

1401255 [2014] RRTA 303 (24 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1401255

COUNTRY OF REFERENCE: Democratic Peoples Republic of Korea

TRIBUNAL MEMBER: Angela Cranston

DATE: 24 March 2014

PLACE OF DECISION: Sydney

DECISION: The Tribunal sets aside the delegate's decision refusing to grant a protection visa and substitutes a decision that the protection visa application is not valid and cannot be considered.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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 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 the Republic of Korea, applied to the Department of Immigration for the visa [in] December 2013 and the delegate refused to grant the visa [in] January 2014. A copy of the claims and evidence is at attachment 1.

CONSIDERATION OF CLAIMS AND EVIDENCE

3. 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.
4. 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).
5. 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').
6. 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.
7. A determination in this case must be made as to whether the applicant is a national of one or two or more countries. That determination must be made by reference to the laws of the countries concerned.
8. In the Tribunal's view, the application made to the Department was not a valid application because it was prevented by the provisions of s.91P. In the Tribunal's view, this is the case because the applicant is a national of both the Republic of Korea and the Democratic People's Republic of Korea.

9. The applicant requested a North Korean interpreter for the hearing but as no such interpreter was available, the Tribunal gave the applicant a choice of either a Korean or Mandarin interpreter. Even though she has stated in her application that she has a good working knowledge of the Mandarin language, the applicant chose to use the Korean interpreter. The Tribunal indicated to the applicant at hearing that she was to make it aware of any interpreter issues as and when they rose. She did not raise any issues.
10. Following the hearing, the Tribunal put its concerns to the applicant in writing and in response, the adviser has stated that the applicant could only understand around half of the interpreted communications because of the legalese and non-preferred interpretation medium however he did not provide any further details. Whilst the applicant's adviser has stated this, the applicant did not raise any interpretation issues during the hearing and neither did the interpreter and it was not the Tribunal's observation that the applicant had difficulties understanding the Tribunal once the interpreter had interpreted what it had said. Given this and given that the applicant and her adviser had a further written opportunity to understand the issues and present her case which they have now done, the Tribunal does not accept that there were interpretation problems at hearing that have affected the outcome of this case.
11. The applicant has always asserted that she was born in the Democratic People's Republic of Korea. Although the applicant has a Chinese passport which the Document Examination Unit said [in] October 2012 was a legitimately manufactured document issued in the expected manner with no alteration, the applicant has stated that this is because the document was fraudulently bought for her by her parents. The applicant has also always claimed to be a national of the Democratic People's Republic of Korea. The applicant has also denied that she has taken any action which would result in the loss of that nationality, specifically she has denied that she has obtained Chinese citizenship.
12. The Tribunal is unable to conclusively find that the applicant is not telling the truth. Accordingly the Tribunal accepts the applicant was born in North Korea and although she holds a Chinese passport, she is not a Chinese citizen as her passport was obtained through bribery.
13. The advice available to the Tribunal from DFAT indicates that citizens of the DPRK are treated as citizens of the ROK automatically by virtue of their residence on the Korean peninsula. Provisions of the Nationality Act governing acquisition of ROK nationality by birth therefore apply equally to people of South and North Korea. Whilst the adviser has suggested that there is a need to approach authorities for protection under the Republic of Korea Act on the Protection and Settlement Support of Residents Escaping from North Korea, in the Tribunal's view this is a separate consideration from the provision which affects nationality under the Republic of Korea Constitution and Nationality Act. In the Tribunal's view, the commentary of the Department of Foreign Affairs and Trade of 17 February 2010, prepared after consulting the Ministry of Unification of the Republic of Korea supports the conclusion that the current interpretation of the Republic of Korea Constitution and the Nationality Act see the applicant considered a citizen of the Republic of Korea from birth.
14. Whilst there are apparently limitations in respect of the availability of assistance under the Act on the Protection and Settlement Support of Residents Escaping from North Korea, these limitations do not appear to affect the recognition of an existing nationality, but merely the availability of assistance under that Act. Thus, persons who

have resided outside the territory of the Republic of Korea for extended periods may not be eligible for assistance in some circumstances, but this would not affect the question of their nationality.

15. As noted by Professor Lee on 27 March 2010, a North Korean is not granted South Korean citizenship as he/she is already a national but she does need to have his/her nationality ascertained in order to live effectively as a citizen of the Republic of Korea and the Protection and Settlement Support of Residents Escaping from North Korea, is merely one route through which one can have the existing nationality of the Republic of Korea recognised. According to Professor Lee, one may also apply for nationality adjudication, a determination procedure operated by the Ministry of Justice under the Nationality Act or one may bring an action in court for a declaratory judgment that he/she is a national of the Republic of Korea.
16. It is the case under Australian law, however, that where a person who is a national of two countries seeks a protection visa they must first be given appropriate exemption from the operation of s.91P.
17. It has not been submitted by the applicant, and no material is otherwise available to the Tribunal, which would indicate that the applicant has approached the Minister before this application was made to seek a written notice under the terms of s.91Q of the Act. Nor is there any evidence that such a notice has ever been produced.
18. Given these conclusions, it is the view of the Tribunal that [in] December 2013, when this application was made to the Department, the applicant was a national of both the Republic of Korea and the Democratic People's Republic of Korea. This being the case, the provisions of s.91N(1) applied to the applicant on that date. There being no written notice under s.91Q in respect of the applicant, she was affected by the provisions of s.91P, such that no application she made was valid. That being the case, the delegate's decision refusing the visa should be set aside and a decision noting the invalidity of the application to the Department should be substituted.

DECISION

19. The Tribunal sets aside the delegate's decision refusing to grant a protection visa and substitutes a decision that the protection visa application is not valid and cannot be considered.

Angela Cranston
Member

ATTACHMENT 1 CLAIMS AND EVIDENCE

20. In her application, the applicant claimed the following:

I was born in the so-called Democratic People's Republic of Korea, most usually known as North [Korea]. I do not know where in North Korea I was born because I was only a few months old when my family left North Korea to live in China. I speak most naturally the Northern dialect of Korean.

When I was only a few months old, I was taken by my parents to the People's Republic of China, or mainland China, mainly because even though economic conditions were poor in China, they were better than economic conditions in North Korea.

I should point out that the Korean custom is to put the family name first and then the given names.

I grew up in China and therefore have a good working knowledge of the Mandarin language, which is the official language of China. But because I am not ethnically Chinese but am an ethnic Korean, I have had a difficult time living in China and have not been able to obtain a Chinese passport.

Because of the difficulties for me of life in China, I decided to do try to leave. But because I could not obtain a valid Chinese passport, I had to obtain some other type of passport even though it would not be valid and I would be using a name which is not my true name.

Economic conditions are very bad in North Korea and my family was not getting enough to eat. That is why we left North Korea for China. Even though economic conditions in China at that time were not much better, at least in China we had food. Also there was no freedom of speech and North Korea because of the dictatorship.

In China, I was married to a man but he treated me very badly and used to beat me and treat me badly in other ways. He was addicted to alcohol and gambling, which does not make for a very good marriage from the wife's point of view. Please see attached committee reports for human rights in North Korea lives the sale – personal accounts of women fleeing North Korea to China.

I am very afraid of been sent back to China, because the Chinese government has been sending North Koreans in China back to North Korea. Because it is against the law in North Korea to live without permission and it is very hard to get permission, North Koreans sent back to North Korea are persecuted by having metal pieces put into their

noses and having their fingernails torn out. In some cases, I believe they may even be executed. There is therefore no future for me in either China or North Korea. I am not aware of any other country to which I could be sent if I am deported.

If I have to go back to North Korea, via China, I will face persecution because even though I was child at the time, I left North Korea without permission. I would not have enough to eat, and would be subjected to torture and may die because of evidence that this is what happens to people returned to North Korea who left without official permission. Please see attached supporting documents evidencing that my personal fate will be fine. Believe repatriated from China to North Korea.

If I am deported to China, the Chinese authorities will then deport me to North Korea because of their long-standing political relationship agreement between the Chinese and North Korean government. (See Brookings Institute paper China's repatriation of North Korea refugees at page 4). Chinese government has been sending most North Korean defectors in China back to North Korea. Once repatriated, defectors face stringent punishment and executed. There is, therefore, no future for me in either China or North Korea. If I am deported to China and North Korea, Australia would be responsible for my death.

21. The applicant appeared before the Tribunal [in] February 2014 to give evidence and present arguments. The Tribunal also heard evidence from [Mr A].
22. The applicant initially requested a Korean interpreter but subsequently requested a North Korean interpreter.
23. The Tribunal hearing was conducted with the assistance of an interpreter in the Korean and Mandarin and English languages. The Tribunal indicated that it had been unable to obtain the services of a North Korean interpreter but had obtained the services of two interpreters; a Korean and a Mandarin interpreter. The applicant chose to use the Korean interpreter. The applicant was told that if she did not understand everything after it had been interpreted, then she should tell the Tribunal immediately.
24. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
25. The applicant stated she could not go back to China because she was born in North Korea. The Tribunal asked if she was a citizen of China. She stated she had Chinese citizenship but if she had to go back she would be sent to North Korea. The Tribunal put to her that it did not understand why she would be sent back to North Korea if she had Chinese citizenship. She stated when she was born her parents fled to China.
26. The Tribunal asked why she said she was a Chinese citizen. She stated her parents bought the nationality. The Tribunal put to her that it was still puzzled about her Chinese citizenship and asked if she was Chinese citizen or not. She stated even though she had Chinese citizenship she was born in North Korea and if she went back to China they would send her back to North Korea. The Tribunal asked why the Chinese would send her back to North Korea. She stated it was because she was from North Korea and even though she had Chinese citizenship they did not protect her. The

Tribunal asked why would they send one of their citizens to North Korea if she was Chinese. She stated her house was located near North Korea and there were spies. She stated even though she had Chinese citizenship they would not protect her and would send her back to North Korea. The Tribunal asked if she was suggesting she was not a Chinese citizen. The Tribunal asked if her parents had legitimately obtained Chinese citizenship. She said she was not sure. The Tribunal confirmed with her that she heard from her parents when she was young that she had Chinese citizenship. She said she was born in North Korea but that Chinese citizenship was bought by her parents.

27. The Tribunal asked where she was born in North Korea. She stated she heard from her parents she was born in [location] and had heard that when she was [young].
28. The Tribunal asked about her protection visa application. The applicant stated her friend [Mr A] translated the forms from English into Korean and her Korean answers into English. [Mr A] was Korean and not Chinese. She stated that [Mr A] had translated what the lawyer had written in English back to her in the Korean and it was correct. She stated her mother had had an operation and if she could have gone back to China she would have.
29. The applicant stated she came to Australia [in] July 2008 and confirmed her [name and date of birth]. She confirmed her South Korean passport that she used to enter Australia was fraudulent. She stated she bought it in Jilin, China. She stated she got her Chinese passport after paying money.
30. The Tribunal asked if she went to the Chinese embassy would she get another passport. She stated she was not sure. She stated once she went to China she would be sent to North Korea. She then stated since she was born in North Korea she could not have a new passport as it was very hard for her to get the Chinese passport issued. The Tribunal asked why she had a Chinese passport issued [in] 2006 which was valid [until] 2011. She stated she paid some money because it was hard for people born in North Korea to get the passport issued. The Tribunal put to her that it thought she had said her parents got Chinese citizenship when she was little. The applicant stated since she was born in North Korea it was very hard for her to live in China and there would always be restrictions such as looking for a job. The Tribunal asked what that had to do with her Chinese citizenship. She stated if she had not had a hard time in China she would not have to come to Australia.
31. The Tribunal put to her she was not answering questions. The Tribunal put to her that it had asked a number of times if she went to the Chinese Embassy would she get a Chinese passport. She stated no. The Tribunal asked why not. The applicant stated that for people from North Korea it was hard to get the passport. The Tribunal asked why a passport had been issued previously. She stated she had paid money. The Tribunal asked why did she have to pay money. She stated the Chinese government did not recognise people from North Korea. The Tribunal asked if she was saying had she been unlawfully in China. She stated no, she could get the Chinese nationality if she paid money. The Tribunal put to her that if she had paid money and got Chinese nationality then why wouldn't they give her another passport. She said it was because she was from North Korea and she had been labelled.

32. The Tribunal put to her that someone was either unlawfully in a country or lawfully in a country and if someone had a passport then that was evidence that they were a citizen of the country. The Tribunal put to her that if she had a Chinese passport previously and was not unlawfully in China then that suggested she was a Chinese citizen. She stated she was from North Korea and if she could have lived in China why would she come to Australia. The Tribunal put to her that if she was legally in China and had a passport it could not understand how she would not get another Chinese passport. She stated she had been labelled as a person from North Korea and would not get a passport. The Tribunal put to her that in her protection visa application she said she and her parents were born in China. She stated she did not say that. The Tribunal put to her that she also said in the same application that she was born in North Korea but did not know where. She stated when she was young she was advised by her parents she was born in [location] but she was not sure if that was the correct name. The Tribunal asked why that information was not in her application. She stated she made a telephone call to her parents and they told her where she was born but since she came to China when she was a child she wasn't sure where she was born. She stated her parents didn't tell her because if people knew she was from North Korea then she might be treated differently. The Tribunal put to her that her passport said she was born in Jilin province. She stated she bought that passport.
33. The Tribunal put to her that it had to work out whether she was a Chinese national or a national of another country. The Tribunal put to her that based on the information before it she seemed to be a Chinese national. She stated she had Chinese nationality because she had paid money and she believed it was genuine and not fake however she was born in North Korea. The Tribunal asked if she could return to China on her documents. She stated if she went back to China they would send her to North Korea where she would be killed.
34. The Tribunal asked if she was a citizen of North Korea. She stated she was a Chinese national but she was born in North Korea and she would be sent back to North Korea.
35. The Tribunal then spoke to the applicant's adviser. The adviser said that the applicant was stating she was a North Korean citizen whose parents had bribed persons to register her as a Chinese when she was little. He stated both countries did not recognise dual citizenship.
36. The Tribunal put to the adviser that if she was a citizen of North Korea then could also be a South Korean citizenship and section 91P stated that if a person was a national two countries then they first had to gain the appropriate exemption to section 91P which required the Minister to provide permission for an applicant to lodge a protection visa. The Tribunal put to the adviser that there was no permission so that the application may not be valid.
37. The Tribunal put to him that there were answers in her application said she born in Jilin and her Chinese passport also said she was born in Jilin and in her statement she said she was born in North Korea but she did not know where. The Tribunal said the Department's document examination unit said that her passport was legitimately manufactured, and although the Tribunal accepted people could be bribed and legitimate documents could be produced as a result, the Tribunal had to consider whether the applicant was in fact a national of China. The Tribunal also indicated if it found she was a North Korean national, then her application may not be valid.

38. The Tribunal held an adjournment.
39. The applicant stated if she'd had a good life in China she wouldn't have come to Australia.
40. The Tribunal asked if she understood that she was a North Korean and she could not make an application for a protection visa unless she sought the permission of the Minister. The Tribunal put to her that if it found that she was citizen of China then it would consider her claims against China. She stated she was a North Korean and that was why she could not back to China and if she was Chinese then why would she spend one and a half years in [a detention facility]. The Tribunal asked if there were any other reasons she could not be back to China. She stated in China she had a boyfriend and she was pregnant and her ex-boyfriend kept drinking and she was living with him and he had verbally abused her and she lost her baby. She stated she was not married to this man and they were just living together. The Tribunal put to her that in her application she said she was married to him. She stated that was a misinterpretation. The Tribunal then put to her she told the department she was having an affair with a married man. She stated it turned out that he had been married to another woman. She stated she met this man in December 2005 and last saw him in 2006. The Tribunal asked if she was still worried about him. She stated the problem was he knew she was from North Korea and had threatened to report her if she did not live with him.
41. The Tribunal asked if there was any other reason which could not back to China. She stated there were no other reasons.
42. The Tribunal put to her that at departmental interview in September 2012 she told the Department she could not go back to Korea because it was harder to earn money. She said she did not say that and there must have been a misinterpretation. The Tribunal asked why it took her so long to her to apply for a protection visa. She stated she did not know. She confirmed she had applied for a 457 visa. The Tribunal asked why she had not applied for a protection visa when she applied for a 457 visa. She stated she was told once she was detained that she could apply for any visa within 48 hours and as she was frightened and there was a sponsor who was willing to sponsor her she was grateful. She stated when she went to the Federal Court she was advised she could apply for a protection visa and was surprised.
43. The applicant stated she was never married. She confirmed [Mr A] was the interpreter for her initial application for a protection visa. The Tribunal put to her that in that application it said she was married. She stated that was a misinterpretation. The Tribunal put to her that if [Mr A] did the interpretation for her and she said it was not true it did not sound like [Mr A] was a good interpreter.
44. The Tribunal then spoke to [Mr A]. He stated he was present throughout the application process and had attended the hearings with the applicant as her friend. He also stated she was from North Korea. He stated he wanted to give evidence in relation to interpretation issues. He stated there had been many significant interpretation issues for example she was not married but the Departmental officer had said this in the decision letter. The Tribunal confirmed that the first time he heard that information was from the departmental officer. The Tribunal asked if he interpreted the application form. He stated not officially and then said never. The Tribunal again asked. He stated as a friend he looked at it but did not give professional advice. The Tribunal asked if he had

translated the application form from English into Korean for her. He stated he could not recall. The Tribunal put to him the applicant said he did. The Tribunal also put to him that in her application form it said she was married. He stated he could not remember.

45. [Mr A] stated he had contacted solicitors for the applicant who advised that within 48 hours she must apply for the 457 visa and she did not know that she could apply for a protection visa. [Mr A] stated that people were trying to make her concede she was a Chinese national and that the Chinese would protect her. He stated she was a North Korean national who would be repatriated by force to North Korea by North Koreans in conjunction with the Chinese.
46. The Tribunal indicated it would put its concerns in writing. The Tribunal indicated it may not accept it had jurisdiction if it found the applicant was a North Korean citizen but if it found that she was a citizen of China then it would need to look at whether she could return to China. The Tribunal put to the adviser there had been inconsistencies about whether she was married or not married, that at the interview with the Department it was recorded she said she was divorced, that at the Tribunal hearing she said she had an affair with a man who she had not seen since 2006 and given that she had come to Australia in 2008 the Tribunal may not be satisfied she faced a chance of harm from him or that he may do her in because she was a North Korean. The Tribunal put to him he may like to provide any information that said the Chinese government were deporting Chinese citizens of North Korean background to North Korea but that it had not read anything like that.
47. The adviser stated that everything the applicant had said suggested she was a North Korean citizen and her Chinese citizenship was bogus. The Tribunal also put to him that her application said she was born in Jilin and she was not able to identify where she was born in North Korea and had only done so at the Tribunal hearing. The adviser stated she had filled in the application form according to her Chinese passport and she had not known or remembered where she was born in North Korea. The Tribunal put to him that if that was the case the Tribunal may not have jurisdiction.
48. The adviser asked for information in relation to why the Tribunal thought she had South Korean nationality. The Tribunal indicated that the Department of Foreign Affairs and Trade provided advice on 17 February 2010 that persons who are born in North Korea have a right to enter and reside in South Korea because North Korea was considered to be part of South Korea. The Tribunal also indicated that exceptions or limitations to the right of a North Korean to enter and reside in South Korea occurred when a person who was born in North Korea acquired the citizenship of another country after leaving North Korea and they would not be entitled to enter and reside in South Korea as a South Korean citizen.
49. The Tribunal also put to the adviser there was a delay in lodging an application for a protection visa and when the applicant was interviewed when she was detained one of the things that seemed to be of concern to her was her right to work. The Tribunal indicated it may find this behaviour was inconsistent with the person who did fear returning to their country.
50. The Tribunal indicated to the applicant it had to make a decision about which country she was a citizen of and if she was a citizen of North Korea then there may be a

jurisdiction problem. The Tribunal put to her that if it decided she was citizen of China then it may not be satisfied that she would suffer harm if she went back there or that she would be forced to return to North Korea.

51. The Tribunal put to her that the latest submission had said she disagreed with North Korean and Chinese communism. The Tribunal asked what that meant. She stated people like North Koreans were not protected in China. The Tribunal put to her that it had concerns about her credibility and thought she might be a Chinese national but she would be given the opportunity to comment further.
52. Following the hearing, the Tribunal sent the following [in] February 2014:

Evidence that indicates you may be a Chinese National

- A copy of your Chinese passport was examined by the Document Examination Unit on [date] October 2012 who stated that it was a legitimately manufactured document issued in the expected manner with no alteration.

This is relevant because the Tribunal may find you are a Chinese National. If this is the case, then the Tribunal will assess your protection claims against China.

Movement Records

- Movement records indicate you arrived in Australia on [date] July 2008 and became unlawful on [date] October 2008. You did not apply for a protection visa until after you were detained.

This is relevant because the Tribunal may find that your delay in applying for a protection visa is not consistent with a genuine fear.

If the Tribunal finds you are a North Korean National

- The Tribunal sought information from the Australian Department of Foreign Affairs and Trade on the issue of status and treatment of those from the Democratic People's Republic of Korea in the Republic of Korea (ROK).

The Department of Foreign Affairs and Trade provided advice on 17 February 2010, after consultation with Ministry of Unification of the Republic of Korea, in the following terms:

A. Do persons who are born in North Korea have a right to enter and reside in South Korea? If so, what is the legal source/basis of this right? Yes. The legal basis of that right is the Constitution of the Republic of Korea (ROK). Article 3 of the Constitution states: "The territory of the Republic of Korea shall consist of the Korean Peninsula and its adjacent islands". North Korea is located on the Korean Peninsula. On this basis, citizens of the DPRK are treated as citizens of the ROK automatically by virtue of their residence on the Korean peninsula. Provisions of the Nationality Act governing acquisition of ROK nationality by birth therefore apply equally to people of South and North Korea.

On 12 November 1996 (in decision no. 96 Nu 1221) the ROK Supreme Court made the following ruling: “given that North Korea is part of the ROK's sovereign territory, holding North Korean citizenship does not adversely affect a person's right to acquire and hold South Korean citizenship”.

B. Are there exceptions or limitations to the right of a North Korean to enter and reside in South Korea? If so, what are they and what is the legal source/basis of these exceptions?

A person who is born in North Korea, but then acquires the citizenship of another country after leaving North Korea will not be entitled to enter and reside in South Korea as a South Korean citizen. Such persons may enter and reside in South Korea only to the extent that persons of their new nationality are entitled to. South Korea does not at this stage permit dual citizenship, but may do so in future.

The source of that limitation is the Nationality Act. Article 15 of the Act provides that “A national of the Republic of Korea who has voluntarily acquired the nationality of a foreign country shall lose the nationality of the Republic of Korea at the time of acquisition of the foreign nationality”.

The Act on the Protection and Settlement Support of Residents escaping from North Korea, which governs the protection and support provided to North Koreans, also excludes from its scope North Koreans who have acquired foreign citizenship. It defines “residents escaping from North Korea” for the purposes of the Act as “persons who have their residence, lineal ascendants and descendants, spouses, work-places etc. in North Korea, and who have not acquired foreign nationality after escaping North Korea”.

Post is not aware of any other exceptions or limitations to the right of a North Korean to enter and reside in South Korea.

This is relevant because if the Tribunal accepts you are a North Korean national, you may also be a national of the ROK and where a person who is a national of two countries seeks a protection visa they must first be given appropriate exemption from the operation of s.91P. As it has not been submitted by you, and no material are otherwise available to the Tribunal, which would indicate that you have approached the Minister before this application was made to seek a written notice under the terms of s.91Q of the Act, the Tribunal may find that this protection visa application is not valid.

53. The applicant’s adviser requested an extension of time within which to respond which the Tribunal granted. The applicant’s adviser requested a further extension but did not provide any reasons why he had not been able to complete his research within the extended time. As such the Tribunal did not grant an extension and stated that submissions should be made as soon as possible.
54. The applicant’s adviser responded [in] March 2014.

Country Information

55. According to the Legal opinion of Professor Chulwoo Lee, Professor of Sociolegal Studies, Yonsei Law School, Seoul on the status of North Koreans under the laws of the Republic of Korea 'Some Questions Relating to the Nationality of North Koreans Citizens under the Law of South Korea', 27 March 2010:

A North Korean is not granted South Korean citizenship. S/he is already a national (citizen) of the Republic of Korea under the law of the Republic of Korea. But s/he has to have his nationality ascertained in order to live effectively as a citizen of the Republic of Korea. There are three ways for a North Korean to have his/her nationality of the Republic of Korea ascertained.

One may apply for "protection" under the Act on the Protection and Settlement Support of Residents Escaping from North Korea. Being granted protection means the person is recognized as an escapee from North Korea and therefore a national of the Republic of Korea. An application can be made when the person is outside of the territory of the Republic of Korea. Yet the protection decision can be revoked if the government is not satisfied that the person is an escapee from North Korea after screening him/her after s/he was admitted to South Korea.

One may apply for nationality adjudication, a determination procedure operated by the Ministry of Justice under the Nationality Act. Even those who have failed to be granted protection under the Act on Protection and Settlement Support may apply. A shortcoming of this procedure is that an application can be made only when the applicant is already in the territory of the Republic of Korea.

One may bring an action in court for a declaratory judgment that s/he is a national of the Republic of Korea. No such action has been brought until now.