

1000666 [2010] RRTA 361 (11 May 2010)

DECISION RECORD

RRT CASE NUMBER: 1000666

DIAC REFERENCE(S): CLF2009/127739

COUNTRY OF REFERENCE: Philippines

TRIBUNAL MEMBER: Robert Wilson

DATE: 11 May 2010

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 Philippines**, arrived in Australia [in] April 2006 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2009. The delegate decided to refuse to grant the visa [in] December 2009 and notified the applicant of the decision and his review rights by letter dated [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations for the grant of a Protection visa.
4. The applicant applied to the Tribunal [in] February 2010 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 Migration Regulations 1994.

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 and *Applicant S v MIMA* (2004) 217 CLR 387.
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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
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.
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, CLF2009/127739, 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, including its file 1000666.
20. The applicant appeared before the Tribunal [in] March 2010 and [in] April 2010 to give evidence and present arguments.

Application for a Protection visa lodged [in] September 2009

21. The applicant is a married man, born on [date deleted: s.431(2)], in [Municipality A], Philippines. The applicant has received 14 years of education, including a Bachelor of Science in Commerce, major in Accounting from [University 1] He can speak, read and write both Tagalog and English. He was self employed in the Philippines, selling jewellery from 2001 to 2004.
22. In answer to Questions 41-44 of Part C of the Application for a Protection visa, the applicant provided the following:

In the middle of 2003 me and my wife started a business of selling precious jewelries and gems on a small scale, because of my wife's skills in the jewelry business, we manage to improve the business, developed and gained trust with our supplier. Until one day, a client who established and managed to gain our trust whom we had been dealing with for some period of time asked us if we can entrust them with a large quantity of valuable gems and jewelries for a few days and which we did, they turned out to be a scam, this client disappeared. We were not able to find them or trace their whereabouts. We are now facing legal battles which had cost us to lose our house and other belongings repossessed, not to mention threats to me, my wife and kids from these people we owe money. In which cause trauma to my family, that if I showed in Philippines that they will endeavour to take my life to even up all their lost.

23. In answer to Q.45 the applicant indicated that he did not think that the Philippine authorities can and will protect him if he goes back because the people that he dealt with are very influential people.

Interview held with the Department held [in] December 2009

24. The following is a summary, and it is not a transcript.
25. The interview was conducted in English as requested by the applicant in his application.
26. The applicant provided some of the documents relating to the charge against him. In 2003, his wife and himself got some jewellery from a maker company. They had to issue post dated cheques for the jewellery that had been given to them. Apparently some of the applicant's clients signed invoices to the applicant and his wife saying they would pay within three months, or so. However, when the applicant gave the jewellery to the clients, the clients disappeared, and the applicant could therefore not pay the provider. That is why the provider sued 'us' in 2004.
27. The applicant referred to the documents.
28. The applicant's bank account is a joint account. They only sued the applicant's wife but they always threatened him. That is why he had to leave.
29. The applicant now has permission to work in Australia.
30. The applicant's wife and children were also treated like that. The delegate asked who was threatening them. The applicant said [Mrs A]. The applicant then said, [Mrs A's full name]. This person was the original owner of the jewellery. The applicant referred to a document and said they were the cheques that were issued to her ([Mrs A]). The applicant said that he could provide the originals of the documents if required. The delegate said that it was not necessary.
31. The applicant said that his wife did not know that they had a hearing at the Municipal Trial Court. They issued a warrant of arrest to the applicant's wife, because they are powerful, they know how to rule the law. The applicant said that his cheques were dishonoured because they closed the accounts, they had no funds. That is why they handled 'these ones as evidence to us.' The delegate said that the applicant gave the jewellery to a client(s) and they all disappeared. The applicant agreed. The applicant sold the jewellery on terms, like payment every three months. They did contact the police, but the applicant did not take any cheques as evidence, but only an invoice. He had people harassing him. They did not know what to do, that is why he decided to leave the Philippines. Then, his wife maybe, because she is a woman, she may not be killed. However, for him, they always threatened him.
32. The applicant said that the authorities will only protect the rich, and not the poor. The applicant said that if the Australian government gave him an opportunity to work here and to help the government maybe he could treat Australia as his second country, that is why he does not want to go to the Philippines.
33. The delegate asked what about moving to other towns in the Philippines. The applicant said, no, because they would know when he come back to the Philippines because they are powerful, and they have plenty of connections. If he goes back to the Philippines, he will be killed. The applicant said that if he gets a job in Australia he can settle the obligation, but for now, until this day, he has no money to do so.

34. The delegate said that the applicant had been in Australia since 2006, and asked why he had not applied before. The applicant said before that he did not know what was going to happen to him. Maybe if they caught him he would go back to the Philippines. He said that he is in fear. He said that perhaps maybe there would be an amnesty for the Protection visas.
35. The applicant has been given a bridging visa with permission to work.
36. The delegate asked what would happen to the applicant if he went back again. He said they would kill him. From 2004 they issued them (with the legal document), and it is now 2009. Maybe that long extended period may make them think that it is much better just to kill him when he goes back to the Philippines. That is why he is fearing to go back.
37. The applicant wrote his statement himself. He handwrote the application. He did not want to use a computer on it.
38. The applicant had been living at his last address in the Philippines since 1988 until he came to Australia. This was at [Address A].
39. In conclusion, the applicant said that he is worried that if he returns to the Philippines they may kill him, that is why he wants to stay in Australia. He said this is a good country and this is why he has treated it as his second country.
40. The applicant said that his passport which he provided to the Department is an original, and it has already expired. He said that he had to renew it at the Philippines Consulate. The applicant stated that all the information in the passport is correct.

Hearing held before the Tribunal [in] March 2010

41. The following is a summary and it is not a transcript.
42. The applicant did not get any help in completing the documents marked B and C. The information in those documents is correct. They are still his claims. There is nothing that he has left out of those forms B and C, which he wanted to claim.
43. The applicant's passport showed that he was born on [date deleted: s.431(2)]. The date of issue of the passport was [in] April 2004 and it expired on [in] April 2009. He did not renew it. He has not travelled to any other countries other than Australia.
44. The applicant confirmed that his address in Australia is [Address B].
45. The applicant said in 2003 in the Philippines he and his wife started a small business. A jewellery owner lent the applicant a big amount of jewellery to sell. It was about one million pesos which is approximately Australian \$25,000. The applicant only sold about 400,000 pesos and they returned the remaining jewellery (worth approximately 600,000 pesos) to the owner. Apparently, the persons who took the jewellery are gone with the jewellery. That is why the owner of the jewellery sued the applicant and his wife. The owner is a powerful client in the applicant's province.
46. The applicant provided a document from the court where the applicant and his wife were sued. The Tribunal said the documents that the applicant provided were already

on the Departmental file. That is what the applicant is referring to. The jewellery owner threatened the applicant, his wife and his family, his daughter. They threatened to kill the applicant as the 400,000 pesos in the Philippines is very big money.

47. They did not threaten his wife with death, but they harassed her. He said the Philippines is a third world country, and the government cannot support you. The other people are a powerful clan which can pay money to other people to kill the applicant. The applicant is scared for his life. That is why he had to come to Australia.
48. The one client is [Mrs A], who is a woman.
49. The Tribunal referred to one of the documents, the one that has not been translated, and which is signed by [Mrs A] The Tribunal referred to the first word on it, that is, the word Malaya. The Tribunal asked the relevance of that word. Is it referring to the country of Malaya? The applicant said it is not the country, but it means to 'speak for herself' or 'freedom'.
50. The Tribunal said there was only one client, and it asked how many people were entrusted with the jewels. The applicant said there were three, all separate. They did not pay. They issued a guaranteed cheque. That is, they issued a cheque for a guaranteed payment every month, but when the applicant deposited it, the cheque bounced. That is why he did not have any money to pay the principal owner of the jewellery ([Mrs A]).
51. The Tribunal confirmed that there were three separate clients who did this to him. The applicant did not know whether they were acting together. The applicant agreed that it was a scam, and they all had the same scam.
52. The Tribunal asked why [Mrs A] had so much power in that province. The applicant said that she is a manufacturer of jewellery. She is influential, rich. The applicant said in the Philippines, even if you are owed a little money from another person, and the person that you owe is stupid, then he can give 500 pesos to a person and that person will shoot you or stab you to death. That is life in the Philippines The government cannot help you. That is the situation in the Philippines, and that is why he is in Australia. They will hire a killer for 500 pesos.
53. The jewellery consisted of earrings, rings, bracelet made of gold with diamonds. The applicant does not know how many pieces were involved. Each of the people who scammed the applicant took what they wanted and issued the applicant with individual cheques, and so on. The applicant issued a cheque to the principal owner. This was a post dated cheque and this is what the principal owner is claiming for. All of the cheques bounced. That is, all of the applicant's cheques bounced.
54. The thieves issued the applicant with about 10 cheques. That is, 10 cheques each. The Tribunal said by then, he would have realised that his cheques were bouncing. The applicant said the applicant's friend knows them, and knows that they are rich also, and they are good persons, but apparently they do that scam. Further, they gave the applicant and his wife a cheque and he thought it was good, but apparently it bounced. This is what started the problem. This is because the applicant and his wife issued a post dated cheque to [Mrs A]. The cheque bounced to [Mrs A] as the bank closed his account because he had insufficient funds, and all the cheques that he issued bounced.

55. The Tribunal said if the applicant says that the thieves issued him with 10 different cheques, and say they gave him one cheque every week. The applicant said no, they issued the post dated cheques on a monthly basis and the applicant held onto them.
56. The Tribunal asked the applicant when he first realised that he was being scammed. He said when he deposited the cheque, it bounced. That is, the first cheque. He went to house of one of the scam operator's, and then to the other two, but they were hiding from him.
57. The Tribunal asked whether the three scam merchants knew each other. The applicant said he did not know.
58. The Tribunal asked whether the applicant contacted the police. He said he did, and he even made a letter of demand on them, but apparently because in the Philippines if the demand letter is not received it is worthless. No one wanted to receive it. If they do, it is evidence against them. They are smart.
59. The Tribunal asked why [Mrs A] took action against the applicant's wife. The applicant said because they issued separate cheques and they bounced. [Mrs A] sued her. The Tribunal asked why she did not sue him. The Tribunal repeated that the legal action was taken against his wife, and not him. He said they were both signatories of the cheque. Only his wife was sued, but [Mrs A] is a powerful person and the applicant is being threatened.
60. The Tribunal said it did not understand why [Mrs A] did not sue him. He said may be it is because his wife signed the invoice. However, the signatory of the cheque was both the applicant and his wife. The Tribunal said it seems strange that [Mrs A] did not sue the applicant as well. He said yes.
61. The Tribunal referred to the applicant's application which shows that he has a Bachelor of Science in Commerce, with a Major in Accounting, from [University 1]. He agreed.
62. The Tribunal said this would indicate that the applicant has a background in accountancy and that he understood business principles, and asked how he got himself into this mess. He said it is because he trusted them, and he thought they were good clients. This is because you have to trust a person in dealing with jewellery. That is the only way they can sell jewellery, by trust.
63. The Tribunal asked whether he had dealt with them before. He said yes, they had purchased small amounts in the past, and they paid by cash or cheque, and it was alright. But they took the big bunch of jewellery they knew it was the right time. The Tribunal said they thought it was a right time to strike. The applicant agreed.
64. The applicant said in the Philippines if you are an influential person, because in the Philippines there is a private army, the New People's Army. They are armed. If you give money to them, they will assassinate you on the road, in the street, wherever. Even a policeman will kill for money. This is because in the Philippines money is the best. If you have money you can rule.
65. That is why it is very hard to live in the Philippines. That is why he asked permission from DIAC for permission to work so that he could pay them and settle his obligation

in the Philippines. He just wants to have a job and pay them. He did get the permission to work from DIAC. That is why he is seeking a job right now. This is to help himself and his family, and to pay some of his obligations. Maybe he won't be able to pay all at once, but it may be monthly. He said in return, he will be able to generate taxes for the Australian government because he wants to stay here in Australia, as it is his second country, and he does not want to go back to the Philippines until he settles his obligation there. That is why he is begging for the Tribunal to give him a visa here.

66. If he goes back, he does not know what will happen to him with the government. If he gets work here in Australia, he can pay taxes, generate some taxes, in return for the help that Australia has given to him.
67. The Tribunal said that in his application at question 45, he said that the Philippine authorities cannot and will not protect him because the people who have dealt with him are very influential people. The Tribunal asked if he was talking about [Mrs A]? He said yes. The applicant said, her husband. The Tribunal asked whether he had thought of giving [Mrs A] the names of the persons who scammed him. He said that they know the persons. However, the transaction involves the applicant, his wife, and [Mrs A], and they will not go to the other persons as they were separate, and not dealing with [Mrs A].
68. The applicant has left his wife and three children in the Philippines. The applicant correctly gave the date of birth of his three children.
69. The Tribunal asked why all of the family were not in Australia. The applicant said he only applied for a tourist visa because he wanted to get out of the Philippines. The Tribunal asked whether he was not worried about his wife and children. He said he is worried, but he does not have enough money to bring them out with him. He said that is why he promised them, [Mrs A], that if he gets money, he will pay to her. This may be monthly or every two months. Until now, he had not had a job and he could not pay them. That is why the case is still going.
70. The Tribunal asked when the applicant arrived in Australia. He said April 2006. The Tribunal asked when he made his application for a protection visa. The Tribunal said [in] September 2009 he got permission to work in November 2009. The Tribunal said if his intention was to pay the money back to [Mrs A] and he did not get here until 2006, he did not even start work until 2009. He said he did, he lived with his cousin and did some gardening and other work, and sometimes he went to the Filipino brotherhood to get some support.
71. The Tribunal asked why he did not apply for a Protection visa earlier. He said he did not know. Only last year he saw reference to it in a newspaper. He was scared, and he did not know the rules in Australia. It was only last year that he saw it in a newspaper. One of his friends told him there is a Protection visa given to the illegals, and that is the only reason he could do it.
72. The Tribunal asked whether he was saying that he did not do any work in Australia from 2006 to 2009. He said no, he only helped his cousin, just to feed himself. He was scared. He did not know how to get a job here, and that is why, only from gardening or from home jobs from his fellow countrymen. They gave him a bit of money, just to

support himself. That is why, until 2009 he did not even pay money to [Mrs A], and that is why they are suing his wife.

73. The applicant said the matter started in 2004, but nothing was paid until 2009.
74. The Tribunal said in 2004 [Mrs A] did not turn up to the court. The Tribunal asked why she did not turn up. The applicant said maybe she forgot. He said in the Philippines that a hearing is every four to five months. Until you pay, it is still with the court. The Tribunal said that the idea of going to court is to get money from you, and yet the applicant is saying that it will not go to court until you pay the money, and this does not make sense. The applicant said the wife always said that if they ever got money they would pay it to [Mrs A]. This is all the applicant's wife could tell them.
75. The applicant's wife is not working. She is supported by his brother and sister-in-law. She is also dealing with a small amount of jewellery with other persons. It is only small. Big money is not involved. It is not permanent work. It is just to help to support their kids.
76. The Tribunal asked who the wife was getting the jewellery from. The applicant said it was only from small dealers. The Tribunal asked would she not get it from manufacturers? He said it is only through agents, it is not through main principals.
77. The Tribunal said the applicant came to Australia on a visitor visa looking for protection. The applicant did not find it for three years. The applicant said he was scared before, and did not know how. The Tribunal asked whether he was scared of Australia. He said no. The applicant said that Filipinos are scared of Immigration, as if Immigration will see them and take them back to the Philippines. It is only when he saw it in the newspaper last year that he got the guts to get a Protection visa.
78. The Tribunal said that if the applicant were to return to the Philippines, what would happen to him. The applicant said he does not know, maybe if he were to return to his home town, they would get him for sure. Until now he owes them money, big money, and it is already four years ago, and he did not pay them. The Tribunal asked who he is referring to when he says them. He said, [Mrs A] and her husband.
79. The Tribunal asked whether the applicant's wife is in the same small town, and whether she is dealing in jewellery, with [Mrs A] in the same town. The application said yes.
80. The Tribunal said with the wife dealing jewellery in the same town that [Mrs A] lived in, would he not you think that [Mrs A] would go and ask the applicant's wife for the money, on the basis that she is dealing in jewellery again. The applicant said it is only small, maybe 5,000 pesos. This is compared to the amount before. It is also through an agent, to get her share. She, the wife, was in the business before, and that is why she knows some of the clients. That is why she works now with an agent. That is what he means. She only gets her percentage share from the agent. However, the agent is the one holding the jewellery, not the applicant's wife. They share the profit. It is only a small scale of jewellery.
81. The Tribunal asked if there was anything else the applicant wanted to say to it. The applicant wants the visa granted so he can pay the money back every month or two. In return, he can generate some tax for his work so he can help the Australian government.

82. The Tribunal said at the beginning of the hearing the Tribunal said that it may put to him information that it may consider would be the reasons for affirming the decision. What the Tribunal is going to do is to provide information that may be the reason for the Tribunal agreeing with the Department decision. This is maybe, and this is not the decision, it is just giving the applicant information, and the Tribunal will then be asking the applicant for his comment on the information.
83. The Tribunal stated that the applicant's comments may have the affect of negating or overcoming what the Tribunal had said. This is simply to give the applicant the opportunity to comment on those things that the Tribunal thinks at this time may, if they go unanswered, or to the extent that the Tribunal is not satisfied with the response; that it may lead to the applicant not getting a Protection visa.
84. The consequences of the applicant not providing responses that are able to satisfy what the Tribunal is saying is that he will not get the Protection visa. When the Tribunal gives the information, it will tell the applicant the relevance of the information. That is, why it is relevant.
85. The Tribunal said the applicant will then have the opportunity to comment on or respond to the information. The applicant can comment on or respond to the information today at the hearing orally. The Tribunal can say, for example, you said you had three children but the Tribunal has proof that you have four, and the applicant can say no I have three. Or, the applicant can elect to hear the information today and then write back in two weeks time and say no I have three children and here are the birth certificates. Or, there is one further option, the applicant can return in two weeks time after hearing what the Tribunal has said today, and tell the Tribunal face-to-face.
86. The Tribunal said if the applicant knew how he would like to respond, then let the Tribunal know. However, the Tribunal will provide the first bit of information and then it will ask the applicant how he wanted to respond, and it will go on to give the second and further information.
87. The Tribunal asked the applicant if he understood the process. He said he did.
88. The Tribunal said the first piece of information that the Tribunal wanted to give to the applicant was that it took the applicant nearly two and a half years to apply for refugee status once he came to Australia. The relevance of the information is that one would expect someone who has left their home country to seek protection somewhere else, would find out very quickly how they go about getting protection when they reach the other country, in order that they do not have to worry about having to go back; in the applicant's case, to the Philippines. So, it may be that in those circumstances where it took the applicant more than two and a half years, it is a long time and it may be that the Tribunal will think that if he was really fleeing his country, he would have found out about seeking protection before that. That is the first bit of information.
89. The applicant can respond today orally, he can respond in writing, or he can come back and respond orally. The Tribunal asked the applicant how he thought he would deal with that example.
90. The Tribunal said it could go through all of the pieces of information and the applicant could then tell him how he wants to respond.

91. The applicant said, in the first question, he was asked why he waited so long, and he said he did not know anything about a Protection visa. The Tribunal interrupted and asked if this was the applicant's answer. He said yes. The Tribunal said, and you do not want to answer later. The applicant agreed that he would be coming back and to use the time to do so, and not to respond today.
92. The Tribunal said that the applicant could get the CD disk of the hearing and go through it.
93. The second piece of information is of a more technical issue. It is that the claim that the applicant has, relates to a private, or criminal, or commercial matter. The applicant appears to owe money to [Mrs A], and his fear is of possible retaliation by [Mrs A] and her husband. The applicant agreed. The Tribunal said that one of the sections of the *Australian Migration Act*, Section 91R(1)(a) says, the Convention reason has to be the essential and significant reason for the persecution. In this case, the applicant's fear of harm is that the creditors are going to kill him; and that is the persecution. If we look at the Convention reasons, they can be for race, religion, nationality, membership of a particular social group, or political opinion. If it is not one of those, there is a problem. The applicant said that he did this application by himself and he did not get a solicitor as he had no money. He is only thinking that maybe he could apply for this. The Tribunal said perhaps he does not want to tell the Tribunal all this now as he wants to come back in two weeks time. The applicant agreed.
94. The applicant asked if he applied on the wrong form, because he is not a refugee. The Tribunal said, it is not saying that. The applicant may come up with a response which satisfies it. Perhaps he may need to see someone who is qualified in this area, for assistance. The Tribunal said it knows the applicant has no money. The applicant said, as he said before, in two and a half years, he did not know how he could apply, so when he applied, it's a wrong obligation or he does not know, or the Tribunal is saying that he is not included in the refugee status. The Tribunal said it may be the case that he is not included. The applicant said, that is right, because he does not have any idea how he can apply for himself in this matter regarding his status.
95. The applicant said it is important for him that he does not want to go back to the Philippines and that is why he is seeking protection here in Australia. The Tribunal said the definition of refugee is quite specific, it relates to situations relating to those five areas. At the end of the hearing, the Tribunal will see if the attendant has any information which is available generally to people in the applicant's situation, who do not have solicitors, who he may be able to ring and get some help. The Tribunal said, it was not sure but maybe of some help.
96. The Tribunal said that is the second piece of information the Tribunal had for the applicant.
97. The third piece of information is that the first action of the dishonouring of a cheque was in 2004. Yet, no physical action had been taken against the applicant. He may have been threatened, but nothing had happened to him. His family is over there, and his wife was in fact his partner, and she is still in the Philippines. The relevance of the information is if the applicant is really at threat of being killed, someone might have been done it quickly. However, two years went by before he even left and now his wife

has stayed there from 2004 to 2010, and nothing has happened to her. It may be that there is no real threat there.

98. The Tribunal said the hearing would be adjourned. The Tribunal discussed how that would occur. The Tribunal also indicated that he would ask the attendant to get the piece of paper which showed where the applicant could get assistance.
99. The Tribunal indicated that if the applicant needed more time, he had to ring back and ask for an extension.

Hearing held before the Tribunal [in] April 2010

100. The following is a summary and it is not a transcript.
101. The Tribunal said the last time they were together the information was provided to the applicant, and the purpose of today's hearing is for the applicant to respond to that information.
102. The applicant said he did not receive any information he had to answer. The Tribunal said it gave it to him at the hearing. There was some discussion about this. The Tribunal said it had a copy of what happened at the last hearing in front of it. The applicant said may be he misunderstood. The Tribunal said there was no option for the Tribunal to give the information to the applicant in writing.
103. The Tribunal said that at the hearing it said the applicant will have the opportunity to comment on or respond to the information. He can comment at the hearing orally. The Tribunal referred to where it said the applicant could elect to write back amongst the three options. The third option was that the applicant could return after hearing the information at the first hearing, and then to respond to the information face to face. The Tribunal had then asked what the applicant wanted to do.
104. The Tribunal gave the applicant the first bit of information. It said he could respond orally, he could respond in writing, or he could come back and respond orally. The Tribunal asked the applicant how he would deal with the example. The applicant agreed that you would be coming back, and to use the time to do so, and not to respond at the hearing. The Tribunal said it went through the three pieces of information with the applicant last time. Today, the applicant was to come back and respond.
105. The Tribunal asked whether the applicant got a copy of the CD. He said yes. The Tribunal asked if he listened to it. The Tribunal said that would have told him what the Tribunal had said.
106. The Tribunal said it would give the applicant the information again now. Again, the applicant can get a copy of the CD and he will be able to hear again what the Tribunal said. Then the Tribunal will give the applicant some time, maybe a week or 10 days, it is not sure, to come back and respond. The applicant said he was sorry about it.
107. The Tribunal said the first bit of information is that it took the applicant nearly two and a half years to apply for refugee status once he came to Australia. The relevance of the information is that one would expect that someone who had left their home country in order to seek protection somewhere else, would find out very quickly how you go about getting protection when you reach that other country. So, if that is the case, they do not

have to worry about having to go back and, in this case; we are talking about the applicant going back to the Philippines. Maybe in those circumstances, where it took the applicant more than two and half years to apply, it is a long time and it may be that the Tribunal will think that if the applicant were really fleeing his country, the Philippines, he would have found out about seeking protection before two and a half years.

108. The relevance of the information is that it may indicate that the applicant had no subjective fear of the Philippines. If he were in fear of the Philippines, he would have come here and put in his application straight away. It may also mean that the applicant's credibility is an issue if he comes here and does not do anything for two and a half years, the Tribunal may find it is difficult to believe that he had been fleeing some persecution in the Philippines. The consequences of the information are that if the applicant is unable in his response to satisfy the Tribunal, it may mean that he does not receive a Protection visa. The Tribunal said that is the first bit of information.
109. The second piece of information is a more technical issue, in the applicant's case, his claim perhaps relates to a criminal, private or commercial matter. This is the jewellery, that is his claim. That is, he allowed it to go to the third parties who did not pay him, and then he got into debt with [Mrs A], and she is threatening him and she has taken action against his wife. The Tribunal said the applicant appears to owe money to [Mrs A], and his fear is possible retaliation by [Mrs A] and her husband.
110. One of the sections of the Australian Migration Act, Section 91R(1)(a), is that the Refugee Convention reason has to be the essential and significant reason for the persecution. In the applicant's case, his fear of harm is that the creditors, [Mrs A] and her husband, are going to kill him, and that is the persecution, or his claim for persecution. However, if we look at the Convention reasons, they relate to race, religion, nationality, membership of a particular social group, or political opinion. If the applicant's claim does not fall into one of those categories, there may be a problem. That is the relevance. It does not look as though his claim falls into an issue relating to his race, nationality, particular social group, religion or political opinion. It seems to be a private matter, a commercial matter, or a criminal matter, or a mixture of all three. So, the applicant can see the relevance of this information. It says that his claims must relate to one of the headings in the Convention. The Tribunal is saying it does not appear as though the applicant's claim falls into the Convention and, therefore, it maybe that he will not receive a Protection visa because he is outside the Refugee Convention.
111. The third piece of information is that the first action when a cheque was dishonoured was in 2004. Yet, no physical action had been taken against the applicant. [Mr and Mrs A] had not beaten him up, no one had killed him, nothing had happened. He may have been threatened, but nothing physical, or life threatening, had happened to him. The applicant said at that time nothing had happened to him at that time. The Tribunal said he should perhaps want to save this for the Tribunal on the next occasion. The Tribunal stated that the applicant's family is in the Philippines as well, and his partner, his wife, is in the Philippines. She is dealing in jewellery at the moment. The relevance of this information is that, if there was really a threat of being killed, someone may have killed him already. They have had plenty of time and plenty of opportunity. They may have beaten him up, they may have done other things to him, but nothing had happened. In fact, it looked as though they let him go so he could come here to

Australia to get money to pay them. So, two years went by before the applicant even left the Philippines, and now his wife has stayed there from 2004 to 2010, and nothing has happened to her, even though she is back in the trade. It may be that there is no real threat.

112. The Tribunal said they are the three points, and they all mean that if the applicant's response is not able to satisfy the Tribunal, he may not get the Protection visa.
113. The applicant asked whether he could do it by writing it up in five or 10 days. The Tribunal said yes, if he wanted to. The applicant referred to the three issues or questions. The Tribunal encouraged the applicant to get a copy of the CD again today so that he could have it to listen to, as it is difficult to make notes and try to understand what is going on at the same time at the hearing.
114. The Tribunal asked if 10 days was enough. The Tribunal said [a date in] April, and the applicant will respond in writing. The Tribunal said that the applicant had received correspondence from the Tribunal and he knew how to respond in writing. The Tribunal suggested if it was convenient to him that he brings it in by hand and gets a receipt, or he sends it in by registered mail so he has a receipt that the Tribunal has actually received it. If the Tribunal does not get anything, it will make a decision. The applicant asked if he could request one thing. He said that he had to go the migration agent, and he asked for 15 days, not 10 days. He needs someone to help him. This relates to the paper someone gave him last time.
115. The Tribunal said we would make it [a later date in] April. The Tribunal asked whether the applicant had made an appointment with the solicitor yet. He said no. He said that he had gone there twice and maybe they are on holidays. That is why he did not speak to them. The Tribunal said it wanted the response [by the second date in] April. The Tribunal said that is a Friday. The applicant will respond in writing.
116. The Tribunal asked if there was anything else.
117. The Tribunal handed back the applicant his passport.
118. The Tribunal said that it wanted to add something to the information. With the three points together, it may mean that the applicant's credibility is in issue. It may mean that the Tribunal does not accept the applicant's claims if it finds that the applicant's credibility is a problem. That may lead to the Protection visa not being granted.

Response from the applicant dated [in] April 2010

119. The Tribunal has reproduced the applicant's letter below.

I am writing about my application for review as response to your questions pointed out in each.

- 1) Why, I have not applied for protection visa upon arrival.

Arriving from the Philippines in April, 2006 with a visitor's Visa, I have no intention of overstaying. Even after a while, till I've received information from my wife that my life's in danger. At that time I have no knowledge regarding refugee application options.

2) That in my own personal belief that if one's life is in danger upon returning to their own country be consider as a refugee.

Knowing that person who is trying to prosecute me, there is no way that I am going to live if ever I arrived back in the Philippines.

3) That in the past 2 1/2 years although we don't have money to settle the case we certainly provide hard earn money to prolong our existence.

And now since we could not afford any payment they are really muscling us to pay.

That is why I am reiterating that if I could work legally and be a productive member of the community, I can settle my debts.

4) I have attached information or sworn statements of credible persons that have known me in the past 10-15 years or more.

I have also collected viable documents that I believed will strengthen my application.

I am willing to endeavour joining any community volunteered work as a token of my appreciation for this privilege.

Should you require further information regarding this letter, please do not hesitate to contact me on my mobile ...

120. One of the attached documents is as follows:

April [date], 2010

I [name] live at [street number] [Address A], [Municipality A] Philippines presently worked at World Health Organization (WHO) United Nation Ave. Manila Personally known [the applicant] for almost 15 years. He and His family, permanently live at [street number] [Address A] [Municipality A] Philippines I've Known him as a good person and a very helpful to the Community.

...

121. Other documents include a letter from DIAC dated [in] October 2009 notifying the applicant of a Bridging visa C with permission to work; notification from the ATO dated [in] October 2009, of his tax file number; Certificate of Registration of a Business Name with the applicant shown as proprietor, issued by NSW Fair Trading, and signed [in] April 2010, together with a receipt; and a clear Police Certificate from the AFP dated [in] October 2009, regarding the applicant.

FINDINGS AND REASONS

122. Having regard to the applicant's passport and other evidence, the Tribunal finds that he is a national of the Republic of the Philippines, and it has assessed his claims accordingly.

123. The applicant's claims may be summarised as follows.

124. In mid 2003 the applicant and his wife started a business selling precious jewellery and gems on a small scale. An important jewellery merchant in his area, [Mrs A], entrusted

him with a large quantity of valuable gems and jewellery which the applicant on-sold to three persons. The applicant provided the jewellery to those three independent persons on the basis that they left post-dated cheques with him, which he could deposit over a period of time. The cheques bounced and the applicant could not repay [Mrs A] who commenced a legal action against the applicant's wife. The applicant has been threatened with death and his family has been harassed.

125. The applicant is also facing legal battles which have cost them their house and other belongings have been repossessed. The Tribunal does not think that the Philippine authorities can and will protect him if he goes back because the people that he dealt with are very influential people.
126. The Tribunal will now consider the applicant's claims.
127. The Tribunal accepts the applicant's claims as summarised above. The Tribunal accepts the applicant's documents.
128. Section 91R(1)(a), of the Act refers to a Refugee Convention reason having to be the essential and significant reason for the persecution. In the applicant's case, his fear of harm is that the creditors, [Mrs A] and her husband, are going to kill him, and that is the basis of his fear. The Convention reasons relate to race, religion, nationality, membership of a particular social group, or political opinion. The Tribunal finds that the applicant's claim does not fall into one of those categories. The Tribunal finds that this is a private matter, a commercial matter, or a criminal matter, or a mixture of all three.
129. While the applicant may be a member of various particular social groups, for example, business men in the Philippines, or debtors in the Philippines, the harm the applicant claims to fear arises out of his personal actions and business transactions with certain individuals and the evidence does not indicate that any harm would be directed at him for reasons of membership of any particular social group, or any other Convention reason.
130. Therefore the Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution for any Convention related reason.
131. Accordingly, the Tribunal is not satisfied that the applicant is a refugee.

CONCLUSIONS

132. 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

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

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

Sealing Officer: PRMHSE