

1104435 [2011] RRTA 441 (6 June 2011)

DECISION RECORD

RRT CASE NUMBER: 1104435

DIAC REFERENCE(S): CLF2011/36694

COUNTRY OF REFERENCE: Denmark

TRIBUNAL MEMBER: Andrew Mullin

DATE: 6 June 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the Applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the Applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The Applicant, who claims to be a citizen of Denmark, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2011 and applied to the Department of Immigration and Citizenship for the visa [on a further date in] March 2011. The delegate decided to refuse to grant the visa [in] May 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] May 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. 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.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Departmental and Tribunal 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.
20. The Applicant, who is in immigration detention, appeared before the Tribunal [in] May 2011 to give evidence and present arguments. He was accompanied by a supporter, [pastor’s name deleted: s.431(2)], as his Authorized Representative.

Summary of written claims

21. In his protection visa application the Applicant claims to have been born in Mogadishu, Somalia, in [year deleted: s.431(2)]. He gives his ethnicity as Somali and his religion as Christian. He claims to be a national of Denmark. He claims to have lived in Mogadishu from [birth] to November 1993; in Aarhus, Denmark, from November 1993 to December 2009; and in a homeless shelter in Copenhagen from December 2009 to March 2011. He claims to have received a total of nine years of formal education in Aarhus and to have been employed as a construction trainee and factory hand in various firms there. He claims never to have been married and lists his father, stepmother and [brothers] as living in Denmark.
22. The Applicant’s substantive claims are set out in a Statutory Declaration attached to his protection visa application. They may be summarised as follows:
 - His father gained refugee status in Denmark in about 1992. With the help of a Christian group in Ethiopia he was subsequently able to join his father in Aarhus.
 - As a result of his involvement with the Ethiopian Christian group he began to take an interest in Christianity and began to attend a church in Aarhus. He finally committed himself to being a Christian in [Church 1], Aarhus, [in] December 2009.
 - Later that day he returned home and told his father, step-mother and brothers about his decision. He was astounded by their violent reaction. His father began to scream at him and dragged him to the basement where he punched, slapped and kicked him. His brothers subsequently joined in this abuse.
 - A couple of days later his father brought an imam to the basement to try to get him to revert to Islam. The imam read from the Koran. The next day the imam returned. As the Applicant knew he would continue to be detained, and might be killed, he eventually stated that he would change his religion back to

Islam. Although his father remained very angry he allowed him out of the basement.

- Within four hours the Applicant left home and caught a train for Copenhagen where he lived mainly in a homeless shelter for twelve months until he was able to save sufficient from his social security payments to purchase an airfare to Australia.
- His family travel regularly to Copenhagen to search for him. They have telephoned him and threatened to kill him if they find him. As a result of these threats he disposed of his mobile telephone about three weeks after arriving in Copenhagen.
- He fears that if he returns to Denmark he will be located by his family and friends and that they will cause him serious harm. They are able to locate him in a small country such as Denmark. They know that he was not genuine in stating that he wished to revert to Islam. He is certain his father would feel himself honour-bound to kill him.

23. [In] March 2011 the Applicant added to these claims in a letter to his advisor by claiming to have been baptised in a church in [Suburb 1] (Aarhus) [in] January 2010.

Departmental interview

24. I have reviewed the audio recording of a Departmental interview attended by the Applicant [in] April 2011. He added to his written claims by claiming, relevantly, that:

- He was a Danish citizen and had never held Somali citizenship.
- At the age of seventeen or eighteen he returned to Somalia for about nine months in an unsuccessful attempt to find his mother.
- Apart from his father, step-mother and brothers living in Aarhus he had cousins and other relatives living elsewhere in Scandinavia and the United Kingdom. He had not had contact with these relatives. Nor had he had contact with his own family for nearly two years although he had received telephone threats from them, causing him to discard his mobile telephone.
- His father was very religious – ‘like an imam’ – and had many friends who were imams. He felt dishonoured by the Applicant’s conversion to Christianity and wished to kill him as a result.
- He was badly beaten by his father and kept in the basement of his house for three days in December 2009. This was because he was a Christian. He had told them of his interest in Christianity and his wish to convert, making his father and brothers very angry with them. He suffered a broken jaw and also experienced severe trauma. He was consulting a psychologist from STARTTS who would provide a report into his condition.
- He became a Christian after he was beaten, in 2010. Asked how it was that he became a Christian he said he had felt constrained by the strict Islamic religion imposed on him when he was growing up. He attended a small local church as

well as a larger church in the centre of Aarhus. He was baptised in the small church [in] January 2010. Asked if he had attended church in Copenhagen he said he had done so. At the time he was hiding in a homeless shelter while he saved money to come to Australia. Asked about his other Christian practice he said he read the Bible.

- After he was released from the basement he went to a hospital in Aarhus where he stayed for two or three days. His family did not visit him there and he received help from nobody.
- It was put to him that this account was quite different from that in his protection visa application statement in which he claimed to have left the house within four hours of having been released from the basement and to have gone immediately to Copenhagen. He said he ran away to Copenhagen but returned to Aarhus to obtain treatment in the hospital. He had returned immediately to Aarhus.
- He did not contact the police about this because it would only make things worse. If his family members were jailed they would '100%' kill him. He only wanted to live in peace. The police could not protect him all the time and could not remain with him continually. He was not a VIP. There were many Muslims in Denmark and Scandinavia and the police could not prevent honour killings. His parents could simply go to the mosque and ask someone else to kill him as an infidel.
- His family threatened to kill him for dishonouring them. His friends heard about it and also threatened him. The family could not find him after he threw his mobile telephone away.
- He chose Australia because it was Christian, spoke English and was as far from Denmark as possible. He was afraid of harm from his family members in Scandinavia and the United Kingdom.
- Asked why he could not continue to live in Copenhagen or some other city he said he would have to hide there and could not live a normal life. It was put to him that as a national of Denmark he had the right to live and reside in other European Union countries. He said the language there was too difficult.
- It was put to him that in an airport interview on arrival he had stated that he only wished to remain in Australia for tourism purposes for three weeks. He said he had been afraid he would be returned on the first plane. It was only when he was detained that he told the truth. It was put to him that he had stated that his immediate family members could provide him with funds and that he could contact them if necessary. He said he mentioned this only to get out of the airport. He had incorrectly stated in his airport interview that he had been imprisoned in Denmark.
- It was put to him that no country can provide an absolute guarantee of safety for its citizens and that Denmark is a country with a functioning police and justice system. He said he was not expecting an absolute guarantee of safety

in Australia but it was far from Scandinavia and his family did not know he was here.

25. [In] April 2011 the Department received a psychological report on the Applicant from STARTTS which recounts his experiences in Denmark as described by him and assesses him as displaying the symptoms of post-traumatic stress disorder.

Claims at hearing

26. The Applicant said he had been assisted in preparing his protection visa application and the accompanying Statutory Declaration by his former solicitor. He communicated with the solicitor in English and had been able to read these documents before signing them. Asked if he had understood everything they contained he said he 'maybe' did so. Asked about this he confirmed that he had understood all the claims made about him but that some of the dates might be inaccurate by one or two days – the information was '99%' accurate. He had not read his Statutory Declaration since his Departmental interview. Everything he had claimed in the interview was true and he did not wish to change anything he had previously claimed.
27. Asked why he had left Denmark to come to Australia the Applicant said there were many things. His parents had driven him crazy when he was growing up and would beat him. He wanted to be free but was imprisoned in his own home. When he told his family he wanted to convert to Christianity they went insane. Asked why they would have wanted to beat him before the point when he announced his Christianity he said it did not happen much but he could be beaten for small infringements. One of these beatings was occasioned by his having eaten a piece of toast so as to leave it in the form of a cross. After growing up and attending a normal school (rather than his previous Muslim school) and socialising with Danish school friends he was always the 'bad guy' at home who was beaten for going out and missing prayers while his brothers dutifully attended to their devotions. Later in the hearing he said his father punished him both because he was a strict disciplinarian and because he disliked him mixing with Christians and Christianity in his school.
28. Asked about his announcement to his parents of his Christianity the Applicant said he would go to church and read about the Bible in a library. One day, [in] December 2009, he decided he wanted to become a Christian and told his parents about it. They reacted very violently. His father and brothers beat him and kept him in the basement for about four days. After his release he needed treatment for his injuries and, despite promising his parents that he would change his mind, he went straight to Copenhagen and did not return to the house. In Copenhagen he was told he could not be treated in a hospital there and so he had to return to Aarhus where he underwent an operation and spent a couple of days in hospital. He then returned to Copenhagen where he lived in hiding in a homeless shelter for many months.
29. The Applicant continued that he could not live in hiding forever and so began thinking about going to other countries. He had relatives in the United Kingdom and Sweden and was worried his family could find him wherever he went in Europe. He decided to go as far as possible and, after saving money for his ticket from social welfare payments, was able to travel to Australia. He had a visitor visa and had not imagined that he would be placed in immigration detention.
30. Asked what he had feared would happen to him in Denmark the Applicant said he was afraid his family would find him and kill him – they had wanted to do so when he was detained in the basement. Now that he had not returned to them they would do so '100%' He feared

they or someone else from the Somali community in Denmark would kill him if he returned and, despite the good life he had enjoyed there, he was unable to do so.

31. The Applicant said he did not fear harm in Denmark for any reason in Denmark other than his having converted to Christianity.
32. The Applicant confirmed the biographical information set out in his protection visa application. He said that in Aarhus he lived at an address in [Suburb 1], an area populated by minority communities including Arabs, Indians, Somalis and Turks. This was a government-provided apartment on the second floor which additionally had a section of the basement allocated for storage. The shelter in Copenhagen was managed by a person named [name deleted: s.431(2)] who allowed him to stay there for many months, sharing a room with three others.
33. The Applicant said he had had no contact with the Ethiopian Christian group after arriving in Denmark. At school he did not attend lessons in Christianity as this was against his family's wishes. Asked about his first contact with organised Christianity he said this took place in a church in about the middle of 2009. He would read the Bible in the town library but had not seen people there of his own age. When he went to the church, which was located very close to his family home in [Suburb 1], he would look around and ask questions of the people there. Asked the denomination of this church he said he had no idea. He knew it was Christian and had thought it was Protestant. However, after having discussed the matter with his Authorized Representative he formed the view that it must have been a Catholic church, on the basis of the clothes worn by the priest. He said it did not matter to him which denomination was involved and he did not know much about it.
34. Asked how often he had attended this church the Applicant said he tried to do so every Sunday if he could. He would mostly aim to attend when there were not many people about and so would arrive when people began to leave. I put to him that he would not have been able to see much of what was going on if he arrived when people were leaving after a service. He said they did not leave straight away, adding that at first he had simply looked at the church from across the street.
35. The Applicant said he had spoken to many people in the [Suburb 1] church, including the priest. Asked this person's name he gave it as [name deleted: s.431(2)]. There were two priests and he spoke to both of them. They welcomed him and said he was welcome to come there at any time he liked. Asked if they had suggested any kind of instruction in Christianity he said they had not – at that time he was only interested in talking about Christianity and learning what was so different about it. He had not yet decided to become a Christian. He told the priest about his situation and the fact that he lived across the street. I noted that it seemed somewhat surprising for a priest in these circumstances not to suggest some method by which he could learn more about the church and become a Christian. He said he remembered the priest telling him to attend Bible study and welcoming his attendance. Asked later in the hearing why he thought the priest had not asked him to convert to Christianity he suggested it was because the church was in a Muslim environment, making the priest cautious about approaches such as his. He spoke about the Bible and Christianity but did not push things.
36. I asked the Applicant why, if he had already taken the initiative of expressing an interest in Christianity in his discussion with the priest, he would not have wished to take it a step further by asking how he could become a Christian. He said he had studied the Bible in a

library but he was still afraid of his family and could not sit in the church for a long time studying the Bible. His family lived close to the church. I suggested this would have been a good reason for attending [Church 1], located elsewhere in Aarhus. He said it was far away, although he went there sometimes.

37. Asked how often he had attended the [Suburb 1] church the Applicant suggested it could have been about fifteen times. This included sitting throughout a service on five or six occasions. Asked what happened in these services he said normally they would sing, listen to the priest, sing again and pray. He had also attended a large church in central Aarhus, the name of which he could not remember, and another church, [Church 1], on a couple of occasions. He was afraid of being seen by other Muslims when he attended these churches.
38. Asked what it was that had prompted him to tell his family about his interest in becoming a Christian the Applicant said the thought came to him when he was sitting in the church. Asked why he would do so if he had not actually become a Christian at that point he said they were his family and he was in the habit of telling them everything; he thought he would tell them and see what happened. I put to him that he would already have known very well what the attitude of Muslims was toward those who convert to Christianity since he had been attending church in secret. He said he never thought they would go beyond hating him, disowning him as a son and expelling him from the house - he never thought they would try to kill him.
39. Noting that at the time of his claimed beating the Applicant had not been a child but an adult of [age deleted: s.431(2)], I asked how it was that his father had been able to take him down two flights of stairs to the basement to be beaten. He said his father had been a general in Mogadishu and was a very strong man. His brothers obeyed his father and helped take him to the basement. I noted that he had earlier claimed his brothers joined them in the basement and began beating him there. He said they were in the house and helped his father. He confirmed his claim that his father detained him there for four days and called a Muslim priest on two occasions to read from the Koran. When the Applicant undertook to revert to Islam his father let him go, although he was still very angry.
40. The Applicant agreed that he took a train immediately for Copenhagen after his release. He went to a police station to ask the directions to a hospital. I suggested that he would have been badly injured at this point. He said his jaw was only slightly swollen by then and there was little blood. I asked if he meant that his father and brothers had beaten him over the course of four days, badly breaking his jaw in the process, with only mild swelling and little blood to show for it. He said he had a scratch on his face and a wound on the back of his head which was bleeding. The police had not noticed much and, when he told them he was injured and needed directions, they directed him to go to his local hospital in Aarhus. Asked if he meant the police had made decisions about which hospital he should go to he said they knew what the rules were.
41. I put to the Applicant that it seemed difficult to believe, in the circumstances he had described, that the police would tell him he could not attend a hospital in Copenhagen but should return instead to Aarhus. In response he offered a comment relating to an incident three years earlier in which he was shocked when the police had not believed his report to them that a friend had confessed to a murder.
42. The Applicant said he underwent an operation on his jaw in the Aarhus hospital where he remained for two or three days. Asked what he did on his release he said he went

immediately to the [Suburb 1] church where he asked the priest to baptise him. The priest complied, placing water on his forehead. Asked who had sponsored him he said it was the priest himself. I noted that this timing seemed inconsistent with his claim to have been detained for four days [in] December 2009 and to have been baptised [in] January 2010. He said all he knew was that he was baptised on that day. He had many injuries and could not remember all the details perfectly.

43. Asked how he could have been able to talk to the priest straight after an operation to repair both sides of a broken jaw the Applicant said he was able to remove the supporting wires to eat, and that he could speak, although with some difficulty. Asked what follow-up medical treatment he had received after such a serious operation he said there was almost none because he could not return to the Aarhus hospital all the time. He amended this by saying that it was not as much as he wanted, and that he had received tablets and other treatment. Asked how long he had stayed in Aarhus after his release from hospital, or his baptism, he said he went straight to Copenhagen. He came back to Aarhus a couple of times, about two months later, for treatment to remove the wiring from his jaw.
44. I put to the Applicant that it seemed hard to understand why, instead of seeking medical treatment in Copenhagen, he would take such a risk by returning to a place where he might be seen and killed by his family. He said he hid by wearing clothing in which he could not be recognised. I put to him that it still seemed a dangerous thing to do. He said he had promised his family at the time that he would be a Muslim and they had let him go. They were wondering about him but did not know he was not coming back. Asked how, in this case, they had known of his intention to continue in his Christian belief he said it was because he continued to live in Copenhagen. His family and friends would contact him by telephone and on Facebook. They would certainly know that he was no longer a Muslim. He said these contacts made him paranoid and he threw away his telephone.
45. Asked if he had gone to church in Copenhagen the Applicant said he had not done so as he was too afraid of being recognised. He mainly remained in the shelter, in hiding, saving money. He would only leave the shelter to buy food. He tried to obtain work through a job centre on one occasion but was unsuccessful. Asked why, if he had been living in hiding in difficult circumstances brought about by his conversion to Christianity, he would not have sought help from a Christian church he said he had not even considered doing so; it would not have helped as his main problem was his family and the Somali community. Additionally, he had known nobody in Copenhagen. I put to him that it would not have been difficult to contact a Christian church or charity which could have given him money, food or a job. He said this would have left him still close to his family – such organizations could not give him protection from his family. He knew he had to go very far from Denmark. Asked if he had known anyone in Australia he said he had met an Australian girl some years before but was not in contact with her.
46. Asked what made him think his family was still searching for him the Applicant said they had already tried to kill him and they had threatened him over the telephone. They did not know he was in Australia and he was sure they were searching in Denmark or Europe.
47. I asked the Applicant why, if he feared he would be found and killed by his family or a member of the Somali community while he was living in Copenhagen, he had delayed his departure for about three weeks after obtaining his Australian visa. He said he said he was waiting to get money and to find the cheapest ticket.

48. Asked why he had not reported his fears to the police the Applicant said he was too scared that his family would kill him. Noting that his claim that he had already believed they would kill him I asked what difference this would make. He said he was no longer in their hands and had not wanted to make things worse. He had the opportunity to get away. If he reported to the police he would have to give evidence and face his family in court. If he went to the police he was '100%' sure they would kill him.
49. I noted that the independent country information indicates Denmark enjoys a very high standard of human rights observance and that it has a fully effective police force and judicial system. This indicated that he would not be denied protection by the Danish state from the harm he feared. The Applicant agreed that the police could take action against his father and brothers, including by putting them into prison but said this would make things much worse. His other relatives or members of the mosque would still harm him. The police could not protect him or guarantee that he was safe. This was why he did not even bother to complain but chose instead to avoid all his problems by going to the other side of the world. I noted that no country is able to provide an absolute guarantee of safety for its citizens but that, in refugee law, the requirement was that the police and judicial system were ready and able to provide reasonable protection for those who fear harm. The Applicant said he agreed that absolute safety was not possible. However, his situation in Denmark would have been made much worse had he complained to the police. Even if his father had been jailed he would have lived in fear awaiting his release. His other relatives or other Somalis would certainly have killed him. He felt safe in Australia where his family would never imagine he had gone.
50. The Applicant said the reason he did not claim protection because of a fear of harm from his family immediately on arrival in Sydney Airport was that he knew he had a visa. It was only later, after he was placed in immigration detention and realized he would not be allowed to enter Australia, that he explained to the Department why he could not return to Denmark.
51. The Applicant's Authorized Representative submitted, in summary, that:
- Honour killings are quite common in the Middle East and also among Muslim communities in Europe. They may be carried out by members of the community on behalf of the aggrieved person. The Applicant had noted that it might be possible to have his father jailed but this would not give him safety against other members of the community.
 - Denmark has a good police system but could not counter the threat the Applicant fears. Although no country, Australia included, can provide an absolute guarantee of safety, the reason the Applicant came here was that it was far from Denmark and his family would not suspect that he was here.
 - The unsophisticated way in which the Applicant had arrived in Australia, with a one-way ticket, suggested that he was genuine in his claims.
 - In his own work as a pastor he knew the need to exercise some care, and to be satisfied about the motivation, in response to requests for conversion, including requests from Muslims. It rang true that a priest in a Muslim ghetto in Denmark would want to take things slowly when a Muslim approached him and expressed an interest in Christianity. I noted that the Applicant was claiming nevertheless that this was the same priest who is said to have

baptised him on the spot when he turned up, unannounced, with a badly swollen jaw. The Applicant said he had sought this baptism.

- It should not be assumed that the police in Copenhagen would react to a request for directions in the same way that the police might react in Australia.
 - Concerning the Applicant's claims to have been dragged into the basement by his father, an additional factor to his claims about his father's physical strength was the fact that Somali culture inhibited children from resisting their fathers.
52. Asked if there was anything he wished to add the Applicant said he had no reason to come to Australia apart from his fear of harm in Denmark. He took issue with the delegate's decision which, he said, did not adequately address the harm he faced and the inadequacy of state protection.
53. The Applicant submitted a number of documents:
- Photocopied pages from his Danish passport.
 - Notes from consultations the Applicant had with a psychologist in immigration detention.
 - Two x-rays of his jaw, taken in May 2011, showing orthopaedic plates and screws inserted on both sides.
 - A radiographical report of the x-rays and of a CT scan of the Applicant's brain which is said to show no abnormal condition.

Independent country information

54. The document 'Denmark 2011 Crime & Safety Report' prepared by The Overseas Security Advisory Council –OSAC – (a United States Federal advisory committee designed to promote security cooperation between American business and private sector interests worldwide and the U.S. Department of State) provides some general information on the risks of crime in Denmark. Although this is described from the perspective of expatriate US citizens, the report also touches on the effectiveness of police responses, including in cases involving Islamic terrorism:

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Danish and Eastern European gangs are primarily responsible for the increase in violent home invasion robberies. In 2010, there were several cases in which intruders gained access to private homes while the homeowners were present. Home invasion activities have been concentrated in rural and less populated areas. These crimes have led to a public debate about the general safety of Danish society, as it was a virtually unknown phenomenon just a few years ago. Both burglaries and home invasions have been designated the highest priority for law enforcement by the National Commissioner for the Police, Jens Henrik Hoejbjerg.

In major cities throughout Denmark, minor criminal activity, such as pick-pocketing, vandalism, and car break-ins, are quite common. The majority of these crimes occur in the summer months around heavily trafficked tourist sites. Precautions should also be taken at cruise line docking areas, airports, and hotels as they are frequented by petty criminals. Special police task forces are frequently deployed during the tourism high

season and the holidays for targeted enforcement in high-crime areas.

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Police and public authority CCTV monitoring is on the rise to prevent crimes in high risk areas, and during 2009 and 2010, cameras were installed on Strøget (the well-known pedestrian shopping street) in Copenhagen. Cameras are also installed in train stations, on S-trains, and on the metro. There has also been an increase in the number of residential areas installing local CCTV systems.

Political Violence

Terrorism

There is an increasing general terrorist threat against Denmark, both from terror groups and individuals acting alone.

This higher risk comes mainly from militant Islamist extremists from both abroad and within Denmark. It is believed to stem primarily from the publication of the "Mohammed cartoons" in 2005 and Denmark's military involvement in the wars in Iraq and Afghanistan.

In 2008, the Danish Embassy in Islamabad, Pakistan was targeted in a bombing attack. Recently, high profile incidents demonstrate that the general terrorism threat in Denmark continues to increase:

In October 2009, U.S. authorities arrested David Headley for his role in planning a bomb attack in Denmark, most likely targeting the Newspaper "Jyllands-Posten," the publisher of the "Mohammed cartoons." Headley is also believed to have been involved in planning the terrorist attacks in Mumbai, India in 2008.

In January 2010, a man of Somali origin attempted to break into the home of the cartoonist Kurt Westergaard with an axe. Kurt Westergaard managed to escape harm by locking himself in a safe-room located in his residence. The attacker has since been linked to the Somali terrorist organization al-Shabaab and had previously been arrested in Kenya on suspicion of terrorist activity.

In September 2010, a Chechen male attempted to conduct an act of terrorism in Copenhagen when he detonated what appeared to be a letter bomb at the Hotel Joergensen in the central part of the city. The follow-up investigation has led the Danish public prosecutor to try the accused Chechen man for an act of terror which in Denmark, has a maximum penalty of life in prison. The investigation is ongoing and has been carried out in close cooperation with foreign partners (primarily Belgium).

Late in December 2010, the Danish Security and intelligence Service PET arrested four male persons suspected of planning an act of terrorism. A fifth suspect was simultaneously taken into custody by Swedish Security forces. The suspects reportedly had plans to conduct a "Mumbai" style attack with the primary target being the Danish newspaper Jyllands Posten. The investigation is ongoing.

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Police Response

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Most police officers understand and speak English. The Danish police force is generally competent and well equipped. The police are responsive to RSO requests for investigative assistance and cooperative on all matters regarding security for American citizens. Relations are excellent with all segments of the police.

FINDINGS AND REASONS

55. On the basis of the photocopied pages of his passport submitted to the Tribunal I accept that the Applicant is a citizen of Denmark, as he claims to be.
56. The Applicant claims to fear harm at the hands of his family, relatives or members of the Somali community in Denmark because he has converted from Islam to Christianity.

Claimed conversion to Christianity

57. I have concerns as to the credibility of key aspects of the Applicant's claims about his experiences in Denmark, for the following reasons.
58. First, the Applicant's description at the hearing of his contacts with Christianity in Denmark was notably lacking in circumstantial detail and at times inconsistent and implausible. He suggested that on his own initiative he studied the Bible in the main library of his home town of Aarhus and, from about the middle of 2009, made a number of approaches to a church in [Suburb 1] located close to his family home. He would at first observe the church from the other side of the street and would later go inside when people were leaving. He sat through an entire service five or six times and attended two other churches in Aarhus on few occasions.
59. The Applicant offered little other information about this contact with organised Christianity and his conversion, despite its alleged prime importance as the cause of his rupture with his family and community and the reason why they beat him and now wish to kill him. He was clearly unaware of the denomination of the church in [Suburb 1], although he claimed now to believe that it may have been Catholic - he maintained that such questions were not important for him. He knew the name of one of the two 'priests' in the church and said he had had discussions with him on the subject of Christianity. He claimed at first that the priest had not suggested any means by which he might advance his understanding of Christianity but, when challenged on this, said the priest had in fact suggested he attend Bible study. Asked why he himself had not expressed any interest in developing his Christian understanding in these meetings he suggested that he feared discovery by his family or others, a claim which is in some conflict with his alleged readiness to sit through entire services in the [Suburb 1] church on a number of occasions.
60. I am not satisfied it is plausible that the Applicant can have been baptised in the circumstances which he described at the hearing. I do not accept that, with his jaw broken in two places and wired together he can have travelled straight from the hospital to the church unannounced, asked the priest to be baptised and received baptism on the spot. This claim is even harder to believe if, as he claimed at an earlier point in the hearing, the priest had shown some caution in entertaining approaches from a Muslim, in a strongly Muslim area, who professed an interest in Christianity. He has provided no documentary support for his claims about his baptism and his description of the ceremony was limited to saying that water was placed on his head.
61. I have further doubts about the plausibility of the Applicant's claim to have converted to Christianity given his evidence that for the next fourteen months while he was living in Copenhagen he made no attempt to contact a church. If he had become a Christian and had been so attached to his new religion that he was prepared to risk death and the severance of all contact with his family, relatives and community for its sake it is hard to understand why

he would have refrained from any attempt to worship or strengthen his Christian knowledge during this lengthy period. If, as he claims, he was living a hand-to-mouth existence in a homeless shelter, it is also hard to understand why he would not have approached a Christian charity or welfare organisation for help. I have considered his explanation for this at the hearing – in summary, that he was so afraid of harm that he mainly stayed in the shelter and seldom ventured out – but I am not satisfied that the claim is plausible or that his alleged fear is consistent with his evidence that on two occasions he was sufficiently confident to be able to return to Aarhus and later tried to obtain work through a job centre in Copenhagen.

62. Second, there are implausibilities and inconsistencies in the Applicant's account of the harm he claims to have suffered in Aarhus.
- In his Statutory Declaration he claims that after he revealed to his family that he had 'become a Christian' his father assaulted him and took him to the basement of their apartment where he continued to punch, slap and kick him. Some time later his brothers came to the basement where, encouraged by their father, they also began to beat him. When he was asked at the hearing how his father could have managed to get him to the basement he contradicted this account by claiming that his brothers helped his father to do so.
 - In his Statutory Declaration he claims he travelled to Copenhagen within four hours of his release from the basement and that he lived in the homeless shelter for twelve months. At the hearing he added a different version of events by claiming that he returned almost immediately to Aarhus where he was admitted to hospital and operated on, and that he did not go to Copenhagen again until immediately after his baptism. I note as well that this account is inconsistent, in terms of timing, with the claim that his detention in the basement began [in] December 2009 and lasted for four days, followed by three days of hospital treatment and baptism [in] January 2011 although I accept that if he had been assaulted as he claims his memory as to exact dates might not be clear.
 - When he was asked about the inconsistency in his account of his movements following his alleged release he claimed that the reason he returned to Aarhus from Copenhagen was that he had gone to a police station there to ask directions to a hospital. Instead of responding to this request, however, the police told him he could not be treated in Copenhagen and would have to return to Aarhus. It is difficult to accept that a person suffering serious injuries including a badly broken jaw would be given such obviously dangerous and irresponsible advice by a police officer, and I do not accept the Applicant's explanation for it that his injuries were so inconspicuous as to be virtually unnoticeable. It is also difficult to accept that if he had been suffering these injuries he would simply have accepted what the police told him instead of persisting in his search for urgent treatment.
63. Taking these things together I am not satisfied as to the credibility of the Applicant's unsubstantiated claims that he was ever involved with organised Christianity in Denmark, that he was baptised in a church in Aarhus or that in any other way he has forsaken the Islamic faith of his family and become a Christian. Nor am I satisfied that was ever believed by his family or anyone else to have converted to Christianity or that he was harmed by them for such a reason. On the basis of the x-ray photographs he has submitted I accept that he has

suffered serious injuries to his jaw requiring the attachment of orthopaedic plates on both sides but I am not satisfied that these injuries were incurred in the circumstances he claims.

State protection

64. Even if I am wrong in these findings, however, I am not satisfied that the Applicant could not obtain the protection of the Danish authorities if he genuinely feared serious harm from his family, relatives or other members of the Somali community in Denmark.
65. As acknowledged by the Applicant at the hearing, the independent country information indicates that Denmark offers a high level of human rights observance and the police are able and willing to protect citizens against violent crime. There is nothing in the information before the Tribunal to indicate, and the Applicant does not claim, that the Danish authorities would discriminate against him in any way or that they would refuse to provide him with such assistance for any reason. His claim is rather that the police cannot guarantee that he will not be killed or seriously injured, and that if his father and brothers were to be jailed this would inflame the situation so that other relatives or community members would certainly kill him. The police could not live in his house to guard him forever, and even if they did so '99%' he would still be killed.
66. As put to the Applicant at the hearing, however, absolute protection from harm is not possible in any country. As observed by Gleeson CJ, Hayne and Heydon JJ in *MIMA v Respondents S152/2003* "no country can guarantee that its citizens will at all times, and in all circumstances, be safe from violence." Justice Kirby similarly stated that the Convention does not require or imply the elimination by the state of all risks of harm; rather it "posits a reasonable level of protection, not a perfect one". Having considered the Applicant's claims about the harm he fears I am not satisfied there is anything in the information before the Tribunal to indicate that such a reasonable level of protection would not have been forthcoming if he had given the Danish authorities the opportunity to provide it. I note Professor Hathaway's view that "there cannot be said to be a failure of state protection where a government has not been given an opportunity to respond to a form of harm in circumstances where protection might reasonably have been forthcoming".¹
67. Taking these considerations together I am not satisfied that the Applicant would be unable to avail himself of the protection of Denmark against the harm he claims to fear there.

Summary

68. In the light of all the information before the Tribunal I am not satisfied that the Applicant has a well-founded fear of persecution because of his religion (said to have involved a conversion to Christianity from Islam) or for any other Convention reason should he return to Denmark now or in the reasonably foreseeable future and I am not satisfied that he is a refugee.

CONCLUSIONS

69. The Tribunal is not satisfied that the Applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the Applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

¹

JC Hathaway, *The Law of Refugee Status*, Butterworths, Toronto, 1991, p.130. Contrast Fortin, at 571-2, 574.

DECISION

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