

**071594588 [2007] RRTA 314 (13 December 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071594588

**DIAC REFERENCE(S):** CLF2007/66786

**COUNTRY OF REFERENCE:** Gambia

**TRIBUNAL MEMBER:** R Mathlin

**DATE DECISION SIGNED:** **13 December 2007**

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

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).

The applicant, who claims to be a citizen of The Gambia, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter dated.

The applicant applied to the Tribunal for review of the delegate's decision.

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**

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.

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 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

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.

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.

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.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of 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.

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.

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**

The Tribunal has before it the Department's file, relating to the applicant.

According to information provided in the protection visa application, the applicant is a married male in his early thirties.

He left Gambia using a passport; he spent a few days in Country A en route to Australia. He provided two different residential addresses for the period of his residence in Gambia – one from his birth to a year before his departure, and another until his departure. He claimed that he attended school for nine years and stated that his occupation was a tradesman, although he provided no details of employment.

He stated that he left Gambia because he was being chased by paramilitary police after he had witnessed the murder, by them, of foreigners.

According to his protection visa application, the applicant was at home early one morning. His brother came home and said that a couple of bodies had been found in the bush near Town in the coastal area. The applicant rushed to witness the scene. A few hours later the applicant's father and one of his fishermen brought two strangers home. They said that they were Country A nationals living in Country B, who were attempting to join a fishing boat travelling illegally. While they were in Gambian waters, Gambian police opened fire on the group, killing some and placing the others under arrest. Those arrested were taken to the police station where their money and belongings were stolen. These two had managed to escape from the police station.

The applicant phoned the Country A High Commissioner to inform him about this incident. The High Commissioner phoned the Ambassador in Country B, who phoned the applicant, telling him to hand over the foreigners to Gambian police, and promising to come to Gambia himself. Accordingly, the applicant handed the two over to the police station.

Two days later the Ambassador met in Country A with the Gambian police director. The applicant was invited to attend the meeting as a witness. The Ambassador asked the director to hand over the two men, but the director said that they had already been deported back to Country B. The Ambassador was not happy and returned to Country B from where he telephoned the Country A Foreign Minister and informed him of the incident

Some time later, the applicant received a telephone call from the "Deputy Minister" The applicant explained what had happened, unaware that the conversation was being played live on Radio in Country A The Ambassador and the Minister then returned to Gambia and met with the applicant and the Police Director at a hotel. A few days later the Minister met the applicant at the police station where he had taken the two boys. The applicant explained what he had witnessed and said that he had handed the two boys over to the police.

On his way home the applicant was confronted by two policemen who ordered him to follow them to the police station. The Police Director ordered that he be detained for investigation. The applicant was ordered to sweep the room, and when the policeman was not looking the

applicant fled. He hid in the bush until night and then walked to another place. From there a taxi driver took him to the town where a relative lived. He stayed with his relative until his departure, helping with his fishing when he had spare time from his work as a tradesman

One day the applicant went out fishing on his relative's boat. On his return he was informed by a friend of his relative that the relative had been detained by the police, who were looking for the applicant. He was questioned and tortured for a couple of days. When he was released he applied for a passport for the applicant and helped him to cross the border into Country B, from where he travelled to Country A and Country C. The applicant stated that in his haste, his relative mistakenly entered his name in the passport incorrectly.

The application was refused by the delegate, who relied on country information that he found indicated that The Gambia is willing and able to provide protection to its citizens against violations of fundamental human rights by public officials or persons acting in an official capacity. The delegate took into account information suggesting that the Gambian authorities had acted harshly and abused the human rights of, for example, suspected political opponents, but decided that the applicant did not have a profile that would lead to him being of adverse interest to the authorities.

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent.

The applicant's oral evidence was essentially consistent with his written claims, except for a few matters which are discussed below.

The applicant said that the town was originally populated by migrants from Country A who were led by his grandfather. His grandfather was made the chief of the village and the applicant's father inherited this role. It was because he was the chief that the two survivors of the massacre were brought to him. After hearing their story, the applicant's father asked the applicant to call the General Secretary of Country A community in the town. They then called the consul in Country B, who also represents Country A. He asked them to call back in one hour. Meanwhile he contacted the Country A Ambassador in Country B, who called back and instructed the applicant and his father to hand the two over to police. The applicant said that the men pleaded simply to be released and not handed to the police, but his father said that it was a serious case and had to be investigated – if they had been released the deaths of the other men could just have been swept under the carpet. Two days later the Ambassador arrived and accompanied the applicant, his father and Ambassador of Country B to the police station, at which point they were told the two men had been deported.

The applicant clarified that the police station to which they had taken the two men was in fact a paramilitary station which had been opened a couple of months earlier. It was a refurbished clinic. He said that because of sensitivity in relations between the Country A community and the Gambian government, paramilitaries had responsibility for policing there.

The Ambassador then contacted the Country A Foreign Minister, and the applicant was subsequently contacted by his deputy. The applicant recounted what he had been told by the two men, unaware that the conversation was being broadcast live on Country A radio station.

The Country A Foreign Minister, came to Gambia; they met again with the Director of the paramilitary police. After the meeting the Ambassador returned to his hotel while the applicant returned home. A few hours later two paramilitaries asked him to accompany them

to the police station. He said that they said nothing to him and asked him nothing; his father came to inquire about him and was told that he had to be investigated. He was held for a couple of days. Early one morning he was asked by a guard to clean the compound. While the guard was distracted talking to two women, the applicant ran into the bush. The applicant said that there was no security fence around the station, which backed onto the bush. Asked why a top security prisoner, as he presumably was, would be sent outside to clean, he said that a different prisoner was asked to clean each morning; he had not yet done this job and the guard on duty just picked him. He indicated that the guards changed every three days, suggesting that perhaps the particular guard did not know why he was there.

The applicant fled to the town where his relative lived. The applicant continued in his job. During the wet season, from June to about October there was no building work, so during this time the applicant worked on his relative's fishing boat. He said that no inquiries were made of his employer during this time, but his father told him that people were asking about him in the village.

Later, the applicant's relative was detained and questioned about him. The Tribunal asked why it took so long for him to be located, given the small size of The Gambia. The applicant said that during the intervening period the situation between Country A and the Gambia in relation to the deaths was very quiet; however, just before they came for him the Country A government had become active again because they were not satisfied that the matter had been properly handled, and the Gambian authorities wanted to silence the applicant.

The Tribunal asked why the applicant's father had not had any problems, given that he knew as much about the matter as the applicant did. The applicant replied that it was because of his interview that was broadcast on Country A radio that the authorities wanted to harm him – they considered that this had brought the Gambian authorities into disrepute. Also his father is an elderly, illiterate man. He said that the Country A authorities had not made further contact with his father in the course of their investigation, and claimed that they would not be able to contact the applicant's father. They had called the applicant on his mobile during the period of the massacre.

The Tribunal asked the applicant why he not sought the assistance of the Country A authorities during the few months that he spent in Country A en route to Australia. He said that his father had told him not to speak to anyone in Country A about the events in The Gambia, and not to stay in Country A, as this could place the family at risk. His father told him that since the applicant's departure, people he did not know had been asking about him.

The applicant agreed to the Tribunal contacting the Country A officials who were involved in the investigation into the incident, but the Tribunal was unable to obtain any further details from them, other than what is already in the public domain. The official report into the killings was due to be released, and the Tribunal delayed finalisation of its decision in the hope that the report would become available in time to shed light on the applicant's account. However, at the time of finalisation of the decision the report had not been released and there was no reliable estimation of when it might be. The Country A officials who were involved in the matter declined to provide information prior to the release of the report. Inquiries made of the Commonwealth Human Rights Initiative a radio station also failed to produce results. In the circumstances, the Tribunal decided that the application should be determined on the basis of the available information.

After the hearing the Tribunal sought additional information from the applicant and also asked him to comment on certain information. Among other things, he was asked to comment on an apparent discrepancy between the claim in his protection visa application that he was detained on his way home after meeting with the Country A Foreign Minister, the Ambassador and the head of the paramilitary police, and his claim in oral evidence that he was detained once he reached home. In response the applicant submitted what he claimed was the original written statement that he had provided to his migration adviser, from which the information in the protection visa application was prepared. In this document it is stated that the applicant was detained when he returned to his house following the meeting. On this basis, the Tribunal accepts that the claim was misstated in the protection visa application as the result of an error by the applicant's adviser, and that this inconsistency does not reflect adversely on the applicant's credibility.

The applicant also submitted his birth certificate as requested by the Tribunal.

### *Country information*

The applicant submitted to the Department and the Tribunal a number of media reports downloaded from the Internet concerning the events which he claimed led to his departure from The Gambia, and the Tribunal has also obtained additional reports dealing with these events. Much of the applicant's account is corroborated by these independent reports.

General country information, as well as references to the events described by the applicant, is set out in the United States Department of State *Country Report on Human Rights Practices, Gambia, 2006*, (released by the Bureau of Democracy, Human Rights, and Labor March 6, 2007), which states:

The Gambia is a multiparty, democratic republic with a population of 1.5 million. On September 22, President Alhaji Yahya Jammeh was re elected for a third five year term in an election considered partially free and fair. President Jammeh's party, the Alliance for Patriotic Reorientation and Construction (APRC), dominated the National Assembly. While civilian authorities generally maintained effective control of the security forces, there were frequent instances in which elements of the security forces acted independently of government authority. On March 21, a coup attempt was uncovered and approximately 50 suspects were detained, 21 of whom remained in detention awaiting or on trial at year's end.

The foiled coup plot resulted in a more restrictive environment, and the government's respect for the human rights of its citizens declined during the year. Although the constitution and law provide for protection of most human rights, there were problems in many areas. Arbitrary arrests and detentions increased, particularly after the discovery of the coup plot. Security forces harassed and mistreated detainees, prisoners, opposition members, journalists, and civilians with impunity. Prisoners were held incommunicado, faced prolonged pretrial detention, and were denied due process. The government infringed on privacy rights and restricted freedom of speech and press...

#### RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no confirmed reports that the government or its agents committed arbitrary or unlawful killings. However, in April there were allegations that the government had executed five detainees in connection with the March coup plot after the government announced that they had escaped while being transferred to a minimum security prison. The government denied the reports, but none of the escapees were seen or heard from during the year. Similarly, the government denied allegations of involvement in the July 2005 case of eight men found dead in the coastal town of Brufut, near Banjul. The victims were later identified as migrant workers from Ghana, Nigeria, and Togo who were trying to make their way to Europe. Government authorities announced that an investigation into the deaths was continuing, although nothing was reported by year's end.

...

#### b. Disappearance

There were reports of [eight suspected] politically motivated disappearances during the year.

...

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and law prohibit such practices; however, there were reports that security forces beat and mistreated persons in custody. Following the foiled March coup plot and throughout the year, there were credible reports of torture of detained suspects, including journalists...

The Indemnity Act continued to prevent victims from seeking redress in torture cases. The army requested that victims file formal complaints so that cases could be investigated; however, there were no known prosecutions in civil courts of soldiers or security officials accused of beating or otherwise mistreating individuals during the year.

...

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, there were instances of police and security forces arbitrarily arresting and detaining citizens, especially following the failed coup plot.

... The police generally were corrupt and ineffective. On occasion police acted with impunity and defied court orders.

...

In May the police established a human rights and complaints unit tasked with teaching basic human rights knowledge to police and other law enforcement officers and sensitizing them to the need to respect the rights of prisoners and detainees. The unit also receives and addresses complaints of human rights abuses committed by police officers from both civilians and other police officers. During the year the unit received several complaints, and some police officers faced disciplinary actions as a result. The NIA is also authorized to investigate police abuses, although it was not reported that the NIA conducted any such investigations during the year.



...

Security forces arbitrarily arrested numerous persons for political reasons, and the whereabouts of some of these political detainees, including a journalist and an opposition supporter, were unknown at year's end (see sections 1.b. and 1.e.). The government also arrested and detained opposition members who publicly criticized or who expressed views in disagreement with the government (see section 2.a.). Security officials arbitrarily detained and abused journalists during the year (see section 2.a.).

...

The constitution and law provide for an independent judiciary; however, in practice the courts, especially at the lower levels, were corrupt and subject to executive pressure at times. ...

#### Political Prisoners and Detainees

During the year there were credible reports that the government held civilians as political detainees based on their political views or associations, and many were held incommunicado for prolonged periods... During the year the government arrested and detained opposition members who publicly criticized or who expressed views in disagreement with the government (see section 2.a.).

#### Civil Judicial Procedures and Remedies

The high court has jurisdiction to hear cases for civil and human rights violations, although it may decline to exercise its powers if it is satisfied that adequate means of redress are available under other laws. The Indemnity Act continued to prevent victims from seeking redress in some cases (see section 1.c.). The army continued to encourage victims to file formal complaints so that old cases would be investigated; however, no such cases were filed during the year.

### **FINDINGS AND REASONS**

The applicant claims that if he returns to The Gambia he will be killed by state paramilitary authorities because he has knowledge of their involvement in the murder of a number of illegal immigrants.

The main issues to be determined by the Tribunal are firstly, whether to accept the applicant's account of his involvement in these events (given the possibility that he has constructed his account of his own involvement based on the readily available information); and secondly, if it is accepted that the applicant's account of the events which led to his departure from The Gambia is true, whether it follows that he has a well founded fear of persecution for a Convention reason in the future if he should return.

Turning to the first issue, the Tribunal will initially consider the question of the applicant's identity and nationality. The applicant entered Australia on a Gambian passport in the name of X; he claims that his real name is Y, and that the passport was mistakenly issued in the wrong name. The applicant has submitted a number of documents in the name Y. These include an Attestation issued by the Office of the Head Chief, which was obtained by the applicant in response to a request by the Tribunal that he obtain his birth certificate; a birth certificate reissued; a Gambian identity card; and payslips and awards issued by the applicant's former employer in The Gambia (Internet research by the Tribunal shows that the company in question does exist, and has carried out one of the specific projects mentioned in

these documents). The Tribunal has also conducted research into the prevalence in The Gambia of the names X and Y, which indicates that both are Ghanaian names; Y is a more common name; and in one case, the same person is referred to interchangeably as Y and X: see Agyekum, Kofi 2005, 'The Sociolinguistic of Akan Personal Names', *Nordic Journal of African Studies*, Vol. 15, Issue 2, p.218 <http://www.njas.helsinki.fi/pdf-files/vol15num2/gyekum.pdf> – accessed 24 August 2007; 'NRC Postpones Tsikata Hearing' 2004, *Ghana News Agency*, 9 February <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=51435> – accessed 19 September 2007.

On the basis of the above, the Tribunal accepts that the applicant is a national of The Gambia, and that his name is Y.

Having accepted this, the Tribunal notes that a person of this name is specifically referred to in a media report concerning the interview on radio in which the applicant claims his conversation with the Country A Deputy Foreign Affairs Minister about the massacre was broadcast.

Numerous other media reports contain similar details of the massacre and the events which followed it to those provided by the applicant. The Tribunal investigated some issues where there appeared to be inconsistencies between the account provided by the applicant and those in the media. For example, the Tribunal was not able to find any corroboration that the applicant's father was the head man or village chief to whom the two survivors of the massacre were brought; indeed, it located articles giving a different name for the relevant chief: [information relating to specific details deleted in accordance with s431 of the Migration Act as this could identify the applicant] which names (name) as "chief of the town". Asked to comment on this information, the applicant explained that Mr Y is the Chief Imam and leader of the Muslim community, while his father is the chief generally. The Tribunal considers that this explanation is plausible.

[Information deleted; s.431]

The Tribunal considers that this report provides confirmation that the applicant's fears are well founded, in that the Gambian paramilitary authorities appear to have an interest in anyone spreading adverse information about their alleged role in the deaths.

Overall, the Tribunal found the applicant to be a credible and plausible witness. He has presented his account consistently at all stages; he gave his evidence fluently, and has been able to explain apparent inconsistencies to the satisfaction of the Tribunal. As noted above, in most significant respects, his account is consistent with and corroborated by independent information. In these circumstances, the Tribunal accepts the applicant's account of the events which he claims led to his departure from The Gambia, and which he claims give rise to a well founded fear of persecution should he return.

The Tribunal has considered whether the applicant's failure to seek protection in Country A, Country B or Country C, where he travelled after leaving The Gambia and before travelling to Australia, might indicate that he does not have a well founded fear of persecution (because he failed to seek asylum at the first opportunity) or that he simply wanted to come to Australia for other reasons. The Tribunal considers that the applicant's explanation for not wishing to remain in countries neighbouring The Gambia is plausible and reasonable in the circumstances, especially his fear that this could place his family at risk.

The Tribunal has also considered whether the passage of a few years since the killings might mean that any ongoing risk to the applicant is diminished to the extent that it could no longer be said that there is a real chance that he might be harmed. However, the Tribunal is unable to find with certainty that any risk to the applicant on return would be insubstantial and therefore insufficient to establish that a well founded fear of persecution continues, even given the passage of time. This is particularly so given that the (presumably) imminent release of the independent investigation into the killings may well bring the issue back into the spotlight.

The Tribunal accepts that the applicant has knowledge of the killings of a number of illegal immigrants, including from Country A, apparently by Gambian paramilitary forces. The Tribunal accepts that through his involvement with the survivors of the killings, he has come to the attention of the paramilitary police, who detained him shortly after the incident, and were seeking him prior to his departure from The Gambia. The Tribunal accepts that there is a real chance that the applicant would face serious harm amounting to persecution at the hands of the paramilitary police if he were to return to The Gambia. Serious human rights abuses carried out by this body, and other government agencies, are documented in the United States Department of State *Country Report* on The Gambia referred to above, and the Tribunal accepts that there is a real chance that the applicant could be subjected to such ill treatment. The Tribunal is satisfied that while the ostensible reason for which such harm might be inflicted upon the applicant is because of his knowledge of the crime committed by the paramilitaries, the underlying reason is because, having publicly blamed the paramilitary police for the atrocity, he would thereby be identified as an opponent of the government. The Tribunal is therefore satisfied that any harm inflicted upon the applicant would be directed at him for the essential and significant reason of a political opinion imputed to him, and that it is therefore harm against which the Refugees Convention must protect him. The Tribunal is satisfied that the independent country information, including that referred to by the delegate, establishes that, in fact, the Gambian authorities would not provide protection against human rights abuses committed by government bodies, and nor would the applicant be likely to obtain proper recourse in the event of suffering such harm: see United States Department of State *Country Report*, supra, which refers to reports that government agents carried out extrajudicial killings and engaged in torture of arbitrarily detained political prisoners; notes that the police were corrupt and ineffective, and that there were statutory obstacles to victims of state agents' abuses seeking redress; and that the courts were subject to executive pressure.

The Tribunal concludes that the applicant has a well founded fear of persecution for a Convention reason, in that there is a real chance that he would face serious harm at the hands of Gambian paramilitary authorities because of his knowledge of their involvement in criminal activities, which was publicised by the applicant. The Tribunal is satisfied that the applicant has thereby acquired the profile of a political opponent of the Gambian authorities, and is satisfied that the independent evidence suggests that the Gambian authorities carry out human rights abuses amounting to persecution against such persons. The Tribunal is satisfied that the applicant would not be able to obtain adequate or effective protection against any mistreatment by state agencies. In these circumstances, 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) for a protection visa.

## DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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

Sealing Officer's I.D. prrt44