# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*MZXMM v MINISTER FOR IMMIGRATION & ANOR [2007] FMCA 975*

MIGRATION – Protection visa – irrelevant consideration – reference to Armeniapedia/Wikipedia web site – whether jurisdictional error – social group – apostates – whether failure to consider claim – application allowed.

*Migration Act 1958*, ss.420, 422B, 424A, 425

*W68/01A v Minister for Immigration & Multicultural Affairs* [2002] FCA 148
*Abebe v Commonwealth* (1999) 197 CLR 510
*NAVK v MIMIA* [2005] FCAFC 124
*Minister for Immigration & Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 77 ALJR 1165
*SZCIJ v MIMIA* [2006] FCAFC 62
*MIMIA v Lay Lat* [2006] FCAFC 61
*SZBEL v MIMIA* [2006] HCA 63

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| Applicant: | MZXMM |
| First Respondent: | MINISTER FOR IMMIGRATION & CITIZENSHIP |
| Second Respondent: | MIGRATION REVIEW TRIBUNAL |
| File number: | MLG1232 of 2006 |
| Judgment of: | McInnis FM |
| Hearing date: | 6 March 2007 |
| Date of last submission: | 3 April 2007 |
| Delivered at: | Melbourne |
| Delivered on: | 13 June 2007 |

**REPRESENTATION**

| | |
|---|---|
| Counsel for the Applicant: | Ms N Karapanagiotidis |
| Solicitors for the Applicant: | Asylum Seeker Resource Centre |
| Counsel for the First Respondent: | Mr P Gray |
| Solicitors for the First Respondent: | DLA Phillips Fox |

**ORDERS**

(1) A writ of certiorari issue directed to the Second Respondent, quashing the decision of the Second Respondent dated 29 August 2006.

(2) A writ of mandamus issue directed to the Second Respondent, requiring the Second Respondent to determine according to law the application for review.

(3) The First Respondent shall pay the Applicant's costs.

# FEDERAL MAGISTRATES COURT OF AUSTRALIA AT MELBOURNE

## MLG1232 of 2006

**MZXMM**
Applicant

And

**MINISTER FOR IMMIGRATION & CITIZENSHIP**
First Respondent

**REFUGEE REVIEW TRIBUNAL**
Second Respondent

## REASONS FOR JUDGMENT

1. The Applicant seeks judicial review of a decision of the Refugee Review Tribunal (the Tribunal) dated 29 August 2006. The Applicant has relied upon an Amended Application filed in Court on 10 March 2007. The Applicant supplements that Amended Application by a Further Amended Application filed 21 March 2007.

2. In its decision the Tribunal affirmed a decision of a delegate of the First Respondent not to grant to the Applicant a protection visa.

## Background

3. The Applicant is a citizen of Iran. He is married with one child. He arrived in Australia on 13 April 2006. Since his arrival in Australia he has been in detention.

4. When he arrived on 13 April 2006 he was not immigration cleared and was interviewed as “an authorised arrival”.

5. On or about 20 April 2006 the Applicant applied for a protection visa. In support of that application the Applicant relied upon a statutory declaration dated 20 April 2006 (Court Book pp.29-31). In the statutory declaration the Applicant relevantly declares:-

> *"… I am a Christian convert. My ethnicity is Gilak, Iranian. I have not had contact with my wife or child since I fled Iran.*
>
> ***Why I left my country:***
>
> *During my school years I had many Christian friends. After the Iranian Revolution in 1979, I started developing anti-Islamic thoughts and beliefs. During this period, I did not practice any religion and did not believe in any religion.*
>
> *Approximately 2 years ago, my Christian friends from my school years started introducing me into the Christian faith. I would go with them to Church because my faith was from my heart. However, I feared practicing my religion because in Iran people who convert from Islam are killed.*
>
> *I continued to sell books on the street corner in my spare time to make extra money. One of the books that I had for sale was the popular but illegal book called '23 Years'. This book is about the 23 years when Mohammad claimed to be a profit of Islam. The book itself is against Islam. The book is very rare given that it is against Islam, I used to photocopy the book and sell it to people who wanted a copy. I sold the book because of my anti-Islamic opinion. One day a man and woman came and ordered a copy of the book from me. I took the money and promised them that I would get a copy the next day. We arranged a mutual time for them to pick up a copy of 23 Years."*
>
> (Court Book p.29)

6. In the declaration the Applicant then refers to police attending at the time he had arranged to meet the couple and that ultimately he fled his stall. He claimed that he was well known in the area because he sold books on the street for numerous years and that since fleeing Iran he had been unable to contact his wife and daughter. He then relevantly declares,

> *"**What I fear might happen if I go back to my country:***
>
> *I will be arrested and killed for firstly selling these books and secondly converting into Christianity.*

…

***Why I believe they will harm or mistreat me if I go back:***

*Because I am a Christian convert and also because I sold books which were banned for being anti-Islamic."*

(Court Book p.30)

7. A delegate of the First Respondent refused to grant the Applicant a protection visa on 31 May 2006. In the delegate's decision reference was made to numerous documents including country reports and departmental files. A delegate then considered in detail the claims made and considered those in the light of the country information which the delegate sets out in detail. One of the reports referred to by the delegate appears to be an issue paper entitled "Iran > 2004 > ISLAMIC REPUBLIC OF IRAN: THE STATUS OF APOSTATES AND CHRISTIAN CONVERTS". The following extracts appear in the Court Book from that country report:

*"…There are two strands of apostasy within Islam. One is that of the born Muslim who renounces his religion (murtad fitri16, literally apostate natural). The other is that of a person who converted to Islam and later rejected the religion (murtad milli17, literally apostate, from the community). Sharia law prescribes the penalty of death for a make apostate and life imprisonment for a female, with the exception of drunkards and the mentally ill. The natural apostate, ie murtad fitri, is viewed as committing treason against God, and will be given a second chance, should be repent. The apostate from the community, murtad milli, is however viewed as committing treason against the community and should be executed even if he should repent …*

…

*It is commonly understood that apostasy in Iran is punishable by death, although apostasy itself is not a crime under any codified law in Iran. Apostasy however transgresses Islam and Sharia law. Article 167 of the constitution allows a judge to 'deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa (rulings issued by qualified clerical jurists). …"*

(Court Book p.96)

8. The delegate then in his decision relevantly concludes,

> *"… Whilst I have some reservations in respect of the applicant's general credibility and have reason to believe … that the applicant may have fabricated some claims and his level of interest in Christianity including baptism and his circumstances surrounding those claims, I am satisfied that if the applicant has converted to Christianity as claimed, his activities are very private and discreet and unlikely to attract the attention of the authorities. …"*
>
> (Court Book p.96)

9. The delegate relevantly then did not accept the Applicant's fear of harm amounting to persecution was well-founded in relation to any of the separate claims.

10. On 31 May 2006 the Applicant sought review before the Tribunal of the delegate's decision. Submissions were provided to the Tribunal on behalf of the Applicant by the Applicant's lawyers including an annexure from the Australian Red Cross dated 27 July 2006 (Court Book pp.133-157).

11. In the submissions from the Applicant's lawyers when considering the issue of whether the Applicant's claimed harm or mistreatment on return to Iran was of sufficient gravity as to constitute persecution the following appears:-

> *"The Applicant fears imprisonment and death at the hands of the authorities or fundamentalist Muslims for reasons of his religion and political opinion and membership of a particular social group namely apostates"*.
>
> (Court Book p.135)

12. In the submissions when dealing with the question of whether the harm or mistreatment feared by the Applicant on return for reason of one or more of the five grounds recognised by the Refugee Convention the following appears,

> *"The claims put forward by the applicant are set out in the applicant's statement previously given during immigration processing at the Maidstone Detention Centre and his interview with an officer of the Department. These statements indicate a*

*fear of persecution for reason of religion, political opinion and member of a particular social group namely apostates."*

(Court Book p.136)

13. The submissions further provide details in relation to what is described as, "Applicant's Circumstances" as follows,

*"Our client instructs that during his school years he had many Christian friends. He instructs that after the Iranian Revolution in 1979, he started developing anti-Islamic beliefs.*

*Our client instructs that approximately 2 years ago he was introduced to Christianity by his friends. Our client instructs that his faith was from the heart but that due to the circumstances in Iran, he was afraid to practice Christianity. Our client instructs that he used to attend the Armanian Church in Rusht and that he was formally baptised approximately 3 months prior to his departure from Iran.*

*Our client instructs that he also sold books on the street corner in his spare time in order to make extra money. Our client instructs that in particular, he sold some books which were banned by the authorities in Iran because they were deemed against Islam such as Ali Dashti's book 23 Years. Our client instructs that this was an illegal book. He instructs that he used to make photocopies of this book and sell it to people who requested a copy. Our client further instructs that he sold this book because of his anti-Islamic beliefs.*

…

*Our client further instructs that he fear that he will be killed for apostasy by the authorities or the fundamentalist Muslims in Iran given that he has converted into Christianity. He further instructs that he will be killed because he sold banned books which are seen as against Islam."*

(Court Book pp.137-138)

14. The letter from the Australian Red Cross dated 27 July 2006 in part states,

*"We understand your concerns that the Iranian Red Crescent Society (IRCS), headed by Red Cross President Dr Seyed Massoud Khatami, may not be acting independently of the Iranian government. …*

*We are unable to call upon the exclusive assistance of the International Committee of the Red Cross (ICRC) in Iran. …"*

(Court Book p.156)

15. The extracts from the relevant material demonstrate that the substance of the Applicant's claims are accurately summarised in the Applicant's contentions filed 22 February 2007 which it is noted is not disputed by the First Respondent.

16. The claims are summarised as follows,

> *"a) He worked full time in a factory and on a part time basis he operated a bookstall (approximately 8 hours in the factory and 3 hours in the bookshop a day) [CB177.4].*
>
> *b) He bought books from publishers in Tehran or people would bring them to his stall [CB 177.4].*
>
> *c) He possessed, sold and copied a book called 'Twenty-Three Years: A study of the Prophetic Career of Mohammad' by Ali Dashti. The book was against Islam, criticized the prophets and was very rare [CB 29; 177.5]. The applicant used to photocopy the book on a machine in a shop of an acquaintance of his and he would sell the copy of 10,000 tomans [CB 177.5].*
>
> *d) The applicant fled Rasht, Iran 3 months before coming to Australia. He had arranged to meet a couple who had organized to by "23 years". At the proposed meeting time he saw 4 Sepah Pastaran police [a group that is parallel to the police and made up of fundamentalist Muslims (CB 66.5-67.1) and come towards his stall. He ran away. The Sepah police had inspected the applicant's bookstall before however any banned books that he had previously were usually hidden [CB 177-178.1]."*

## The Tribunal Decision

17. The Tribunal in its decision specifically referred to the claims made by the Applicant including his interest in Christianity. It is relevant to note that when it recorded the history the Tribunal states,

> *"The applicant said that he did not have problems in Iran through not practising Islam – most Iranians do not go to Mosque, he*

*said. It is just assumed everyone is Muslim. His wife and daughter did not know he was otherwise; he would not share his private concerns with his wife and child. They knew he was not interested in Islam. He did not tell them he had studied Christianity.*

*The applicant said about two years previously his friends began taking him to Church (the Armenian Church in Sardiz Street) and he became familiar with their beliefs. He went most Sundays. He told his wife and daughter that he was going there but they did not know he had converted. He said he wanted to see the ceremonies and rituals.*

*The Applicant knew that Christians celebrate the birth of Christ on 25 December and that Easter has to do with resurrection.*

*The applicant said he wanted to become a Christian so a discreet approach was made to the priest who put water on his face and he was baptised. This was about three months before leaving Iran. He reiterated that he had not told his wife. He said the prayers in the Church were Armenian. He was not involved in any Church activities other than attending the services. He said that the Armenian Christians proselytise. He said he was given a card in relation to his joining the Church, but he did not have it with him. The Delegate observed that the applicant would be registered on the Church's records as having been baptised there. The applicant said those records are given to the Iranian authorities."*

18. At the hearing the Tribunal dealt with a wide range of topics though relevantly the Tribunal also records the following in relation to the Applicant's activities in relation to Christianity in Iran. The Tribunal relevantly states,

*"The Tribunal put it to the applicant that at his arrival interview he had not mentioned that he had any concerns about being persecuted in Iran in connection with Christianity. The applicant said he was asked his religion and told then he was a Christian. He was not asked any more questions about it.*

*The applicant said he had Christian friends at school. He kept in contact with them and got to be familiar with Christianity. Two years ago he got to be closer to them, because he was interested in Christianity. He was interested in Christianity because of Christ's sacrifice. His activity level increased. Secretly he would go with them to the Church. The Tribunal asked the applicant*

*what happened at Church. The applicant said there was prayer and ceremony. The Tribunal asked the applicant what sort of ceremony there was. The applicant said there was prayer, singing, and collecting of money. That was about it. It was an Armenian church. He attended two or three times in total. He was afraid to go more often. He was baptised 2 to 3 months before leaving Rasht. He reads the Bible in Persian. The services at the Church were in Armenian but his friends would explain to him what was happening. The Church agreed to baptise him on the recommendation of his friends. He could not remember the name of the priest.*

*The Tribunal said that is information was that the Armenian Church generally did not baptise Muslims. The applicant said he was not a Muslim. He did not tell them he was a Muslim. He did not believe in any religion before. That was what he told the priest. The Tribunal said the Church would have assumed from this that he was a Muslim by birth. The applicant maintained that the Church did baptise Muslims; he was not the only one.*

…

*Finally, the applicant that Iran did not value people, it only valued Islamic ideology. He had lived with fear ever since the Revolution, and had actively promoted against Islam. Islam brought war and misery for him and for all the people of Iran. Iran had a lot of resources but the people had no rights. All the regime cared about was arms and warfare. This was its idea of security. They manipulated people's emotions. That came from Islam. Now the people in Iran are suffering. People were flogged. The reason the applicant converted was because Christ suffered. The applicant saw a lot of Christians. They visited him and gave him hope, and he would never forget them. He was very depressed and had lost weight. He had put his family in danger and wanted the Tribunal to help him."*

(Court Book pp.178-179)

19. The Tribunal also recorded the claim by the Applicant that he was given a baptism certificate though was too afraid to obtain a crucifix in Iran and did not want his family to know about his conversion as they are "fanatical Muslims". Reference was then made to the Applicant's attendance at church in Australia. The Applicant relied on a witness who was the chaplain at the detention centre and the Tribunal relevantly records the evidence of that witness in part as follows,

*"… He was attending Catholic and Anglican churches now. He was sincerely interested in the scriptures, and could not be expected to know much about the sacraments. Also it was possible he had been attending an Armenian Evangelical service in which case it would be unstructured. The applicant was open in prayer. Her impression was that the notion of sacrifice appealed to Iranians because of the suffering there."*

20. In its decision before reciting its findings the Tribunal set out the following,

*"Country Information*

*The Tribunal has previously enquired as to the procedures for baptism into the Armenian Apostolic Church. The Ausrtalia.NZ primate sent a letter to the Tribunal dated 2 December 2001 stating as follows:*

*Any Armenian by birth or marriage is entitled to be baptised in the Armenian Apostolic Church. Generally, the Armenian Church does not allow conversion from other religious denomination, however, under special circumstances the Supreme Patriarch and Catholicos of all Armenians in Etchmiadzin may give His pontifical blessing.*

*In the Armenian Apostolic Church, there is no difference between a baptism of a child or an adult.*

*Any adult who wishes to be baptised in the Armenian Apostolic Church should attend Christian education (catechism).(Baliosian A. 2001, 'Ref: Refugee Review Tribunal information request-date 30 November 2001', 2 December)*

*The current UK Home Office Country Assessment of Iran states,*

*6.70 According to the USSD Religious Freedom Report 2005 there were approximately 300,000 Christians in the county, according to UN figures, the majority of whom are ethnic Armenians and Assyro-Chaldeans. Armenians have lived in Iran for centuries, mainly in Tehran. The Government appears to be tolerant of groups such as Armenian Christians because they conduct their services in Armenian and those do not proselytise.*

*The Armenian Church is a variant of Eastern Othodoxy, and thus stresses ritual and liturgy (described in detail at www.armeniapedia.org).”*

(Court Book pp.180-181)

21. It should be noted that the reference to the web site www.armeniapedia.org (the web site) is taken to be a reference to what I understand the parties to accept is a linked web site to the web site known as “Wikipedia”.

22. When dealing with the issue of the Applicant’s conversion to Christianity it is also relevant to note the following extracts from the transcript of the proceedings before the Tribunal which appear in the Supplementary Court Book as follows:-

*“Ms Hamilton: Ah ok I’m going to make some comments about this. You claim to have been baptised into the Armenian Church. What you’ve described to me about what went on in the services doesn’t sound to me accurate. I think there are some important aspects of the Armenian Orthodox ritual which are missing in the way you are describing what you saw. Secondly I have difficulty accepting that the church would baptise you after only 2 or 3 attendances at the church when they would be aware that you wouldn’t be understanding the language of the service.”*

(Supplementary Court Book p.34)

23. It is also relevant to note that the Tribunal then received evidence from the detention centre chaplin who relevantly states,

*“Ms Fitche: But, um, initially, I have not been able to exactly work out from a denominational point of view, even from the Armenian aspect if it is actually the Armenian Orthodox Church or its one of the evangelical churches which operates in Iran, and there are numbers of evangelical groups who operate either covertly or in secret. I’m aware of that.*

*Ms Hamilton: Mm hmmm*

*Ms Fitche: Un, certainly if its an evangelical kind of stream, well, it is I think as [the Applicant] described, it is very, its probably quite unstructured in the way that their worship is operated in, though the prayer and song, I think that would certainly indicate that it might not necessarily be an orthodox*

*tradition, that [the Applicant] was going to. Um, the other thing is just from my personal observations and being with [the Applicant], I do believe there is some kind of, whether it's a commitment or its an attraction, um, in terms of the Christian belief, I think that is there. I certainly feel that that is there."*

(Supplementary Court Book p.39)

24. Under the heading, "Findings and Reasons" the Tribunal after finding that the Applicant is an Iranian national did not accept that the Applicant had copied and sold the book "23 Years". It relevantly states,

*"The Tribunal does not accept that the applicant copied and sold the book '23 Years'. The applicant was unable to readily describe the structure of the book could not name the publisher of his version. His explanation for this was not persuasive. Even if he had not read the book for many years as claimed, if he had copied it a number of times for sale the Tribunal would have expected he would have absorbed more knowledge about the way it looked at its prominent labels.*

*It follows that the Tribunal does not accept that the applicant fled [R] because the police came to his bookstall where he expected them to find 23 Years. This finding is also evidenced by the fact that the authorities seemingly made no attempt to find him at his sister's house in Tehran."*

25. When dealing with the Applicant's involvement with Christianity the Tribunal relevantly makes the following findings,

*"The Tribunal does not accept that the applicant had any involvement with Christianity while in Iran. First, the applicant did not mention any concern about being persecuted as a convert, when explaining on his arrival in Australia why he had left Iran. Second, the applicant claimed to have been to an Armenian Church t a dedicated church building in [R]. The Tribunal interprets this as a claim to have been in the Armenian Apostolic Church. It is not implausible that there are Armenian evangelicals in [R] however his suggestion came from the applicant's witness and was speculative only. At the Armenian Apostolic Church the applicant would have witnessed notable ritual aspects of the service that go beyond singing and prayer, and ought to have been able to describe these. He was not able to do so.*

*It follows that the Tribunal does not accept that the applicant was baptised. Further, this claim was inconsistent with the country information which indicates that the Armenian Church does not baptise non-Armenians. The applicant was Muslim-born, so this rule would apply to him. In some instances it is possible but is only done with the special permission of the head of the church. The applicant did not claim to have had such permission. Baptism follows catechism, which the applicant did not claim to have received. Furthermore, he could not recall the name of the priest that baptised him even though his baptism allegedly took place not so long ago."*

26. In making its findings the Tribunal acknowledged that a person can acquire refugee status *sur place*.

27. In its findings it is also significant to note the Tribunal did not accept the Applicant fled his home town as claimed due to police attending his bookstall. It did not accept that the Applicant's wife and daughter had disappeared as claimed by the Applicant and dealing with those issues the Tribunal relevantly concluded as follows,

> *"in support of his claim to have been of adverse interest to the Iranian authorities, the applicant said he was unable to make contact with his wife and child. However, the Tribunal does not accept that the applicant's wife and daughter have disappeared as claimed. First, the applicant on arrival in Australia did not say anything indicating any concern about the whereabouts of his wife and child. What he did say suggested there was no reason to think they were not at home as usual. Later he indicated this was because he only found out about their disappearance from his sister after arriving in Australia. This explanation was not consistent with what he said in the hearing however, which was that he found out from a neighbour he contact in Tehran, that they had disappeared. This evidence, in turn, appeared to have been given in order to explain the puzzling claim that he did not contact his wife and children in the months he was in Tehran (also attributed, unconvincingly, to stress and a sense of danger). However, the applicant could not satisfactorily explain why he did not institute enquiries about the fate of his family while he was in Tehran. Then he claimed that his sister had made some sort of contact with his wife's family. The applicant did not seek to engage the Red Cross until he had been in Australia for some time.* ***He then made it impossible for them to help him****, with his concern about the necessary engagement of the Iranian Red Crescent Society (contrary to the adviser's claim, it is clear from*

*the Red Cross letter that this was the applicant's concern, not theirs, although they 'understood' it). His explanation for this was unpersuasive; if he and his family were really in trouble with the Iranian authorities, how could it make things worse to have international scrutiny of their situation?"* (emphasis added)

(Court Book pp.181-182)

## Grounds of Claim

28. In the Amended Application filed 10 March 2007 the Applicant relies upon the following grounds:-

> *"1. The Tribunal failed to consider the claim that the applicant would face serious harm because of his membership of a particular social group, namely apostates.*
>
> *Particulars*
>
> *a) The Tribunal confined its inquiry to whether or not the applicant had converted to Christianity.*
>
> *b) The applicant claimed to fear persecution on the grounds of, inter alia, religion and membership of a particular social group, namely apostates.*
>
> *c) The Tribunal should have considered (i) whether the applicant had abandoned Islam as claimed; and (ii) whether the applicant was at risk of facing serious harm because of his abandonment of Islam.*
>
> *d) This consideration was quite separate to whether or not the applicant had converted to Christianity.*
>
> *2. The decision of the Tribunal was illogical and/or irrational and/or unreasonable*
>
> *Family whereabouts and the Red Cross*
>
> *a) The Tribunal rejected the claim that the applicants' family had disappeared for a number of reasons, including the applicants' failure to co-operate with the Red Cross Tracing Service, claimed by the applicant to be due to his concern about the services relationship with the Iranian government.*

*b) The Tribunal rejected this explanation on the basis that if the applicant and his family were already in trouble 'how could it make things worse to have international scrutiny of their situation.'*

*c) The Tribunal's reasoning in respect of this issue was unreasonable and represents a misapplication of the Refugee Convention.*

*Religious ceremonies*

*d) The Tribunal rejected the claim that the applicant had an involvement with Christianity while in Iran for a number of reasons, including the applicants' inability to describe notable ritual aspects of the Armenian Church service that went beyond singing and prayer.*

*e) The Tribunal failed to disclose any detail of the 'ritual and liturgy' that it expected the applicant to outline and there was no evidence before the Tribunal that the ceremonies deviated from what the applicant had outlined at hearing.*

*The structure of '23 Years'*

*f) The Tribunal dismissed the claim that the applicant sold or possessed the book '23 Years: A study of the Prophetic Career of Mohammad' on the basis that he could not describe its structure when clearly he did describe it.*

*g) It is apparent that the applicant did describe the structure of the book.*

*h) There was no basis for the suggestion by the Tribunal that the book contained 'prominent labels' that the applicant should have absorbed while photocopying it.*

*3. The Tribunal acted without or in excess of jurisdiction, and/or identified a wrong issue, asked a wrong question, relied on irrelevant material or ignored relevant material.*

*Particulars*

*a) The applicant refers to and repeats the particulars contained in paragraph 2.*

*4. The applicant was denied natural justice/procedural fairness.*

*Particulars*

*Finding that applicant attended Armenian Apostolic Church*

*a) The Tribunal interpolated the applicants claim to have attended an Armenian Church in [R] to be a claim to have attended the Armenian Apostolic Church.*

*b) On this basis, the Tribunal dismissed the applicants claim to have an involvement in Christianity because he should have been capable of describing 'notable ritual aspects of the service'.*

*c) It was entirely unclear on the material whether the applicant had claimed to have attended an Apostolic or an Evangelical Armenian Church.*

*d) It was never put to or suggested to the applicant that he had attended an Apostolic Church as opposed to an Evangelical Church.*

*e) The Tribunal's failure to put to the applicant this critical matter resulted in a denial of procedural fairness as it deprived him of an opportunity to respond to adverse material.*

*Religious ceremonies – country information*

*f) In addition or in the alternative to paragraphs [a]-[e] the Tribunal failed to put to the applicant the particulars of information that outlined the ritual and liturgy of the Armenian Apostolic Church which were allegedly at odds with the applicants evidence.*

*g) This information was used to make an adverse decision against the applicant.*

*5. The Tribunal breached section 424A of the Migration Act 1958.*

*Particulars*

*a) The applicant refers to and repeats the particulars contained in paragraph 4."*

29. The Applicant relies upon a Further Amended Application filed on 21 March 2007 to supplement the grounds set out above in the Amended Application and relies on the following additional grounds (the additional grounds),

> *"1. The Tribunal acted without or in excess of jurisdiction by taking into account an irrelevant consideration.*

*Particulars*

*a) The Tribunal took into account an irrelevant consideration, namely (unidentified) information/material contained in the www.armeniapedia.org site.*

*2. The Tribunal acted without or in excess of jurisdiction.*

*Particulars*

*a) The Tribunal's reliance on the (unidentified) information/material contained in www.armeniapedia.org site was illogical and/or irrational and/or unreasonable.*

*3. The Tribunal acted without or in excess of jurisdiction by failing to accord the applicant procedural fairness and failing to comply with section 425 of the Migration Act.*

*Particulars*

*a) The Tribunal interpolated the applicants claim to have attended Armenian Church in [R] to be a claim to have attended the Armenian Apostolic Church and failed to put this to the applicant.*

*b) The Tribunal rejected the claim that the applicant had an involvement with Christianity because the applicant was unable to describe notable ritual aspects of the Armenian Church service and failed to put this detail to the applicant."*

**Amended Application – Ground 1(a) – (d) – Failure to consider the claim that the Applicant would face serious harm because of his membership of a particular social group, namely apostates**

## Applicant's Submissions

30. It was noted in the Applicant's submissions that he had claimed to have converted to Christianity though the Tribunal found he had no involvement with Christianity in Iran. It further found adversely for the Applicant that his conduct in Australia was for the "sole purpose of strengthening his refugee case". It was noted that finding enlivened

"the provisions of s.91R(3) which placed an onus of proof on the Applicant, which according to the Tribunal, he failed to discharge".

31. Reference was made to the Tribunal note of the Applicant's claim at the hearing as follows:-

> *"Finally, the applicant said that Iran did not value people, it only valued Islamic ideology. He had lived with fear ever since the Revolution, and had actively promoted against Islam. Islam brought war and misery for him and for all the people of Iran. Iran had a lot of resources but the people had no rights. All the regime cared about was arms and warfare. This was its idea of security. They manipulated people's emotions. That came from Islam. Now the people in Iran are suffering. People are flogged. The reason the applicant converted was because Christ suffered."*
>
> (Court Book.p.181)

32. Further reference was made to extracts from the Applicant's declaration concerning his claimed development of anti-Islamic thoughts and beliefs which has been set out earlier in this judgment.

33. It was then submitted that the Applicant had made clear to the Tribunal that he was anti-Islam and no longer a Muslim. It was specifically submitted,

> *"… Just because the Tribunal rejected the applicant's claimed conversion did not relieve it of its responsibility and duty of considering whether the applicant had renounced Islam and the possible consequences to him of such an action (of being a 'non believer'). This is particularly so in light of the country information on Iran and Apostasy that was available to the Tribunal [see CB 138-149; 114-118]. 'It is commonly understood that apostasy in Iran is punishable by death' [CB 96.5]."*

34. It was argued that the Applicant's adviser put to the Tribunal the Applicant feared persecution because of his "religion and political opinion and membership of a particular social group namely apostates" referred to in paragraph 11 of this judgment. It was argued that the term "apostates" means renunciation of one's religion and involves abandonment of belief in Islam. It was submitted that formal conversion to another religion is not a requirement and apostate it was submitted "may be an atheist who has rejected Islam".

35. Reference was made to *W68/01A v Minister for Immigration & Multicultural Affairs* [2002] FCA 148 (W68/01A). In that case Lee J referred in some detail to the Tribunal decision in the following terms:

> *"20 With regard to the applicant's conversion to Christianity and his claim to fear persecution because of his apostasy, the Tribunal said as follows:*
>
> > *"I accept the evidence from the Reverend Fabb, and from [the applicant] himself, that he has been baptised as a Christian since his arrival at the detention centre in Port Hedland.*
> >
> > *It may be that [the applicant] is being truthful when he claims that he had Christian friends in Iran and visited a church there. However he does not claim to have had a well-founded fear of persecution because of this at the time he left Iran. He claims to have converted to Christianity since his arrival in Australia, and that this gives rise to a well-founded fear of Convention-related persecution. While I accept that he has been baptised as a Christian since his arrival in Australia I must consider whether this has arisen from a genuinely-held change in his religious beliefs. That issue is relevant because it will influence how he intends to express his religious views (if at all) if he re-enters Iran, how he might be perceived and whether, as a consequence of that perception, he might have a well-founded fear of Convention-related persecution.*
> >
> > *In Woudneh v MILGEA (unreported, Federal Court of Australia, Gray J, 16 September 1988) the applicant (in that case an Ethiopian) had become a born again Christian since his arrival in Australia. He feared imprisonment without trial if he were returned to his country of nationality, partly for reasons of religion, and that he would be precluded from practising his born again religion there. The primary decision-maker decided that his fear of religious persecution on return was unwarranted as his conversion had occurred in Australia and would not be known to his country's authorities. However, the Court held that, in the absence of any evidence that he could conceal his faith consistently with practising it, it was not open to conclude he would not be persecuted if returned. Moreover:*

*[t]he mere fact of the necessity to conceal would amount to support for the proposition that the applicant had a well-founded fear of persecution on religious grounds (per Gray J at 19).*

*[The applicant] did not refer to his interest in Christianity or his difficulties arising from it when he was first interviewed, soon after his arrival in Australia (10 June 2000). He has explained that this was because it was just an `inside feeling' then. In his written statement to the Department of 12 October 2000, a document eight pages (forty eight paragraphs) in length, he referred in only one paragraph to `thinking of other religions' and being `curious to know more about' the religion conducted in a church. He expressed no interest in or intention of converting to Christianity in that statement. His failure to do so in an otherwise comprehensive and detailed account of his claims is not consistent with his claim to Reverend Fabb only three weeks later that he had decided to convert to Christianity while still in Iran. I also have regard to the fact that he was interviewed by a Departmental officer about his protection visa claims on 24 October 2000, and that it was less than two weeks after this that he told Reverend Fabb he wished to convert. The independent evidence cited above indicates that Christians, and particularly converts from Islam, face various forms of discrimination (in some cases very serious) in Iran. [The applicant's] own evidence indicates that he was well aware of this discrimination before he left Iran. It is open to me to infer from this that [the applicant] belatedly decided to express a wish to convert to Christianity in order to enhance his claims to be a refugee, rather than as a result of religious feeling. I note his own evidence that he did not tell his Muslim family that he was interested in Christianity while he was in Iran and that he has not told them even now that he has converted. I am not satisfied that [the applicant] intends to be a practicing [sic] Christian if he returns to Iran, and am of the view that he has greatly exaggerated his level of commitment to attend church, to proselytise and to Christianity. Therefore I am satisfied that there would be no necessity for him to conceal a Christian faith, a necessity which, in a genuine convert, might give rise to a well-founded fear of persecution.*

…

*24. In any event the Tribunal purported to consider whether, notwithstanding the absence of a positive finding by the Tribunal that the applicant was a "genuine" convert to Christianity, the applicant, if returned to Iran, may be perceived by Iranian authorities to be an apostate. In that regard the Tribunal said as follows:*

> *"I have also considered whether, despite my finding that [the applicant] is not a genuine convert to Christianity, he might be perceived as one in Iran. [The applicant] claimed that information had been sent to Iran by fellow detainees at the Port Hedland detention centre that he and other detainees had converted to Christianity. However he later conceded that it was possible that this was just a rumour, and had not occurred. I have considered his adviser's submission that there is no guarantee that news of his conversion has not been leaked to Iran. That is true. However it appears that there is nothing more than a rumour on which to base a conclusion that it has been leaked, nor any evidence at all that (even if it was) such information was passed to anyone who might be motivated to harm [the applicant] because of it and was in a position to do so. In the absence of any more convincing evidence that [the applicant] has been identified by other detainees to the Iranian authorities as a person who has converted to Christianity in Australia, I cannot be satisfied that this has occurred.*
>
> *[The applicant] has also claimed that he was told that an arrest warrant was issued for him at least four days before he left Iran, and initially stated at the hearing that it was issued because of his apostasy. He later claimed that the `real reason' it was issued was because he had exposed embezzlement. Even if I accept that there was an arrest warrant, I have regard to his own evidence at the hearing that his family was not told the charge to which it related. Therefore his claim that it was either because he was an apostate or because he exposed embezzlement is no more than speculation, and I cannot be satisfied that it was because he was believed to be an apostate."*"

36. Lee J then relevantly states,

> *"33 The Tribunal, however, limited its consideration of whether the applicant had a well-founded fear of persecution by reason of his claim of apostasy to the question whether the applicant had made a true conversion from Islam to a Christian religion. The real question was whether there was*

*a risk that the enforcers of Shariah law in Iran could treat the applicant as a person who had abandoned Islam. In that regard a material consideration would be whether there were any indicia of apostasy that would damn the applicant as an apostate in the eyes of an Iranian religious Judge. In the applicant's case such a circumstance existed in that the applicant had been baptised, thereby overtly renouncing Islam.*

34 *Insofar as the Tribunal considered whether there was such a risk, the Tribunal purported to determine that unless the Tribunal was satisfied that at the time of the decision the Iranian authorities were aware that the applicant had converted to Christianity in Australia, the applicant's fear of future persecution could not be well-founded.*

35 *Perhaps a person who has committed a capital offence of apostasy under Iranian law may be fortunate enough to escape the consequence of that conduct if returned to Iran, but, as the Tribunal acknowledged, the risk of discovery, apprehension and punishment would continue and it may be sufficient to ground a well-founded fear of persecution. (See: Bastanipour v Immigration and Naturalization Service 980 F.2d 1129 (7th Cir. 1992) at 1133.) Furthermore, the persecution feared, of course, is not restricted to execution and may include the suffering of substantial harm or interference with life by way of deprivation of liberty, assaults and continuing harassment on account of the perceived apostasy.*

36 *Whether the applicant had committed himself in mind and body to a conversion to Christianity was a relevant matter for the Tribunal to consider in assessing whether there was a risk that the applicant may be persecuted in future by reason of the observance by him in Iran of his religious beliefs, but an assessment of the degree of commitment to conversion would not determine the extent of the risk to persecution. As the United States Court of Appeals (7th Circuit) said in Bastanipour at 1132, a case involving an Iranian who had renounced Islam and, although not baptised, had satisfied witnesses whose evidence was not rejected, that he believed in Christianity rather than Islam:*

> *"Whether Bastanipour believes the tenets of Christianity in his heart of hearts or, as hinted but not found by the Board, is acting opportunistically (though at great risk to himself) in the hope of staving off deportation would not, we imagine, matter to an Iranian religious judge.""*

37. It is also noted in passing that Lee J cited with approval the decision of Gleeson CJ and McHugh J in *Abebe v Commonwealth* (1999) 197 CLR 510 (Abebe) where in that case the High Court relevantly stated the fact that an Applicant:

> *"...might fail to make out an affirmative case in respect of one or more of the above steps did not necessarily mean that [the] claim for refugee status must fail. As [Minister for Immigration & Multicultural Affairs v Guo (1997) 191 CLR 559 at 575-576] makes clear, even if the Tribunal is not affirmatively satisfied that the events deposed to by an applicant have occurred, the degree of probability of their occurrence or non-occurrence is a relevant matter in determining whether an applicant has a well-founded fear of persecution. The Tribunal `must take into account the chance that the applicant was so [persecuted] when determining whether there is a well-founded fear of future persecution' [Guo at 576]."*

38. The Applicant noted that the Tribunal in its decision referred to the article contained in the CIS resource set out earlier in this judgment. It was submitted that the Tribunal "*was required to consider this discrete claim that emerged on the evidence before it and to make findings accordingly*".

39. In its decision it was argued the Tribunal had wrongly confined its decision to the issue of whether the Applicant had converted to Christianity. Instead it should have considered whether the Applicant had abandoned Islam and whether he was at risk of facing serious harm because of that abandonment.

40. It was submitted that, "in failing to do so, the Tribunal fell into jurisdictional error in that it did not consider all the claims directly raised by the Applicant and/or adequately disclosed in the material before it and/or it failed to ask itself the correct question.

## First Respondent's Submissions

41. Whilst the First Respondent accepted that in 'the abstract' the submissions arising out of *W68/01A* including that 'apostasy' does not necessarily involve conversion of another religion, it was argued that it is relevant to consider not simply the abstract but the specific claims

advanced by the Applicant supported by probative material in the present application.

42. It was submitted that the "accepted test for whether a particular contention in an applicant's claims for refugee status was such as to require determination by the decision-maker under ss.36, 65 and 414 of the Migration Act (sometimes called an 'integer' – NAVK v MIMIA [2005] FCAFC 124 at [30], was articulated in Applicant WAEE v MIMA [2003] FCAFC 184; (2003) 75 ALD 630 (WAEE) at [45]-[47]:

> *"In conducting its review the Tribunal must have regard to the criteria for the grant of a protection visa and in particular the criterion that the applicant for a visa is:*
>
> > *`... a non-citizen in Australia to whom the [Tribunal] is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol;' (s 36(2)(a) read with s 415(1))*
>
> *The critical question which ordinarily will have to be addressed in applying this criterion is whether the applicant has a well-founded fear of persecution for one of the Convention reasons. If the Tribunal fails to consider a contention that the applicant fears persecution for a particular reason which, if accepted, would justify concluding that the applicant has satisfied the relevant criterion, and if that contention is supported by probative material, the Tribunal will have failed in the discharge of its duty, imposed by s 414, to conduct a review of the decision. This is a matter of substance, not a matter of the form of the Tribunal's published reasons for decision.*
>
> *It is plainly not necessary for the Tribunal to refer to every piece of evidence and every contention made by an applicant in its written reasons. It may be that some evidence is irrelevant to the criteria and some contentions misconceived. Moreover, there is a distinction between the Tribunal failing to advert to evidence which, if accepted, might have led it to make a different finding of fact (cf Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323 at [87]-[97]) and a failure by the Tribunal to address a contention which, if accepted, might establish that the applicant had a well-founded fear of persecution for a Convention reason. The Tribunal is not a court. It is an administrative body operating in an environment which requires the expeditious determination of a high volume of applications. Each of the applications it decides is, of course, of great*

*importance. Some of its decisions may literally be life and death decisions for the applicant. Nevertheless, it is an administrative body and not a court and its reasons are not to be scrutinised `with an eye keenly attuned to error'. Nor is it necessarily required to provide reasons of the kind that might be expected of a court of law.*

*The inference that the Tribunal has failed to consider an issue may be drawn from its failure to expressly deal with that issue in its reasons. But that is an inference not too readily to be drawn where the reasons are otherwise comprehensive and the issue has at least been identified at some point. It may be that it is unnecessary to make a finding on a particular matter because it is subsumed in findings of greater generality or because there is a factual premise upon which a contention rests which has been rejected. Where however there is an issue raised by the evidence advanced on behalf of an applicant and contentions made by the applicant and that issue, if resolved one way, would be dispositive of the Tribunal's review of the delegate's decision, a failure to deal with it in the published reasons may raise a strong inference that it has been overlooked."* (emphasis added)

43. Particular emphasis was placed upon the passage from *WAEE* where the Court states "that it is unnecessary to make a finding on a particular matter because it is subsumed in findings of greater generality or because there is a factual premise upon which a contention rests which has been rejected".

44. The First Respondent submitted that the claim of apostasy was not an integer before the Tribunal requiring express determination independent of the claims in relation to the banned literature and conversion to Christianity. It was noted that the Applicant's case appears to rely upon what is described as a 'single line in a written submission by an advisor on behalf of the Applicant couching the claim as one of membership of particular social group of 'apostates'.

45. The First Respondent relied upon the decision of the Court in *NAVK v MIMIA* [2005] FCAFC 124 (NAVK) where the Court relevantly states the following at [38] –

> *"38 As was noted at [20] above, the particular statement of the appellant's counsel to the Tribunal is an isolated submission and in its precise terms was not repeated by the appellant's counsel or raised by the appellant herself in*

*response to the questions put to her by the Tribunal. Moreover, it was a claim unsupported by any probative material and, based on what was said by this Court in Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs (2003) 75 ALD 630 at [45]:*

> *"If the tribunal fails to consider a contention that the applicant fears persecution for a particular reason which, if accepted, would justify concluding that the applicant has satisfied the relevant criterion, **and if that contention is supported by probative material**, the tribunal will have failed in the discharge of its duty, imposed by s 414 to conduct a review of the decision. This is a matter of substance, not a matter of the form of the tribunal´s published reasons for decision." [**Emphasis**]*

*it is by no means clear that there was any obligation on the Tribunal to consider the claim of the appellant's counsel as a distinct and discrete claim."*

46. Relying upon *NAVK* it was submitted that the submission by the Applicant relying upon the written submission of the adviser is not enough. It was argued that at no stage did the Applicant give evidence that he faced persecution as a result of not either having practiced Islam or being a non believer. Specific reference was made to the record of the delegate where the Applicant allegedly claimed that he had no problems in Iran though not practising Islam (Court Book p.176).

47. Reference was made to the transcript when it was claimed the Applicant referred to being active in "propogating against Islam". Specific reference was made to the following extract:-

> *"Interpreter: I live in a country that they don't have any value for, um, for people or human being. They cannot accept anything except, um, thinking about Islam or ideology about Islam. Last, for example, last week someone by the name Akbah Muhammadi?? who had national and religious ideas was, um, died in prison of hunger strike. They say that he was, ur, he had a stroke. I lived with fear all my life after the revolution. I was active in properganding, um, I was propergating against Islam. Islam, um, brought war and miserable for me and for the people of Iran. Iran has got a lot of natural resources, natural resources,*

*but authorities in Iran, they don't want to give the people in Iran any right. They all think of the war and, and gathering the firearms to kills people. They think the war as their stability. They think that if they go to war or they are in warful people, they are more stable. They play with people's emotional. I say these things because I want you to know it, about Islam. That how me and my people, and some people, the power ?? and people in Iran are suffering. In a country that because of drinking just one glass of alcohol they will whip the young people. The reason that I converted to Christianity is just because I could see how Christ went into a lot of suffering. During this time that I was in detention centre, I saw a lot of Christians. I didn't know them, but they would come and visit me. They would give me hope. I would never forget these people. Since I escaped from Iran I suffered a lot. I was over 88 kg but now I am 75kg. I am depressed and at night I take anti-depressant tablets which the doctor game me. Mentally and emotionally, I am not well. I have put myself and my family into danger by converting to Christianity. I don't have any news from them. I don't know whether they have been arrested or whether they have been executed. I am asking you to help me. So then, I can go and find my family. Thank you."*

(Suppelementary Court Book p.38)

48. Referring to that extract it was argued that the submissions made by the Applicant's adviser "depended on and was constituted by these matters".

49. Reference was made to the hearing and that no specific mention was made of the social group of apostates and specifically no probative evidence was provided in support of any claim of membership of a particular social group of apostates in Iran. Accordingly it was submitted there is no requirement on the part of the Tribunal to determine that supposed claim because the Tribunal had made adverse findings in relation to the claims made by the Applicant concerning possession for sale of banned literature and conversion to Christianity.

50. Any reference to country information considered by the delegate relating to apostates again was submitted to be an abstract matter whereas the issue in the present case is "whether the Applicant made a claim supported by probative material to face persecution as an apostate independently of his other claims".

51. It was argued that there was no discrete claim and this ground should fail.

## Reasoning

52. In my view it is appropriate to determine whether the claim of being a member of a social group namely 'apostates in Iran' has been raised as part of the claim in a manner which as submitted by the First Respondent is not simply in the abstract but a claim advanced supported by probative material.

53. In my view the claim of being a member of a particular social group namely apostates in Iran was clearly and squarely raised by the Applicant's agent in the submissions forwarded under cover of letter dated 28 July 2006 (Court Book pp.133-157). In those submissions the author responded to the following question, "Is the claimed harm or mistreatment on return to Iran of sufficient gravity as to constitute persecution?"

54. In answer to that question under the heading "Claims and Submissions" the following appears,

> *"The Applicant fears imprisonment and death at the hands of the authorities or fundamentalist Muslims for reasons of his religion and political opinion and membership of a particular social group namely apostates".*

55. Further in the submissions a response was provided to the question, "Is the harm or mistreatment feared by the Applicant on return for reason of one or more of the five grounds recognised in the Refugee Convention?" In answer to that question under the heading, "Claims and Submissions" the following appears,

> *"The claims put forward by the Applicant are set out in the Applicant's statement previously given during immigration processing at the Maidstone Detention Centre and in his interview with an officer of the Department. These statements indicate a fear of persecution for reason of religion, political opinion and* ***member of a particular social group namely apostates****" (Emphasis added)*
>
> (Court Book p.136)

56. At the hearing and indeed in other material greater emphasis seemed to be placed upon the activities of the Applicant in relation to the selling of banned material and his inability to contact his wife and daughter. However, it is clear that in relation to the Applicant's circumstances the submissions referred to earlier forwarded under cover of letter dated 28 July 2006 also refer to the instructions that the Applicant "started developing anti-Islamic beliefs". In the same submissions the following appears,

> *"Our client further instructs that he fear that he will be killed for apostasy by the authorities or the fundamentalist Muslims in Iran given that he has converted into Christianity …"*
>
> (Court Book p.138)

57. It is accepted that persecution of apostates according to the country information may occur where a person has renounced his religion and does not necessarily involve or is dependent upon conversion to Christianity.

58. I accept as submitted by the Applicant that in this instance the Tribunal ought to have considered as an integer of the claim what I regard as squarely raised namely the issue of whether or not the Applicant faced persecution by reason of membership of the particular social group of apostates in Iran. I further accept that this would involve consideration by the Tribunal as to whether or not the Applicant in truth and in fact had abandoned Islam and whether he faced serious harm as a result of that abandonment.

59. In the present case I am satisfied that contrary to the submissions of the First Respondent there is indeed probative evidence at least to the extent that the Applicant indicated that he engaged in conduct which may have been characterised as anti-Islamic conduct beyond the material rejected by the Tribunal concerning the sale of banned material or conversion to Christianity. The latter issue namely conversion to Christianity to some extent depends upon a further new ground relied upon and is considered later in this judgment. If that adverse finding was reached during the course of a process demonstrating jurisdictional error then it should not be used to defeat the current claim. For reasons which will become apparent I am not

satisfied that the finding concerning the Applicant's claimed conversion to Christianity has been made free of jurisdictional error and accordingly that is further probative material which ought to be considered in the context of the claim of membership of a particular social group of apostates in Iran. Further, I am satisfied that that material when combined with the country information to which both parties have referred at least provides some basis upon which the Tribunal could properly explore the issue of social group.

60. Accordingly for those reasons I am satisfied that the Applicant should succeed in relation to this ground.

## Amended Application - Gounds 2(a) – (h) and 3 - The decision of the Tribunal was illogical and/or irrational and/or unreasonable and/or whether the Tribunal identified the wrong issue, asked the wrong question, relied on irrelevant material or ignored relevant material

### Applicant's submissions

61. The Applicant in support of grounds 2 and 3 effectively relied upon the same particulars subjoined to ground 2. Those particulars appeared under the following headings:-

- Family whereabouts and the Red Cross
- Religious ceremonies
- The structure of "23 Years"

62. The Applicant submitted that there were a number of findings of the Tribunal which demonstrate that it engaged in illogical and/or irrational and/or unreasonable reasoning. Reliance was placed upon the decision of *Minister for Immigration & Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 77 ALJR 1165 at [70]. In the alternative it was argued that in support of this ground the Court can find that the Tribunal took into irrelevant considerations or failed to discharge its duty of review.

63. Reference was made to the Tribunal decision and it was noted that adverse credibility findings were made against the Applicant. That

finding it was argued was made after considering what was submitted to be the "totality of the Applicant's case". The Tribunal used the expression "considering the overall absence of credibility of his claims" (Court Book p.182) which it was claimed was a conclusion reached by combining other findings.

64. In relation to the issue of family whereabouts and the Red Cross it was noted that the Tribunal rejected the Applicant's claim that his family had disappeared. It was argued that the rejection of the claim was based upon the Applicant failing to indicate that his family were missing when interviewed on arrival. In addition reference was made to the Applicant's explanation at the hearing where he claimed to have been informed by a neighbour of his family's disappearance and that this was at odds with his explanation that he only heard of the disappearance from his sister on arrival in Australia. An additional factor relied upon by the Tribunal was the failure of the Applicant to seek to engage the Red Cross until he had been in Australia for some time. It was argued that by making the finding in relation to the Red Cross the Tribunal had taken into account an irrelevant consideration or had engaged in unreasonable and/or illogical reasoning.

65. It was submitted that the Applicant "had engaged the Red Cross but was hesitant for them to search for his family because of the Applicant's concern for the Red Cross's overseas counterparts may not be independent of the government".

66. Reliance was placed upon the correspondence from the Red Cross set out earlier in this judgment (see paragraph 27 above).

67. It was argued that for the Tribunal to ask itself "if he and his family were really in trouble with the Iranian authorities, how could it make things worse to have international scrutiny of their situation?" was patently an unreasonable position for the Tribunal to adopt.

68. It was argued that to suggest that it would "make no difference" given effectively that he already claimed to be in trouble, is unreasonable, illogical and an irrelevant consideration.

69. In relation to religious ceremonies it was argued that the Applicant "claimed to have attended an Armenian church, 2 or 3 times in total" as

he was "afraid to go more often" (Court Book p.179). It was noted he also claimed to have been baptised.

70. It was pointed out that there was some degree of confusion about the Applicant's claim to have attended an Armenian Church and the interpretation of the Tribunal the Applicants claimed to have attended an apostolic church.

71. In any event it was argued that the Tribunal rejected the Applicant's claims due to his failure of not mentioning fearing persecution on the ground of religion at his arrival interview. Further, it was noted the Tribunal stated as set out earlier that the Applicant "would have witnessed notable ritual aspects of the service that go beyond singing and prayer and ought to have been able to describe these. He was not able to do so". However, the Tribunal relied upon country information indicating the Armenian Church does not generally baptise non Armenians.

72. Reference was made to material relied upon by the Tribunal which is now referred to and relied upon as an additional ground namely reliance upon the material contained in the web site. However when dealing with this specific ground it was argued the Tribunal failed to disclose any detail of the "ritual and liturgy" that it expected the Applicant to outline. It was noted that when the Applicant was asked about the ceremony he claimed that "there was prayer, singing and collecting of money" and further that services were conducted in Armenian and his friends would explain to him what was happening (Court Book p.179).

73. It was submitted that there "was simply no evidence before the Tribunal that the church ceremonies deviated from what the Applicant had detailed at hearing".

74. It was further submitted that the Tribunal was obliged to put any detail of "ritual and liturgy" to the Applicant. During the course of the hearing it was noted that the Tribunal relevantly stated, "What you have described to me about what went on in the services doesn't sound to me accurate. I think there are some important aspects of the Armenian orthodox ritual which are missing in the way you are describing what you saw …" It was submitted that that comment did

not satisfactorily discharge the Tribunal's obligation to put adverse material to the Applicant for his reply. The information it was argued did not fall within the exclusion provided in s.424A of the *Migration Act 1958* (the Migration Act) and that the failure to put the particulars to the Applicant could properly be described as a breach of that section.

75. When dealing with the publication "23 Years" reference was made to the Tribunal's criticism of the Applicant being "unable to readily describe the structure of the book …" The Tribunal it was noted expected the Applicant "would have absorbed more knowledge about the way it looked and its prominent labels" (Court Book p.181). Reference was made to the comments made by the Applicant in relation to the book.

## First Respondent's Submissions

76. The First Respondent submitted that the complaints arising out of the Tribunal's findings in relation to the Applicant's family whereabouts in the Red Cross, religious ceremonies and the structure of "23 Years" are not sufficient to constitute jurisdictional error.

77. The Tribunal's reasoning in relation to the family whereabouts was made upon a number of conclusions set out in the Applicant's submissions. The reference to the Red Cross it was submitted was "not a finding in itself, but is merely an element of the RRT's reasoning going to the finding of whether the family really was missing".

78. It was submitted that in any event the Tribunal's findings could not be properly described as irrational.

79. It was argued that in relation to the ritual aspects of the Armenian Church reference was made to the material from the Supplementary Court Book constituting what is described as "excerpts from web site www.armeniapedia.org". The First Respondent relied on extracts from that material. It was noted that the Applicant has claimed a breach of s.424A in relation to the material and also as a basis upon which it could be argued there was a denial of procedural fairness. As I understand the submissions for the First Respondent any argument of procedural fairness fails to take into account the operation of s.422B of the Migration Act (see *SZCIJ v MIMIA* [2006] FCAFC 62; following

*MIMIA v Lay Lat* [2006] FCAFC 61. It is noted this argument is specifically raised in answer to grounds 4 and 5 though clearly appears to be raised in response to ground 3.

80. It was otherwise submitted by the First Respondent that the Tribunal's findings in relation to the Applicant's knowledge of the publication "23 Years" were open to it free of any error.

## Reasoning

81. In my view the First Respondent's submissions in relation to the Tribunal's findings concerning the family whereabouts and the Red Cross and the Applicant's knowledge of the publication "23 Years" are correct. The Tribunal whilst referring to the Red Cross letter does no more than refer to that matter in passing and I accept that it can properly be regarded as simply one strand of its reasoning process. There was other material which the Tribunal was able to take into account concerning the whereabouts of the Applicant's family. The letter from the Red Cross did not determine that outcome. The Tribunal was otherwise able to take into account the timing of the complaint to the Red Cross as a relevant factor despite the difficulties raised by the Applicant and was not obliged to refer to those difficulties to otherwise explain the delay by the Applicant in making a complaint to the Red Cross. After all the Applicant did make a complaint to the Red Cross and it is not the futility of making the claim but rather the timing of the claim which on my reading of the Tribunal's decision appears relevant. I can see no error in the manner in which the Tribunal dealt with that topic.

82. The issue of the lateral aspects of the Armenian Church services does raise some concern and will be dealt with in further detail when considering the further grounds namely whether by referring to the web site the Tribunal took into account an irrelevant consideration.

83. For present purposes reliance upon that web site which I am satisfied does contain some information about ritual at least in the context of an alleged breach of s.424A does not give rise to jurisdictional error as I am satisfied the issue was at least agitated between the Tribunal and the Applicant. That does not however overcome any error the Tribunal

may have made referred to later in this judgment when considering the question of whether it took into account an irrelevant matter.

84. I am not satisfied that these grounds can be sustained.

## Amended Application - Grounds 4 and 5 – The Applicant was denied natural justice/procedural fairness and the Tribunal breached s.424A of the Migration Act 1958

### Applicant's Submissions

85. As I understood it the Applicant submitted that the denial of natural justice or procedural fairness occurred in relation to the confusion concerning the Armenian Church and Armenian Apostolic Church. It further raised the question of the ritual aspects of the service and otherwise used information concerning the ritual and liturgy of the Armenian Apostolic Church at odds with the Applicant's evidence and had therefore failed to put that country information to the Applicant.

### First Respondent's Submissions

86. As indicated earlier the First Respondent relied upon s.422B of the Migration Act when dealing with these grounds. It otherwise claimed there had not been any breach of s.424A of the Migration Act.

### Reasoning

87. I accept the arguments advanced for and on behalf of the First Respondent in relation to s.422B and apply the authorities referred to earlier in this judgment when dealing with these grounds. I further accept that there does not appear to have been a breach of s.424A when dealing with country information and specifically information concerning the Armenian Church at least in the context of the Tribunal's obligations under s.424A of the Migration Act.

88. Accordingly these grounds should fail.

## Additional Grounds of Claim

## Applicant's Submissions

89. The Applicant relied upon Suppelementary Contentions and submitted that the Tribunal took into account an irrelevant consideration by referring to the information or material contained in the web site.

90. Reference was made to the Tribunal decision where it relevantly states as set out earlier in this judgment the following:-

> *"The Armenian Church is a variant of eastern orthodoxy, and thus stresses ritual and liturgy (described in detail at www.armeniapedia.org)"*
>
> (Court Book p.101)

91. It was submitted that the Tribunal though relying upon the information did not provide any further detail other than a cross reference to the web site. It was subitted that it is "entirely unclear whether the Tribunal actually viewed and relied upon the extracts lifted from the web site and reproduced in the Supplementary Court Book". It was argued that this involves "guess work, supposition and the drawing of certain inferences". The Tribunal it was noted failed to reproduce any of the extract to the site in its decision.

92. It was argued that the Tribunal has a duty to conduct its review in a reasoned manner according to substantial justice and the merits of the case. By relying upon the armenia web site it had taken into account an irrelevant consideration. Criticism was made of the web site. Particular reference was made to the extract from the web site which appears in the Supplementary Court Book and in particular the following taken from what is described as the "main page",

> *"Welcome to Armeniapedia, an onling excyclopedia about Armenia* ***that anyone can edit****.*
>
> …
>
> *If you visit a page where the article needs work being rewritten and organized, please feel free to* ***jump in and edit the page****. …"*
>
> (Emphasis added)
>
> (Supplementary Court Book p.1)

93. The material on the web site does not provide details concerning the authors of the material. It was noted however that the material was the site which formed the sole basis "for the Tribunal finding that the Armenian Orthodox Church practices rituals and services that the Applicant was unable to describe". This finding it was submitted, "was critical to (the Tribunal's) rejection of the Applicant's case for a protection visa".

94. It is also noted that in support of the submissions concerning the unreliability of the web site, reference was made to a newspaper article critical of the parent site namely Wikipedia. The article apparently appeared in The Age newspaper on 8 March 2007 under the title, "Wikipedia 'expert' admits: I made it up". The article involved a person purportedly claiming to be an editor of Wikipedia and who had been incorrectly referred to as a "professor of religion with a PhD in theology and a degree in cannon law" serving his "second term as chair of the mediation committee" which purportedly rules on disputes over information posted on the web site. The article reveals that the person holds no advanced degrees and in fact is a 24 year old from Kentucky. It was submitted this demonstrates the unreliability of the material.

95. In the present case it was argued that the Tribunal's reliance on the web site is not analagous to preferring one source of information over another as often will be the case in country information.

96. It was further submitted that although the Tribunal has broad powers to review a decision and that s.420 of the Migration Act means that it is not bound by the rules of evidence, technicalities or legal forms, it is implicit that the Tribunal must identify in its decision additional information which it has sought and has relied upon. The information must be relevant (see s.424(1)). A difficulty may arise in determining whether the information sought by the Tribunal is excluded by s.424A(3) of the Migration Act as it is not sufficiently identified by the Tribunal.

97. It was otherwise submitted that the decision of the Tribunal was irrational and/or illogical. Earlier submissions were repeated in relation to the denial of procedural fairness by the Tribunal relying on the material.

98. As I understand the submissions for the Applicant it was argued that there had been a denial of procedural fairness arising from the Tribunal's failure to comply with s.425 of the Migration Act. Reference was made to the High Court decision in *SZBEL v MIMIA* [2006] HCA 63 at [33] (SZBEL) where the Court relevantly states as follows:

> *"33. The Act defines the nature of the opportunity to be heard that is to be given to an applicant for review by the Tribunal. The applicant is to be invited 'to give evidence and present arguments relating to the issues arising in relation to the decision under review'. The reference to 'the issues arising in relation to the decision under review" is important."*

99. In the present case it was noted the delegate gave the benefit of the doubt to the Applicant in relation to his involvement in Christianity and did not refer to any rituals or practices of the Armenian Church that he expected an applicant to describe. It was argued the Tribunal failed to identify the issue beyond a general comment about what the Applicant had described at the hearing as being material that "doesn't sound to me accurate". The Tribunal had failed to comply with s.425(1) and the Applicant was not afforded procedural fairness.

100. It was otherwise argued that the Applicant was denied procedural fairness and/or the Tribunal failed to comply with s.425 of the Migration Act by not putting to the Applicant the critical finding that it interpreted the Applicant's claim to have attended church to be a claim to have attended an apostolic church.

## First Respondent's Submissions

101. The First Respondent provided detailed Supplementary Contentions filed on 2 April 2007. It was submitted that the Tribunal was not precluded from taking into account information drawn from the web site. It was argued that reference to the web site in relation to the rituals of the church did not result in the Tribunal taking into account an irrelevant consideration nor has any breach of s.424A of the Migration Act occurred. The findings of the Tribunal were supported by other strands of reasoning and it was submitted there was an absence of any contention by the Applicant that the conclusions drawn

from information on the web site were wrong, illogical, irrational or so unreasonable as to result in jurisdictional error.

102. It was noted that there was other material including material before the delegate concerning the Applicant's claims of becoming a christian. It was also noted that the Applicant's adviser (Court Book p.138) refers to information sourced from Wikipedia and other sources (Court Book p.144). The First Respondent referred to other material including country information referred to by the Tribunal.

103. In addition reference was made to the transcript of the Tribunal proceedings where no mention was made by the Applicant of christianity as being a reason why he feared persecution in Iran together with reference to other material set out earlier in the judgment concerning questions raised by the Tribunal with the Applicant about the Armenian Church including comments from the detention centre chaplin.

104. Although the First Respondent referred to the newspaper article published in The Age relied upon by the Applicant it was submitted the Applicant has not contended the Tribunal was materially misled in the case by anything it may have seen on the web site. Specifically the Applicant does not contend that the Armenian Apostolic Church is in fact not a variant of eastern orthodoxy or that church services of the Armenian Apostolic Church in fact do not stress ritual and liturgy.

105. The First Respondent in written submissions relied upon an article by R Rosenzweig entitled *"Can History Be An Open Source? History and the Future of the Past"* The Journal of American History Volume 93 pp.117-146 (2006). Sepcific reference was made to the article where the author states relevantly the following,

> *Perhaps as a result, Wikipedia is surprisingly accurate in reporting names, dates and events in U.S. history. In the 25 biographies I read closely, I doung clear-cut factual errors in only 4. Most were small and inconsequential. Frederick Law Olmsted is said to have managed the Mariposa mining estate after the Civil War, rather than in 1863. And some errors simply repeat widely held but inaccurate beliefs, such as that Haym Salomon personally loaned hundreds of thousands of dollars to the American government during the Revolution and was never repaid. (In fact, the money merely passed though his bank*

*accounts.) Both Encarta and the Encyclopedia Britannica offer up the same myth. The 10,000-word essay on Franklin Roosevelt was the only one with multiple errors. Again, some are small or widely accepted, such a the false claim (made by Roosevelt supporters during the 1932 election) that FDR wrote the Haitian constitution or that Roosevelt money was crucial to his first election to public office in 1910. But two are more signficant – the suggestion that a switch by Al Smith's (rather than John Nance Garner's delegates gave Roosevelt the 1932 nomination and the statement that the Supreme Court overruled the National Industrial Recovery Act (NIRA) in 1937, rather than 1935.*

*…*

*Wikipedia, then, beats Encarta but not American National Biography Online in coverage and roughly matches Encarta in accuracy. This general conclusion is supported by studies comparing Wikipedia to othe rmajor encyclopedias. In 2004 a German computing magazine had experts compare articles in twenty-two different fields in the three leading German-language digital encyclopedias. It rated Wikipedia first with a 3.6 on a 5-point scale, placing it above Brockhaus Premium (3.3) and Encarta (3.1). The following year the British scientific magazine Nature asked experts to assess 42 science entries in Wikipedia and Encyclopedia Brittanica, without telling them which articles came from which publication. The reviewers found only 8 serious errors, such as misinterpretations of major concepts – an equal number in each encyclopedia. But they also noted that Wikipedia had a slightly larger number (162 versus 123) of smaller mistakes, including 'factual errors, omissions or misleading statements.' Nature concluded that 'Britannica's advantage may not be great, at least when it comes to science articles,; and that 'considering how Wikipedia articles are written, that result might seem surprising.*

*…*

*They also may not realize when an article has been vandalized. But vandalism turns out to be less common than one would expect in a totally open system. Over a two-year period, vandals defaced the Calvin Coolidge entry only ten times – almost all with abscenities or juvenile jottings that would have not misled any visitor to the site. (The one exception changed his birth date to 1722, which was also unlikely to confuse anyone.) The median time for repairing the damage was three minutes. More systematic tests have found that vandalism generally has a short life on Wikipedia. The blogger Alex Halavais, graduate director*

*for the informatics school at the University at Buffalo, inserted thirteen errors into Wikipedia entries – including, for example, the clai that the 'well-known abolitionist Frederick Douglass made Syracuse his home for four years.' To his surprise , vigilant Wikipedians removed all mistakes within two and a half hours. Others have been more successful in slipping errors into the encyclopedia, including an invented history of Chesapeake, Virgina, describing it as a major importer of cow dung until 'it collapsed in one tremendous heap,' which lasted on Wikipedia for a month. But vandals face formidable countermeasures that Wikipedia has evolved over time, including a 'recent changes patrol' that constantly monitors changes reported on a 'Recent Changes' page as well as 'personal watchlists' that tell contributors whether an article of interest to them has been changed. On average, every article is on the watchlist of two accounts and the keepers of those lists often obsessively check them several times a day. More generally, the sheer volume of edits – almost 100,000 per day – means that entries, at least popular entries, come under almost constant scrutiny.*

…

*… Two days later they were fixed."*

106. It was submitted that the article "demonstrates that open source and freely edited web sites such as Wikipedia (and by extension the linked web site "Armeniapedia" considered by the RRT in this case" are capable of providing and tend to provide, accurate information".

107. It was submitted that the additional grounds seek to challenge the Tribunal's statements in its decision record. Reference was made to the Tribunal's statement under the heading "Country Information". Reference was made to the web site set out earlier in this judgment. It was noted the Tribunal interpreted the Applicant's claim to be a member of the Armenian church as having been a claim to belong to the Armenian Apostolic Church. It was argued that it is "important to note that the characteristics and particular details of the rituals are not relied upon by the RRT, only the fact that the Armenian Apostolic Church has notable rituals beyond those described by the Applicant, was relied upon.

108. It was argued that the Applicant has not contended that the Armenian Apostolic Church does not have notable rituals beyond those described

by the Applicant. The use it was argued by the Tribunal of the impugned aspects of the decision in the overall structure of the decision was limited and only forms one of three strands of the Tribunal's finding that it did not accept the Applicant had any involvement in Christianity while in Iran. The other strands include the Applicant's failure to mention concern about being persecuted as a convert when explaining on his arrival in Australia why he left Iran and support for the finding that the Tribunal did not accept the Applicant had been baptised as claimed as this was inconsistent with the country information that the Armenian Church does not baptise non Armenians and the Applicant did not receive catechism and could not remember the name of the priest who baptised him.

109. Applying s.424(1) of the Migration Act empowers the Tribunal to "get any information that it considers relevant". It was argued there is no express limitation on the Tribunal's power to do so save the information must be considered relevant. In the present case as I understood the First Respondent's submissions the Tribunal clearly regarded the web site information to be relevant. It was argued however that the information should be found by the Court to be also relevant. Concerns expressed by the Court in relation to the web site and its reliability should not it was submitted impugn the relevance of the information. Those concerns only relate to reliability. In the present case it was submitted "there is no suggestion here that the conclusions drawn from the web site were wrong".

110. It was further submitted that "further and in any event even if there were thought to be some connection between relevance in s.424(1) and reliability, web sites of this kind are capable of providing and tend to provide, accurate information". It was further submitted that, "the fact that a web site may be freely edited by internet users does not mean that the information on the web site will be inaccurate or cant be considered 'relevant' to the topics which the information is directed.

111. It was further argued in the light of the Court's doubts about the accuracy of the information on the web site and the absence of a clear authorship was that errors can exist in works which have "an identified author".

112. It was argued that "the ability of internet users to edit the content of such web sites increases the opportunity for errors to be corrected promptly".

113. Accordingly it was argued that the Tribunal has not committed any error by taking into account an irrelevant matter.

114. It was submitted that there is no breach of s.424A and the Applicant's argument that due to the lack of clarity the exception in s.424A(3) cannot apply. All that is needed it was argued is the identification of the information that would be reason or part of the reason for affirming the decision and the Tribunal has clearly done that by reference to the web site and reference to rituals and liturgy. Accordingly even if the rituals of the Armenian Apostolic Church described on the web site were part of the reason for the Tribunal decision then s.424A(3)(a) would apply. That is "because Church rituals and liturgy are by definition things done by a group of people" according to the First Respondent's submissions.

115. Reliance was otherwise placed upon s.422B of the Migration Act in relation to any claim of denial of procedural fairness.

116. It was further argued that in the present case the facts can be distinguished from *SZBEL* as unlike the hypothetical given in that case the delegate in the present case referred to the Applicant's apparent "low level of knowledge about Christian practices" and therefore this was a "live issue in the RRT review from the outset.

## Reasoning

117. In my view the Tribunal by taking into account the web site has committed jurisdictional error. It has done so by having regard to an irrelevant piece of information. The information is irrelevant where it is so unreliable that no Tribunal acting reasonably would have regard to that information.

118. The unreliability of that information is self evident. The information is provided on a web site which clearly advises the readers that "any one can edit" the publication. It is further noted that readers are invited to "feel free to jump in and edit the page".

119. There is no recognised author provided for the relevant extract. It is noted in passing that the extract reproduced in the Supplementary Court Book whilst providing names of purported authors does not give any or any sufficient information concerning the qualifications of the authors. Unlike recognised theological texts of which there are many which could presumably be accessed by a Tribunal acting reasonably, this web site may or may not contain accurate or relevant data.

120. I am satisfied as submitted by the Applicant and for reasons which are apparent even on a superficial analysis of the web site that the information is so unreliable as to render it an irrelevant piece of information for the purpose of the Tribunal's consideration of the Applicant's claim. Whilst the web site might be an acceptable general source of information perhaps for a primary or secondary school student it is difficult to conceive that it would be material which an undergraduate could rely upon in a bibliography or list of references at any respectable university. Reliance upon a web site of this kind would appear to transgress well established academic and legal principles applying to texts including identification of the author, distinctions between opinion and facts and accurate identification of source material.

121. Whilst reference to a web site might be expeditious and readily available through internet search engines it does not therefore make it a relevant source of information for a Tribunal acting independently according to law.

122. I reject the submissions made by the First Respondent that s.424 of the Migration Act is broad enough to include reference to material of this kind. That section permits the Tribunal to "get any information that it considers relevant". It does not permit the Tribunal to access unreliable material of this kind which in my view could not possibly be relevant to its enquiry. Hence, prime facie, this cannot be relevant material. Given the opportunity for anyone to edit the material it is clear that the Tribunal accessing a web site of this kind might do just as well to conduct a survey at the local internet café. The concerns expressed by the Court in relation to this freely edited web site does in my view contrary to the submissions by the First Respondent impugn

the relevance of the information. It is both irrelevant and unreliable. The unreliability which is palpable makes its irrelevant.

123. I further reject the submission made by the First Respondent that there was "no suggestion here that the conclusions drawn from the web site were wrong". That submission in my view tends to beg the question. If the starting point is unreliable and irrelevant material then it is not for others to seek to impugn the material as being unreliable. Without identified authors and source material the task is difficult and indeed the onus should not be then shifted from a Tribunal acting upon irrelevant and unreliable material to the Applicant in a manner which requires the Applicant to establish unreliability of the web site.

124. I further reject the submission by the First Respondent that "web sites of this kind are capable of providing and tend to provide, accurate information." There is simply no evidence provided to support that submission.

125. Likewise, it is mere speculation in my view to suggest that the capacity to freely edit the web site means that it is likely that errors will be corrected or that the web site is capable "of providing and tend to provide accurate information".

126. I note some reliance was placed upon the article by Rosenzweig referred to earlier in this judgment. I have considered that article carefully. The learned author in fact states in addition to the matters referred to by the First Respondent the following,

> *"A historical work without owners and with multiple, anonymous authors is thus almost unimaginable in our professional culture. Yet, quite remarkably, that describes the online encyclopedia known as Wikipedia, which contains 3 million articles (1 million of them in English). History is probably the category encompassing the largest number of articles. Wikipedia is entirely free. And that freedom includes not just the ability of anyone to read it (a freedom denied by the scholarly journals in, say, JSTOR, which requires an expensive institutional subscription) but also – more remarkably – their freedom to use it. You can take Wikipedia's entry on Franklin D. Roosevelt and put it on your own Web site, you can hand out copies to your students, and you can publish it in a book – all with only one restriction: You may not impose any more restrictions on*

*subsequent readers and users than have been imposed on you. And it has no authors in any conventional sense. Tens of thousands of people – who have not gotten even the glory of affixing their names to it – have written it collaboratively. The Roosevelt entry, for example, emerged over four years as five hundred authors made about one thousand edits. This extraordinary freedom and cooperation make Wikipedia the most important application of the principles of free and open-source software movement to the world of cultural, rather than software, production.*

…

*Writing about Wikipedia is maddeningly difficult. Because Wikipedia is subject to constant change, much that I write about Wikipedia could be untrue by the time you read this. An additional difficulty stems from its vast scale. I cannot claim to have read the 500 million words in the entire Wikipedia, nor even the subset of articles (as many as half) that could be considered historical. This is only a very partial and preliminary report from an ever-changing front, but one that I argue has profound implications for our practice as historians.*

…

*Yet, the ubiquity and ease of the use of Wikipedia still pose important challenges for history teachers. Wikipedia can act as a megaphone, amplifying the (sometimes incorrect) conventional wisdom. …*

*But should we blame Wikipedia for the appetite for pre-digested and prepared information or the tenancy to believe that anything is true? That problem existed back in the days of the family encyclopedia. And one key solution remains the same: Spend more time teaching about the limitations of all information sources, including Wikipedia, and emphasizing the skills of critical analysis of primary or secondary sources."*

127. As the learned author states he does not claim to have read the "500 million words in the entire Wikipedia, nor even the subset of articles (as many as half) that could be considered historical". Significantly the author recognises the appetite for "pre-digested and prepared information or the tendency to believe that anything you read is true".

128. In the present case in my view whilst there may be an appetite for pre-digested and prepared information in the wide internet community that

does not mean that information available on the internet should be regarded as relevant to the task of a Tribunal reviewing a delegate's decision in relation to a protection visa or indeed in any other aspect of the Tribunal's task.

129. Whilst Wikipedia and the web site which is the subject of the present application which is a branch of Wikipedia may loosely be described as an 'information source', the unreliability of that information for the reasons given renders it an irrelevant source. By relying upon it the Tribunal has committed jurisdictional error.

130. I am not satisfied that the reliance upon the web site in this instance can be saved by simply referring to it as one strand of the Tribunal's reasoning. The fact is that the extract from the Tribunal's decision set out earlier in this judgment clearly indicates that the Tribunal has relied upon the detail in the web site when considering the "ritual and liturgy" of the Armenian Church which then critically leads the Tribunal to make an adverse finding concerning the Applicant's claimed Christian activities in Iran before travelling to Australia. That finding was a crucial finding and depended at least in part upon the Tribunal relying upon what I regard as irrelevant web site information.

131. Accordingly I am satisfied that additional ground 1 succeeds. It is not necessary for the Court to consider in further detail the other additional grounds.

## Conclusion

132. It follows for the reasons given that the Tribunal decision should be set aside.

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**I certify that the preceding one hundred and thirty-two (132) paragraphs are a true copy of the reasons for judgment of McInnis FM**

Associate:

Date: 13 June 2007