

1110359 [2012] RRTA 303 (7 May 2012)

DECISION RECORD

RRT CASE NUMBER: 1110359

DIAC REFERENCES: CLF2011/52885; CLF2011/82107

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Jennifer Ellis

DATE: 7 May 2012

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Turkey, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2011 and applied to the Department of Immigration and Citizenship for the visa [in] March 2011. The delegate decided to refuse to grant the visa [in] September 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] October 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. 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). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person 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 s.36(2) and that person holds a protection visa.

Refugee criterion

7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
8. 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.

9. 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.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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

18. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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: s.36(2)(aa) ('the complementary protection criterion').
19. '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.
20. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's files 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.

Background

22. The applicant is a married [age deleted: s.431(2)] year old male citizen of Turkey who was born in [date deleted: s.431(2)] in [Village 1], Turkey. The applicant's wife and [three adult children in] reside in Turkey.
23. In his visitor visa application the applicant stated that he resided in Istanbul and his wife and three children resided there. He said he wanted to go to Australia because his travel agent told him it was a fantastic place for a holiday and he said that he had a Schengen visa and he planned to visit Schengen countries afterwards. He said that he was a company owner of a

wholesale business for 9 years and that he owned his own apartment. He submitted evidence of 6 credit cards, and documents in relation to his business.

24. The applicant travelled to Australia on a Turkish passport issued in November 2010 and entered Australia [in] February 2011 as the holder of a Subclass 676 visa that had been granted [in] January 2011 and contained condition 8503. He had permission to stay for one month.

Protection Visa Application

25. The applicant lodged his application for a protection visa [in] March 2011.
26. The applicant claims that he is a Christian Armenian. The applicant claims that he can speak, read and write Turkish. The applicant completed 5 years of education at primary level in [Village 1] and completed compulsory military service. He said that between 1979 and 2002 he was a self-employed labourer in various places in Turkey, [Country 2] and [Country 3] and that since 2002 he has been self-employed in Istanbul.
27. He submitted a copy of his passport which included a Schengen visa issued [in] January 2011 and valid until [April] 2011.
28. In his protection visa application the applicant stated that he was born in [Village 1], Turkey in [year deleted: s.431(2)]. He is ethnically Armenian and described his religion as Christian. His occupation in Turkey was as a distributor of coffee, tea and sugar. He is a Turkish citizen and lived in Turkey until he came to Australia, travelling on a Turkish passport issued [in] November 2010. He had previous passports which expired in approximately 1984 and 1987. He has travelled before: to [Country 2] for a year in 1984-1985 to work as a labourer/construction worker and to [Country 3] for a year in 1987-1988 to work as a labourer/construction worker.
29. The applicant stated that he left Turkey legally and had no difficulty obtaining a passport. The applicant said he left Turkey after two cousins were killed in 1996 and February 2007 and he felt his life was at risk. He said he received threats against him and his family and his shop was burgled in August 2010 and the stock taken away. His car was burned in October 2010. He said that he was scared he would be killed if he returned to Turkey. He feared harm from the Grey Wolves who are associated with the MHP (Nationalist Movement Party). He said he had been targeted and received threats up until late 2010/early 2011. He said the Turkish authorities have never protected Armenians and other minorities.
30. [In] May 2011 the applicant's representative lodged additional documents including:
 - Statutory declaration made by the applicant [in] May 2011;
 - Submission made by the applicant's representative [in] May 2011;
 - Country information in support of the application; and
 - Newspapers articles in Turkish.
31. The following claims were made in the applicant's statutory declaration namely:

- The applicant fears persecution in Turkey by reason of his ethnicity (Armenian), his religion (Christian), his left wing political views and for membership of a social group (namely his family who have been very active in politics);
- The applicant was born in a village called [Village 1] in Turkey and has [five siblings]. His family could not afford to send him to secondary school and after finishing primary school he started working;
- As an Armenian Christian family living in [Village 1] they were frequently forced to abide by Muslim customs and have never been able to live freely as Christians;
- There was a lot of violence against Christian Armenian and Alevi Kurdish people in [Village 1] by the Grey Wolves who are the youth wing of the Nationalist Movement Party (the MHP);
- In [year deleted: s.431(2)], when he was about 15 or 16 years old, two of his work colleagues were killed by the Grey Wolves;
- About two days later, his older brother [Mr A] was stabbed by a member of the MHP and hospitalised for two weeks. After that he left to go to Istanbul with his two older brothers [Mr A] and [Mr B] and he worked there on construction sites with his brothers;
- The rest of the family were forced to relocate to Istanbul in 1984;
- In 1984 he [bought land] and got married and later worked in [Country 2] and [Country 3] until 1988. He returned to Istanbul and his children were born in [years deleted: s.431(2)] but he never felt safe in Istanbul;
- In 1993 he went to Sivas with his family to see the work of [his mother's cousin]. [She] was killed during the Sivas massacre;
- In May 1995 the applicant's [cousin], was arrested and questioned by police because he was Armenian;
- In February 1996 his [cousin] and two of her friends were killed by police because they were Armenian and Christian missionaries. The applicant and his two brothers were detained for 5 days and questioned at her funeral;
- In September 1996 the applicant was detained for 16 days at a school function for his sister and brutally tortured. He was detained in Sakary prison for 4 months and tortured because he was suspected of being part of an Armenian terrorist group;
- In May 1998 his brother [Mr A] was detained and questioned;
- In 1999 his [cousin] was detained and later in 2000 went to [Country 5] where he remains. His other [cousin] lives in England as a refugee;

- In 2002 the applicant started up his own distributing [business] which distributed goods such as tea and coffee to various businesses;
- In February 2007 the applicant's nephew [Mr C] (son of his brother [Mr A]) was killed by six members of the Grey Wolves and the applicant witnessed his killing and gave evidence against them at the trial. [Mr C] was targeted because he [held a senior position] of an association called UC Karanfil Dernegi, which was a Christian based organisation which provided assistance to families. [Mr C] had been involved in the organisation of the funeral of Hrant Dink who was a Turkish-Armenian human rights defender who worked for an Armenian newspaper;
- The applicant and his family were also members of UC Karanfil Dernegi;
- In June 2007 the applicant's [son] was assaulted by the Grey Wolves and threatened that if the applicant gave evidence the family would be killed. The family then moved from [Suburb 5] to [another suburb in Istanbul];
- The applicant's brother [Mr A] was also threatened and moved house;
- The family's house in [Suburb 5] remained under surveillance;
- After the trial verdict in June 2010 the applicant was verbally threatened by Grey Wolves who threatened to burn down his home;
- In July 2010, the applicant's warehouse was ransacked by MHP members;
- Between July 2010 and November 2010 he received threatening telephone calls;
- In late October/November 2010 the applicant was forced to close down his business because of constant threats by the Grey Wolves;
- In October 2010, the applicant's car was set alight by the Grey Wolves;
- The applicant decided to leave Turkey in February 2011 to seek protection in Australia. His sister in law lived in [Western Europe] and he thought he could live there as a tourist for some time and he also applied for a visa to Australia;
- When he arrived in Australia he did not know anyone but obtained some assistance from the Kurdish Association; and
- The applicant fears that if he returns to Turkey, he will be killed by the MHP or the Grey Wolves and that the Turkish authorities will not protect him.

32. The applicant's representative in his submission stated that there are about 70 000 Armenians living in Turkey and most live in Istanbul after being cleared out of the east. They are targeted by right wing extremist groups and experience significant harassment by police. The main threat is not from the Turkish State but from Turkish right wing extremist groups and the State are unwilling to protect minorities from violence.

33. [In] June 2011 the Department received a further submission from the applicant's representative in which it was stated that the applicant had received a phone call from his family [in] May 2011 that his father had [died in] 2011 caused by stress following an attack by Grey Wolves on his house in [Suburb 5] [in] May 2011. The Grey Wolves had questioned the applicant's family about him and his whereabouts. It was submitted that the Grey Wolves continue to persecute the applicant because of the outcome of the court case in which he was a witness.
34. Also submitted was a medical report from [Dr D] dated [in] June 2011 that stated that the applicant told him he had been beaten up by police in 1996 injuring his right shoulder and right arm as well as additional bruising over his body. [Dr D] stated that the applicant has a large lump on the biceps region of his right upper arm and an ultrasound showed a tear in the tendon which could be attributable to this [assault]. [Dr D] stated that the applicant also suffered from post traumatic stress disorder related to his experiences in Turkey.

Interview

35. [In] July 2011 the applicant was interviewed by the delegate. The delegate was concerned that the applicant was unable to name the Patriarch of the Armenian Church in Turkey and stated that he did not attend church regularly.

Primary Decision

36. [In] September 2011 the delegate refused the application. The delegate concluded that the applicant was not a person to whom Australia had a protection obligation.

Application for Review

37. [In] October 2011 the applicant lodged an Application for Review of the delegate's decision.
38. The matter was constituted to the Presiding Member [in] February 2012.
39. By letter dated [February] 2012 the Tribunal wrote to the applicant stating that it had considered the information before it in relation to his claims and was unable to make a favourable decision on this information alone. As a consequence the applicant was invited to appear before the Tribunal [in] March 2012 to provide additional information and present oral arguments about his claims.
40. [In] March 2012 the Tribunal received a statutory declaration made by the applicant [in the same month] 2012 and a submission from the applicant's representative in which the following points were made:
- The applicant is a person who has suffered significant trauma and gave his answers at the Departmental interview through an interpreter and the Tribunal should not put substantial weight on them;
 - The applicant never claimed to be a religious activist or an especially devout Armenian Christian. His identification as an Armenian Christian is as much cultural as spiritual and any lack of understanding of the Armenian Christian Church should be understood in that context;

- In relation to the applicant's ID card describing his religion as 'Islam', the 2010 Report of the US Commission on International Religious Freedom confirms that it is common Turkish practice in relation to the issues of ID cards;
- The delegate accepted that the applicant had been detained twice by the Turkish authorities, that his nephew was murdered and his cousin killed;
- The applicant's claims of past persecution need to be understood cumulatively. He has been detained and ill treated in the past and two family members have been murdered. The applicant has suffered past persecution for the reasons of being an Armenian Christian and/or because of the political activism of his family;
- Country information indicates that the position of minority groups in Turkey including Armenian Christians is difficult and that there has been impunity for state forces who inflict human rights abuses and they do not protect minorities against attacks;
- In relation to the coming into force of complementary protection provisions it was submitted that the applicant would be likely to meet this test.

41. In his statutory declaration, the applicant stated that he grew up in a community in which many of the residents were Alevi. His cultural background was Armenian Christian but the family did not have many opportunities to worship as Armenian Christians. The community of [Village 1] was not tolerant of Christian ritual and tradition and his learning of Armenian traditions was limited. He is not a devout worshipper but an Armenian Christian both in cultural and religious terms. He has been involved in UC Karanfil Demigi and believes he would be persecuted as a result of his religious and cultural identity if he returned to Turkey. Whilst he had a Schengen visa in his passport when he left Turkey he was wary of the strong Turkish presence in many European countries such as Germany and that was why he came to Australia. He and his family have a long history of having suffered persecution at the hands of the Turkish state and by extremists in Turkish society. He fears that he would be at risk of persecution in Turkey not only because of the testimony at the trial of his nephew's killers but also because of the religious and ethnic identity of his family and his family's involvement in political activity. He concluded that even if the Turkish authorities are less likely to detain and torture him now, they would not protect him from extremists in the community.

Evidence at the hearing

42. The applicant appeared before the Tribunal [in] March 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages.
43. The applicant was represented in relation to the review. The applicant's representative attended the Tribunal hearing.
44. The applicant told the Tribunal that he currently lived with a friend who had a protection visa and that he had no family in Australia. He said he came to Australia to seek protection because he believed Australia had more human rights than elsewhere.

45. The applicant said that his wife did not work and that [one child] was married. His [other two children] were studying at university and school respectively. He said his family were Armenian Christians but had lived in an area with many Alevi and were sometimes called Armenian Alevi. He referred to the 1915 Armenian genocide and said that his grandparents survived that. He said that he had a sister in [Western Europe] who was a refugee and that he had worked in [Country 3] and [Country 2].
46. The Tribunal put to the applicant the delegate's concerns about whether or not he was an Armenian Christian and he said that he had never had much of an education and that the authorities tried to assimilate his family. Accordingly he did not know much about the religion of the Armenian people.
47. The applicant told the Tribunal that he moved to Istanbul and that in 2007 his nephew was killed in front of their house. He gave evidence at the subsequent trial and the perpetrators were convicted. Since then he had lived in danger and he and his family had to leave their house and move into his uncle's house. The applicant explained to the Tribunal that he had to register where he lived with the Muhtar, the local authority.
48. The applicant told the Tribunal that he only had 2 or years of a primary school education in his village. When he moved to Istanbul he worked in building sites until he borrowed money and started his own business which was going very well until his nephew was killed. He said his nephew was killed by the Grey Wolves because he had helped organise the funeral of Hrant Dink and he was recognised by them due to his particular involvement in an Armenian organisation. He said his nephew was killed about a month after the funeral. He disagreed with the newspaper articles which suggested that his nephew may have been killed by mistake or that there was mistaken identity involved. He explained that his brother (father of [Mr C]) had recognised the people who killed his son a month later and that he and his brother had gone after them and taken them to the police. The applicant said that he only received police protection at the court when he was giving evidence against them.
49. The applicant told the Tribunal that since the murderers had been convicted he had received threats from the Grey Wolves, both over the telephone and in person. Then in 2010 his depot was burgled and his goods stolen and in essence this finished his business. His wife and children were helped financially by family and friends and [one of his children was] at university was on a scholarship.
50. The Tribunal asked the applicant why he did not use his Schengen visa and go to Europe instead of Australia and he said that he only got that visa in order to make it easier to obtain an Australian visa. He said he could not travel to the UK on that visa and for the sake of his children he wanted to go to a country where English was the spoken language.
51. The Tribunal asked the applicant if he had received any threats since being in Australia and he said that about 6 months ago his brother had been followed home by the Grey Wolves and he was scared and fell and broke his hip.
52. The Tribunal put to the applicant that his problems in Turkey appeared to stem from his giving witness in a criminal trial and appeared to be crime related rather than for reasons of persecution for a Convention reason. He said it related to him being an Armenian Christian and that the names of his wife and children identified them as Christian. He said his wife had recently applied to court to change her listed religion to Christianity on her ID card and that it

was a complicated process. He said he had approached a Kurdish organisation in [Australia] because he did not know of an Armenian one and he said some Kurds were Christian.

53. The Tribunal asked the applicant why he could not live safely in Turkey given his brothers appeared to be safe there including [Mr C]'s father. He said they could die tomorrow as he could if he returned. He said ten members of his family had been forced to leave Turkey and were living in [Western Europe] and [Country 5]. The Tribunal asked him why he did not use the Schengen visa to go to [Western Europe] and he said that he felt safer in Australia because it was further away.
54. The Tribunal asked the applicant why he could not relocate within Turkey away from Istanbul and he said that he would have to register with the Muhter and that there was no guarantee of safety anywhere. He said police only protected him during the trial when he was in the court. He referred to the burning of the Sivas Hotel in 1993 and how the Turkish police did nothing to help the victims.
55. The Tribunal asked the applicant what he thought would happen to him if he returned to Turkey and he said that Turkey does not protect its citizens and one day he would receive great harm from people like the Grey Wolves.
56. At the conclusion of the hearing, the applicant's representative submitted that the applicant had not departed from his account at any stage and there was no reason to doubt his credibility. He had a long history of past persecution and a real likelihood of future persecution. In relation to relocation he submitted that as he would have to register a change of address it was likely that extremists, who existed across Turkey, would be able to find him and it would not be reasonable as he would have to move far away and uproot his children from their education and it would cause his family significant hardship.
57. The Tribunal granted the representative's request that he have further time to lodge further written submissions with the Tribunal and the Tribunal gave him until [in] April 2012 to do so.

Post hearing submissions

58. [In] April 2012 the Tribunal received a written submission from the applicant's representative in which it was stated that:
 - The applicant was a credible witness and his evidence should be accepted;
 - The applicant and his family have been persistently exposed to violence motivated at least in part by their ethnic and religious identity as Armenian Christians;
 - There is a long history of nationalist violence in Turkey and in 2007 three Christian missionaries were killed in Malatya, the hometown of Mehmet Ali Agca, a Grey Wolf who shot Pope John Paul in 1981;
 - The New Zealand Refugee Status Appeal Authority have recognised the enduring threat posed by ultra nationalist groups in Turkey and accepted a claim that an applicant had a well founded fear of persecution by the Grey Wolves in Turkey;

- People of Armenian Christian identity are in a particularly vulnerable position in Turkey and there is a real chance that the applicant will be persecuted if he returns to Turkey;
- The violence feared by the applicant is motivated by his religious and ethnic identity and he faces a real chance of persecution with a Convention nexus;
- There is a real chance he will be targeted by private actors (the Grey Wolves) and the Turkish state will not protect him;
- Relocation would not be feasible or reasonable; and
- In the alternative, the applicant would have strong grounds under complementary protection provisions.

INDEPENDENT COUNTRY INFORMATION

Armenian Christianity

59. Christianity was proclaimed as Armenia's state religion in 301 CE, establishing Armenia as the first Christian state. The Armenian Church has affinities with other ancient churches such as the Orthodox and Roman Catholic Churches, and is purported to be similar to the Copts, Ethiopians, Syrians, and Malabars, though all are different in terms of "their outward forms of rite, ritual, worship styles, cultural tradition and language". According to the Armenian Church Resource Page website, Armenian Church services are "quite similar to those of the Eastern Orthodox and Roman Catholic Churches, as they draw on a common base of early church practices". The website provides the following information on the church and its place in Christendom:

Doctrine

- The faith, doctrine and dogma of the Armenian Church are based upon the Apostolic teachings, Holy Tradition and the written Word of God.
- The Nicene Creed is the main statement of faith, professing the doctrine of the Holy Trinity, Father, Son and Holy Spirit.
- Only the first three church councils are accepted as fully ecumenical: Nicea in 325, Constantinople in 381, and Ephesus in 431.
- Most of the doctrine of the Armenian Church is collected in the Book of Letters (Girk Tghtots) and the Canonbook of the Armenian Church (Kanonagirk Hayots)

Worship

- There are major sacraments administered and celebrated by the clergy.
- Baptism by immersion into water constitutes one's entry into the Church.
- The Holy Eucharist, the Badarak, also known as the Divine Liturgy, is the central sacrament and is offered to the faithful at Holy Communion in the

form of unleavened bread and wine that become truly the Body and Blood of Christ.

- The Virgin Mary is venerated as the Mother of God and the image of her holding Jesus is required to be placed above the main altar of every Church, and her life and model of humble service celebrated through many holy days throughout the year.
- The Holy Cross is venerated and honored and its life-giving power remembered in holy days throughout the year.
- Salvation is achieved through faith and works and is a life-long process.

Governance

- The Foundation, Head and High Priest of the Church is Jesus Christ.
- The Armenian Church is one of Apostolic Succession and was established by the Apostles Thaddeus and Bartholomew.
- Holy Orders - Bishop, Priest and Deacon - are reserved for men; there is a tradition of Deaconesses in the Armenian Church as well.
- The successor of the Apostles is the head of the Church called the Supreme Patriarch and Catholicos of All Armenians who resides in Armenia at the Mother See of Holy Etchmiadzin.
- Bishops and priests are the ordained leaders of the church.
- Bishops oversee dioceses, formed of parishes in a particular territory. Priests serve as pastors of churches. Both Diocese and Parish have elected councils, majority of whose members are lay people. As of 2008, there are over 25 dioceses of the Armenian Church covering North and South America, Europe, Armenia, Russia, the Mid-East, Africa, the Far East and Australia.
- There are two classes of priests: married and celibate, only celibate priests may be ordained vardapet and rise into the church hierarchy as bishops, patriarchs or catholicos.
- The laity and clergy together govern the church through elective church councils and assemblies and participate in decisions that affect the faith and life of the church.

60. According to the Armeniapedia website, Christianity is generally divided between Eastern (Byzantine, including Armenian Christianity) and Western (Roman) churches, with the main theological differences being:

- Filioque: according to the teachings of the Church of Rome, the Holy Spirit, the Third Person of the Holy Trinity, proceeds from the Father and the Son, while the Orthodox teach that the Holy Spirit proceeds from the Father only;

- Papal Supremacy: the Roman Catholics consider the Pope the "Vicar of Christ", while the Orthodox churches consider him only as "first in honor" and in pastoral diakonia.
- Papal Infallibility: The Catholics follow a "monarchical" model of ecclesial polity, while the Orthodox follow a "conciliar" model, i.e., church councils determine church dogma, canons and policies.
- There are also other minor differences among these two branches of churches, such as the rules of fasting; unleavened bread at Eucharist (West); manner of conferring confirmation; celibacy of clergy; divorce (not sanctioned in Roman Catholicism); purgatory (East doesn't teach it); West has "scholastic" approach, East has "mystical" approach to theological issues.

The current situation for Armenian Christians in Istanbul

61. According to ReligiousTolerance.org, serious restrictions are imposed on the ability of non-Muslims and Muslims outside state control to exercise freedom of religion or belief. Religious communities that existed in the Ottoman Empire operate legally under an "archaic system of imperial decrees and regulations that deny them full legal status as religious communities and restrict their freedom to function". While registered mosques are tax exempt, and the government employs and pays the salaries of their imams, no other faith is permitted to train its clergy in Turkey, and no religious community can own property. Places of worship must be owned by separate foundations not under direct control of the communities.
62. In February 2012, however, PanArmenian.net reported that the Turkish government was "not opposed to [the] opening of a seminary to raise Christian clerics provided it is subsumed under the authority of the Higher Education Board (YOK)". According to Deputy Prime Minister Bekir Bozdag, "[t]here are no laws in Turkey against operating a seminary to raise Christian clerics, the state will also support such a move".
63. According to Minority Rights Group (MRG), in 2010 "[t]he Ministry of Education printed Armenian textbooks for Armenian minority schools for the first time, although these schools continued to receive no financial support from the state and remain subject to heavy financial and bureaucratic burdens. Only Armenian children who have Turkish citizenship can study at these schools".
64. In February 2012, Compass Direct reported that according to a report by the Turkish Association of Protestant Churches (TEK), "Christians in Turkey continue to suffer attacks from private citizens, discrimination by lower-level government officials and vilification in both school textbooks and news media". Twelve attacks against Christians were documented in 2011, "including incidents in which individuals were beaten in Istanbul for sharing their faith, church members were threatened and church buildings attacked". In 2011, the previous TEK report noted that "[d]iscrimination, slander and attacks against churches were among the examples of ongoing harassment", and that "Turkish laws and 'negative attitudes of civil servants' continue to make it nearly impossible for non-Muslims to establish places of worship".
65. Also in February 2012, officials from Malatya Municipality "demolished three buildings, including a place of worship that was under renovation, located inside an Armenian cemetery

even though the Malatya governor and mayor gave permission". According to officials, however, the place of worship was being built without permission.

66. In August 2010, Turkish police reportedly "ushered a group of Armenian children out of a 10th century Armenian Christian church on the island of Akdamar in Anatolia after the children began lighting candles, singing hymns and engaging in prayer". The church was destroyed during the 1915 Armenian genocide, and was restored by the Turkish government "as part of the fitful path towards reconciliation between Armenia and Turkey". Turkish officials have reportedly been reluctant to allow religious activity at the church since it reopened in 2007 as a secular museum, and some Muslims have protested the reopening "on the grounds that a Christian place of worship, even if run as a museum, is inappropriate in a Muslim country".
67. According to CBN News, a nine-year-old former Muslim boy in Turkey who had publicly professed his Christian faith by wearing a cross was taunted at school, and was spat on and called names. One classmate reportedly threatened to shoot the boy if he told anyone about the harassment. The boy also claimed that he endured beatings from his religion teacher, and "was punished regularly with a two-foot long rod because he wouldn't say the Islamic Shahada".
68. In December 2011, Compass Direct News reported that an "official indictment against 11 alleged Al Qaeda militants arrested in July revealed the homegrown terrorist cell's alleged plans to attack Ankara's churches as well as their Christian clergy". Maps, sketches and building diagrams were among material recovered in a July 2011 raid; police also discovered "lists of the names and home addresses of Christian clergy and other church workers residing in Ankara".

State protection in Istanbul for religious minorities

69. According to Compass Direct, some church leaders in Turkey are required to live under some sort of police protection; there are "at least five church leaders who have bodyguards, and at least two have a direct phone line to a police protection unit...[s]everal churches have police protection during worship services". Despite increasing attacks against religious minorities in Turkey, "[t]he state routinely characterizes attacks on Christians as isolated acts of violence rather than the result of intolerance within elements across Turkish society".
70. In March 2011, Associated Press reported that a "Turkish court ordered five military officers and two civilians jailed...in a probe into the 2007 killing of three Christians...over allegations that the attack was part of an alleged plot to topple the government". The Christians had been tied up and murdered at a Bible-publishing house in Malatya. According to Minority Rights Group, in 2010 many perpetrators of racist or hate crimes were arrested and convicted, "including a 39-month prison sentence handed down to someone who threatened the staff of AGOS, an Armenian weekly newspaper based in Istanbul".
71. According to the US Department of State (USDOS), in September 2010 the European Court of Human Rights (ECHR) found that Turkey "was liable for failing to protect the life and freedom of expression of Armenian-Turkish journalist Hrant Dink in 2007. The ECHR ruled that the government failed to prevent the murder of the journalist after threats were made against him and did not carry out an effective investigation afterwards". USDOS also noted that in 2010, a number of public events took place "to commemorate events relating to the

Armenian issue and the tragic events of 1915. The gatherings were peaceful and received police protection where necessary".

72. With regard to the provision of protection to other religious minorities, USDOS reported that following the 'Free Gaza' incident in May 2010, Turkish government leaders "at all levels emphasized through public speeches that Turkish Jews were distinct from both Israeli citizens and the Israeli government, and they asserted that the country's Jews should be protected. Jewish community leaders noted that after the event they received extra police protection, which prevented a few acts of vandalism against community property".

Armenians with Turkish names

73. The Turkish Surname Law of 1934 required each citizen to adopt a family name, and placed restrictions on the types of surnames that could be adopted. According to academic Senem Aslan, these restrictions "suggested that the state's aim to impose a surname law went beyond a purely administrative motive. The Turkish state also considered the law as an agent of social makeover to mold citizens into a homogeneous, national unit". As the Jewish, Armenian and Greek communities were officially recognised minorities, they were not legally required to change their names, but this was reportedly not made explicit in the law. Aslan noted that many non-Muslim citizens "chose to divest their names of explicit markers of their ethnic affiliation".
74. In June 2011, Hurriyet Daily News reported that "[t]he stories of Armenians who had concealed their identities for decades have begun surfacing over recent years as Turkey continues treading its path towards democratization. Many of them live under their Sunni - Muslim or Kurdish - Alevi identities, although they still define themselves ethnically as Armenians". Gaffur Turkay, a prominent Armenian and Sunni Muslim, claims that he was 15 when he learned that his real family name was Ohanyan, and noted that "Christian Armenians look down upon Muslim Armenians". Turkay further noted that Christian Armenians behave "as if we had a choice in the matter. The Armenian identity must bond around race, not religion. Religion can be chosen, but not race".
75. In June 2011, Hurriyet Daily News cited researcher Ismet Sahin, who noted that "Islamicized Armenians who live in the provinces of Artvin and Rize in Turkey's eastern Black Sea region define themselves as Hemsins and speak a dialect of the Armenian language. Hamshenite Armenians still maintain their Christian traditions, even though they define themselves as Muslims". According to Sahin, "a large portion of hidden Armenians in Turkey live under the Kurdish-Alevi identity".
76. According to News.am, Cenk Taskan, a Turkish musician of Armenian origin, changed his name from Majak Tosikyan upon returning to Turkey after living in Canada "to avoid censorship by Turkish state channel TRT". Taskan believed that as his name was Armenian, the channel could disapprove his songs. Taskan further noted, however, that "Turkey [has] progressed and currently does not face such problems".

Religion on Turkish ID cards.

77. In November 2011, Compass Direct reported that an estimated "300,000 Armenian and Syriac Christians converted to either Sunni or Alawite Islam after 1915 to avoid forced deportation"; according to a cleric from Istanbul's Armenian Patriarchate, "there could be as many as a half-million ethnic-background Christians in Turkey today who carry ID cards

stating they are Muslims". The article further noted that "[o]ver the past decade, both Armenian and Syriac Orthodox church centers in Turkey have quietly baptized individuals and families from the eastern regions of the country who had Muslim IDs but wished to return to their Christian roots".

78. It is noteworthy that in February 2010, the European Court of Human Rights "ordered Turkey to remove the religious affiliation section from citizens' identification cards, calling the practice a violation of human rights". According to Compass Direct, "[r]eligious minorities and in particular Christian converts in Turkey have faced discrimination because of the mandatory religion declaration on their identification cards, which was enforced until 2006. Since then, citizens are allowed to leave the 'Religion' section of their IDs blank". According to the court, any mention of religion on an identity card violates human rights. Turkey was found to be in violation of the European Convention of Human Rights, to which the country is a signatory.

Current anti-Armenian activity by the Grey Wolves in Istanbul

79. The Grey Wolves were founded in 1969 by Alparslan Turkes, a right-wing politician and founder of the Nationalist Movement Party (MHP). Created as a youth-wing of the MHP, the Grey Wolves are believed to have committed "hundreds of murders - mostly of liberals, trade unionists, leftists, intellectuals, Communists, Kurds etc. - in Turkey during the mid to late 1970s". During this time, the Grey Wolves were thought to have been "manipulated by state agencies (particularly the military) to create a chaos in the country and destabilize the state", which ultimately led to the 1980 military coup. Despite the Grey Wolves having been outlawed after the coup, the group has "apparently remained active in shadows, reportedly making alliances with both Turkish intelligence services and Turkish mafia". The group has also "been implicated in violent attacks against Greeks, Kurds and Armenians, among others". According to the Zaman News Agency, a document from the Grey Wolves' archives "revealed that "Turkey's National Intelligence Organization (MIT) paid regular salaries to ultranationalists to carry out illegal operations". This was believed to be the first time that such a document had appeared in a court confirming that the Grey Wolves "were armed and funded by the state to carry out political murders".
80. In May 2011, MHP supporters reportedly attacked the offices of the Daily Star in Istanbul in response to claims published by the newspaper of a scandal that had damaged the party. According to Hurriyet Daily News, "[t]he Grey Wolves, a youth league with ties to the MHP, began massing in front of Star's building in the industrial Ikitelli area at roughly 10 pm, and their numbers quickly swelled to about 300 demonstrators". The protestors reportedly attacked security staff, and assaulted journalists trying to take photographs of the protest.
81. In April 2011, Hurriyet Daily News reported that an elite police unit "chanted Grey Wolf slogans during April 10 Police Day ceremonies". An amateur video reportedly shows "police chiefs walking at the front and chanting 'Who are these?' while police units reply back "The Grey Wolves' as passersby clapped and cheered in support". The article also referred to a previous statement from MHP leader Devlet Bahçeli, in which he claimed he would need only "1,000 of his Grey Wolves" to rout 10,000 supporters of the Prime Minister.
82. According to the Zaman News Agency, three people were arrested in September 2009 on charges of planning to assassinate Kurdish politicians and businessmen. The raids reportedly took place "at the homes of Mucahit Yalcin, the president of the Iğdir branch of the Grey

Wolves ultranationalist group, and Turan Cevik, the former head of the Melekli district's Grey Wolves branch".

83. According to an August 2011 report from the Department of Foreign Affairs and Trade (DFAT), however, "[t]here is no indication of any Grey Wolves activity in Turkey since the 1980 military coup". DFAT noted that although young MHP ultra-nationalists were domestically known as Grey Wolves, "no legal or illegal organisation has ever existed under that name".

FINDINGS AND REASONS

84. The applicant travelled to Australia on a valid Turkish passport and claims to be a national of Turkey. The Tribunal accepts that the applicant is a national of Turkey and has assessed his claims against Turkey as his country of nationality.
85. The Tribunal observes that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that he satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
86. In determining whether an applicant is entitled to protection in Australia the Tribunal must first make findings of fact on the claims he has made. This may involve an assessment of the applicant's credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.
87. On the other hand, as stated previously, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).

The Applicant's Claims

88. The applicant claims that he is Turkish citizen of Armenian ethnicity and a Christian. He claims that he has been targeted by extremist nationalist forces, mainly the Grey Wolves and that the Turkey authorities will not protect him from these threats. He stated that the fact he

gave evidence against members of the Grey Wolves who killed his nephew [Mr C], has subjected him to further threats and ultimately to the demise of his business after his warehouse was burgled and his car set on fire.

89. The applicant claims that the police have detained him twice in the past as a result of his Armenian ethnicity and family association. He has claimed that he was tortured on these occasions and that he suffers trauma as a result.
90. The applicant claims that as a consequence of these incidents he became very concerned about his circumstances and departed Turkey in 2011.
91. In considering all of the applicant's claims the Tribunal finds that the essential and significant reasons for the harm feared by the applicant is for the Convention reasons of his race (Armenian ethnicity), religion (Christian), imputed political opinion and membership of a particular social group.
92. The applicant fears that if he were to return to Turkey he may be killed by the Grey Wolves. The applicant believes that he is unable to seek state protection from the authorities as the authorities would withhold such protection from a minority such as the applicant.

Assessment of the Applicant's Claims

93. The applicants' main claim relates to his Armenian ethnicity and his involvement in the trial of his nephew's killers who were convicted after he gave evidence against them. He claims that many members of his family have suffered as a result of their Armenian ethnicity and that consequently many family members have sought refuge outside Turkey.
94. The applicant's claims about what happened to him and his family are consistent with the independent country information before the Tribunal.
95. The applicant submitted evidence to support his claim that he had been arrested, detained and tortured. The applicant submitted a medical report from [Dr D] as evidence of his physical injuries. The report concluded that the applicant exhibited post traumatic stress disorder.
96. The Tribunal accepts the applicant's claims that he was arrested, detained and tortured because of his support for Armenian identity and rights. The Tribunal finds that this past treatment amounted to persecution. However the Tribunal also finds that this past treatment took place many years ago and that it is arguable that there may not be a real chance now that the applicant would be persecuted by Turkish authorities in the reasonable foreseeable future on this basis.
97. However the applicant's main claims are that he and his family have suffered persecution from the Grey Wolves as detailed above. Given the above independent information and the applicant's consistent and credible evidence, the Tribunal accepts the applicant's claims in this regard. The Tribunal accepts that the applicant and his family have persistently been exposed to violence motivated in part by their Armenian identity.
98. The Tribunal has considered what is likely to happen if the applicant returned to Turkey. The Tribunal accepts that the applicant and his family are regarded by extreme nationalist forces as having been involved in Armenian organisations and causes. The Tribunal accepts, based on the country information above, that there is a real chance that the applicant will not receive any effective protection from the Turkish authorities. The Tribunal finds that there is

a real chance that the applicant would face treatment amounting to persecution for the combined reasons of his ethnicity (Armenian), his religion (Christian), his imputed political opinion and/or his membership of a social group (namely his family who have been active in Armenian causes).

99. The Tribunal has considered whether the applicant could relocate to another area of Turkey to be free from the risk of persecution. The Tribunal accepts that the Turkish population at large are subjected to random ID checks and have to register with local authorities if they move residence. The Tribunal finds that the applicant would not be safe anywhere in Turkey and that relocation would not lessen the risk of serious harm to the applicant. The Tribunal also accepts that it would be unreasonable for the applicant to relocate outside Istanbul given his family there, lack of job prospects outside and the fact that the Armenian community is concentrated in that city. The Tribunal finds that the applicant's fear of Convention related harm in Turkey is therefore well founded.
100. Taking into account all of the evidence before it, the Tribunal accepts that the applicant was arrested, detained and tortured in Turkey. The Tribunal accepts that the applicant has been threatened and had his livelihood destroyed by the Grey Wolves. The Tribunal accepts that there is a real chance the applicant would be further threatened by the Grey Wolves or other ultra nationalist elements and that the Turkish authorities would not protect him. The Tribunal finds that there is a real chance that the applicant would face treatment amounting to persecution and that his fear of Convention related persecution in Turkey is well founded.
101. The applicant visited [Country 3] and [Country 2] in the 1980's for the purposes of employment. Whilst he obtained a Schengen visa issued [in] January 2011, this expired [in] April 2011. The Tribunal accepts his reasons for not utilising this visa. The Tribunal is not satisfied that the applicant has a legally enforceable right to enter and reside in any country other than Turkey. The Tribunal therefore finds that he is not excluded from Australia's protection by section 36(3) of the Act.
102. In conclusion, the Tribunal is satisfied that the applicant has a well-founded fear of persecution in Turkey in the reasonably foreseeable future, for the Convention reasons of his ethnicity, religion, imputed political opinion and membership of a social group, which for the purposes of s.91R(1)(a) are the essential and significant reasons for the harm feared.

CONCLUSIONS

103. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

104. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.