FEDERAL MAGISTRATES COURT OF AUSTRALIA

MZWTX & ANOR v MINISTER FOR IMMIGRATION & ANOR *[2006] FMCA 297*

MIGRATION – Refugee Review Tribunal – review of tribunal's decision – failure to address a convention related ground – imputed political belief – whether tribunal considered the claim before it – whether obligation to consider claim not argued by the applicant – imputed political belief inferred by facts although not expressly the basis of applicant's case – convention ground "squarely raised" on the material – discrete finding of adequate state protection – jurisdictional error on discrete finding – jurisdictional error on two bases found – tribunal decision set aside and matter remitted back to tribunal.

Migration Act 1958, ss.474, 474(2)

SAAP v Minister for Immigration and Multicultural and Indigenous Affairs 2005 HCA 24
Plaintiff S157/2002 v Commonwealth of Australia [2003] HCA 2 (2003) 195 ALR 24; 77 ALJR 454
Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte *Applicants S134/2002* [2003] HCA 1 (2003) 195 ALR 1; 77 ALJR 437
NABE v MIMIA (No 2) [2004] FCAFC 263
Applicant A v Minister for Immigration and Ethnic Affairs (1997) 142 ALR 331

First Applicant:	MZWTX
Second Applicant:	MZWTY
First Respondent:	MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	MLG1610 of 2004
Judgment of:	O'Dwyer FM
Hearing date:	11 November 2005
Delivered at:	Melbourne
Delivered on:	24 March 2006

REPRESENTATION

Counsel for the Applicants:	Mr Gibson
Solicitors for the Applicants:	Frank Sabelberg
Counsel for the Respondents:	Mr Hay
Solicitors for the Respondents:	Clayton Utz

ORDERS

(1) The Refugee Review Tribunal be named as second respondent.

(2) The name of the first respondent be amended to read, "Minister for Immigration and Multicultural Affairs".

(3) The decision of the Refugee Review Tribunal made on 10 October 2004 and handed down on 12 November 2004 be set aside.

(4) The matter be remitted back to the Refugee Review Tribunal to be determined according to law by a differently constituted Tribunal.

(5) The first respondent pay the applicants' costs fixed in the sum of $6,500.00.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT MELBOURNE

MLG1610 of 2004

MZWTX
First Applicant

MZWTY
Second Applicant

And

MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

Introduction

1. It is necessary to join the Refugee Review Tribunal (the Tribunal) as second respondent (see *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* 2005 HCA 24) and to amend the first respondent's name to read, "Minister for Immigration and Multicultural Affairs". Orders shall be made accordingly.

2. By an application filed on 9 December 2004 and amended by an amended application filed on 29 April 2005 the applicants seek a review of the decision of the Tribunal made on 22 October 2004 and handed down on 12 November 2004. That decision affirmed an earlier determination of the first respondent's delegate to refuse to grant the applicants a protection visa. The applicants claim to be owed

protection by Australia under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (collectively referred to as the Convention) on the basis that should they be forced to return to Sri Lanka they face persecution and the real chance of serious harm.

3. The Tribunal's decision purports to be a privative clause decision within the meaning of s.474 (2) of the *Migration Act 1958* (the Act). Accordingly, the applicants must establish that the Tribunal made a jurisdictional error to be successful in obtaining the orders sought in the review application; namely, the setting aside of the Tribunal's decision and remittance of the matter back to the Tribunal to be determined according to law (see *Plaintiff S157/2002 v Commonwealth of Australia* [2003] HCA 2 (2003) 195 ALR 24; 77 ALJR 454 and *Re Minister for Immigration and Multicultural and Indigenous Affairs*; Ex parte Applicants S134/2002 [2003] HCA 1 (2003) 195 ALR 1; 77 ALJR 437).

Background

4. The applicants are citizens of Sri Lanka of Sinhalese ethnicity. They are a 49 year old former Colonel in the Sri Lankan Army, his wife and their two children. The principal applicant, who makes specific claims under the Convention, is the first applicant, the former Colonel. The other applicants rely on their dependency on the first applicant to qualify for protection visas. Accordingly, for convenience, hereafter a reference to the applicant is a reference to the first applicant.

5. The applicant as a Colonel in the Sri Lankan Army was placed in charge of the high profile investigation into the murder of a Tamil school girl and three other Tamils by army personnel (and a police officer), all of whom were of Sinhalese ethnicity. As well as conducting a successful investigation, the applicant gave evidence at the trial. Those charged were convicted and sentenced to death.

6. As a consequence of the applicant's involvement in the prosecution and successful conviction of these Sinhalese soldiers, the applicant was accused of being a traitor to his Sinhalese race and community. He and his family were subjected to threats and acts of violence which

culminated in a grenade attack on the applicant's home resulting in serious injury to his wife and daughter. It was the grenade attack which precipitated their flight.

The Tribunal's decision

7. It is of note that the ground argued before the Tribunal by the applicant that founded his claims under the Convention, and indeed the only ground ostensibly argued, was that of race. The applicant argued that the threat to him and his family arose out of the racial conflict in Sri Lanka between the Tamil minority and the perception by some Sinhalese that he, as a Sinhalese himself, was a traitor who had betrayed his race through his pursuit and successful prosecution of fellow Sinhalese soldiers.

8. The Tribunal found that the applicant and his family faced life–threatening harm from unidentifiable persons and further found that they had a well–founded fear for their safety if they returned to Sri Lanka because of past persecution.

9. However, the Tribunal further found that the threat to the applicant and his family did not arise from race, but from unrelated attempts for revenge. In that regard the Tribunal said:

> *"The Tribunal is however satisfied the persecutors are most likely persons associated with the individuals investigated by the first applicant in his capacity as a military police officer, and in particular those associated with individuals involved in the specific Tamil murder case to which he and his witness referred.*
>
> *The Tribunal accepts the perpetrators of the persecution themselves may be of Sinhalese ethnicity, as were the persons convicted of the murders which the first named applicant investigated. It also accepts the applicants share that same ethnicity, and that the grenade attacker may have referred to the Sinhalese factor during his attack on the second and third named applicants. It does not however accept the assertion that the essential and significant motivation of those persons who have persecuted the applicants in the past, or the grenade attacker was their Sinhalese "race". In this respect, the Tribunal finds the essential and significant reason for the persecution experienced in the past and feared in the future by the applicants is revenge against the first applicant for conducting an enquiry which*

resulted in trial and conviction of five individuals. (Case Book pp 24-25) "

10. The Tribunal also made a discrete finding that state protection would be afforded the applicants should they return to Sri Lanka.

11. In concluding its findings the Tribunal stated:

> *"Accordingly, despite accepting the applicants hold legitimate fears of persecution for a non Convention reason, the Tribunal must find they do not have a well founded fear of persecution for reason of their race, or any other Convention reason if returned to Sri Lanka now or in the reasonably foreseeable future."*

Applicant's contentions

12. The applicant simply contends that, although the ground of race was put to the Tribunal, the actual and correct ground is that of imputed political opinion. It is contended that the case for this ground is made out in the accepted substratum of facts and one which the Tribunal failed to consider when it "in an anodyne way" purported to have considered all potential grounds when it found that there were not "any other Convention reason". It was also contended that the failure to identify the correct ground, to deal with an integer of the claim, was a significant jurisdictional error that infects the Tribunal's decision and that the Tribunal's treatment of the adequacy of state protection is fundamentally flawed.

13. The applicant contended that the issue of imputed political opinion was squarely raised though not expressly articulated in the same manner as the claim based on race: (see *NABE v MIMIA* (No 2) [2004] FCAFC 263 at [53]–[63] (Black CJ French and Selway JJ). In support of that contention the applicant highlights the following:

- although the applicant relied at the Tribunal hearing on the ground of race, that does not obviate the need for the Tribunal to deal with the case on other Convention grounds if it arises from the material;
- the issue of the applicant's persecution was accepted in the context of the political environment subsisting in Sri Lanka at the

time, namely conflict between Tamil and Sinhalese communities, and the activities of the Liberation Tigers of Tamil Elam (LTTE);

- the political context, even though the hearing centred on the ground of race, could not and should not have been ignored and gave a political aspect to the persecution of the applicant. The Tribunal accepted the applicant had been identified, by those that would harm him, as supportive of the Tamil cause and that such support was treacherous. In other words, he was perceived as someone who was helping or supporting the other side in the conflict that embroiled the Sri Lankan communities from the one he belonged to because of his ethnicity;

- material before the Tribunal referred to the applicant:

  - helping the Tamils (i.e. LTTE) instead of helping soldiers of Sinhalese ethnicity (CB 12);

  - carrying favour with the Tamils (CB 133);

  - being the victim of the sentiments of extremist Sinhalese (CB 206)(CB 224);

  - betraying the Singhala community (CB 206, 224): noted in the decision at CB 250, 252-252; in hearing at CB 254;

  - being persecuted for politically motivated reasons (CB 225);

  - being told through the security officer "not to offer the arse-hole to the Tamils" (CB 131);

  - being told through his daughter at the time of the grenade attack that he had betrayed the Sinhalese race and nation (CB 253); and

  - being the prime target of political revenge (CB 226).

14. The language used by the Tribunal exhibits some recognition by it of the political context in which the persecution was perpetrated and the political nexus between the persecution and the role played by the applicant in the prosecution of the Sinhalese soldiers. In my view, whilst it is understandable the Tribunal's focus was on the ground of

race as it certainly was the main assertion by the applicant, it was incumbent upon the Tribunal to explore the question of other Convention related grounds, including that of an imputed political opinion being ascribed by the persecutors to the applicant. There was no assessment of the issue, which in my view, was squarely raised. A failure to do so, in my view amounts to jurisdictional error.

15. I do not accept that the perfunctory treatment of the issue of "other Convention grounds" by the Tribunal can stand as an examination and rejection of the ground in question.

16. In respect of this issue (i.e. the ground of imputed political opinion) I also adopt the written contentions of the applicant which, in my view, express the law on the matter and how that law applies to the facts of this case. Set out below are those contentions:

> *"24. Had the RRT turned its mind to various authorities and not confined its treatment solely to the ground of race then the basis of a Convention ground based upon imputed political opinion would have been apparent. In* ***Brandigampolage v MIMA [2000] FCA 1400*** *for example in dealing with an issue of alleged persecution on the grounds of race of a Singhala who had assisted a Tamil. Moore J. said concerning the very point which the Applicants make:*
>
> > *This submission assumes a wide operation of the Convention in that the applicant would not simply be claiming persecution motivated by the fact of his own race (in the sense that he was perceived to be a traitor to it), but also because of assistance that he is believed to have provided to members of another race.*
> >
> > *8. Counsel were unable to point to any authority dealing with the operation of the Convention in this way though perhaps this is not surprising given that cases involving the provision of assistance to a member of another race* ***often raise for consideration allegations of persecution for reasons of political opinion (bold added)****. Counsel for the respondent argued that "for reasons of race" could, at most, extend only to instances of persecution because of an asylum seeker's actual or imputed race in a way analogous to the* ***reach of the Convention in relation to political opinion.(bold added)*** *In this case, it was submitted, the applicant was not persecuted because of his own race, and nor was he imputed to be a*

> *Tamil. Counsel for the applicant, on the other hand, submitted that where race is the motivation for harm caused there is no reason to limit the ambit of the Convention to instances in which that harm is caused because of the race, actual or imputed, of the asylum seeker.*
>
> *9. The interpretation of the Convention advanced on behalf of the applicant may be correct though I would imagine it is controversial. However for reasons which will emerge shortly it is a matter I need not address [it]…*

25. Indeed it can be seen from this dictum in a case such as the present, political opinion was not just a Convention ground, it was the correct ground.

26. The distinction between engagement in political activity, and imputation of political opinion was emphasised in ***Tanji v MIMA [2001] FCA 1110*** *(Tamberlin J.). The significance of the imputation by would-be persecutors of an association of an applicant with the views of their political enemies (in this case the Tamil/LTTE cause) is born out in this case - which is analogous to the situation here. His Honour said:*

> *13. The difference between being imputed with engagement in "political activity" and holding a particular "political opinion" is a real distinction. A person may have no history of political activity or not be imputed with "political activity", but nevertheless be persecuted because of a perception that such person holds a particular "political opinion". In the present case, the accepted evidence is that when he was attacked and detained his attackers stated that he was "like his father". The only rational explanation of the use of this language is that he was imputed in their perception with holding a political opinion similar to or identical with that of his father. The best guide as to the reasons which actuated the attack must be the words used by the attackers at the time. There is no contest that words linking him with his father were uttered at the time.*

27. The linking of the First Applicant and his actions to perceived support for the Tamil and LTTE cause (as some of the references in paragraph 21 show) makes the analysis in Tanji directly applicable to the facts of this case.

28. Without any analysis of the kind undertaken in the above-mentioned cases, and the complete lack of any reasoning to demonstrate the consideration which the Tribunal

purportedly gave to "whether there were other Convention grounds applicable, it was not open to the Tribunal to conclude that revenge was the essential and significant reason for the persecution experienced in the past and the persecution, whilst real and serious was not persecution for reason of any Convention ground (CB 266).

29. The core principle is unexceptional. In ***Minister for Immigration & Ethnic Affairs v Guo (1997) 191 CLR 559*** *Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ (at 570-71) said:*

> *For the purposes of the Convention, a political opinion need not be an opinion that is actually held by the refugee. It is sufficient for those purposes that such an opinion is imputed to him or her by the persecutor. In Chan Gaudron J said:*
>
> > *'persecution may as equally be constituted by the infliction of harm on the basis of perceived political belief as of actual belief'.*

30. See too Applicant in ***V488 of 2000 v MIMA [2001] FCA*** *1815 at [17] –[22]*

31. If the Tribunal had considered the ground of political opinion properly instructed by authority it could well have arrived at a different conclusion on the issue of the existence of a Convention nexus to the one it did."

17. The first respondent in her contentions, simply put, submits that the Tribunal addressed the ground argued before it by the applicant and that the question of an imputed political opinion did not arise on the material so squarely as to warrant any consideration by the Tribunal. For the reasons set out above, I do not accept the first respondent's contentions.

18. To be successful in his application, the applicant must also show that in making the discrete finding on the availability and adequacy of state protection for the applicant and his family, the Tribunal had made a jurisdictional error. On this issue I adopt the contentions of the applicant as a correct expression of the law applying to the facts of this case. Set out below are those contentions:

> ***"C) Asking wrong question/misconstruction of test of adequate or effective state protection***

i) No factual basis for conclusion of "availment" of protection

32. If the Applicants succeed on the first ground of review, which then allows for the existence of a Convention reason for the actions of the non-state agents, it follows that if the finding concerning adequacy of state protection against these acts contains jurisdictional error the decision of the Tribunal must be set aside.

33. The Applicants refer to and repeat paragraphs 16, 17 and 19 above. The factual premise of the Tribunal's finding that the Applicants had a well-founded fear of life-threatening persecution from non-state agents was that the five-year long pattern of intimidation and persecution continued in spite of anything that the State authorities may have done to protect them. Indeed the RRT accepted that the Applicants could again face persecution by non-state agents in the same way as they had before (CB 265). Yet the Tribunal proceeded to find (at CB 267) on the basis of country information that the Applicants could avail themselves of protection from the authorities as they did in the past, and could do again in the future.

34. There is a non-sequitur in this approach. While having sought the protection of the state and the State having attempted, on the Tribunal's findings, unsuccessfully to protect them, it simply could not be said that they had availed, or could avail, themselves of state protection. Where a State is powerless to prevent persecution or is unable to do so as was the case here then it must follow from the finding of a well-founded fear ***on the facts as they were*** *in the present case that the Applicants came within the terms of the Convention. In the alternative to reach a conclusion that there was adequate state protection on the material before it must mean that that the RRT applied the wrong test or was not satisfied in respect of the correct test that it was bound to apply.*

ii) Core principle - State is unable or powerless to protect

35. McHugh J. in ***Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225*** *at 258 said:*

> *Persecution by private individuals or groups does not by itself fall within the definition of refugee unless the State it either*

encourages or is or appears to be powerless to prevent that private persecution.

36. Brennan CJ said earlier at 233:

> *As the justification for the refugee's not availing himself of the protection of that country is the existence of the relevant "circumstances", those circumstances must have been such that the country of the refugee's nationality was unable or unwilling to prevent their occurrence. Thus the definition of "refugee" must be speaking of a fear of persecution that is official, or officially tolerated, or uncontrollable by the authorities of the country of the refugee's nationality.*

37. This is the core principle in relation to state protection inability or powerlessness to prevent persecution by non-state agents.

*38. The issue of the ability of the State to protect was raised by the Applicant himself when he sought to distinguish protection which might notionally be available but which was not effective because of lack of manpower and resources (at CB 255). In this respect Selway J, in **SGNB v MIMA [2003] FCA 585; (2003) 132 FCR 192** has said:*

> *34... I do not think **Khawar** stands for the proposition that the inability of a government through lack of resources or effective control to protect its citizens from non-state persecution is not 'persecution' (italics added) for the purpose of the Act: contrast von Doussa J in **SCAL v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 548** at [6]. I think that the High Court has not finally resolved that issue.*

39. In this case there was a clear inability or incapacity to protect the applicant or to detect the perpetrators over a long period. So much was accepted by the RRT (At CB 267 at two points). The nub of the Applicant case was that the state was powerless or unable to protect him or his family. This was not a case of random thuggery or an isolated incident of persecution.

iii) Guiding principles

*40. The High Court in **MIMIA v Respondents S152/2003 [2004] HCA 18; (2004) 78 ALJR 678; 205 ALR 487; 77 ALD 296 ("S152")** (Gleeson CJ. McHugh, Gummow Kirby Hayne JJ.) succinctly stated the guiding principles:*

26 No country can guarantee that its citizens will at all times, and in all circumstances, be safe from violence. Day by day, Australian courts deal with criminal cases involving violent attacks on person or property. Some of them may occur for reasons of racial or religious intolerance. The religious activities in which the first respondent engaged between May and December 1998 evidently aroused the anger of some other people. Their response was unlawful. The Ukrainian state was obliged to take reasonable measures to protect the lives and safety of its citizens, and those measures would include an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system …

41. *The issue of adequate State protection had been summarised in the earlier judgment of **SVECS v MIMA (1999] FCA 1507** by Hely J. at [26] consistently with the later statement in S152:*

> *The issue is not whether the authorities can guarantee that the applicants will not suffer harm for a Convention reason, but whether, in the language of the Full Court in A, B & C v Minister for Immigration & Multicultural Affairs [1999] FCA 116 at par 42, [relevant country] has "effective judicial and law enforcement agencies, is governed by the rule of law and has an infrastructure of laws designed to protect its nationals against harm of the sort said to be feared" by the applicants.*

42. *In **Mehmood v MIMA [2002] FCA 1799** Von Doussa J. opined:*

> *[15] What is required is that the State offer effective protection from private persecution sufficient to remove any real chance that it will occur: see Minister for Immigration and Multicultural Affairs v Thiyagarajah (1997) 80 FCR 543 at 566-568; [Minister for Immigration and Multicultural Affairs v Prathapan (1998) 86 FCR 95] at 101-106; Minister for Immigration and Multicultural Affairs v Kandasamy [2000] FCA 67 at par 50-52 and Ahmed [Minister for Immigration and Multicultural Affairs [2000] FCA 123] at par 27. However good the level of protection offered by a State might be, random acts of thuggery or other criminal behaviour cannot always be prevented, and hence absolute guarantees against harm are impossible in fact, and are not required in law to negative a real chance of persecution.*

43. *Even the guiding approach mandated by **S152** was not adopted by the RRT.*

iv) State unable or powerless to protect applicants - misapplication of "guarantee" concept

44. *In the Applicant's submission the principle upon which the RRT rested its decision that a state can not guarantee protection simply can not do the work which the Tribunal seeks to make it do (at CB 267). On the factual findings which the RRT made the State had over a long period of time been unable or powerless to protect the Applicants. That failure of protection almost cost the Applicant wife and her child their lives.*

45. *This distinction between a theoretical availing of state protection yet a practical inability or powerlessness of the state to protect (which is one of the alternate limbs of the concept of failure of state protection) is in fact reflected in the DFAT assessment cited and relied upon by the RRT at CB 262. It notes that while their advice had been that "all citizens can avail themselves of the protection of law enforcement authorities, the reliability and efficiency of authorities in responding to or investigating complaints has been mixed. Recent (very public) failures of police to respond to complaints to complaints are partly attributable to weaknesses of enforcement mechanisms…" Saying that the Applicants can avail themselves of protection from the authorities as they did in the past even on this information when seen in the context of the facts as found is not an answer to the question whether State Protection is adequate. The Applicants refer to and repeat paragraph 34 above.*

46. *Taking up what Brennan CJ said in **Applicant A**, a person can not be said to be in a position to avail himself or State protection if on the facts as found the State was clearly unable or powerless to prevent the occurrence of persecutory acts.*

47. *The second cable on which the RRT relied attempted to answer the alternative legal question which is posed for a tribunal (but is not in contention in this case - the "willingness of the State to protect" . DFAT's comment was "our assessment is that the Sri Lankan authorities are willing to provide protection for citizens or officials who are targets for possible attack ... however there is no guarantee that such protection would be effective." The main thrust appears to be*

persons who may face harm for performing their official duties.

48. The RRT relied upon the statement contained in that advice to reach its decision. In doing so it elevated a broad concept into the defining principle that charts the outer boundaries of the doctrine of effective and adequate state protection. With respect this is simply not correct and the High Court did not intend that the sentence at [26] of S152 which the RRT quotes be used as the benchmark for such cases. The fact that a State is not expected to guarantee safety or remove all risks of harm before it can be said that an unwillingness to seek protection can be justified does not provide the defining test of the adequacy or effectiveness of state protection.

*49. The proposition "a state can not guarantee protection" has been used in this manner by the Tribunal in the instant case. This is wrong in law. There are **limits** on this concept as a determinative factor which, inter alia, involve examination of a range of matters of which **S152** is an illustration.*

50. The Tribunal found in reaching its conclusions on effective protection (at CB 267) that country information suggests citizens of Sri Lanka can avail themselves of protection as the applicant's did in the past. In saying then that State protection was not able to avoid ongoing incidents of persecution, yet then to rely on the "no guarantee concept is to distort and to extend it far beyond its intended meaning."

19. In her contentions on this issue, the first respondent relies upon the submission that the finding by the Tribunal about adequate state protection was a finding of fact unassailable by any court of review. The first respondent also contends, which contention in my view misunderstands the nature of the applicant's contentions in this regard, that a person being persecuted for private, non Convention reasons does not attract a Convention based persecution simply because the state is unwilling or unable to provide adequate protection. This is trite law and the applicant, in my view, does not draw issue with it. The contention of the applicant, however, is that the persecution of the applicant was for a Convention reason (imputed political opinion), and it fell to the Tribunal to properly consider the adequacy of the protection offered, in the light of accepted facts. The applicant contends, and I agree, the analysis by the Tribunal of the question of adequate state protection was misconceived because it was done with a

framework predicated on no nexus with the Convention being established and therefore only considered the inadequacy of protection in the context where it must be shown, and could not, be that the state itself was acting discriminatorily on a Convention ground.

20. As his Honour Justice McHugh stated in *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 142 ALR 331 at 354:

> *"The object of the Convention is to provide refuge for those groups who, having lost the dejure or de facto protection of their governments, are unwilling to return to the countries of their nationality."*

21. For the reasons set out above, I do not accept the first respondent's contentions on the issue of state protection and find that there was jurisdictional error in the Tribunal's finding that adequate state protection is available to the applicant and his family should they return to Sri Lanka.

Conclusion

22. For the reasons set out above, there is jurisdictional error on the part of the Tribunal in respect of both the failure of the Tribunal to consider the Convention ground of imputed political opinion which was raised squarely by the material before the Tribunal, and which the Tribunal itself gave partial recognition to in the language it used, and the failure to examine the issue of adequate state protection in the light of the potential Convention based persecution and the significant, accepted history of failed protection provided by the state.

23. Accordingly, the decision of the Tribunal is not afforded the protection of s.474 of the Act and orders to the effect sought in the amended application before me should be made.

I certify that the preceding twenty-three (23) paragraphs are a true copy of the reasons for judgment of O'Dwyer FM

Associate:

Date: 24 March 2006