

1100178 [2011] RRTA 764 (7 September 2011)

DECISION RECORD

RRT CASE NUMBER: 1100178

DIAC REFERENCE(S): CLF2010/91640

COUNTRY OF REFERENCE: Indonesia

TRIBUNAL MEMBER: Linda Symons

DATE: 7 September 2011

PLACE OF DECISION: Sydney

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 and Citizenship 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 Indonesia, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2002 and applied to the Department of Immigration and Citizenship for the visa [in] July 2010. The delegate decided to refuse to grant the visa [in] December 2010 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] January 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Regulations.

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

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

Information given to the Department by the applicant

20. The following personal information about the applicant and the written claims are contained in the Application for a Protection Visa and accompanying statement lodged [in] July 2010.
21. The applicant claims that she is a citizen of Indonesia. She was born on [date deleted: s.431(2)] in Jakarta in Indonesia. She undertook her primary and secondary school education between 1974 and 1987. She undertook a Bachelor degree in Computer Information between 1988 and 1991.
22. She was employed in Indonesia between November 1989 and June 1991 in financial administration, between June 1991 and April 1993 as a computer operator and between May 1994 and January 2001 as an Operational Manager.
23. She is single. She lived at the same address in Jakarta from 1989 to 2002. Her parents live in Indonesia. Her younger brother lives in Australia. She speaks, reads and writes Indonesian. She claims she is a Chinese Christian.
24. The applicant first arrived in Australia [in] June 2000 on a Visitor visa. She claims that she departed Australia [in] September 2002. She claims that she travelled on an Indonesian passport issued [in] June 1998 which expired [in] June 2003. She was issued with a further Indonesian passport [in] March 2006 which expired [in] March 2011. She claims that she was issued with a Bridging visa [in] July 2010 which expired [in] July 2010.
25. In support of the Application for a Protection Visa the applicant made the following statement:

RIOT 13-15 May 1998

7 A.m I called my office to check if the staff already there. My position as the operation manager, I have to make sure that everything running well, before even I attend the office.

We have the early shift staff that started from 7.00 am.

I went to my office as usual, without any suspicious that anything will happen at all. Once I arrived at work, I organized the daily activities for the project to one of our staff, and he must survey our projects using the Company car.

My company is a cleaning Company, cleaning services, I am as operational Manager, and had about 150 employees working for our Company. All of them are indigenous Indonesia. Only me and my big boss are Chinese. Two of my staff are Christian and the rest are Moslem.

Around 10am, my father called me and asked where about my position. I told him I was in the office. My father told me to go home immediately if not I won't be able to go home.

The distance between my office and my home about 1 hour if no traffic jam and will take around 2 hours or more with traffic jam.

I told my father that the Co. car was not there, and I could not go home until the car arrived.

Alarmed by the sudden chaotic situation, I called my staff to get back to the office, as I was afraid the car will also stuck and get burned by the mob of people. On the street, cars were burned and main road full of mass of people.

In the office some of the staff went home. Since they are native Indonesian, they had no problem on the street at all.

The phone rang every 15minute, from my father and my boss who were overseas at that time., but he worried so much about my circumstances, as I was the only Chinese in the office and our working place were in the Moslem and Native area.

I went down to the second floor and saw all the mob of people fill up all the street, some cars burned down, and it was impossible to move or even get out.

Phone kept ringing, I told my boss that I will remain in the office as I could not get out at all, but due to lots of chemical cleaning products, my boss not allowing me to remain in the office, in case our office got burned. With the chemical around, it could explode. The building was 3 storey buildings. And the only way out were closed to the warehouse.

My dad, called me and advised that it would be impossible to go home at that time as mob of people were surrounding our house already, they started to burn the building, cars, and mob of people, uncountable.. getting wild and crazy.

I could not do anything else, except waiting and worried sick unknown of what will happen to my life.

About 4 hours later, our car came back safely. The driver is native Indonesia, so they didn't touch him at all.

It went to our warehouse, and I went inside the car, my staff covered me up with some clothes and I was lying down on the back of the car with all the goods covering me up.

My staff took me to his place. I could not eat nor sleep at that night as my staff environment all native Indonesian.

Early in the morning, the next day, I rang my father, and he hurriedly ask me to go home immediately, before the mob of people on the street.

I forced myself to look for the public transport, there is no public transport. I asked my staff to help me to walk me out, one on the right, and one on the left, as the skin color of ours are too obvious. My staff said, let him walk on the road side, so he was trying to camouflage me as our skin color too much different.

Lots of people on the street, started to look at me, I was trembling and shaking, their eyes were eating me alive..some started to approach me. Pushed my friend away, and they started to pulled me. I fell to the ground, and they started to abuse me and called me names: Chinese pig. My staff was trying to protect me and calm them down. They hid him, he feel down to the ground.

They started to toy me around like pushing to the right and pushing to the left. My head went very dizzy. I was thinking that will be the last day of my life.

My staff stood up and grab my hands and we ran away with all our strength and I didn't know at that time, how much strength I had. Due to our fear and with the help off my two staff, they pulled me and dragged me.

They kept dragging me in order to save my life. We kept running and running.

We ran to nearby house, and asked for help to the owner of the house. I gave all my money, watch for him to help me out.

He took me to his car and agreed to take us to my place. At the time the road vehicles on major roads, nothing on the road. And only our car. I was whispering to my staff, only our vehicle on this road.

I was very terrified. Finally we came out into the larger road, and mass of people, lots of smoke everywhere. I was truly terrified,

Left, right, front and back from our car were all the mob with violent voices : Chinese came down, kill Chinese, give them the lesson they deserve! ! The driver and my friends were kept driving, slowly ... and gave them hands....

I was so scare and shaken badly, I was so afraid they asked me to get me out of the car. I was covering my face and felt like vomiting.. we arrived in my staff house nearby my home.

God answered my prayer, I arrived to my staff house nearby. We immediately ran to the phone and rang my house and cried. I asked about the house. They could not locate my sister where about.

My father said the home environment all men on guard. No one can pass as the entrance and exit were blocked. They brought anything they can brought, cleaver, pipe, knife, everything they can grabbed, in order to protect around the house.

I was so scare anything could happened to my sister.

My father send a few men to pick me up at my staff's house. About 5 men. We walked and I was in the middle and these men were around me. All the road scene were terrible, cars and buildings burned..finally I get home safely but very late.

What I experienced traumatized my life. Only by Grace of God, I managed to survive, anything worst could happened to me in my life.

Anything in Indonesia could happen at any time. The above was the only example I gone through. I am not ready to go back to that circumstances at any time. The trauma and feat were beyond my strength.

Based on the above, I am applying this PV application. I made this claims are based on my true experiences. (sic)

26. The applicant was interviewed by the delegate [in] November 2010. She was asked whether she wished to make any amendments to her application and answered no. During the course of the interview she stated that she travelled to Australia in 2002 because she was afraid of living in Indonesia after the riots in 1998. When asked why she applied for a Protection visa she stated it was because of what happened in Indonesia and because she had no other visa choice.
27. When asked when she first realised she needed protection, she stated from the first time she came to Australia. When asked whether she had ever been harassed, threatened or harmed in Indonesia other than for the incident in 1998, she stated that sometimes when she walked down the street people called her named and spat on her. This happened prior to the 1998 riots.
28. During the course of the interview she told the delegate that she has never worked in Australia. When the delegate noted that she had informed a Compliance Officer that she did some cleaning and some babysitting, she stated that she was sometimes given money for doing this.
29. [In] December 2010, the delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

Information given to the Tribunal by the applicant

Application for Review

30. The applicant lodged an Application for Review [in] January 2011. No further information, documents or submissions were lodged in support of the application at that time.

Invitation to Hearing

31. [In] January 2011, an officer of the Tribunal wrote to the applicant advising that the Tribunal had considered all the material before it relating to the application but it was unable to make a favourable decision on that information alone. The applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal [in] February 2011.
32. [In] February 2011, the Tribunal received a letter from the applicant's migration agent requesting a postponement of the hearing for medical reasons. The letter was accompanied by a letter from [Hospital 1] and some medical records.
33. [In] February 2011, the Tribunal wrote to the applicant and informed her that her request for a postponement had been granted. The applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal [in] March 2011.
34. [In] March 2011, the Tribunal received a letter from the applicant's migration agent requesting a second postponement of the hearing for medical reasons. The letter enclosed a Clinical note from [Hospital 1].
35. [In] March 2011, the Tribunal wrote to the applicant and informed her that her request for a second postponement had been granted. The applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal [in] May 2011.
36. [In] April 2011, the Tribunal received a letter from the applicant's migration agent requesting a third postponement of the hearing for medical reasons. The letter enclosed a letter from the applicant's treating doctor dated [in] April 2011 and a Generic Discharge Referral from [Hospital 1].
37. [In] May 2011, the Tribunal wrote to the applicant and informed her that her request for a third postponement had been granted. The applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal [in] July 2011. The applicant was advised that, in view of her circumstances, the Tribunal was prepared to accept telephone evidence from her if she was unable to attend the hearing in person. The applicant was also advised that if any further adjournments were sought the Tribunal would require the applicant to be examined by a Commonwealth Medical Officer and have a report prepared.
38. [In] June 2011, the Tribunal received a letter from the applicant's migration agent requesting a fourth postponement of the hearing for medical reasons. It indicated that the applicant had an appointment to see her doctor [in] August 2011. The letter enclosed a letter to the applicant dated [in] May 2011 confirming that she had an appointment at the [clinic deleted: s.431(2)] [in] May 2011, an appointment card indicating that she had an appointment at [Hospital 1] [in] August 2011 and a Generic Discharge Referral from [Hospital 1] dated [in] April 2011 that had been previously submitted to the Tribunal.
39. [In] June 2011, the Tribunal wrote to the applicant and informed her that her request for a fourth postponement of the hearing had been refused. She was informed that the hearing would proceed [in] July 2011 at 9.30am. She was also informed that she had the option to attend the hearing by telephone but needed to inform the Tribunal by no later than 12 noon on [a day and date in] July 2011 if she wished to do so and to provide the Tribunal with her current telephone number.

[In] June 2011, the Tribunal received a Response to the Hearing Invitation indicating that the applicant would be attending the hearing in person. Enclosed with the Response was an undated statement from the applicant and four internet printouts in relation to country information on Indonesia. In the written statement the applicant claimed that she suffered discrimination in almost every aspect of her life. She again referred to the riots in May 1998 and claimed that during the riots a number of Christian Indonesian women of Chinese ethnicity became victims of sexual abuse. She claimed that churches were burnt and church goers harmed and that the Indonesian government were powerless to prevent violence against Christians of Chinese ethnicity. She referred to her sister being missing for eight years and claimed that the Indonesian police would not assist her family in their search for her sister because they had no money to pay them. She claimed that her parents fear she will suffer the same fate as her sister if she returns to Indonesia.

At the hearing [in] July 2011

40. The applicant appeared before the Tribunal [in] July 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.
41. The applicant was represented in relation to the review by her registered migration agent.

The evidence of the applicant is summarised as follows:

42. She was born on [date deleted: s.431(2)] in Jakarta, Indonesia. She is a citizen of Indonesia and is not a citizen of any other country. She does not have a right to live in any other country.
43. Her parents live in Jakarta and have lived there for more than 50 years. Neither of her parents are working. She has a younger brother and younger sister. Her brother came to Australia in 1998 on a Tourist visa and has remained in Australia since then. He overstayed his visa. He has made an application to the Minister. He is currently unemployed. She does not know what his occupation is.
44. Since arriving in Australia, she has lived with her brother for some of that time. Her brother has never worked in Australia. He supports himself from his own savings or money that his parents send him. When asked how her parents are able to send him money when they are not working, she stated that they occasionally send him money.
45. She is single. She was educated in Jakarta. She left school at the age of [age deleted: s.431(2)] and went to university. She did a Bachelor of Computer Science degree. She studied at university for six years and was [age deleted: s.431(2)] when she left university.
46. Her first job was in Jakarta where she worked in Administration. She did that job for two years. She thereafter obtained a job in Accounting. She studied Accounting in High School. She then obtained a job as an Operational Manager in a cleaning service in Jakarta. She did that job for six and a half years until 2001. She did not work thereafter.
47. She has travelled to Australia on two occasions in 2000 and in 2002. The purpose of each of those visits was to have a holiday. When she travelled to Australia in 2002, she

travelled on an Indonesian passport that was issued in her name. She could not recall when the passport was issued or when it expired. That was the first passport she has held.

48. When she arrived in Australia in 2002, she had savings of \$2,000.00 with her. She lived in [Suburb 2] with a friend. She could not remember the friend's name or how long she lived in [Suburb 2]. She then moved to [suburb deleted: s.431(2)], where she rented a room and lived there for approximately two years. She then moved back to [Suburb 2], where she lived for five years. She thereafter moved to [suburb deleted: s.431(2)], where she lived with her brother for eight months. She and her brother then moved to another property in [suburb deleted: s.431(2)]. They share a house. She pays rent of \$225.00 per week. She does not pay for water or electricity, as the owner pays that. The house does not have a landline telephone. She has a mobile telephone which costs \$10.00 per month.
49. She has never worked in Australia. When asked how she has supported herself for the past eight and a half years, she stated from her savings. When the Tribunal questioned how her savings of \$2,000.00 supported her for eight and a half years, she stated that occasionally people gave her money. When asked who these people were, she stated that she could not recall. She then stated that more than twenty friends have given her money. When asked to name one of them, she could only recall her first name and stated that she was called [name deleted: s.431(2)].
50. She stated that she met [name deleted: s.431(2)] through the [church deleted: s.431(2)]. She stated that it was an Indonesian charismatic church which she attends four times a month. She has done that for the last five years.
51. The Tribunal noted that she lodged an Application for a Protection visa [in] July 2010. When asked when she first found out about Protection visas, she stated in April 2010. She was sick at that time and an Immigration officer suggested that she apply for a visa. When asked why she waited from April 2010 until July 2010 to lodge her application, she stated that she was given a Bridging E visa for a period of three months. She was aware that it was a temporary visa. During that period of three months, she collected information from friends and the internet on what type of visa she could apply for. None of her friends were lawyers.
52. She stated that she could not rely on the information she was given by friends, so she went to see a migration agent who told her about Protection visas. She filled out the application herself. When asked whether she reads and writes English, she stated a little bit. When asked whether there was any reason why she did not disclose that in her Application for a Protection visa, she stated that she filled out the application with the assistance of the migration agent.
53. She identified her signature on the Application for a Protection visa, and stated that everything she said in her application is true and correct. The Tribunal noted that she had also lodged a written statement in support of her application. She stated that she prepared that statement in Indonesian and it was then translated into English for her by a friend. Her friend is not an interpreter or translator. She stated that the statement was read back to her in Indonesian after it was prepared. She identified her signature on the statement, and stated that everything she said in the statement was true and correct.

When asked whether she wished to make any changes to her statement, she answered no.

54. The Tribunal noted that in her statement, she referred to riots in Indonesia in 1998. When asked to tell the Tribunal what happened to her at that time, she stated that on the morning of the riots she prepared to go to the office but felt fearful so she telephoned members of staff who were already at the office. The staff told her that nothing had happened on the streets, so she went to work. At 10.00 am her father telephoned her and told her to go home quickly. She informed him that she could not go home because the office car was out of the office. Her father warned her that if she did not go home she may not be able to go home. There was a lot of commotion in the streets and things were being burned. She looked out of the window and was stunned by what she saw. There were lots of people outside the office.
55. She telephoned the staff members who had the car and instructed them to return to the office as soon as possible. The streets were full of people. When the car returned, she got in the car and her friend covered her so that she could not be seen. She lived quite far from the office. They decided to go to the home of a friend. When she got there she telephoned her parents who instructed her to stay there and not to attempt to return home. She could not eat or sleep. There were native Indonesians who lived near her friend's home.
56. On the following morning, she telephoned her parents. Her father instructed her to return home. She tried to get public transport but there was none. Her friend accompanied her. There was a group of people on the street. They noticed that her complexion was lighter than the rest of them and started to make comments about her. They called her a Chinese pig. They tried to pull her. Her friends tried to protect her but they were pushed aside and fell. She thought she was going to die. She had a headache and nearly collapsed. Her friend then pulled her hand and told her to run. They ran to the closest house and asked for help. Her friend asked the person to drive her home. She gave that person her money and jewellery, and the person agreed to drive her home.
57. They got into the car. There was a group of people in front of the car. They surrounded the car and banged on the windows. They told her to get out of the car but she did not do so. The person drove her to the home of another friend. When she got there, she telephoned her father. He then arranged for someone to pick her up from there. This incident took place [in] May 1998.
58. When asked whether she had had any other similar incidents since 1998, she answered yes. She stated that she worked as a supervisor of 150 Indonesians. Her job was to oversee the projects. On one occasion, there was a problem and the cleaning had not been done properly. She had to speak to one of the workers and give him a warning. He cursed her and nearly hit her. She could not recall when this incident took place. She reported the incident to her boss. However, her boss did not do anything about it.
59. When asked whether she was subject to any kind of harassment, threats or persecution in Indonesia, she answered yes. When asked when this happened, she stated that it happened when she was at university. Most of the students were native Indonesians. When they had group discussions she was shunned because she was Chinese. The administration made it difficult for her.

60. The applicant referred to an incident when some men demanded money from her. When asked when this incident took place, she stated that she could not recall the date. She then stated that this happened on several occasions when groups of men demanded money from her. When asked why she had not mentioned this before, she stated that she just referred to the worst incident.
61. When asked when that incident happened, she stated that it happened during the riots in 1998. She stated that extortions took place before and after the riots. She then stated that this incident took place before the riots.
62. When asked to tell the Tribunal what happened, she stated that she was walking on a quiet street when a group of men appeared. They surrounded her and asked for money. She was afraid and ran away. She threw away her money and ran. She screamed for help. She stated that she did not report this incident to the police as the police would not have believed her. There was no evidence. When asked whether there was any reason why she did not mention this in her written statement, she stated that she did not because she only wanted to mention the worst incident.
63. When asked about her sister, she stated that her sister's name was [name deleted: s.431(2)]. She was born on [date deleted: s.431(2)]. She lives in Jakarta. She does not know her address. She last saw her sister in 2002. She has had telephone contact with her since then. Their last telephone contact was in March 2002.
64. When asked why she has not contacted her sister since then, she stated that her telephone was not connected. She made inquiries with her sister's friends but they did not know where she was. Her sister is not in contact with her parents. Neither she nor her parents know where her sister is. Her sister is divorced from her husband. When asked whether her sister's disappearance had been reported to the police in Indonesia, she answered no. When asked why not, she stated that they do not have money. If they reported it, there would have been no response anyway. When asked when her sister disappeared, she stated in 2002. Her sister's disappearance had nothing to do with the riots in 1998.
65. When asked whether there was any reason why she did not disclose that she has a sister in her Application for a Protection visa, she stated that the application was only about her. The Tribunal noted that she mentioned her parents and her brother in her Application for a Protection visa but not her sister. She stated that she did not mention her sister because she did not know her address. When asked what she thought would happen if she returned to Indonesia now, she stated she still feels that she is under threat. She stated that there would be somebody following her. When asked who she was under threat from, she stated "native Indonesians". When asked who would follow her, she stated that she did not know but they would come "all of a sudden". When asked why she would be under threat from "native Indonesians", she stated that they always target the Chinese for violence.
66. The Tribunal noted that nothing had happened to her since 1998. When asked why she thought something would happen to her in 2011, she stated that journalists do not always report the news, and Chinese do not always report incidents to the police. When asked what news she was referring to, she stated bad news affecting friends and Chinese. The Chinese still experience violence and discrimination.

67. When asked whether there was anything else she wished to tell the Tribunal, she stated that she often had bad experiences as a Chinese in Indonesia. "Native Indonesians" always target the Chinese for violence and discrimination. She had experiences before and after the riots which has resulted in her always being fearful. She is seeking protection in Australia. She apologised for being in Australia unlawfully.
68. The applicant's evidence was then concluded.
69. The Tribunal informed the applicant that it wished to discuss relevant country information on Indonesia with her. The Tribunal informed the applicant that the country information on Indonesia indicates that the situation was bad for Chinese Indonesians in 1998 but that the situation for ethnic Chinese has improved considerably since then. The Tribunal noted that the information indicated that there may be one or two isolated incidents every now and then, but generally things are pretty stable in Indonesia now.
70. The applicant responded that many Chinese do not report incidents to the police because they are afraid that the police will demand money from them. There is still discrimination against Chinese and Christian churches. Chinese usually assemble in churches.
71. The Tribunal informed the applicant that there was information before it which could be the reason, or part of the reason, why it may affirm the decision made by the Department. The Tribunal advised the applicant that this was important because it could lead the Tribunal to form the view that she was not a witness of truth and that this could lead the Tribunal to the conclusion that she is not a refugee.
72. The Tribunal informed the applicant that if it reached this conclusion, it would have to affirm the decision made by the Department and that that would mean that she would not be entitled to a Protection visa and her application to the Tribunal would be unsuccessful. The Tribunal informed the applicant that she would be told the information and given an opportunity to comment on, or respond, to that information. The Tribunal also informed the applicant that she was not obliged to comment on, or respond, immediately and could seek additional time to do so.
73. The Tribunal informed the applicant that the records of the Department indicate that she first came to Australia [in] June 2000 on a Tourist visa. That visa was valid until [a date in] September 2000. However, she left Australia [in] July 2000, long before her visa expired and voluntarily returned to Indonesia. The Tribunal noted that in her written statement, she stated that she was not ready to go back to those circumstances in Indonesia at any time. However, she voluntarily returned to those circumstances in July 2000.
74. The Tribunal noted that this was not consistent with someone who feared returning to Indonesia. The Tribunal also noted that this was two years after the incident she referred to in 1998. However, in 2011, which is 13 years after the incident, she claims that as a result of what happened in 1998, she is afraid to return to Indonesia.
75. The applicant responded immediately, and stated that she came to Australia in 2000 for a holiday. She then returned to Indonesia. On her return to Indonesia, she realised that she was still afraid. She could not stand it any longer. She resigned from work because there was too much pressure on Chinese like her. She decided to return to Australia

because she felt that there was peace here, and it was very different here. It is a multicultural country where people from different races and religions live in harmony and she did not feel afraid here.

76. She stated that she made this decision in 2000 and decided to return to Australia because it was safer here. She also tried to change her Tourist visa into a Skilled visa so that she would not be in Australia illegally. When asked when she did that, she stated that she tried to do that one month after her arrival in Australia. She went to an office of the Department. She was asked to do a health check. She did that but did not meet the requirements for a Skilled visa.
77. When asked whether she consulted a migration agent or a lawyer, she answered no. When asked why not, she stated that she did not think there would be any migration agent who could help her. She had only been in Australia for one month. When the Tribunal pointed out that she had been in Australia previously for a longer period, she stated that she was here on holiday and had not thought about speaking to a migration agent. When she returned in 2002, she did not realise that a migration agent could help her.
78. The Tribunal informed the applicant that it would expect that as an educated woman and a university graduate, she would know that one goes to a lawyer to get legal advice. She stated that she did not know how to contact a lawyer. When asked why she did not ask her brother, she stated that he did not know much about it. The Tribunal noted that he had been living in Australia since 1998. She agreed and stated that he did not know much.
79. The Tribunal informed the applicant that the records of the Department indicate that she came to Australia for the second time [in] January 2002 on a Tourist visa. That visa was valid until [a date in] April 2002. She thereafter overstayed her visa and remained in Australia unlawfully until [a date in] April 2010. The Tribunal noted the applicant's evidence that she returned to Australia because she was afraid to live in Indonesia.
80. The applicant responded immediately, and stated that her application was lodged because she was ill at that time. An Immigration officer gave her a Bridging visa and suggested that she see a migration agent.
81. The Tribunal noted that the records of the Department indicate that [Hospital 1] reported that she was in Australia unlawfully and that the Department located her, rather than her voluntarily going to the Department and informing them that she was in Australia unlawfully. The applicant responded immediately and agreed with that.
82. The Tribunal informed the applicant that this raises an issue for the Tribunal as to whether she would have lodged an Application for a Protection visa at all if she had not been located by a Departmental officer. The applicant responded immediately and stated that before she became ill she was making efforts to legalise her status in Australia because it had been a long time and she did not feel comfortable living illegally.
83. When asked what efforts she had made to legalise her status, she stated that she obtained information about a migration agent from the priest at her church at the end of 2009. She saw the migration agent. She could not recall her name, but stated that she

was a Filipino woman who is not her current migration agent. When asked what happened between the end of 2009 and July 2010, she stated that she became ill in April 2010.

84. When asked what she did between December 2009 and April 2010, she stated that she tried to collect the information that was required to be submitted to the Department. When asked what this information was, she stated that she needed to obtain reference letters from people to support her application. When asked what type of application she was going to lodge, she stated that she did not know. She only met the migration agent once.
85. The Tribunal informed the applicant that the records of the Department indicated that she was interviewed by the Departmental delegate [in] November 2010. During that interview, she claimed that she came to Australia in 2002 because she was afraid. This was inconsistent with her initial evidence to the Tribunal that she came to Australia in 2002 for a holiday. The applicant responded immediately and stated that she was already in fear. She tried to change her status into a legal one.
86. The Tribunal informed the applicant that it had a number of issues and concerns about her application. The Tribunal noted that she came to Australia in 2000, which was two years after the riots in Indonesia where she claimed she was traumatised. However, she did not lodge an Application for a Protection visa at that time and voluntarily returned to Indonesia long before her Tourist visa expired. The Tribunal noted that these were not the actions of someone who had a fear of persecution if she returned to Indonesia.
87. The applicant responded that at that time she was still working. The situation went from bad to worse. She tried to stay there but could not. She was haunted by fear and the situation at the workplace.
88. The Tribunal noted that she claimed that she returned to Australia in January 2002 because she was afraid of living in Indonesia. She was aware that she was on a Tourist visa but did not lodge an Application for a Protection visa until [a date in] July 2010, which was some eight and a half years later. The Tribunal noted that these were not the actions of someone seeking protection because she feared returning to her country.
89. The applicant apologised for remaining in Australia illegally for so long. She stated that she kept trying to get information. She heard that migration agents were not good. Secondly, she needed money to see them. It was only after her priest suggested she see a migration agent that she did.
90. The Tribunal informed the applicant that it had some serious concerns in relation to her credibility. The Tribunal noted that the records of the Department indicate that when she was interviewed by a Departmental officer, she stated that she had worked in Australia. She responded that she did not work. She helped people. Occasionally, people gave her money. The Departmental officer categorised that as work.
91. When asked whether she had told the Tribunal everything she wished to tell the Tribunal, she stated that extortion of money can happen anywhere. In Indonesia, a woman with a fairer complexion is always targeted for exploitation. They think Chinese in Indonesia are rich.

92. When asked whether there was anything else she wished to tell the Tribunal, she answered no. When the Tribunal asked the applicant's migration agent whether there were any other questions she wished the Tribunal to ask the applicant, she answered no. The applicant's migration agent was then invited to make oral submissions and declined to do so.
93. The hearing was then concluded.

INDEPENDENT COUNTRY INFORMATION

Chinese minorities in Indonesia

World Directory of Minorities and Indigenous Peoples - Indonesia : Chinese, 2008

94. Several laws that discriminated against the Chinese minority have been changed or removed, including the cancellation in 2005 of the Indonesian Citizenship Certificate (SBKRI) decree, under which ethnic Chinese were given a special code in their ID which identified them as Chinese and gave the bureaucracy the opportunity to discriminate against them. In the 2004 elections, there were several parties that openly claimed to be representing ethnic Chinese, something that was unheard of during the rule of former president Suharto. Although these parties won only a small number of votes, they did raise the profile of the Chinese community. Many senior Indonesian officials also openly proclaimed their Chinese ancestry.

Developments in 2006 indeed show a sea-change in attitudes towards the Chinese minority, at least from state authorities: the Indonesian government in that year recognized Confucianism as a formal religion (which should allow the issuing of marriage licences and identification documents recognizing the involved individuals' Confucian beliefs, for example), and the Chinese New Year officially became a national holiday. A new citizenship law also adopted in 2006 should permit the naturalization of most ethnic Chinese who were born in Indonesia who may still not be citizens.

Public signs in Chinese, and Chinese language newspapers are no longer banned, and have begun to make their appearance in Indonesia, and various private institutions have been set up to teach Mandarin. Radio and television broadcasts of news in Chinese have begun to make their appearance, and especially to cover important cultural events such as the Chinese New Year.

(Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Indonesia : Chinese, 2008*, available at:

<http://www.unhcr.org/refworld/docid/49749d0e2d.html>)

Religious freedom in Indonesia

U.S Department of State, *International Religious Freedom Report 2011 - Indonesia*

95. The constitution provides for freedom of religion. The government generally respected religious freedom for the six officially recognized religions; however, ongoing restrictions, particularly on religions not sanctioned by the government and sects of the recognized religions considered deviant, were exceptions.

...The constitution provides for freedom of religion, accords "all persons the right to worship according to their own religion or belief," and states that "the nation is based upon belief in one supreme God." The first tenet of the country's national ideology, Pancasila, similarly declares belief in one God. The government does not allow for not believing in God. ... The Ministry of Religious Affairs extends official status to six religious groups: Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism.

..... The criminal code makes spreading hatred, heresy, and blasphemy punishable by up to five years in prison. Although the law applies to all officially recognized religions, the few cases in which it has been enforced have almost always involved blasphemy and heresy against Islam.

..... Under the National Education Law, religious instruction in any one of the six official religions is required when requested by a student. Religious speeches are permissible if delivered to members of the same religious group and are not intended to convert persons of other religious groups. Televised religious programming is unrestricted for any of the recognized religious groups. Publication of religious materials or the use of religious symbols is permitted; however, the government bans dissemination of these materials to persons of other religious groups.

..... The law does not discriminate against any recognized religious group in employment, housing, or health care.

..... NGOs that monitor religious freedom violations in the country recorded over 200 incidents during the reporting period. The highest number of reported incidents occurred in West Java and Jakarta. During the reporting period, the government continued explicitly and implicitly to restrict the religious freedom of groups associated with forms of Islam viewed as outside the mainstream.

.... There were a number of reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Some hard-line Muslim groups used violence and intimidation to close at least 28 churches. Some of the churches remained closed. Only a few perpetrators of these and past abuses have been prosecuted.

..... There were numerous areas of improvements in religious freedom during the reporting period. Representatives of the Confucian community continued to practice their religion freely as well as obtain marriage certificates and identity cards with Confucianism listed as their religion.

..... There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Controversy over the Ahmadiyya continued throughout the reporting period. Hardline groups renewed attacks and demanded the government disband the Ahmadiyya.

..... In addition to the Ahmadiyya, according to the Indonesian Communion of Churches and the Wahid Institute, local government officials and local communities forced the closing of at least 28 licensed and unlicensed churches during the reporting period. Many of the targeted churches operated in private homes and storefronts, and some churches moved their services to rented spaces in public shopping malls to lessen the potential of threats from hard-line groups.

..... Several houses of worship, religious schools, and homes of Muslim groups regarded as unorthodox were attacked, vandalized, forced to shut, or prevented from being established by militant groups and mobs throughout the country. In several cases police temporarily detained members of "deviant groups" who were victims of attacks, ostensibly to ensure their safety, but did not arrest attackers.

(U.S. Department of State *International Religious Freedom Report 2011- Indonesia*
<http://www.state.gov/g/drl/rls/irf/2010/148869.htm>)

FINDINGS AND REASONS

96. The Tribunal finds that the applicant is a citizen of the Republic of Indonesia based on the evidence given by the applicant at the hearing and a copy of her passport which is before the Tribunal and will assess her claims on this basis. The Tribunal finds that the applicant is outside her country of nationality. There is no evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than her country of nationality
97. In assessing claims made by an applicant, the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicant. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to an asylum seeker who is generally credible but unable to substantiate all of his or her claims.
98. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true. (See *MIMA v Rajalingam* (1999) 93 FCR 220).
99. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J: *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547).
100. In this case the applicant first came to Australia [in] June 2000 on a Tourist visa. This visa was valid until [a date in] September 2000. She returned to Indonesia [in] July 2000. She came to Australia for the second time [in] January 2001 on a Tourist visa that was valid until [a date in] April 2002. She did not return to Indonesia at the expiry of her visa and continued to remain in Australia unlawfully until [a date in] April 2010. [In] April 2010, she was granted a Bridging visa that was valid until [a date in] July 2010. [In] July 2010, her Bridging visa was extended until [a date in] July 2010. [In] July 2010, the applicant lodged an Application for a Protection visa which was refused by the Department [in] December 2010. [In] January 2011, she lodged an Application for Review with the Tribunal.
101. In dealing with the Application for Review the Tribunal finds that the applicant's material claims lack credibility and cannot be accepted. The applicant's claimed fears are inconsistent with the country information. There are inconsistencies and contradictions within the evidence given by the applicant to the Tribunal and between

the evidence given by the applicant to the Department and to the Tribunal that raise concerns in relation to the applicant's credibility and the veracity of her claims. The applicant's voluntary return to Indonesia in 2000, seven weeks prior to the expiry of her Tourist visa, the delay of eight and a half years in lodging her Application for a Protection visa and the circumstances in which she lodged the Application for a Protection visa also raise serious concerns in relation to the credibility of the applicant, the veracity of her claims and her motivation in lodging the application.

102. In her Application for a Protection visa, the applicant claimed that she was "mocked, teased and disturbed" every day, that she was traumatised as a result of the riots in Indonesia in May 1998, that the Chinese are not protected in Indonesia, that she cannot get protection because she has no money to bribe the authorities, that she left Indonesia because she found no peace, that she feels sick and depressed at the thought of returning to Indonesia and that she does not wish to return to the same circumstances in Indonesia.
103. The applicant lodged a written statement with the Department in support of her application. In the written statement she claimed that she was traumatised as a result of the riots in Indonesia in May 1998. Her statement provided details of her going to work on the day the riots commenced and the difficulties, harassment and threats she encountered in trying to return home safely on that date. She claimed that this was the "only example" of what she had gone through. She also claimed that on the day the riots commenced they were unable to locate the whereabouts of her sister and she was scared that something could have happened to her sister. She further claimed that anything can happen in Indonesia at any time, that she was traumatised and fearful and did not want to go back to those circumstances at any time.
104. During the course of her interview with the delegate [in] November 2010, the applicant claimed that prior to 1998 people would call her names and spit on her when she walked down the street in Indonesia, that she travelled to Australia because she was scared of living in Indonesia after the riots in 1998 and that she realised she needed protection from the first time she came to Australia in 2000.
105. During the course of the hearing before the Tribunal, the applicant claimed that when she was at university she was shunned during group discussions because she was Chinese and the Administration made it difficult for her. She also claimed that on one occasion, on a date she could not recall, some men demanded money from her. She claimed that she was walking on a quiet street when a group of men appeared, surrounded her and asked for money. She claimed that she was afraid, threw away her money and ran away. She stated that she did not report this incident to the police because they would not have believed her.
106. During the hearing the applicant further claimed that her job involved overseeing projects and supervising one hundred and fifty cleaners. She claimed that on one occasion there was a problem because a cleaning job had not been done properly. She claimed that when she spoke to one of the workers to give him a warning, he cursed her and nearly hit her. She claimed that when she reported this incident to her boss he did not do anything about it.
107. During the hearing the applicant claimed that she last had contact with her sister in 2002 and that neither she nor her parents now have contact with her or know her

whereabouts. She claimed that her sister's disappearance has not been reported to the police and that her sister's disappearance has nothing to do with the riots in Indonesia in May 1998.

108. Following the hearing the applicant submitted an undated written statement and some country information to the Tribunal. In the statement she claimed that the police would not assist her family to search for her sister because they did not have money to pay the police. She also claimed that her parents feared that she would suffer the same fate as her sister if she returns to Indonesia. The applicant further claimed that during the May 1998 riots Christian Indonesian women of Chinese ethnicity became victims of sexual abuse. She claimed that churches were burnt and church goers harmed and that the Indonesian government were powerless to prevent violence against Christian Indonesians of Chinese ethnicity.
109. The country information on Indonesia indicates that there were riots in Indonesia in 1998 and that they were set against the background of a number of issues created by the Asian Financial Crisis in 1997. The country information also indicates that the May 1998 riots in Indonesia predominantly targeted ethnic Chinese in Jakarta and other cities such as Surabaya, Surakarta and Palembang. The applicant's primary claim arises from an incident that took place during the riots [in] May 1998.
110. The Tribunal accepts that [in] May 1998 there were riots in Jakarta, that the applicant had difficulty getting home from work on that day and that she was harassed and threatened as she attempted to get home. The Tribunal also accepts that the applicant was harassed and threatened on that date because of her race. The Tribunal further accepts that the applicant was traumatised by her experience [in] May 1998. The applicant claims that, as a result of the riots in May 1998, she has a fear of persecution by reason of her race should she return to Indonesia in the reasonably foreseeable future. The Tribunal has difficulty accepting that this claimed fear is well founded as it is inconsistent with the country information on Indonesia.
111. The country information on Indonesia indicates that the situation for ethnic Chinese in Indonesia has changed considerably and for the better since 1998. In 2005 several laws that discriminated against the Chinese minority have been amended or repealed. It also indicates that developments in 2006 "show a sea-change in attitudes towards the Chinese minority, at least from state authorities." (*World Directory of Minorities and Indigenous Peoples - Indonesia : Chinese, 2008*).
112. The applicant has not lived in Indonesia since 2002. She has not experienced the changes in Indonesia since 2005. Her claimed fears are based on her experiences prior to 2002. The Tribunal has serious doubts about the extent of the applicant's claimed fears particularly as her actions are inconsistent with her claimed fears.
113. The applicant travelled to Australia [in] June 2000 which was two years after the May 1998 riots in Indonesia. She travelled here on a Tourist visa that was valid until [a date in] September 2000. However, she voluntarily returned to Indonesia [in] July 2000 which was seven weeks prior to the expiry of her Tourist visa. Whilst she was in Australia for six weeks she did not obtain any legal advice in relation to seeking permanent residence in Australia or make an Application for a Protection visa. These actions of the applicant are not consistent with her claims to the Department that she travelled to Australia because she was scared of living in Indonesia after the riots in

1998, that she realised she needed protection from the first time she came to Australia in 2000, that anything can happen in Indonesia at any time, that she was traumatised and fearful and did not want to go back to those circumstances at any time. Her actions are more consistent with her evidence to the Tribunal that she came to Australia in 2000 for a holiday. The applicant's voluntary return to Indonesia in 2000, seven weeks prior to the expiry of her Tourist visa, raises serious concerns in relation to her credibility and the veracity of her claims.

114. The applicant returned to Australia [in] January 2002 on a Tourist visa which expired [in] April 2002. The applicant claimed that she returned to Australia because she was afraid of living in Indonesia. However, she continued to live in Australia unlawfully after her visa expired and made no attempt to seek Australia's protection for eight and a half years. She did not seek advice from a migration agent until the end of 2009 and only after her priest advised her to do so. When the Tribunal discussed this issue with the applicant at the hearing she stated that she did not realise that a migration agent could help her. The Tribunal does not accept this explanation. The Tribunal would expect that, as an educated woman and a university graduate, the applicant would know that one goes to a lawyer to get legal advice and that she could have made inquiries about where she could get immigration advice.
115. When this was raised with the applicant, she claimed that she did not know how to contact a lawyer. The Tribunal does not accept this. The applicant's brother has lived in Australia since 1998 and she could have asked him. She also claimed that she has been attending an Indonesian charismatic church regularly for the last five years. She could have made inquiries with her priest or other church goers. She also claimed that she has about twenty friends who have financially supported her in Australia and could have asked them to refer her to a lawyer or migration agent where she could have obtained free legal advice.
116. The applicant claimed that she sought legal advice from a migration agent at the end of 2009 after her priest advised her to do so. However, she did not lodge an Application for a Protection visa at that time. When the Tribunal questioned her about this she claimed that she needed to obtain reference letters from people to support her application. However, when she eventually lodged her Application for a Protection visa [in] July 2010 she did not lodge any reference letters from other people in support of her application. The lengthy delay in lodging her Application for a Protection visa raises serious concerns in relation to the credibility of the applicant and the veracity of her claims.
117. The applicant became ill in April 2010 and went to [Hospital 1] for medical treatment. She was then referred to the Department and was interviewed by a Compliance Officer. The applicant was granted a Bridging visa [in] April 2010 but did not lodge her Application for a Protection visa until [a date in] July 2010. The Tribunal raised its concerns with the applicant in relation to the delay of eight and a half years from the time she arrived in Australia in 2002 until she lodged her Application for a Protection visa and the fact that she lodged the application only after she came to the attention of the Department's Compliance Officers.
118. The applicant responded that she lodged the application because she was ill at that time and because an officer from the Department gave her a Bridging visa and suggested that she see a migration agent. This response does not explain the reason for the delay.

It also raises serious doubts as to whether the applicant would have lodged an Application for a Protection visa at all if she had not been located by the Department's Compliance Officers. During the course of the hearing the Tribunal also asked the applicant why she lodged an Application for a Protection visa. She responded that she did so because of what happened in Indonesia and because she had no other visa choice. This response raises further concerns for the Tribunal in relation to the applicant's motivation in lodging the application.

119. During the course of the hearing the applicant referred to an incident where a group of men surrounded her on a quiet street and demanded money from her. She claimed that Indonesians believe that all Chinese are rich and she was targeted because she is of lighter complexion and of Chinese ethnicity. She claimed that she threw her money, screamed for help and ran away. The applicant did not refer to this incident in her Application for a Protection visa or her written statement to the Department. In her written statement to the Department she only referred to the incident [in] May 1998 and stated that it was the only example of what she had gone through.
120. In the undated written statement submitted by the applicant to the Tribunal following the hearing, she referred to this incident and stated that she was confronted by a group of men in a quiet street. She claimed that they demanded money and when she told them she had no money they began touching her. She claimed that she screamed for help and managed to escape.
121. During the hearing, the applicant initially stated that she could not recall the date on which this incident occurred. When questioned further, she changed her evidence several times and stated that it occurred during the riots in 1998, that it took place before the riots and that groups of men demanded money from her on several occasions. When the Tribunal asked the applicant why she had not mentioned this/these incident/s before, she stated that she just referred to the worst incident. This is inconsistent with her written statement to the Department in which she stated that the incident [in] May 1998 was the only example of what she had gone through.
122. In her oral evidence to the Tribunal, the applicant claimed that when confronted by the group of men she threw her money away, screamed for help and ran away. In the written statement submitted to the Tribunal following the hearing, the applicant claimed that when confronted by the group of men she told them that she did not have any money on her, that they then began touching her, that she screamed for help and managed to escape. The many different versions of this incident given by the applicant raise serious concerns in relation to her credibility. The Tribunal is of the view that the applicant has fabricated this claim, does not recall what she previously claimed and embellished it in her written statement to the Tribunal. The Tribunal does not accept that the applicant was stopped by a group of men who demanded money from her on one or more occasions.
123. During the course of her interview with the delegate [in] November 2010, the applicant claimed that prior to 1998 people would call her names and spit on her when she walked down the street in Indonesia. This claim was not mentioned in the written claims to the Department. In her written statement the applicant claimed that the incident [in] May 1998 was the only example of what she had gone through. She did not give evidence to the Tribunal of being called names or being spat at notwithstanding the Tribunal giving her several opportunities to do so. The Tribunal

does not accept that the applicant was called names or spat at when she walked down the street in Indonesia with the exception of the incident [in] May 1998 when she was called names during the riots.

124. The applicant claimed before the Tribunal that when she was at university she was shunned during group discussions because she was Chinese and that the Administration made it difficult for her. The Tribunal accepts that the applicant may have had problems at university but this did not prevent her from completing her studies and graduating from university. The Tribunal does not accept that being shunned from group discussions at university and having problems with the Administration at university amounts to serious harm for the purposes of s.91R of the Act.
125. In the written statement submitted to the Tribunal following the hearing the applicant claimed that she suffered discrimination in almost every aspect of her life. This claim is inconsistent with the country information and the Tribunal does not accept it. The applicant was able to attend school and university and obtain a good education. She was able to obtain employment and was in a management position in her last job in Indonesia. She was able to earn sufficient income to travel to Australia for holidays on two occasions.
126. The applicant referred to an incident at work where one of the workers swore at her and nearly hit her when, as his supervisor, she spoke to him about a job that had not been done well and warned him. She claimed that when she reported this incident to her boss who is also Chinese he did not do anything about it. The Tribunal is satisfied that this incident arose as a result of inappropriate behaviour in the work place and is not Convention related.
127. The applicant did not disclose that she has a sister in her Application for a Protection visa. However, in her written statement to the Department she claimed that she was worried about the whereabouts of her sister [in] May 1998 as her parents could not locate her whereabouts. During the hearing the applicant claimed that she last had contact with her sister in 2002 and that neither she nor her parents now have contact with her or know her whereabouts. She also claimed that her sister's disappearance had not been reported to the police and that her sister's disappearance had nothing to do with the riots in Indonesia in May 1998.
128. In the written statement submitted to the Tribunal following the hearing, the applicant claimed that the Indonesian police would not assist her family in their search for her sister because her family had no money to pay them. This is inconsistent with her previous evidence to the Tribunal that her sister's disappearance had not been reported to the police. These inconsistencies in the applicant's evidence raise serious concerns in relation to her credibility and doubts as to whether she has a sister. Even if the Tribunal were to give the applicant the benefit of the doubt and accept that she has a sister, the Tribunal is not satisfied, on the evidence before it, that the disappearance of the applicant's sister is for a Convention based reason or that the Indonesian authorities are not investigating her disappearance for a Convention based reason. The Tribunal is also not satisfied, on the evidence before it, that the applicant would suffer the same fate as her sister if she returns to Indonesia.
129. The applicant claims that she is a Christian. The Tribunal has considered whether the applicant is at risk of persecution because she is a Christian or a Christian of Chinese

ethnicity. The country information indicates that the Constitution of Indonesia provides for freedom of religion and that the government generally respected religious freedom for the six officially recognized religions. It indicates that the Ministry of Religious Affairs extends official status to six religious groups: Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism.

130. The applicant has provided the Tribunal with some country information from the internet in relation to attacks on churches in Indonesia. The Tribunal has considered this information as well as independent country information from reliable sources. According to the U.S Department of State *International Religious Freedom Report 2011 – Indonesia*, “some hard-line Muslim groups used violence and intimidation to close at least 28 churches. Some of the churches remained closed. Only a few perpetrators of these and past abuses have been prosecuted.” The Report also indicated that “there were numerous areas of improvements in religious freedom during the reporting period”.
131. Based on the country information on Indonesia the Tribunal is satisfied that hard line Muslim groups have used violence and intimidation to close down churches in Indonesia. The Tribunal is not satisfied that this conduct is State sanctioned or that the State has turned a blind eye to it. The country information also indicates that these are isolated incidents and the Tribunal is not satisfied that it involves systematic and discriminatory conduct.
132. In her written statement to the Tribunal the applicant claimed that during the riots in May 1998 a number of Christian Indonesian women of Chinese ethnicity became victims of sexual abuse. This is confirmed by the country information on Indonesia. There is no indication in the current independent country information on Indonesia that Christian Indonesian women of Chinese ethnicity are at risk of sexual abuse because of their religion, race or any other Convention ground now or in the foreseeable future. The Tribunal is therefore satisfied that the applicant will be able to return to Indonesia and practise Christianity and that there is no real chance that she will be at risk of persecution by reason of her religion.
133. Having considered the evidence as a whole and the applicant’s claims both individually and cumulatively, the Tribunal finds that the applicant’s claims lack credibility and cannot be accepted. The Tribunal does not accept that the applicant was “mocked, teased and disturbed” every day and that prior to 1998 she was called names and spat at when she walked down the street (other than [in] May 1998 when she was called names during the riots). The Tribunal does not accept that the applicant was stopped by a group of men who demanded money from her on one or more occasions.
134. The Tribunal does not accept that the applicant will be targeted because she is a woman of light complexion and of Chinese ethnicity, that people of Chinese ethnicity are not able to obtain State protection in Indonesia and that the applicant cannot obtain State protection because she has no money to bribe the authorities. The Tribunal does not accept that there is a real chance that the applicant will be at risk of persecution if she practises Christianity or that there is a real chance that she will be a victim of sexual abuse by reason of her race or religion or both.
135. The Tribunal accepts that the applicant was affected by the riots [in] May 1998. For the reasons referred to above and in particular in paragraphs 109 to 111, the Tribunal does

not accept that the applicant has a well-founded fear of persecution by reason of her race. The Tribunal accepts that the applicant may have suffered some discrimination at university by reason of her race but does not accept that it amounted to persecution. The Tribunal accepts that the applicant does not wish to return to Indonesia and is satisfied that it is not for a Convention based reason.

136. In view of the above findings, the Tribunal finds that there is no real basis for the applicant's claims to fear persecution. The Tribunal is satisfied that if the applicant returns to Indonesia there is no real chance that she will be at risk of persecution.
137. Accordingly, the Tribunal finds that the applicant does not have a well-founded fear of persecution on the grounds of race, religion or any other Convention ground now or in the reasonably foreseeable future and that there is no real chance that she will be at risk of persecution if she returns to Indonesia now or in the reasonably foreseeable future.

CONCLUSIONS

138. 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) for a protection visa.

DECISION

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