the first named applicant is a person in respect of whom Australia has protection obligations. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a).
53. The Tribunal is not satisfied that the other applicants are persons in respect of whom Australia has protection obligations for the purposes of s.36(2)(a) or (aa). However, the Tribunal is satisfied that the applicant's mother and step-father are members of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of

their application depends on the outcome of the first named applicant's application. It follows that the other applicants will be entitled to a protection visa provided the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa are met.

DECISION

54. The Tribunal remits the matter for reconsideration with the following directions:
- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act; and
 - (ii) that the other applicants satisfy s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant.

Nicole Burns
Member