

**1210767 [2013] RRTA 356 (23 May 2013)**

## **DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1210767
<b>DIAC REFERENCE(S):</b>	CLF2012/51779
<b>COUNTRY OF REFERENCE:</b>	Turkey
<b>TRIBUNAL MEMBER:</b>	James Silva
<b>DATE:</b>	23 May 2013
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## statement of decision and reasons

1. The applicant is a man [age deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant], a Turkish national from south-eastern Turkey. He arrived in Australia in mid-February 2012, on a sponsored visitor visa, to visit relatives. He applied for protection in mid-March 2012.
2. The applicant claims to be an ethnic Arab of the Alevi faith, and a supporter of leftist political parties.
3. The applicant claims to have experienced general discrimination as an Arab Alevi, throughout his life. For instance, he was forced to practice his faith in secret, and at school he experienced assaults and ostracism that led him to finish his education early.
4. The applicant claims to have been involved in the Democratic People's Federation, and in July 2002, the police briefly detained him for the first time.
5. The applicant visited Australia from June 2008 until August 2008, also on a sponsored visitor visa. He claims that following his return to Turkey, he faced intensified mistreatment from a number of sources, most notably the following: -
  - In mid-2009, police detained the applicant and others following a raid on an Alevi *cem* (religious service), blindfolding and beating him overnight.
  - He attended various political and cultural rallies, which resulted in a brief detention in May 2009 and overnight detention and assault in May 2010.
  - The police abused, detained and mistreated him, and vandalised his [shop] around summer 2010, because he displayed an Alevi religious image on the wall of the shop.
  - Around the same time, in mid-2010, members of the ultranationalist *Ülkücü*<sup>1</sup> demanded extortion money from the applicant, destroying his [shop] on four occasions and, on two occasions, attacked him. The police failed to protect the applicant, instead siding with the *Ülkücü*.
  - In October 2011, plainclothes police forced the applicant into their car, drove him to remote location, and assaulted and threatened to kill him. They warned him to stop 'these activities, which the applicant took to be a reference to stop his Alevi activities.
  - At the hearing, the applicant claimed that, since his arrival in Australia, local authorities have demolished the family's [shop].
6. The applicant claims to fear continued discrimination and abuse from the Turkish authorities as well as the general community, if he returns to Turkey.
7. The delegate found that the applicant's claims lacked credibility, having particular regard to his continued residency and employment in his home town, his failure to seek protection

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<sup>1</sup> The *Ülkücü Gençlik*, or Idealist Youth, is an ultranationalist youth organisation, also known as the Grey Wolves, strongly opposed to Kurdish separatists and leftwing youth.

during his visit in 2008, and his unsatisfactory explanation for the ‘rash of events’ that allegedly occurred in 2010 and 2011.

8. The issues before the Tribunal are:
- The applicant’s mental health
  - The treatment of Arab Alevis
  - The applicant’s credibility
  - The applicant’s conduct and his need for protection
  - The applicant’s experiences before 2008
  - The alleged incidents after 2008
  - Refugee protection
  - Complementary protection

### **MATERIALS BEFORE THE TRIBUNAL**

9. The Tribunal has had regard to the applicant’s written and oral evidence to the Department and the Tribunal, including submissions made on his behalf. These are listed at Appendix A. The Tribunal has also considered relevant law, a summary of which is at Appendix B.

### **BACKGROUND**

10. The applicant is from [Town 1], a small town on the Turkish coast, almost [distance deleted: s.431(2)] km from the provincial capital of Adana.
11. The applicant is an ethnic Arab, and a speaker of Turkish and Arabic. He adheres to the Alevi faith.
12. The applicant lived in [Town 1] before coming to Australia, except for military service in Northern Cyprus from [dates deleted: s.431(2)]. He has qualifications as a [details deleted: s.431(2)]. From 1995 until early 2012, he worked in [Town 1].
13. The applicant has variously indicated that he worked as a fishmonger, waiter and café owner. He explained at the hearing that his father owns a fishing business and café. His brothers do fishing during the summer, and the applicant helps his father sell the produce. At other times, the family runs a café. It employs three people, and the applicant assists with cooking, waiting and other tasks.
14. The applicant is unmarried. His parents and [brothers] are in [Town 1]. He has a sister in Australia, [Ms A].
15. The applicant’s current Turkish passport was issued in September 2011, and is valid for ten years. He obtained an Australian visitor visa in Ankara [in] February 2012, and departed Turkey 10 days later. The applicant made an earlier visit to Australia, from June to August 2008.<sup>2</sup> In his protection visa application, the applicant claims (incorrectly) to have obtained a student visa [in] February 2012. He makes no mention of his earlier visit to Australia.

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<sup>2</sup> This information comes from the delegate’s decision, a copy of which the applicant attached to his protection visa application, and also from the applicant’s oral evidence at the hearing.

16. The applicant attended a Tribunal hearing [in] May 2013. His representative was present. His nominated witnesses, [Mr B] and [name deleted: s.431(2)], did not appear, due to other commitments. The applicant foreshadowed that they might provide written statements. The applicant said that he had not told his sister about the hearing.

## CONSIDERATION OF CLAIMS AND EVIDENCE

### The applicant's mental health

17. The applicant claimed in his original application to be 'psychologically devastated', due to his experiences in Turkey. Neither the applicant nor the representative raised any concerns following the Tribunal's hearing introduction. The applicant appeared somewhat downcast and was generally vague during the hearing. After the Tribunal signalled its concern about his inconsistent and uncertain evidence, he said that he has difficulty remembering things and elaborated on his mental pressures. He said that he has recently been prescribed anti-depressant medication.
18. The post-hearing submission includes a report from [Dr C], dated [in] May 2013 (the day after the hearing), indicating that he examined the applicant that day, and found him 'still depressed, poor memory, mumbling, sometimes aggressive, on antidepressant, have occasional thought of commit suicide [sic]'. The reason for the visit was given as 'anxiety/depression' The report comments that the applicant attributes his mental pressure to 'history of religious conflicts and tension in Turkey'. Also attached is a referral letter from [Dr C] to a psychologist. The letter includes the comment: 'History of visit on [date]02/13', which the Tribunal understands to mean that the applicant's first consultation with [Dr C] was on that date.
19. Two supporting statements, from the applicant's sister and from [Mr B], address the applicant's mental health.
  - [Ms A] reports that the applicant was 'devastated psychologically' after arriving in Australia, and describes his symptoms of anxiety and forgetfulness. She states that she took him a doctor, who referred the applicant to a psychologist.
  - [Mr B] stated that he is friends with the applicant's family, and he saw him in Turkey about 2½ years ago (hence, around late 2010, early 2011). He reports that, compared to his lively personality in Turkey, the applicant has been withdrawn. He recounts that the applicant told him that the reason for his change of demeanour was the mistreatment he received from the police and right-wing groups, and a severe beating that he received at a political rally. [Mr B] does not give details of any observations of or exchanges with the applicant when they last met in Turkey (which was in the middle of a number of adverse incidents).
20. The Tribunal appreciates that applicants may feel stressed about their unresolved migration status and the setting of a tribunal hearing, and has taken this into account in conducting the hearing. The available medical evidence goes back only to [a date in] February 2013, and refers only to two visits to a general practitioner and a referral. Although [Ms A] and [Mr B] claim to have observed changes in the applicant's personality, after his arrival in Australia in early 2012, there are no details of medical treatment before early 2013. The Tribunal is not satisfied on the available material that the applicant has any medical condition that prevented him from presenting his case at a hearing.

## Refugee protection

### *The treatment of Arab Alevis in Turkey*

21. The applicant claimed that he has experienced discrimination and mistreatment as an Arab Alevi in Turkey, and he fears future persecution on that basis. He stated in broad terms at the hearing that ‘the government is against us’, and said that Arab Alevis in [Town 1] look for opportunities to emigrate. Several times during the hearing, the applicant responded to questions about his personal circumstances with broad assertions about the difficulties that Arab Alevis face in daily life in Turkey. The Tribunal therefore considers firstly whether he faces a real chance of persecution for reason of his race or religion, or a combination of the two.
22. The Tribunal put to the applicant country information that Alevis face unequal treatment and some degree of discrimination in Turkey, but that these do not generally involve serious harm amounting to persecution. Most of the available information does not differentiate between Arab Alevis, and Turkish or Kurdish Alevis. The 2013 US Department of State (USDOS) *Country Reports on Human Rights Practices for 2012* for Turkey notes that Alevis are not recognised under Turkish law.<sup>3</sup> The report reiterates advice from previous years that ethnic and religious minorities such as Alevis are ‘prohibited from fully exercising their linguistic, religious, and cultural rights and continued to face varying levels of pressure to assimilate’.<sup>4</sup> According to report, ‘While dialogue with non-Muslim religious communities continued, persons professing faith in minority religions or no faith continued to be subject to discrimination and threats from extremists’.<sup>5</sup> A June 2012 Immigration and Refugee Board of Canada (IRBC) research response notes information provided by a Turkish studies researcher in May 2012 stating that Alevis continue to experience ‘verbal (written and oral) harassment’<sup>6</sup> It also notes that unemployment was reportedly an issue for Alevis ‘because of their identity’, both in the public and private sector.<sup>7</sup>
23. The applicant claimed that he was unable to practice his Alevi faith, citing the need to meet secretly, police abuse and threats for displaying an Alevi religious image; and an occasion in May 2009 when police raided a *cem* meeting, arrested him and others, and detained and mistreated them. He claimed broadly that Alevis have no rights to practice their faith. This

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<sup>3</sup> US Department of State 2013, *Country Reports on Human Rights Practices for 2012 – Turkey*, 19 March, Section 6

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204348#wrapper>>  
Accessed 7 May 2013

<sup>4</sup> US Department of State 2013, *Country Reports on Human Rights Practices for 2012 – Turkey*, 19 March, Section 6

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204348#wrapper>>  
Accessed 7 May 2013

<sup>5</sup> US Department of State 2013, *Country Reports on Human Rights Practices for 2012 – Turkey*, 19 March, Section 6

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204348#wrapper>>  
Accessed 7 May 2013

<sup>6</sup> Immigration and Refugee Board of Canada 2012, *Turkey: Treatment of Alevis by society and government authorities; state response to mistreatment (2008-May 2012)*, 1 June <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=454024&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=454024&l=e)> Accessed 6 May 2013

<sup>7</sup> Immigration and Refugee Board of Canada 2012, *Turkey: Treatment of Alevis by society and government authorities; state response to mistreatment (2008-May 2012)*, 1 June <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=454024&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=454024&l=e)> Accessed 6 May 2013

contrasts with available country advice. For instance, the 2012 USDOS *International Religious Freedom Report for 2011* states that Alevis ‘freely practiced their beliefs and built cem houses (places of gathering), although these have no legal status as places of worship’<sup>8</sup> The US Commission on International Religious Freedom *2013 Annual Report*, released 30 April 2013, reports that:

Over the past several years, the Turkish government has held regular workshops with the Alevi community to discuss their concerns. However, since the Alevi community has varying views on its relation to Islam, ascertaining its collective goals is difficult... Alevis worship in “gathering places” (*cemevi*), which the Turkish government does not consider legal houses of worship, effectively meaning they cannot receive the legal and financial benefits associated with such status. The government’s position was upheld by the Supreme Court of Appeals in July 2012.<sup>9</sup>

24. The Tribunal noted at the hearing that, in 2012, Turkish media sources reported that houses belonging to Alevis had been defaced in a number of locations across the country. On 20 January 2013, *Today’s Zaman* reported that Turkish authorities had arrested a member of the Revolutionary People’s Liberation Party/Front for ordering the defacement of Alevi houses in Istanbul.<sup>10</sup> Other instances occurred elsewhere in Turkey While this raises some concerns of potential violence, the Tribunal is not satisfied that this indicates that Alevis generally are at risk of persecution in Turkey.
25. The Tribunal has not found any specific information on the treatment of Alevis, or Arab Alevis in Adana.<sup>11</sup> While cautious about drawing any firm conclusions from the absence of information, the Tribunal considers that the systematic mistreatment of a minority in this province would be likely to have attracted some attention.
26. The applicant raised concerns about the impact of the Syrian conflict on Arab Alevis in the Adana area. He said that people are upset because of US presence in the Incirlik Air Base, in Adana, implying that Adana’s Alevi Arabs feel under added pressure because of their suspected allegiance with the Allawite-led Syrian Government. [Mr B] teased this out in his statutory declaration, stating that ‘the Arab Alevis of Turkey are being targeted by the [Turkish] Sunni population and the government authorities. They are accused of supporting the Syrian president and his government.’ He opines that the applicant ‘would be exposed to severe mistreatment and discrimination, if he continued to show his Alevi identity so openly’. The Tribunal has received no country information to support these assertions.
27. As discussed at the hearing, the Tribunal has found reports indicating that the Turkish government’s active support for the mostly Sunni Syrian opposition has aroused some

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<sup>8</sup> US Department of State 2012, *International Religious Freedom Report for 2011 – Turkey*, 30 July, Executive Summary & Section 2 <<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192871#wrapper>> Accessed 7 May 2013

<sup>9</sup> US Commission on International Religious Freedom 2013, *USCRIF Annual Report 2013 – Other countries and regions monitored: Turkey*, 30 April, UNHCR Refworld <<http://www.refworld.org/docid/51826ee318.html>> Accessed 7 May 2013

<sup>10</sup> ‘DHKP/C member arrested for ordering defacing of Alevi houses’ 2013, *Today’s Zaman*, 20 January <<http://www.todayszaman.com/news-304601-dhkp-c-member-arrested-for-ordering-defacing-of-alevi-houses.html>> Accessed 21 January 2013

<sup>11</sup> The Tribunal consulted the following - UNHCR Refworld, Immigration and Refugee Board of Canada, major human rights groups, Australian and foreign government reports and news and other sources using the google search engine. The Tribunal also consulted internal tribunal databases and the DIAC CISNET database.

anxiety among Turkey's religious minorities, including Christians and Alevis<sup>12</sup>, and that Alevis perceive the Turkish Government 'to be taking a pro-Sunni stance towards Syria.'<sup>13</sup> The Tribunal alerted the applicant that it has found some information that the Turkish authorities have stepped up security measures around Syrian refugee camps (accommodating 5,500 Syrians) in Hatay, where 40 per cent of the population are Arab Alevi.<sup>14</sup> The Turkish English-language daily *Today's Zaman* reported that there have been tensions between refugees and local Arab Alevis, and the government was planning to relocate refugees to places other than those with high Alevi populations. These sources suggest that the Turkish Government is taking steps to avoid conflict between local populations near the Syrian border and newly arrived Syrian refugees, but the Tribunal accepts that the government might be motivated by broader security considerations, including some mistrust of local Arab Alevis. However, the Tribunal has found nothing in these reports, and is not satisfied on the available information, that Arab Alevis, or Alevis in general, are at risk of persecution as a result of the Syrian conflict.

28. The Tribunal is not satisfied on the available information that the mere fact of being an Arab Alevi in Adana province establishes a real chance of persecution for reason of race, religion, any combination of these or for any Convention reason.
29. The Tribunal therefore proceeds to consider whether the applicant's particular circumstances put him at risk of persecution for a Convention reason.

#### *The applicant's credibility*

30. The Tribunal is mindful of the need not to take an overly stringent approach to questions of credibility. However, it is also not required to accept all his claims uncritically.<sup>15</sup> The *Handbook on Procedures and Criteria for Determining Refugee Status*, suggests that it is "frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".<sup>16</sup>
31. In assessing the applicant's claims and evidence, the Tribunal has taken into account that he appeared to be stressed and somewhat downcast, as noted above. At the hearing, the Tribunal found that the applicant was able to speak with confidence about some aspects of his life, and describe some individual incidents that formed the basis for his protection claims. By contrast, he was unable to give a coherent account of the sequence of events in the years after his return from Turkey, or even relate them to each other in a meaningful way. He often deflected specific questions with broad generalisations about the difficulties that Alevis face in Turkey, without engaging directly with the question. The Tribunal is concerned that the

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<sup>12</sup> 'Tough times for Turks on border with Syria' 2012, *The Guardian*, 25 April

<sup>13</sup> Jones, D 2012, 'Turkey's Alawite community worried about Syria conflict', *Voice of America*, 15 March

<sup>14</sup> 'Turkey steps up security around camps for Syrian refugees' 2012, *Today's Zaman*, 30 October, BBC Monitoring Service

<sup>15</sup> *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451; *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559 at 596; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70; *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9; see also *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241

<sup>16</sup> United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

applicant was reciting an account of various incidents, but not doing so from personal experience. This casts some doubt over his credibility, and his claims for protection.

32. The applicant's personal and family background adds to the Tribunal's doubts about the severity of any claimed discrimination, and indeed the credibility of his protection claims as a whole.

- According to the applicant's evidence, his father operated a fishing business and café. The applicant has had virtually uninterrupted employment. At the hearing, the applicant claimed, for the first time, that the family's café had been destroyed. He linked this with his claim to have always been in trouble because of religious issues. He said that the council had given him written and verbal warnings (these appear to have been eviction notices), to demolish the café and create a park. This had lasted over a period of ten years or so. The applicant said that the family contested the actions in court, to no avail. They received no compensation. He does not have any documentation relating to this action. The applicant said that the council did not issue neighbouring businesses with the same notices, and the land on which the café stood is now vacant. He claimed that this was not a mere urban planning decision, but an example of discrimination. He said that the planned demolition of the café was one of the reasons he came to Australia, but the real reason was to escape persecution. In other evidence, the applicant told the Tribunal that his father continues to operate the fishing business and also draws a pension. His brothers work mainly as fisherman, at sea. The Tribunal notes that the applicant's family operated a seaside business for many years, and it is not satisfied on the limited available material that the council has demolished the café or otherwise targeted the family for religious or any other Convention reason.

- The applicant has had the opportunity to obtain qualifications as a [qualifications deleted: s.431(2)]. This adds to the Tribunal's doubts that he has suffered persistent, serious discrimination.

- He served in the Turkish military from [dates deleted: s.431(2)]. He commented that he was young at the time, and military service was compulsory. At the same time, however, he appears to have had no qualms about serving in the military. On the contrary, he suggested that he and others had done it as a necessary, and not altogether unwelcome, step towards adulthood and further training. In response to the Tribunal's questions, he added that he did face some discrimination and poor treatment, but did not appear to place much weight on these experiences.

- The applicant told the Tribunal that his brothers are both fishermen. He has not claimed or implied that they have suffered persecution as Arab Alevis. The Tribunal has considered the applicant's comment that they are usually at sea, working. However, he also told the Tribunal that the fishing season is from May to September. The Tribunal is concerned as to why the applicant claims to have been subject to persistent discrimination as an Arab Alevi (although he also alluded to a political component to his claims), whereas his brothers do not appear to have experienced such problems.

33. In the Tribunal's view, the applicant's personal and family background sits uneasily with his claim to have been subject to persistent discrimination and persecution as an Arab Alevi.

*The applicant's conduct and his need for protection*



34. The applicant's visit to Australia in May 2008 and his return to Turkey three months later are strong indicators that he did not experience any noteworthy harm or disadvantage, as an Arab Alevi, or for any political reasons, such as the claimed brief detention and interrogation that he experienced following a political rally in mid-2002. His willingness to return to Turkey without seeking protection in Australia raises questions about not just the severity of any past mistreatment, or whether he thought any future risks were manageable, but about the truthfulness of his claimed experiences. In other words, it casts doubt on his claims that he was forced to practice his Alevi faith in secret (for fear of persecutory or other harm), that he experienced persistent mistreatment at school from teachers and students alike, and that the police briefly detained and interrogated him.
35. The applicant alluded to family circumstances as the reason for his return to Turkey in 2008 – he visited Australia with his mother to attend a wedding, and he was busy in his father's business back in Turkey. He and his sister also suggested that his problems were in fact not so serious prior to 2008. Even taking these comments at face value, they add to the Tribunal's already significant doubts that the Turkish authorities, non-Arabs and non-Alevis have persistently mistreated him for reasons of his race and religion.
36. As noted below, the Tribunal found it very difficult to establish a clear chronology of the numerous incidents of harm that the applicant claimed happened to him after his return to Turkey in 2008. Asked to describe the very first instance of police detention and mistreatment, the applicant related the occasion when they warned him and his father to remove an Alevi religious image from their [shop]. When the applicant and his father failed to comply with these orders, the police detained both the applicant and his father for 1½ days, during which they assaulted them and released them on condition that the pictures be taken down. The applicant thought that this incident occurred sometime in 2010 or 2011. The applicant was very confused about the timing of the alleged incidents, both in absolute terms and in relation to each other.
37. The Tribunal asked him about his response to these incidents, for instance, whether he tried to leave his local area after this first occasion. The applicant replied that their thinking was that they had done nothing wrong in displaying the religious image, and they thought that the harassment would not endure. He could not be more specific about what led him to expect this. Pressed for more detail, he said that he did apply for another Australian visa in 2009, but it was refused. In the following years, his sister turned her mind to organising for him to travel to Australia. The Tribunal's concerns about this account are threefold. First, according to the applicant's protection visa application, the first incident was his arrest and detention while attending an Alevi *cem*, in May 2009. At the hearing, he thought that this had occurred after the [shop] incident. Second, the applicant's unsuccessful application for an Australian visa in 2009 cannot have been in response to the first assault if it was lodged *before* it. Third, and most significantly, the applicant did not show any interest in moving from Adana or considering any other destination apart from Australia, where his sister lives. The Tribunal notes the applicant's concern that he does not know people elsewhere and that it would be difficult to find work. However, it is difficult to imagine that a person who is subject to sustained targeting by local police, ultranationalist youth or others, all within a relatively short period of time, would not seek to escape their immediate environs, even if this was inconvenient or challenging. The applicant's preference to wait for an opportunity to travel to Australia casts doubt on the truth of his claims.
38. The Tribunal finds that the applicant's conduct - first in failing to seek protection in Australia in 2008, and second in continuing to live and work in his home town until he was able to

obtain a second Sponsored Visitor visa for Australia - is a strong indicator that he does not have a genuine or well-founded fear of persecution for any reason, and does not need protection.

*The applicant's experiences before 2008*

39. The Tribunal accepts, on the basis of the applicant's evidence and country information, that there is some level of discrimination against Alevis in Turkey and that he may have experienced this first-hand.
40. The Tribunal accepts that the applicant may have been aware, for instance, that the Alevi faith is not accorded equal treatment in Turkish law, and that its adherents are looked down upon by Sunni Turks. It accepts that his classroom consisted of about 40 per cent Arab Alevi students, who felt that they were treated like second-class citizens compared with the Sunni students, particularly in the failure to accord the Alevi faith recognition in the curriculum. And, although the applicant did not raise this in his protection visa application or at the hearing, until the Tribunal asked him specifically, the Tribunal accepts that he may have also experienced some social discrimination while completing his military service.
41. However, the Tribunal finds that the applicant has significantly exaggerated the extent of these problems, and that his account of his experiences is unreliable. It takes into particular account his personal and family background, and his willingness to return to Turkey after his first Australian visit. The Tribunal does not accept on the material before it that the applicant was unable to practice his Alevi faith at all, or only in secret, due to the risk of persecution; that he faced persistent physical, verbal and psychological abuse from teachers and fellow students at school; that he was forced to leave school early because of this abuse; or that he was briefly detained in mid-2002 during a political rally.

*The alleged incidents after 2008*

42. The Tribunal is concerned that the applicant was unable to explain, and did not appear to have really turned his mind to, what circumstances led to his being subject to sustained targeting by the Turkish authorities and ultranationalist youths in the period between 2009 and his departure for Australia in early 2012. He commented vaguely that he was vulnerable as an Alevi, and started to describe the key points of distinction between Alevis and Sunni Muslims. He suggested that he started attending the *cem* around this time, and that the authorities started taking more concerted action against Alevis. In the Tribunal's view, however, he did not provide meaningful detail or context about the surge in unwelcome attention following his return from Australia.
43. Of significant concern, as noted above, is the applicant's confusion as to the incidents during which he was targeted and/or harmed: -
  - In his protection visa application, the applicant referred to three occasions when the police detained him – once in May 2009, when he was attending the [Town 1] *cemevi* (paragraph 25 of his statement); once in May 2010, when the Ülkücü attacked him and other participants at a May Day rally, only to have the police arrest, detain and severely assault him and his friends (paragraph 20); and once during the summer of 2010 when they detained the applicant and his father for displaying an Alevi religious image in their shop (paragraph 15).

- At the hearing, the applicant recalled that the police had detained him on three occasions. (The Tribunal takes it that the alleged brief detentions and interrogations in July 2002 and May 2009, referred to in paragraph 20 of the original statement, were not significant. It therefore draws no adverse inferences from the applicant's failure to mention these.) He thought that the first one was in connection with the [shop], in either 2010 or 2011; the second one was the raid on the *cem*; and the third occasion was the arrest at the May Day celebrations in 2011, or perhaps 2010.
  - To be clear, the Tribunal does not expect applicants to recall exact dates. However, the applicant's inability to relate these incidents to each other, in some semblance of consistent chronological order, or to other events in his life, such as the date of his second Sponsored Visitor visa application in late 2009, casts doubt on the veracity of his claims. Relevantly, the applicant's claimed encounters with the police differ widely in nature – one at a religious function, one at a political rally and one in the family's own business. In the Tribunal's view, it is reasonable to expect an applicant to recall with some approximation the sequence of these events, given their significance to him.

    - The Tribunal has considered the applicant's claim that he felt confused and stressed at the hearing, that he felt stressed and that he is on anti-depressants. It has also considered [Dr C]'s recent report, and the supporting statements from the applicant's sister and from [Mr B]. It is not satisfied that these adequately explain the applicant's inability to explain his encounters with the police in Turkey during the period from 2009 to 2012.
    - The Tribunal also notes that the applicant's original statement appears to be a rough compilation of his claims, hastily put together and with scant regard to the chronology or causality of the incidents of past harm. This adds to the need for caution in drawing any strict comparisons between the applicant's written and oral evidence. However, it does not assuage the Tribunal's concerns about the applicant's evidence as a whole.
44. As noted above, the applicant's conduct in Turkey - that is, his failure to move away from his home area in response to the multiple threats from the police, the Ülkücü and society at large, waiting instead until he was able to obtain another Australian visa – adds significantly to the Tribunal's doubts about the truth of his claims.
45. The applicant also claimed the the Ülkücü had demanded extortion money from him, threatened and assaulted him, ransacked his shop, and assaulted him and his father on several occasions in mid-2010. The police, who themselves had right-wing tendencies, failed to protect the applicant and his father, instead suggesting that they were in part to blame for the incidents. The Tribunal put to the applicant country information indicating that, while the Ülkücü, or Grey Wolves, were reportedly involved in protests in Turkey and Europe in 2011 and 2012, their profile is reported to have diminished.
46. An article published in November 2011 by the US-based, online global business newspaper *International Business Times (IBT)* stated that the Ülkücü (Grey Wolves) 'have seemingly been dormant for many years' According to Dilshod Achilov, Professor of Political Science at East Tennessee State University, the 'Grey Wolves' activities have significantly

diminished in the public discourse’ and ‘They rarely ever come to the public’s attention, or the media’s attention anymore’<sup>17</sup> The *IBT* article states:

...their presence appears to have diminished ever since Turkey embarked on a course to modernize its economy (with great success), become a dominant player in Eastern Europe-Middle East politics; and aspire to join the European Union.

47. The Tribunal is cautious about inferring from this general information any firm conclusion that the Ülkücü do not have a local presence in [Town 1], that they do not engage in extortion or that they do not selectively target certain businesspeople. However, given the Tribunal’s overall concerns about the applicant’s credibility and his need for protection, the Tribunal is not prepared to accept at face value that the applicant and his family were subject to any such harm.
48. At the hearing, the applicant gave as another example of the Ülkücüs’ pursuit of him, the occasion when they kidnapped him while he was going to his shop, blindfolded and took him to an isolated place, where they beat him up. In the statement attached to his protection visa application (paragraph 24), he spoke of an incident in October 2011 when four men who identified themselves as ‘civil police officers’ carried out such an attack, in retaliation for the applicant disobeying police orders to stop his Alevi activities. Asked to explain this discrepancy – whether the perpetrators had identified themselves as civil police officers or were Ülkücü – the applicant said vaguely that they were Ülkücü, but could have been police. He said that both groups are rightwing, and that they targeted him because he is leftwing and Alevi. The Tribunal considers the applicant’s evidence changeable and inconsistent. It does not make sense that the perpetrators identified themselves as police officers, yet the applicant nominates them as Ülkücü who might be police.
49. At the hearing, the Tribunal explored with the applicant whether he had any independent documentation that could substantiate his claims. It queried, for instance, whether his several claimed occasions of detention and physical abuse had resulted in injuries that had required medical treatment. It observed that several references to ‘severe beatings’ had resulted in bleeding from the mouth and nose (for instance, after both the May 2010 police detention and the October 2011 abduction), and bruising, yet nothing that appeared to require medical treatment. The applicant said that there was no further documentation.
50. The concerns set out above, in paragraphs 41 to 48, taken together with the Tribunal’s other concerns (for instance, about the applicant’s continuous residency and employment in his home area, and his conduct), lead the Tribunal to conclude that his claims of past harm following his return to Turkey in 2008 are completely unreliable. It finds that the applicant fabricated these claims for the purpose of obtaining protection in Australia.
51. The Tribunal does not accept that the applicant participated in any political rallies or has engaged in political activities. It does not accept that the applicant was briefly detained during political rallies in 2002 and 2009, or that he was detained overnight, threatened and beaten following a May Day rally in May 2010. It does not accept that the police insisted that he and his father remove Alevi religious items from their [shop]; that they abused them and vandalised the store several days later; or that they detained, threatened and assaulted the pair because of their refusal to comply. It also rejects his claim that Ülkücü members demanded extortion money from the applicant and his father; that they ransacked their shop; that they

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<sup>17</sup> Ghosh, PR 2011, ‘A Turkish Puzzle: Grey Wolves, Ergenekon, and the ‘Deep State’’, *International Business Times*, 1 November

beat the applicant up; and that the police failed to protect the family, but instead blamed them for the incidents. It also rejects that applicants claim that he was abducted in October 2011, by Ülkücü members, plainclothes police or anybody, taken to an isolated location, assaulted and warned to stop his 'Alevi activities' The Tribunal also does not accept that the applicant and others were detained and beaten up following a police raid on the [Town 1] *cemevi* at any time. The Tribunal dismisses these and all associated claims that he has made in relation to the period from 2008 until his departure for Australia in 2012.

52. The Tribunal has considered the applicant's evidence that local authorities closed down and demolished the family's café. It accepts, on the basis that it is plausible, that the café no longer operates. The available material strongly suggests that this was part of urban planning work. While the applicant claimed that the family received no compensation, and that the demolition was unnecessary and discriminatory, the Tribunal is not satisfied that the local authorities targeted the applicants' family because they were Arab Alevis or for any Convention reason. Given the extent of its concerns about the applicant's credibility, the Tribunal does not accept that the applicant and his family were denied due process, or compensation; or that they were treated unfairly.
53. The Tribunal accepts that the applicant may have continued to face some low-level discrimination in Adana and Turkey, as an Arab Alevia, after his return from Australia. It accepts that he may lean towards leftwing politics, but does not accept that he has participated in any May Day or other political rallies, at any time. The Tribunal finds that the applicant has not experienced any harm amounting to persecution for a Convention reason at any time in Turkey, but that he left the country for unrelated reasons.

### **Refugee protection**

54. The Tribunal has accepted that the applicant may have experienced some low level discrimination in Turkey, as an Arab and an Alevi; that he has never suffered harm amounting to persecution for any Convention reason; and that he is not a politically engaged person. The Tribunal is not satisfied, for the reasons stated above, that the mere fact of being an Arab Alevi, gives rise to a real chance of persecution for a Convention reason. It considers that, if the applicant returns to Turkey, he will continue to engage in his family's fishing interests or look for work in [details of qualifications deleted: s.431(2)] or similar fields (irrespective of whether or not the family continues to operate a café). It does not accept that he has a political opinion that has in the past led him to engage in political activities, or that would motivate him to do so in the future. It follows that he would therefore also not need to refrain from any such activities to avoid the risk of persecution.
55. The Tribunal has considered the applicant's claims individually and cumulatively. It finds that there is no real chance of the applicant experiencing serious harm amounting to persecution for reason of his race, religion or (now-dismissed) political opinion, or any other Convention reason. It is therefore not satisfied that he has a well-founded fear of Convention-related persecution, now or in the reasonably foreseeable future, if he returns to Turkey.

### **Complementary protection**

56. The applicant did not raise any other matters which could be relevant to an assessment of Australia's complementary protection obligations in respect of him. In light of the findings of fact above, the Tribunal does not accept that the applicant is at risk of significant harm as an

Arab Alevi; nor does it accept that he has any political opinion that could put him at risk in the future.

57. The Tribunal is therefore not satisfied on the available evidence that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Turkey, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.

### **CONCLUSIONS**

58. 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).
59. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
60. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

### **DECISION**

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

## APPENDIX A: MATERIALS BEFORE THE TRIBUNAL

The Tribunal has before it the following materials, and has had regard to them as set out in the findings and reasons above:

- The protection visa application and accompanying papers. These included a photocopy of the applicant's Turkish passports, issued in March 2008 and in September 2011 and a copy of his ID card.
- The applicant's oral evidence at a Tribunal hearing held [in] May 2013, conducted with the assistance of an interpreter in Turkish/English. Note: the applicant nominated two persons as witnesses, [Mr B] and [name deleted: s.431(2)], but they did not appear to the hearing.
- The applicant's oral evidence at a Department interview held [in] June 2012.
- A post-hearing submission dated [in] May 2013, in which the applicant provides the following:

- A statutory declaration from the applicant's sister, [Ms A] -

[Ms A] gives information about Arab Alevis. She states that the applicant faced problems even as a young boy. He came to Australia in 2008. 'But his treatment was not as bad before 2008, compared to after he returned to Turkey in 2008.' [Ms A] claims that she suggested that he come to Australia, for his safety. On his arrival, she found that he was 'devastated psychologically'. She describes his appearance then, and states that she took him to doctors.

She writes of her concern that he would be the target of the police and rightist people if he returns to Turkey, and that he would be unable to cope psychologically.

- A statutory declaration from [Mr B]: -

[Mr B] states that he is a Kurdish Alevi who has received protection in Australia, and who is family friends with the applicant's sister and brother-in-law in Australia. He met the applicant on his last visit to Turkey, about five years ago, and once again, 2½ years ago. [There is no mention of [Mr B] having witnessed or heard of any problems at that time, which was around early 2011.] [Mr B] writes that the applicant's sister told him about the problems that the police and 'some civilian groups' had caused the applicant. On seeing the applicant in Australia, [Mr B] was struck by his changed nature – from being a lively person, to being more withdrawn. The applicant recounted the reasons (that is, those relating to his refugee claims).

[Mr B] notes that the Sunni population and Turkish government authorities have targeted the Arab Alevis because of the civil war in Syria. He expresses concern that the applicant would experience 'severe mistreatment and discrimination, if he continued to show his Alevi identity so openly.'

- A statement from [Dr C]: -

[Dr C] states that he examined the applicant [in] May 2013, and is 'still depressed', has poor memory, is sometimes aggressive and has occasional thoughts of suicide. He is on anti-depressants. [Dr C] records one previous consultation, [in] February 2013. The letter refers to the history of religious

conflicts and tension in Turkey, which the applicant thinks is creating his mental problems.

- A referral letter from [Dr C], to psychologist [name deleted: s.431(2)]. This recounts the applicant's symptoms, and mentions that the applicant broke up with his girlfriend in Turkey and was on anti-depressants before. [There is no mention in the referral letter to Turkey's religious conflicts or similar as a stated contributory factor.]

## **APPENDIX B: RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). As a result of amendments to the Act, some of the criteria in s.36 do not apply to visa applications made before 1 October 2001. However, the criteria in cl.866.221 of the Regulations broadly reflect the criteria for a protection visa in s.36(2) of the Act. An applicant for the visa must meet one of the alternative criteria in cl.866.221(2), (3), (4) or (5): cl.866.221(1). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under either the Refugees Convention or the complementary protection grounds and that person holds a protection visa.

### **Refugee criterion**

Clause 866.221(2) is satisfied if the Minister is satisfied that the applicant for the visa is a person to whom Australia has protection obligations under the Refugees Convention.

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

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. These provisions were inserted on 1 October 2001 and apply to all protection visa applications not finalised before that date.



There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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

## **Complementary protection criterion**

If a person is found not to meet the refugee criterion in cl.866.221(2) he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a person to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: cl.866.221(4) ('the complementary protection criterion').

'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.