

1001289 [2010] RRTA 310 (21 April 2010)

DECISION RECORD

RRT CASE NUMBER: 1001289

DIAC REFERENCE(S): CLF2009/165181 OSF2007/084214

COUNTRY OF REFERENCE: Philippines

TRIBUNAL MEMBER: Mary Urquhart

DATE: 21 April 2010

PLACE OF DECISION: Melbourne

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

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 Philippines arrived in Australia [in] September 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2009. The delegate decided to refuse to grant the visa [in] January 2010 and notified the applicant of the decision and her review rights by letter [on the same date]
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] February 2010 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.

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 Department's file 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 Department file reveals that the applicant last entered Australia [in] September 2009 on a Republic of the Philippines passport number [number deleted: s.431(2)] on a class TU subclass 686 Tourist visa valid until [a date in] March 2010. She applied for protection [in] December 2009 and was granted an associated Class WA Subclass 010 Bridging visa.
21. The applicant states in her Protection visa application that she was born in [Municipality A], Bongabong Province, she is of Tagalog ethnicity. She states she is a Roman Catholic by religion. She states that she has never married.
22. The applicant states she has one daughter, [name deleted: s.431(2)] (born [date deleted: s.431(2)]), living with her family in the Philippines, and one Australian citizen daughter, [name deleted: s.431(2)] (born [date deleted: s.431(2)]), living with her in Australia.
23. The applicant was interviewed by the Department in relation to her claims [in] January 2010, and further claimed that she had not received a direct threat of kidnapping. She has not reported her concerns to the authorities as she is too scared to go to the police.
24. The applicant appeared before the Tribunal [in] April 2010 to give evidence and present arguments. The Tribunal also received oral evidence from [Person A].

Evidence at the hearing

25. The applicant stated her name and gave her date of birth as [date deleted: s.431(2)]. She is currently [age deleted: s.431(2)] years old. She is a single mother and the mother of two daughters. She has a daughter [age deleted: s.431(2)] who lives in the Philippines with her own mother and sister, and a daughter in Australia born [date deleted: s.431(2)] who lives with her. The child has an Australia citizen father who does not support her. A copy of the registered birth certificate was submitted at the hearing.
26. The applicant told the Tribunal that she was a Tagalog by ethnicity and of the Roman Catholic faith.
27. The applicant produced her Republic of the Philippines passport issued in December 2006. It was her evidence she travelled to Australia using the passport in her own name. The applicant told the Tribunal that she had made four trips to Australia. She first came to Australia in January 2007 on a Tourist Visa and stayed for three months. Later in 2007 she returned to Australia and remained from May until November. She said she next came to Australia in June 2008 on a fiancé visa and stayed for nine months. It was her evidence that

her sponsor did not marry her and she returned to the Philippines. The applicant came to Australia most recently in September 2009.

28. The applicant told the Tribunal that she had a mother in the Philippines, and four sisters and three brothers living there. All live in [Municipality A]. This was the area where she was born and where she returned to live with her child between trips to Australia.
29. Prior to coming to Australia, the applicant told the Tribunal that she had worked in Manila as a nanny for some Chinese people and that she was engaged in that employment for some six years. It was her evidence that she graduated from high school having completed a four-year diploma. She said she was 21 when she finished school. She was a little older because her aunt had paid for her to go and finish her education.
30. The Tribunal asked the applicant if she had had any help with her application. She replied that she did have some help from [Person A] who was here today as a witness. It was her evidence that she talked to him about her application and he wrote the application for her. It was his writing; however, she signed the declaration that the contents were true.
31. The Tribunal asked the applicant why it was that she left the Philippines. The applicant replied she left the Philippines because of the danger she perceived on behalf of her Australian baby. She said that she was a single mum in the Philippines with a foreign-born baby. She does not wish to return to the Philippines as she fears that her Australian born baby daughter will be kidnapped and held for ransom from the Australian government.
32. It was her evidence that her sister [name deleted: s.431(2)] had told her of the dangers of foreign babies being kidnapped. She said her sister mentioned a number of groups, squads or gangs who were responsible for kidnapping. The applicant said some of these gangs were known as the Sparrow Squad and the Gagamba unit and that they were responsible for kidnappings. It was her evidence that groups such as these kidnapped babies in order to hold them for ransom from their countries of nationality.
33. The applicant indicated that she was afraid to go to the authorities and report her fears in relation to the kidnapping. It was her evidence that the police could not help her. She said the police are suspected of being involved with the kidnappers. As a single mum she could not rely on the authorities if her baby was kidnapped.
34. The applicant also spoke of her fears from terrorists known as Abu Sayeff. It was her evidence that they were terrorists operating in and around the province where she came from. She said she knew that they had in the past been responsible for kidnapping. She had heard that they kidnapped children and she was particularly worried about her Australian baby.
35. The Tribunal questioned the applicant carefully about her knowledge of the terrorists and gangs such as Gagamba unit or the Sparrow squad. She was very frank telling the Tribunal that she could give no details of these groups, but was convinced by her sister and from newspaper and other reports that they operated openly in the area and she feared her baby would be at risk from them.
36. The applicant spoke about her fears that the outlaw gangs or the terrorists were involved in organised kidnapping. She said babies could be sold to other families. She said babies and young people could be sold for drug abuse, sex abuse and even into prostitution.

37. The applicant told the Tribunal that she held grave fears that if she returned to the Philippines as a single Filipino woman on her own with a foreign born baby there would be no-one to help her. She cited an example of her time in the Philippines when her baby was sick and she as its single mother could find no assistance. It was her evidence that if she could find no assistance when her baby was sick, how would she find assistance if something like a kidnapping happened to her baby.
38. The Tribunal discussed with the applicant whether she could return to Manila with her baby, and live away from the province where her family reside. She replied that she had no support there and no friends there. She said when she had previously returned to the Philippines she had had to return to her own province for these reasons. The Tribunal asked the applicant if the father of her child assisted with the child. She replied he did not. She said he was in touch and knew of the situation, but could not help.
39. The applicant told the Tribunal that the only help she has been able to source is from the Red Cross, from the Asylum Seekers Centre, from The Salvation Army and from [welfare organisation deleted: s.431(2)]. It was the applicant's evidence that she was suffering from depression and had suicidal thoughts. She said she did not know where she was going. She spoke of the hardship she has endured, even in Australia. She told the Tribunal she is now receiving food and support from the Red Cross and the Salvation Army and from [Person A], her witness, and from one other person in Australia named [Person B].
40. The applicant told the Tribunal that her baby was her life. She did not know what to do or where she could go. She could not leave her Australian-born baby in Australia alone and she could not go back to the Philippines as a single mother without her baby, but she could not take the baby to the Philippines where there was such a risk.
41. [Person A] gave evidence. He told the Tribunal he was born [date deleted: s.431(2)]. He met the applicant with another friend named [Person B] He said the applicant had told him her situation. He met her sometime last year. He said he could not believe that this woman was in Australia and having a baby and yet was starving. She had no food and no help. He said she was in a very hard situation. He asked her why she did not go home and she explained to him something of the current situation in the Philippines where babies are stolen. She explained to him that her baby had a particular problem because her baby was a foreign baby. She had told him that her sister knew that if there was a baby with another nationality then the gangs would focus on such a baby to get ransom.
42. [Person A] suggested the applicant go to the Red Cross or to the Asylum Seekers Centre for assistance. It was his evidence he took her to the Red Cross. He said she had no idea where to go. He also took the applicant to Legal Aid and assisted her in seeking advice in relation to applying for a Protection Visa.
43. The witness knew her migration history, which included coming to Australia as a fiancé and that that application had not worked out. The witness told the Tribunal that on one occasion he had spoken to the applicant's sister in the Philippines. He said he had also spoken to Filipino workmates that he knew in Australia. It was his view that her beliefs about kidnapping were true. He said even family members would sell a baby for money in the Philippines. There is a great amount of poverty.
44. The Tribunal put to the witness that the applicant's [age deleted] daughter in the Philippines seemed to be safe. He replied that that daughter is not a foreigner. It was his evidence that

the gangs and terrorists are very smart, and they know that even if the Australia government wouldn't give ransom they would advocate on behalf of a baby who was an Australian citizen. He said the applicant's baby was at a higher risk because she was a foreigner.

45. The witness told the Tribunal that the applicant was in dire straits; that she was crying day and night. He said she lives on food handouts, second-hand clothes, and sponsored accommodation and that these were no solutions for her.

Country information

46. On 20 April 2010 DFAT issued the following Travel advice:

“We advise you to exercise a high degree of caution in the Philippines because of the high threat of terrorist attack and the high level of serious crime”.

The report states: “There is a danger of kidnapping throughout the Philippines, particularly in the southern Philippines including coastal and island tourist resorts and dive sites. Terrorists have kidnapped foreigners from these areas in the past”.

47. The Philippines: "Kidnap Capital of Asia" Thomas A. Clayton 2006, <http://www.claytonconsultants.com/en/resources/articles.php> - Accessed 20 April 2010. (file://melsrv1\melref\INTERNET\PHL36520.we6.pdf) records:

Fiscally, geographically and with an eye toward long-term benefits, the Philippines has always been a popular place for foreign businesses to "set up shop."

Unfortunately, a major obstacle for business and social success that has become increasingly prevalent in the Philippines is the crime of kidnapping for ransom. In fact, kidnapping incidents are so common in the Philippines that the country has fast earned the unsavoury reputation as being "the kidnap capital of Asia." The Philippine Centre for Investigative Journalism describes kidnapping in the country as "...a virtual cottage industry in which little capital and apparently equally little risk can mean millions of pesos in profits."

But in all of Asia, why has the crime of kidnapping become epidemic in the Philippines? Who is performing these crimes and who are their targets?

Who is Doing the Kidnapping?

Kidnap for ransom (K&R) is not a new phenomenon, but it is a problem that has become more and more commonplace all over the world in recent years - and the Philippines is no exception, exhibiting a particularly sharp increase in incidents over the last decade. Companies with operations in the Philippines must be aware that carefully organized regional K&R "gangs" indeed exist and are capable of causing serious damage to the welfare of a company's employees and that company's bottom line.

Despite the fact that the Philippines legally considers kidnapping to be a crime punishable by death, incidents continue to rise, which may cause a number of foreign investors and tourists to consider alternative locations. Concerns intensified under the present administration of President Gloria Macapagal-Arroyo, prompting the President to declare an "all-out war" against kidnapers.

The Philippines struggles as a nation with unemployment and poverty - with nearly 40% of the population currently living under the poverty line. As with other nations

around the world with uneven economies, the prevalence of organized crime becomes an outlet to illegally receive large returns in exchange for relatively little effort.

Impoverished regions, as well as conflicts between and among secessionist groups have become breeding grounds of criminal syndicates, many of whom utilize K&R practices to bankroll their operations. Notably, secessionist Muslim groups, such as the MNLF and the MILF, and splinters and metamorphoses of these groups are known to pursue K&R as a means of raising funds. The Muslim armed group Abu Sayyaf has been involved in kidnapping of foreign tourists for ransom and political statements. The Communist Party of the Philippines (CPP) and its armed group the New People's Army (NPA) and similar socialist/communist armed groups who continue to oppose the government have likewise conducted kidnappings, though to a lesser extent than the Muslim groups.

A Growing Problem

K&R incidents have increased at an equally steady rate. From 1993 to 2002, a total 2,142 kidnap victims were monitored by the Citizens' Action Against Crime (CAAC) and the Movement for Restoration of Peace and Order (MRPO). These numbers translate to a yearly average of 214 reported kidnap victims that by all accounts seems to be increasing.

Note too that these are the reported numbers. The actual number of kidnappings for ransom that take place in the Philippines far exceeds the numbers written up by the authorities because many kidnapping cases are not reported to the police. The main reason for this is that often, the families of the victims fear police involvement may endanger the victims' lives. Many victims' families do not know who to trust in the police force due to the perceived involvement of some policemen in K&R cases. In the last decade, numerous "bad cops" have been pinpointed as among the beneficiaries of the kidnapping trade. There are also reports that kidnap gangs are well connected with big political warlords. Further, most of the kidnap gangs threaten to harm or kill members of the family if the incident is reported to the police.

One disturbing allegation that was brought out to explain the rise in K&R numbers during election periods is the involvement of some local, as well as national, electoral candidates utilizing K&R ransom collections to fund their election campaigns. Police intelligence revealed that some kidnapping incidents in election years 1998 and 2001 were carried out "to fund the campaign of some cash-strapped presidential candidates," and National Chief of Police Hermogenes Ebdane reportedly confirmed these reports. In May of last year, Ebdane himself publicly warned of the possibility of a rise in kidnapping incidents toward the start of the campaign period for the local and national elections to be conducted this year.

In 2002, as K&R incidents occurring in the Philippines were rising on the international news front, a national emergency summit was conducted at which President Arroyo gave Police Chief Ebdane an ultimatum - to neutralize the 21 most active kidnap-for-ransom syndicates in the country within one year. In June of 2003, Chief Ebdane conceded that he was unlikely to meet the deadline set by the President Arroyo, but reported that 15 major K&R syndicates had been broken up since the "all-out war" was declared. It remains to be seen whether the K&R industry's growth has been slowed at all by the police activity, but based on recent events, it would seem that as quickly as the police topple a major K&R syndicate, another begins to form in its place.

Who Are the Targeted Victims?

In the Philippines, anyone can be a potential kidnap victim - Filipinos and foreigners, wealthy or middle class - as long as he or she presents a promise for a high payout. Often, foreigners of modest means are kidnapped if they work for companies perceived to have "deep pockets" and the willingness to pay for the safe return of employees. Always, the most important factor considered by kidnapers in the selection of a target person is the intended victim's family or affiliate organization and subsequent capacity to pay the ransom in a short period of time. More often than not in the Philippines, the selected victims belong to families in the upper income brackets and are mostly wealthy businessmen.

While there is a wide demographic scope of different types of K&R targets, the group that has been targeted most frequently in the last five to ten years has been Chinese businessmen. This is attributed to the large numbers of Chinese people who adhere to a cultural norm that includes extreme privacy when dealing with family-related issues - meaning that such cases are less often reported to the authorities.

This is not to say that people who are not Chinese businessmen need not worry. Men, women and children who are a part of a wealthy family, or who work for (or are related to someone who works for) an established company are all considered "at risk."

It should be noted that the risk for foreigners is at its highest in the Southern Philippines where the Muslim gangs primarily operate. Foreigners in Metro Manila are relatively safe by comparison. It is actually recommended that visiting foreigners avoid the southern region if possible. There continue to be travel warnings issued by many governments about this region of the Philippines.

The Practice of Kidnapping

In the Philippines, the kidnapping act can be performed by a gang of less than 10 equipped with some basic weapons, a safe house and a get-away vehicle. Typically, a background check of potential victims is carried out to determine assets or the capacity to raise money. A kidnap group initially scouts for a potential victim through an informer or spotter. An informer or spotter could be a gang member or an outsider whose participation is to locate targets for the group.

Aside from potential victims who exhibit conspicuously lavish lifestyles, there are other pieces of information that flag people as targets for kidnapers. These include significant business transactions (such as expansions and mergers of businesses), real estate transactions (such as the sale of a big land property), and big celebrations or parties where many guests are invited.

After the potential victim has been spotted, the kidnap group conducts a thorough study on his background and his daily routine movements/activities. Customary routes (to work, to school, etc.) taken by the target are observed.

To facilitate the kidnapping of the target victim, a gang member is sometimes made to seek employment with the target victim's family, either as a driver or as a household helper. In coordination with this insider, the group snatches the victim at an opportune time and in a manner that does not invite attention or suspicion from the public.

Increasingly, kidnap gangs in the Philippines have been focusing on children and teenagers (of all national backgrounds) between 5 to 15 years of age studying at private schools. In these cases, the children are seized and, typically, as the getaway

car speeds away, a convoy of vehicles follows in a single line, creating temporary traffic as a police-blocking manoeuvre. The kidnappers then call the child's parents and let their young victim cry for help over the phone and plead to be saved. This is exacerbated by the threat that the child will be killed if the ransom is not settled within the day.

The amount of money asked by the gang is a result of the background research prior to the abduction. If the victim's family can't afford the ransom, they are advised to sell property, including cars and other valuable goods. Before they release their victims upon the payment of the ransom, the victims are induced to divulge the names and relevant information of their classmates, friends and neighbours who are considered to be coming from well-to-do families. The tips provided by the helpless victims then become part of an ongoing cycle.

Be the victim a 75-year-old Chinese businessman, the wife of a local Filipino banker or a five-year-old American ex-pat private school attendee, the bottom line is always money. In each case the victim is regarded as a commodity transaction reinforced by threats.

While Filipino kidnappers may come from the more impoverished parts of the country, it is a mistake to assume that they are not sophisticated. Most gangs have members that may themselves be former police, rebels, security or military officers. These gang members are professionals who have obtained military, para-military, police or security training, and are trained in combat as well as psychological operations.

Effective pre-incident training, security awareness and the implementation of security measures at home and at work are the best ways to avoid becoming a kidnap-for-ransom victim. Unfortunately, even individuals with security details may prove helpless in the hands of well-equipped, well-trained and highly armed professional kidnappers. In these cases, the victim's families may have a better chance of fighting the criminals by contacting proper and trusted authorities and experienced negotiators for help”.

48. In an essay on Abu Sayyaf and US and Australian military intervention in the southern Philippines, dated 29 November 2007, Austral Policy Forum 07-23A Ms Carolin Liss sets out a background to the terrorist situation in the Philippines. She writes:

“Australia will only be the second country to be allowed to send substantial numbers of military personnel to the Philippines”. US forces operate alongside Philippines government forces (AFP) targeting the Islamic insurgency in the southern Philippines, the Abu Sayyaf in particular. However, AFP operations “have led to the displacement of hundreds of thousands of people. These operations have therefore contributed to the suffering of the local population and have undoubtedly increased local support for groups such as the MILF and the Abu Sayyaf” Liss concludes that “insufficient economic and humanitarian assistance and the continuous use of military force to ‘pacify’ and integrate the south into the main body of the Philippine nation-state, is unlikely to succeed.

The southern Philippines regions of Sulu and Mindanao, have given rise to three major Islamic-based insurgent organisations, of which the most radical today is the Abu Sayyaf. Successive Philippines governments have responded with force, and occasional bouts of negotiations. This article provides an overview of the violent history of the Abu Sayyaf and examines the increasing involvement of foreign forces, namely US and possibly Australian troops, in the conflict between the Philippine

government and Muslim insurgents. The paper questions the success of the involvement of foreign military forces, suggesting that it may in fact aggravate an already volatile situation.

Forerunners of the Abu Sayyaf

When the Spanish colonial forces arrived in the sixteenth century in the archipelago that is today known as the Philippines, they referred to their enemies, the various Islamised groups in the south, collectively, as 'Moros'. The term carried connotations of backwardness and inferiority and became synonymous with savagery, barbarism, piracy and the like. When the American colonial forces attempted to impose their sovereignty on Mindanao and Sulu in 1898, they also met staunch opposition from Muslim people in the southern part of the Philippine archipelago. The conflict between the American forces and the Muslim population led to the emergence of the notion of the so-called 'Moro Problem', a social and political concept which became an integral part of American colonial vocabulary and policy in the southern Philippines. The term 'Moro' still has a wide currency in the Mindanao-Sulu region, but with a significantly different connotation. Since the late 1960s a deepening Islamic consciousness and an increased unity among Muslim Filipinos, in the face of the politics of integration in the Philippines, has led some Philippine Muslim nationalists to refer to themselves collectively as Bangsa Moro ('the Muslim people'). In this usage the term 'Moro' has thus been transformed into a positive symbol of collective identity.

In the early 1970s, broad-based separatist movements began to emerge in the southern Philippines as a result of the political, social and economic marginalisation of the Muslim population of Mindanao and Sulu. As Muslims in a Christian-dominated state, Islam has been an important ideological-cultural aspect of the separatist struggle in this area.[1] Increased globalisation, and its associated rapid exchange of money, goods and ideas, including the dissemination of radical ideologies and political tactics, as well as the increased travel of Muslims between the Middle East and the southern Philippines, also played a pivotal role.[2] The first major group to emerge in 1971 in the southern Philippines was the Moro National Liberation Front (MNLF) led by Nur Misuari. The initial aim of this group was to establish a separate Moro homeland with "a democratic system of government which [does] not allow or tolerate any form of exploitation and oppression of any human being by another or of one nation by another",[3] and the preservation of Islamic and indigenous culture.[4] However, internal fighting divided the group from the outset and over the years a number of factions split from the MNLF. The Moro Islamic Liberation Front (MILF), identified with the Islamic scholar Hashim Salamat, separated from the MNLF in 1984, stressing the ideological importance of Islamic renewal as part of the struggle for Muslim self-determination.[5]

Like separatist movements in other parts of the world, the MILF and MNLF chose armed struggle to further their aims. Successive Philippine governments answered in kind, with some presidents using extreme forms of violence, including the use of napalm, against the local population in the south.[6] Over the years the ongoing conflict between these groups and the successive Philippine governments resulted in considerable destruction of villages and towns in the area and the displacement of the local population, including Christians, Muslims and Bajaus.

Guerrilla warfare was the predominant pattern of armed struggle used by the MNLF and the MILF, with troops of both groups controlling parts of the countryside and establishing fixed bases in the southern Philippines. However, in both organisations individual leaders and their idiosyncratic tactics caused problems. Rogue elements

within both the MNLF and MILF were accused of being responsible for kidnappings, extortion and robberies in the Philippines and occasional pirate attacks off the country's coast.[7]

Since the 1970s, attempts have been made by the MNLF, MILF and the Philippine government to end the conflict in the south. In 1996, after decades of negotiations, the MNLF signed a peace agreement with the Philippine government. However, due to corruption within the MNLF and, perhaps more importantly, because the government did not keep its promises regarding economic assistance and the fact that numerous former MNLF fighters were left without employment, unrest persisted.[8] In fact, many dissatisfied MNLF members defected to the MILF, particularly after 1996, due to their frustration over the outcome of the agreement. Therefore, by 1996 (if not earlier) the MILF became the most powerful insurgent movement in the southern Philippines. The Philippine government had recognised the importance and influence of the MILF early on and in 1992 began negotiations. However, while a number of agreements between the government and the MILF were reached over the years and a cease-fire signed in 2001, the situation remains volatile and negotiations are still ongoing.[9]

Dissatisfaction with the MILF and MNLF and the failure of the Philippine government to either solve the Mindanao-Sulu problem politically, or truly abide by the tenets of the various peace agreements reached with the MNLF and MILF, enhanced the radicalisation of some young Muslims. This radicalising process and political frustration on the part of Muslim youth was demonstrated by the emergence and rise of the extremely militant group, Abu Sayyaf.

The Abu Sayyaf

The Abu Sayyaf was founded in the early 1990s by a former MNLF member Abdurajak Janjalani. A charismatic leader and an eloquent speaker, Janjalani was also a committed Muslim scholar who had studied, among other places, in Mecca and Libya. After his return to the Philippines from the Middle East, Janjalani broke with the MNLF, as he, unlike the MNLF leadership, remained committed to the notion of jihad for an independent Islamic state, and founded his own organisation – the Abu Sayyaf.[10]

Since the early 1990s the Abu Sayyaf is believed to be responsible for a spate of attacks and robberies in the southern Philippines, including bombings, extortion, raids of villages, attacks on military posts and kidnappings. The military blamed the Abu Sayyaf for committing 102 terrorist acts between 1991 and 1995 alone, and claimed it amassed 20 million Pesos through kidnapping in that period.[11] The government reacted in force against the Abu Sayyaf. By the mid-1990s, sporadic battles between the Abu Sayyaf and the Armed Forces of the Philippines (AFP) were severely affecting the civilian population on the island of Basilan, the stronghold of the Abu Sayyaf,[12] as well as on surrounding islands, resulting in the displacement of thousands of people in the area.[13]

In 1998, Abdurajak Janjalani was killed in a gun battle with the police and the organizational and ideological structure of the Abu Sayyaf changed. After considerable internal struggle, Abdurajak Janjalani was succeeded by his brother Khaddafy Janjalani, who lacked the ideological and religious moorings of Abdurajak.[14] Not all commanders and fighters of the Abu Sayyaf accepted Khaddafy as their new leader, and the group developed into an even more radical movement consisting of several loosely connected factions, without a clear set of doctrines and principles.[15]

However, even before Abdurajak Janjalani's death, the Philippine government repeatedly characterised the Abu Sayyaf as a group of bandits with no political agenda, profiting from the general state of lawlessness on the edge of the frontier in the southern Philippines. Indeed, it often appears difficult to draw a clear line dividing political aims from criminal purposes in regard to the Abu Sayyaf. There is no doubt that kidnapping and ransom have played an important part in the group's strategy and tactics. Yet the group's basic aim was clearly defined as the establishment of an independent Islamic state in the southern Philippines. Judging by demands made during kidnapping incidents throughout the 1990s, other, perhaps more realistic aims, were also of critical importance to the group. These included the exclusion of undesirable foreign influences, such as Christian missionaries, from the southern Philippines, the banning of foreign fishing boats and fishermen from the waters of the Sulu and Celebes seas, and the teaching of Islam in Philippine schools.[16] These demands indicate that the group is not just 'in it for the money' but has been fighting for fundamental political and economic objectives and changes.

More difficult, though, is determining whether the group is primarily religiously or politically motivated. During Abdurajak Janjalani's leadership, Abu Sayyaf members and the group's aims were heavily influenced by Janjalani's teachings and his interpretation of jihad. However, the group's emergence out of the backwater of historical-political neglect of the Muslim population in the southern Philippines, as well as economic-environmental demands such as the banning of foreign fishermen, indicate that the Abu Sayyaf's agenda was first and foremost political in nature, even under Janjalani's leadership. After Khaddafy took over the reins of leadership in 1999, the group lost some of its Islamic ideological base, and political aims became even more explicit and prominent. Nonetheless, Islam and the plight of the regional Muslim populace remained an important part of Abu Sayyaf ideology.[17]

49. BBC News 8 March 2010 reports:

The Philippines - a Spanish colony for more than three centuries and named after a 16th century Spanish king - was taken over by the US in the early 20th century after a protracted rebellion against rule from Madrid. Spanish and US influences remain strong, especially in terms of language, religion and government.

Self-rule in 1935 was followed by full independence in 1946 under a US-style constitution. President Ferdinand Marcos, a close ally of the US, imposed martial law in the early 1970s but was forced to step down in 1986 after mass demonstrations cost him the support of the armed forces.

Although the country has remained a democracy it has enjoyed little stability. President Joseph Estrada was forced out of office in 2001 after months of protests at his corrupt rule, and there have been a number of coup attempts against his successor, Gloria Arroyo.

On the southern island of Mindanao, rebels have been fighting for a separate Islamic state within the mainly-Catholic country. The decades-long conflict has claimed more than 120,000 lives. Sporadic violence has continued despite a 2003 ceasefire and peace talks, which again resumed in December 2009.

The Abu Sayyaf group on the island of Jolo has a history of violence towards hostages, and the government has declared all-out war on it over its alliance with al-Qaeda.

Although it once boasted one of the region's best-performing economies, the Philippines is saddled with a large national debt and tens of millions of people live in poverty. The economy is heavily dependent on the billions of dollars sent home each year by the huge Filipino overseas workforce.

...The Abu Sayyaf, which has more than 300 fighters, is on the U.S. list of terrorist organizations. It is suspected of receiving funds and training from al-Qaida.

Although the government has claimed to have crippled the Abu Sayyaf after several U.S.-backed offensives, the group still poses a major threat. It held three Red Cross workers and several others hostage earlier this year, engaged government troops in fierce fighting and planted bombs. According to the Philippine army, it was behind Sunday's blast that wounded two soldiers outside an airport and an air force base on Jolo, about 590 miles (950 kilometres) south of Manila.

The Abu Sayyaf has remained without a central leader following the killings of its top commanders. It has split into at least five factions and can still plot attacks despite many battle setbacks and logistical problems, police intelligence official Senior Supt. Felix Villasanta said.

50. Amnesty International's Report 2009 – Philippines (28 May 2009):

Renewed armed conflict displaced more than 610,000 and killed over 100 civilians in Southern Philippines. Peace talks between the government and various armed groups stalled. The majority of extrajudicial killings and enforced disappearances remained unsolved. A culture of impunity continued to encourage vigilante killings. Indigenous Peoples (IPs) continued to struggle for land rights as the government failed to comply with its obligation to obtain IPs' free, prior and informed consent to development plans in their traditional territories. Cruel, inhuman and degrading conditions of detention persisted, and under-18s experienced abuse in juvenile detention centres.

51. Armed conflict – Mindanao

In August, heavy fighting erupted between government security forces and the Moro Islamic Liberation Front (MILF) after the Supreme Court issued a temporary restraining order on a previously signed Memorandum of Agreement on Ancestral Domain. The Memorandum widened the Autonomous Region for Muslim Mindanao and gave broader political and economic powers to Muslim leadership in the region.

Human rights abuses and breaches of international humanitarian law were committed by the government and the MILF during the renewed conflict. Over 610,000 people were displaced by the fighting; their situation was aggravated by floods, typhoons and reported cases of local government or the military blocking aid. Over 100 unarmed civilians were killed, some of them deliberately targeted and others indiscriminately attacked by MILF fighters. Over 500 houses were allegedly burned by both parties.

In August, the MILF killed at least 33 civilians and took more than 70 hostage including the elderly, women and children, in an attack on civilians in Lanao del Norte province.

The MILF reportedly trained children as young as 13 for the Bangsamoro Islamic Armed Forces.

The Philippine military failed to protect civilians from MILF attacks, and killed several civilians in ground attacks and aerial bombings. Security forces allegedly

tortured several Muslim civilians, resulting in at least two deaths, in their pursuit of MILF commanders.

The government armed militias. In August, the police announced that they would distribute 12,000 shotguns to “auxiliaries”. Some local officials encouraged civilians to arm themselves for protection.

...Few effective investigations were conducted into allegations of enforced disappearances and extrajudicial executions, and conviction of those responsible was rare. Many cases were not brought to court due to a lack of evidence, often because witnesses feared reprisals. Out of the hundreds of cases that had been reported in previous years, only two were resolved and no high-ranking officials were prosecuted.

"At least 11 journalists, mostly local radio commentators, were killed in separate incidents..."

In a landmark ruling in July, a Regional Trial Court in Agusan del Sur province found Army Corporal Rodrigo Billones guilty of kidnapping and illegal detention of six individuals, suspected to be communist insurgents, in 2000. A military witness stated that the victims were tortured. Rodrigo Billones was sentenced to life imprisonment.

In September, Indigenous Peoples’ rights activist and co-founder of group Cordillera Peoples’ Alliance (CPA) James Balao was abducted by armed men claiming to be police officers. The CPA believed James Balao to be detained in an undisclosed security forces’ facility.

In September, the Court of Appeals issued writs of amparo and habeas corpus to the families of disappeared students Sherlyn Cadapan and Karen Empeño, who had been abducted in 2006. The Court ordered the students’ release, stating that the decision dealt with “a few misguided, self-righteous people who resort to the extrajudicial process of neutralizing those who disagree with the country’s democratic system of government.” However, the court did not permit inspection of military camps and facilities, and their whereabouts remained unknown.

In October, the Supreme Court upheld a Court of Appeals decision granting brothers Raymond and Reynaldo Manalo protection from harassment by security forces under a writ of amparo. The brothers were illegally detained and subjected to torture and other cruel, inhuman and degrading treatment by the military for 18 months before they escaped in 2007...

52. Country information contained in “ A Deeper Look at Violence Against Women (VAW): The Case of the Philippine”, (Mallorca-Bernabe, Grace; undated, downloaded from the University for Peace’s Peace & Conflict Monitor site – <http://www.monitor.upeace.org/pdf/Violence%20Against%20Women%20in%20the%20Philippines.pdf>), refers to the status of women.

53. In particular the report acknowledges the gains made in relation to the protection of women through legislation but also highlights further challenges for the Philippines:

“While tremendous gains have already been achieved, there are key challenges that need to be addressed still. Among these are:

The monitoring, evaluation and implementation of existing laws and policies addressing violence against women need to be regularly done via a standardized

documentation system and development of evaluation instruments to analyse trends and developments including prevalence and magnitude of VAW. Critical legislation on violence against women needs to be passed. Among these are the anti prostitution bill, the amendments of discriminatory laws such as the Revised Penal Code, particularly the provisions related to Adultery and Concubinage and the Reproductive health Care Act.

A more sustained gender sensitizing and training of police investigators, social workers, police and health officials involved in assisting survivors is needed. In the same manner, a more comprehensive, coordinated and multi-agency approach to VAW needs to be operationalized to ensure timely, responsive environment for woman victims; including a woman-friendly judicial framework that safeguards the safety and welfare of victims throughout the proceedings and processes of the criminal justice system”.

FINDINGS AND REASONS

54. The applicant arrived in Australia on a Republic of the Philippines passport. There is no evidence that the applicant has the right to enter and reside in a safe third country under section 36(3) of the *Migration Act* 1958. The Tribunal finds on the basis of the applicant’s evidence and passport that the applicant is a national of the Republic of the Philippines and has assessed her application against that country.
55. The applicant fears that as a Filipino who is the unmarried mother of an Australian born child her baby may be kidnapped by terrorists and outlaws. She has not reported her concerns to the authorities as she claims she is too scared to go to the police.
56. The Tribunal notes the Department delegate at primary decision found that the applicant does not fear persecution as a result of a Convention reason, and so did not address the question of whether the claims made by the applicant involve serious harm and systematic and discriminatory conduct as required by Section 91R of the *Migration Act*.
57. In determining whether the applicant’s fear of persecution is well founded, the Tribunal must weigh all of the evidence before it and determine whether it accepts the applicant’s account of the circumstances leading to the applicant’s departure from the Philippines. In doing so, it is entitled to have regard to the overall plausibility of her account (Chan’s case, per Dawson J at 396, and per McHugh J at 428; Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, Geneva, January 1992, at 47 and 48).
58. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the claimed fear or that it is “well founded” or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be provided by the applicant. A decision maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the claims made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169 70.)

59. Although an applicant is not obliged to provide corroboration of his or her statements, a decision maker is not required to accept uncritically his or her unsupported assertions: *Randhawa v MILGEA* (1994) 124 ALR 265.
60. An assertion by an applicant, that he or she faces persecution for a particular reason, is not sufficient to establish refugee status. The Tribunal is not required to accept an applicant's evidence, even in the absence of other evidence which specifically disproves that of the applicant; the Tribunal must consider the objective and subjective evidence, consider inconsistencies and determine which evidence it finds credible: see *Chen Xin He v MIEA* (unreported), 23 November 1995, Nicholson J at p11. An applicant's account should be accepted if it is credible, plausible and does not run counter to generally known facts: Handbook at par.204.
61. The Tribunal accepts that the applicant is [age deleted: s.431(2)] female citizen of the Philippines. The Tribunal accepts that the applicant is of Tagalog ethnicity and that she is of the Roman Catholic faith. The Tribunal accepts that she is unmarried and that she is the single mother of two children. The Tribunal accepts that she is the single mother of a [age deleted: s.431(2)] daughter [name deleted: s.431(2)] (born [date deleted: s.431(2)]), living with her family in the Philippines, and that she is the single mother of an Australian born baby, [name deleted: s.431(2)](born [date deleted: s.431(2)]), living with her in Australia.
62. The Tribunal notes that in her written application for a protection visa and at the hearing the applicant did not make any reference to any fear of religious, ethnic or racial harm; or to any harm arising from her political opinion or imputed political opinion. However she did refer to her status as a single mother of an Australian or foreign born baby. For this reason the Tribunal has considered her application on the basis of the Convention ground of particular social group.
63. The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:
- ... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...
64. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.
65. Before a decision can be made that a person is a refugee by reason of his or her membership of a particular social group, the Tribunal must be satisfied that:
- there is a relevant social group of which the applicant is a member, and
 - the persecution feared is for reasons of membership of the group.

66. In *Applicant S* the High Court emphasized the relevance of cultural, social, religious and legal factors or norms in a particular society in determining whether a posited group is a particular social group in the society. In this decision, Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

...First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a “social group” and not a “particular social group”.

67. In *Applicant S*, Justice McHugh went on to explain that the collection of persons who comprise a particular social group must share a certain characteristic or element which unites them and enables them to be set apart from society at large. That is to say, not only must such persons exhibit some common element; the element must unite them, making those who share it a cognisable group within their society:

The use of [the term “membership”] in conjunction with “particular social group” connotes persons who are defined as a distinct social group by reason of some characteristic, attribute, activity, belief, interest or goal that unites them. If the group is perceived by people in the relevant country as a particular social group, it will usually but not always be the case that they are members of such a group. Without some form of internal linking or unity of characteristics, attributes, activities, beliefs, interests or goals, however, it is unlikely that a collection of individuals will or can be perceived as being a particular social group. Those indiscriminately killed or robbed by guerrillas, for example, are not a particular social group.

68. The Tribunal accepts that the visa applicant is a member of a particular social group being unmarried Filipino mothers of foreign nationals in the Philippines which sets that group apart in society and is not distinguishable simply by a common fear of persecution and finds that “unmarried Filipino mothers of foreign nationals in the Philippines” appropriately categorises and encompasses the particular social group to which the visa applicant belongs. The Tribunal is further satisfied that the characteristic that binds this group is not and does not constitute a shared fear of persecution. The Tribunal finds that her membership of this particular social group is the essential and significant reason for the harm that she fears.

69. In the *Khawar* decision, the High Court held that once a claim meets the threshold of serious harm – as the Tribunal has found in this case – the relevant consideration is whether effective state protection is available for the harm feared by the applicant. As demonstrated in *Khawar*, it is not necessary that the harm is inflicted by the state; rather the emphasis is on the nexus between the harm suffered and the state’s ability or inability to protect the applicant, as discussed below.

70. The Tribunal finds that the prevailing attitudes to women, that when subjected to serious harm in this instance perhaps by outlaws and terrorists, there is a real chance that state protection would selectively and discriminatorily be withheld from the applicant. This is underscored by country information which indicates that the protection of women in the Philippines is hampered by cultural attitudes about the role of women generally and status of wives in particular.

71. Given the applicant is “an unmarried Filipino mother of a foreign national in the Philippines” the Tribunal finds there is a chance which the Tribunal finds is not remote, and is therefore a real chance, that effective state protection for the harm feared by the applicant may not be available to her. The Tribunal accepts that this could amount to serious harm amounting to persecution as outlined in s.91R of the *Act*.
72. The existence of such harm however does not necessarily mean that an applicant is a refugee under the Convention. Whether a person is a refugee depends on an assessment of the applicant’s claims to determine if the harm feared is for a Convention reason, as well as an assessment of the effectiveness of state protection in the Philippines.
73. The Tribunal finds the applicant to be a credible witness. There is a sound level of consistency in the applicant’s claims and circumstances contained in her protection visa application, her interview with the delegate and her oral evidence to the Tribunal. The Tribunal is of the view that the applicant has not attempted to embellish or exaggerate her claims.
74. The Tribunal accepts the evidence of the applicant that she fears her Australian born child may be kidnapped. The Tribunal accepts that kidnappings in the Philippines have been and are being perpetrated. The Tribunal considers that country information is consistent in highlighting the problems with kidnappings take place.
75. In considering the available country information, cited above, in conjunction with the oral evidence of the applicant the Tribunal accepts that terrorist groups and outlaws are the perpetrators of kidnappings in the Philippines. Independent country information (as set out above) states that “The Abu Sayyaf group has a history of violence towards hostages. The Moro Islamic Liberation Front (MILF) are also engaged in kidnapping. The Tribunal accepts that both organisations have a long-standing history of using kidnapping for ransom, in order to obtain funds to support their operations. The Tribunal accepts that foreign nationals of any age are amongst those targeted by these groups for ransom.
76. The Tribunal notes that according to a 2006 article by risk management consultant Thomas Clayton, set out above, the principal targets of kidnapping are likely to be those who can pay the ransom demanded for the safe return of the victim.
77. The Tribunal accepts the applicant’s claim that her baby is at a higher risk of harm because she is a foreigner. The Tribunal relies on country information in this regard. In particular the Tribunal notes country information set out above which states inter alia that “..foreigners, wealthy or middle class – (are kidnapping targets)- as long as he or she presents a promise for a high payout. Often, foreigners of modest means are kidnapped if they work for companies perceived to have "deep pockets" and the willingness to pay for the safe return of employees. Always, the most important factor considered by kidnappers in the selection of a target person is the intended victim's family or affiliate organization and subsequent capacity to pay the ransom in a short period of time”.
78. The Tribunal accepts the evidence given at the hearing that the applicant’s child being a foreigner may be at risk as the terrorists and gangs who target hostages may believe that that the Australian government may pay a ransom or if not that Australian representatives would take all appropriate actions in order to assist in bringing about the safe return of a kidnapped victim. The Tribunal finds that whilst the Australian government is unlikely to pay a ransom it accepts that if an Australian national were kidnapped in the Philippines, Australian

diplomatic representatives based there would seek to provide assistance and for this reason accepts the applicant's claim that her child is at greater risk as an Australian national

79. The Tribunal accepts the reasons given by the applicant as to why she fears to seek protection from the police in the Philippines. In relation to the treatment of women in the Philippines the Tribunal notes country information that, although authorities have introduced laws, there are major shortcomings in implementing the law. In assessing the applicant's claims the Tribunal finds that there is more than a remote possibility and therefore a real chance that state protection will be selectively and discriminatorily withheld from the applicant, now or in the reasonably foreseeable future, for reason of her membership of the particular social group of "unmarried Filipino mothers of a foreign nationals in the Philippines".
80. A further consideration for the Tribunal is whether the applicant would be reasonably able to relocate to another part of the Philippines. The applicant has told the Tribunal that in order to obtain employment she would be required to return to her village in an area she does not consider safe. She has no family or connections elsewhere. The Tribunal has taken into account the observations of the witness in relation to the applicant's mental well being. The Tribunal accepts the applicant's own evidence that she is suffering from depression. The Tribunal accepts that the visa applicant's mental condition is fragile. The Tribunal finds that it would not be reasonable, that she would be able to re-build a life as a single mother in the Philippines, in circumstances where those she fears would be able to continue to put her at risk
81. Having considered the applicant's claims both singularly and cumulatively the Tribunal finds that the visa applicant has a well founded fear of serious harm on return to the Philippines. The Tribunal also finds that on the basis of the information above, given the visa applicant's membership of the social group to which she belongs, that there is more than a remote chance, that is, a real chance, that she will face serious harm were she to return to the Philippines now or in the reasonably foreseeable future.

CONCLUSIONS

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

DECISION

83. 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: PRMHSE