

1103937 [2011] RRTA 383 (16 May 2011)

DECISION RECORD

RRT CASE NUMBER:	1103937
DIAC REFERENCE(S):	CLF2011/40075
COUNTRY OF REFERENCE:	Czech Republic
TRIBUNAL MEMBER:	James Silva
DATE:	16 May 2011
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of the Czech Republic, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may would identify the applicant] February 2009 and applied to the Department of Immigration and Citizenship for the visa [in] March 2011. The delegate decided to refuse to grant the visa [in] April 2011 and notified the applicant of the decision.
3. The applicant applied to the Tribunal [in] April 2011 for review of the delegate's decision.
4. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

5. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
6. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
9. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

CLAIMS AND EVIDENCE

18. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Primary application

19. According to his protection visa application and attached documents, the applicant is a [age deleted: s.431(2)] man born in [Town 1], Czech Republic. His languages are English, German and Czech. He gives his religion as Islam. He states that he has not been known by any other names.
20. The applicant states that his parents and a brother are deceased. He attended primary school in [Town 1] from 1984 to 1992 ([ages deleted: s.431(2)]). He then studied at a Hotelfachschule (hotel training college) in Austria from 1992 to 1995. He also obtained certificates in the Czech Republic, in bartending, [and martial artists].
21. The applicant worked in 3 named restaurants in Prague; no timeframe is given. He then spent time in Brazil, France, Spain, Thailand and Switzerland, as a tourist, again with no details of the timing. The applicant states that he entered Australia in 2009 on a Czech passport, as the holder of a tourist visa.
22. The applicant's refugee claims and further details are in a statutory declaration accompanying the application. They are, in summary:
 - He fears returning to the Czech Republic because of the volatile political situation. He is concerned that the EU might close the borders, and he would be denied freedom of movement within the EU. The applicant is a free-spirited person who has travelled to many countries, and does not want to face EU travel restrictions.
 - He also states that he strongly opposed Czech EU membership. He resents the EU parliament's interference in areas such as finance, politics, the judiciary, private companies and public offices. He did not protest EU membership, as he knew that the EU parliament controlled the Czech government.
 - About 18 months ago, the applicant became a Muslim, while he was travelling in the Northern Territory. He discussed religion with fellow travellers from Saudi Arabia and other Middle Eastern countries. The applicant found that the Muslim diet, with its ban on *roti* (bread), alcohol and pork suited his dietary needs. He is allergic to dairy, soy and yeast, and falls into a trance and loses his concentration if he eats these products. The applicant started eating Muslim food, praying 5 times a day and avoiding alcohol, and felt great improvements to his life.
 - The applicant fears that the Czechs, who are 95% Christian and very strict, will harm him if he returns to the Czech Republic. He also fears discrimination in employment.

- He believes that the Czech government is controlled by the EU and is very corrupt; they will not protect a Muslim like the applicant.
 - The applicant states that his most recent Czech passport was issued in Prague in 2006, and was stolen while he was in the Northern Territory. He applied for a new Czech passport about a month before the statement.
23. The Department file includes (at folio 95) the biodata page of an emergency passport issued by the Czech Consulate in Sydney, [in] March 2011.

Department interview

24. The applicant attended a Department interview [in] April 2011. The Tribunal has listened to the recording of the interview, which is on the Department file.
25. The applicant confirmed his personal and family background. His parents and brother have died. The applicant worked in restaurants, and was involved in martial arts. He undertook hotel training in Austria, and later worked in the UK for a year. He has travelled extensively, usually for martial arts competitions.
26. The applicant said that he loves Islam. He is a Sunni Muslim, but has not undergone any formalities. He described his gradual attraction to the religion, which grew stronger when he met Muslims in Australia. He considers Czechs to be mainly Christian, and intolerant towards minorities such as Muslims. For instance, he feels unsafe on the street there and believes that he will face discrimination when looking for a job. The police ignore assaults that are religiously motivated. The applicant said that he knew some Muslims who had been attacked, and who refrained from going to the police.
27. The applicant did not believe it was safe anywhere in Europe. He voiced concern, too, that EU borders may come down. He stressed that he needs a quiet life, and he had found this in Australia.

Decision under review

28. The delegate accepted that the applicant is a Muslim, but found - with reference to country information about Muslims in the Czech Republic - that his fear of persecution was not well-founded. The delegate considered the applicant's stated political opinion - to be opposed to the Czech Republic's EU membership, yet also concerned that freedom of movement and other benefits of that membership might evaporate - contradictory. The delegate was not satisfied that the applicant's fear of persecution for any political reason was well-founded.
29. The decision notes from Department record that the applicant visited Australia as a tourist on previous occasions: (a) from [a date in] September 2008 to [a date in] November 2008, and (b) from [a date in] November 2008 to [a date in] February 2009. He most recently arrived [in] February 2009. He was hospitalised in November/December 2010, and gave Department officers the name of [alias deleted: s.431(2)], a Netherlands citizen. [In] February 2011, he used the name [alias deleted: s.431(2)], a Canadian citizen.

Review application

30. The Tribunal received a pre-hearing submission [in] May 2011, with the following information:

- The applicant fears persecution in the Czech Republic. He strongly opposes the EU's interference in Czech domestic politics, but fears that he will be unable to travel freely if the EU itself disintegrates. Second, he has converted to Islam, and fears religious persecution. The submission summarises relevant law.
- The applicant claims to fear harm as a Muslim from non-State actors, and fears the denial of State protection (the submission refers to *MIMA v Khawar*). It bases this claim on the following:
 - The Czech Republic's Muslim population is small. He states that the community and politicians opposed a proposed second mosque being built in Brno, indicative (it is argued) of widespread mistrust and mistreatment of Muslims in the Czech Republic. A 2006 survey revealed Islamophobic attitudes in the Czech community – such as three-quarters having a negative attitude to Islam.
 - There are only 3 mosques in the country. A majority of people would like a ban on mosques, and there is opposition to 2 of them building minarets.
 - Government attitudes to demands by Muslims for greater religious freedom are also 'xenophobic' While Czechs are largely atheistic, they believe that the country should be based on Christian values and beliefs.'
 - Other examples are given. Muslims have not met the conditions to establish religious schools (being established for 21 years or more, and obtaining at least 10,000 signatures), and have failed to get an exemption because the authorities are opposed to the religion - at least some ministries fear Islamic radicalisation taking root. The submission contends that the denial of the right to 'establish religious schools' and 'to hold Islamic weddings' (there are no more details on the latter, reflects widespread negative official attitudes. The applicant is at risk of facing discrimination, 'significant threats of verbal and physical abuse, from which government officials may be reluctant to protect him (owing to prejudice against his chosen faith)').
- The applicant fears, in particular, 'significant economic hardship that threatens [his] capacity to subsist', because of anti-Muslim sentiment. He fears that the small Muslim community would be unable to protect him, due to its small size.
- The submission also points to extremist groups in the Czech Republic, 'characterised by racist, xenophobic, anti-Semitic, and anti-Muslim attitudes, dissemination of Nazi propaganda and holocaust denial.' Such views are common in political discourse, and often tolerated by the government. A September 2008 article in the *Prague Monitor* records concerns about a 'steep increase in Islamophobia, anti-Arabism and anti-Muslim moods'.
- It points to anti-Muslim protests in Hradec Kralove (city of 94,000 in northern Czech Republic), quoting some of the participants. Views that Muslims are anti-Czech and oriented to the East rather than Europe 'will hinder his ability to find work from Czech employers', affect his relations with government officials, and expose him to harm from non-State actors, with the risk that the State will selectively withhold protection from him, because he is Muslim.

- The applicant fears that such attitudes may cause him to suffer ‘vicious violence’, particularly if he were in custody. An incident is described in which an Uzbek national was detained and racially abused (‘dirty and black foreigner’). The submission contends that this is similar to anti-Muslim rhetoric that is used to vilify suspects and justify abuses of prisoners in custody. It also cites the Czech Republic’s alleged policy of prolonging the duration of asylum seekers for Iraqis (a concern raised by the European Council on Refugees and Exiles, in its *Country Report 2005*) as further evidence of anti-Islamic prejudices in the public sector.
 - The submission concludes that the applicant’s fears of religious persecution are well-founded; that he will be unable to access protection anywhere in the Czech Republic; and that he cannot relocate anywhere in the Czech Republic to avoid persecution.
31. The submission also requests the Tribunal, if it were to decide that Australia does not owe protection obligations towards the applicant, to recommend that the Minister exercise his public interest powers under s.417 of the Act, and substitute a decision more favourable to the applicant. The following considerations were presented:
- Even if the Tribunal were to find that the applicant did not face a real chance of persecution, he may nonetheless face ‘very serious discrimination and prejudice resulting from his religion – sufficient to threaten his human dignity, his capacity to find work, and his capacity to gain assistance from the government.’
 - The applicant’s parents and brother are deceased. He is at risk of ostracism from his ethnic and former religious community, and may not find ready acceptance in the small Muslim community.
 - As for the applicant’s prospects elsewhere in the EU (this appears to address the question whether he has effective third State protection there), the applicant has no ‘contacts, connections, or marketable entry-level skills; his only significant employment experiences is as a restaurant manager, a job he will find very difficult to take up in another nation with limited references or connections in the local community.’

Tribunal hearing, [in] May 2011

32. The applicant attended a Tribunal hearing [in] May 2011. The applicant’s representative was not present. The hearing was held in English, in which the applicant is fluent.
33. The applicant confirmed the accuracy of the submissions that he had presented to the Department and the Tribunal to date. He said that he mainly fears persecution on the ground of religion, as a Muslim, and also on the grounds of political opinion.
34. The applicant clarified some details about his personal background. He said that he attended school in [Town 1], in central Czech Republic, and then studied at a hotel school in Austria from [age deleted: s.431(2)]. He then lived in Prague, working as a waiter, bartender and later restaurant manager. The applicant said that he had travelled abroad, as a tourist. He made some trips by car within Europe. His travel included a 10-day trip to Brazil, as a tourist and to visit a significant [martial arts] school. He also visited Thailand 3 times, for tourism and to attend Thai [martial arts] competitions.

35. The applicant said that he has no immediate family. His mother and brother died when he was [age deleted: s.431(2)], and his father died several years later. The applicant referred during the hearing to friends in Prague, but said that he has now lost contact with them.
36. The applicant said that he arrived in Australia several years earlier (i.e. late 2008/early 2009), on a tourist visa that he thought had been valid for one year. He said that he decided to stay longer than that, because he feels attached to and safe in Australia. He spent most of his time in the Northern Territory. He said that he had once fallen seriously ill in Katherine and been transferred to Darwin for treatment. Immigration officials were alerted to his visa status at that time. Later, he went to Alice Springs to earn money to pay for his treatment in Darwin. The applicant said that, during this period, he used aliases, as these English names were less conspicuous than his Czech name.
37. *Religion:* The applicant said that he grew up as an atheist, but felt that something was missing. He also suffered from food allergies and stress, and his poor health fuelled his interest in religion. Around [ages deleted: s.431(2)], he began to adjust his food intake, gradually giving up dairy products, pork and beef. He said that he had some Muslim friends in Prague, and developed some interest in the faith. Asked for details of his friends, the applicant said he knew about 10 or 12 – some were Czech converts, one was from Thailand and several were French (North African).
38. The applicant said that his interest in Islam intensified in Australia. He met Muslim people in the Northern Territory, and he found it to be a beautiful religion. The applicant said that the Muslims he met were tourists or farmworkers, and gave as an example a person from Dubai whom he met in a backpacker lodge in Alice Springs. In response to the Tribunal's questions about how they taught him, the applicant said that they talked about Islam and prayed together. The Tribunal asked if he attended or enquired about mosques in the Northern Territory. The applicant replied that he did not attend any mosque in Darwin or make enquiries, as he had been stressed, unwell and busy trying to make ends meet. As for his income during this period, the applicant said that he did casual jobs, such as collecting tins, gardening or cleaning. He said that he did not know of any mosques in Alice Springs.
39. The Tribunal asked the applicant about the extent to which he had adopted other Muslim practices, such as eating *halal* products or observing Ramadan. He replied that he refrained from drinking alcohol, and eating pork and beef; he tried to eat *halal* but had limited opportunity to adhere to this practice. He has not yet observed Ramadan. The Tribunal observed that there are large Muslim populations in Australian cities like Sydney and Melbourne, where the applicant may have had more opportunity to learn about and practice Islam. The applicant commented that he does not like the city; he prefers the freedom and openness of the Territory.
40. The applicant wore a *keffiyeh* (traditional Arab headdress) to the hearing, and said that a fellow Villawood detainee had given it to him a few weeks earlier. It had come from Mecca. He said that he now attends prayers in Villawood, and spoke warmly about the Muslim detainees and his estimation of how their religion guided them.
41. *Fears in the Czech Republic:* The applicant said that he knew from his friends that there are 'lots of mosques', by which he meant formal mosques as well as small prayer rooms, in the Czech Republic. There were some opportunities to obtain *halal* food. These were not real problems.

42. The applicant said that he feared anti-Muslim violence from extremist Christians, if he returned to the Czech Republic. Asked for details of the particular groups he was referring to, the applicant said that they were not organised groups, but rather individuals or informal gangs who targeted Muslim. (He agreed with the Tribunal's comment that he appeared to be referring to extremist gangs, the kinds that are also neo-Nazi, anti-Semitic and anti-Roma.) The applicant said that he wished to be able to walk freely on the street, as a Muslim, without having to conceal his faith. He was prepared and equipped to defend himself, but did not want to have to do so.
43. The Tribunal put to the applicant that country information indicated that a large proportion of the Czech population were atheists, and another proportion Christian. The Muslim population numbered in the thousands – the US State Department records estimates of several thousand, whereas the website *Islamicawarenessnet.com* put it at around 20,000. There were certainly reports of attacks against other minority groups such as the Roma. The Tribunal had found only limited evidence of violence against Muslims. The examples that were before it (such as the reported mistreatment of an Uzbek, referred to in the pre-hearing submission) generally involved foreigners, who did not speak Czech and who may have been vulnerable because of their appearance, and their lack of Czech nationality and language.
44. The Tribunal noted also reports of community opposition to the establishment of a second mosque in Brno, and the references in the pre-hearing submission to difficulties that the Muslim community had had in establishing a religious school and holding Islamic weddings. The applicant appeared to be only vaguely familiar with these references. The Tribunal noted that such community sensitivities could indicate some degree of discrimination or even Islamophobia, but they fell well short of establishing that Muslims were at risk of persecution.
45. The Tribunal, noting that the applicant had engaged in mainly private prayer in Australia thus far, asked him why he feared that extremist gangs in the Czech Republic would identify and target him as a Muslim. The applicant said that they could easily find out that he was Muslim, as the Czech Republic is a small country and it is easy for them to check. He said that he did not want to have to conceal his faith. The Tribunal asked whether he was referring to wearing a *keffiyeh*, as there were many young non-Muslims who wore this. The applicant said that he wished to continue wearing this in the Czech Republic, but his main concern was the extremists' ability to find out about his faith.
46. In response to the Tribunal's queries about his Muslim friends in Prague, and their experiences, the applicant said that 3 of them have been assaulted in Prague, and received anti-Muslim abuse in the process. One of these was a Muslim Thai friend, who ended up in hospital with a broken leg. The Tribunal observed that most Thais are Buddhist, and wondered whether the applicant had more details on whether the attack was motivated by racial or unrelated factors. The applicant said that they had abused him as a Muslim, calling him a 'fucking Muslim', but he did not have further details.
47. The applicant also spoke of 2 Czech friends who were attacked by fanatics, also on religious grounds. He said that in one instance, the police had caught the perpetrators, but he had not made further enquiries about what action they took against them, as he had not wanted to press his friends to relive the incident. The Tribunal sought clarification as to whether the friends were linked with Islam because of the location, their clothing or other features that brought them to the attention of their attackers. The applicant thought that they also wore Arabic *keffiyeh*, and suggested that they might also have worn other Muslim clothes (he

seemed to be implying robes or *shalwar kameez*). The applicant said that he was proud to be a Muslim, and wished to wear the *keffiyeh*, but stressed that his claims were not based on clothing alone.

48. The Tribunal observed that his applicant's Muslim Czech friends had gone to the police and obtained help, suggesting that the authorities took such incidents seriously and sought to protect the victims.
49. Later in the hearing (when the Tribunal asked the applicant about his request for humanitarian consideration), the applicant added that he also feared job discrimination and lack of social acceptance, as a Muslim. The Tribunal noted that the Czech Republic had large atheist and Christian populations. It noted EU protections against religious discrimination, and queried why he thought that prospective employers would focus on this issue. The applicant replied that he was not sure, but considered that it could occur in private companies, and informally.
50. *Political opinion*: The Tribunal asked the applicant about his political opinion, and whether he feared that this would put him in harm's way. He expressed concerns about Europe's politics and economy – the demise of the southern European powers (Spain, Portugal and Italy), and Germany's economic and political dominance, including through EU institutions and through Germany's large companies. He feared that the Czech Republic might eventually leave the EU and close its borders, leaving it vulnerable to the kind of events that occurred in 1948. The Tribunal reminded the applicant that dissatisfaction with a country's political, economic or other conditions did not amount to persecution. It noted that, at its core, the applicant's political opinion was one that a majority of people might ascribe to – that the Czech Republic should enjoy the benefits of EU membership, yet contain the associated costs, such as interference with domestic politics and economics, and the dominance of more powerful countries. The applicant replied that his political opinion did not cause him to fear persecution as such.
51. *Third State protection*: The Tribunal alerted the applicant that, in the event that it were satisfied that he had a well-founded fear of Convention-related persecution in the Czech Republic, it was still required to assess whether he has a right to enter and reside in another country, where he does not have a well-founded fear of Convention-related persecution, or a well-founded fear of being refouled to the Czech Republic. This arose because of the Czech Republic's EU membership, and the applicant's ability to live and work elsewhere (as he had already done in the past). The applicant replied that there are fanatics all around the world, and it is easy for them to find out about his identity and to persecute him. He did not have specific proof of this, and had not wanted to cause himself more stress by researching it. The applicant contrasted this with conditions in the Northern Territory, where he feels free and safe. He implied that the vastness and anonymity of the Northern Territory afforded him great comfort.
52. *Humanitarian consideration*: The Tribunal noted that the applicant's representative had asked it to refer his matter for consideration on humanitarian grounds, taking into account his family circumstances, his religion and the social and employment consequences (even if these did not amount to Convention-related persecution). The Tribunal undertook to reflect on this, but alerted the applicant that his illegal overstay in Australia, his language and employment skills, and his other circumstances might also be relevant in any such assessment. In relation to his overstay, the applicant said that he had felt stressed, and had been unable to find information on the internet as to how he could stay in Australia legally.

The Czech authorities in Australia had told him that they could not help him with visas. He stressed that he had done no wrong, and had only moved to Alice Springs to work, so that he could pay his Darwin hospital bills. He stressed that he loves Australia and would like to stay.

Information from other sources

53. The most recent US State Department *International Freedom Report 2010 – Czech Republic*¹ gives the following religious demography for the Czech Republic:

The country has an area of 30,442 square miles and a population of 10.5 million. The population is largely homogeneous with a dominant Christian tradition. However, in part as a result of communist rule between 1948 and 1989, the majority of citizens do not identify themselves as members of any organized religion. In a 2009 opinion poll sponsored by the Stredisko Empirickych Vyzkumu (STEM) agency, 32 percent of respondents claimed to believe in God, while 38 percent identified themselves as atheists. Only 25 percent of citizens under the age of 29 professed a belief in God. [...]

According to the decennial census of 2001, there are 3.3 million religious believers in the country. Twenty-seven percent of the population belongs to the Roman Catholic Church, 3 percent to Protestant churches, 1 percent to the Czech Hussite Church, and 2 percent to other religious groups. Five percent of the population attends Catholic services regularly, and most live in the Moravian dioceses of Olomouc and Brno. One percent of the population is practicing Protestants. **In 2004 Islam was registered as an officially recognized religion, and leaders of the local Muslim community estimate there are several thousand Muslims in the country.** [Tribunal emphasis]

54. The report mentions the presence of extremist/nationalist groups in the Czech Republic who espouse, among other things, anti-Muslim attitudes. It notes opposition to proposal to build a second mosque in Brno – as indicative of community and official attitudes – but does not identify any specific violence against Muslims (including Czech Muslims).

The activities of groups such as National Resistance (Narodni odpor) and Autonomous Nationalists (Autonomni nacionaliste) were characterized by racist, xenophobic, anti-Semitic, and anti-Muslim attitudes as well as Holocaust denial and the dissemination of Nazi propaganda.

The Brno Muslim community's plan to build a second mosque in the city led to protests, including a small demonstration by the National Party in August 2009. The local leadership of the centrist Christian Democratic Party also opposed the plan.

55. An on-line source, Islam Awareness² gives in an article entitled *Quick look at Islam in Czech Republic*, an overview of the Muslim population and organisations. Relevantly, it confirms that native Czech Muslims are few in number, and mostly women.

There are no reliable figures as to how many Muslims really live in the Czech Republic. Mohamed Ali Šilhavý (interviewed by the BBC Czech Service, September 20, 2001) estimated the numbers at about 20,000 Muslims in the Czech Republic, among whom some 400 could be native Czechs. The number of converts seems to grow, and probably as many as 80% of them are women, which more completely adopt cultural patterns (not only the basic faith as such)..

¹ Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report 2010*, November 7, 2010, <http://www.state.gov/g/drl/rls/irf/2010/148927.htm>

² http://www.islamawareness.net/Europe/Czech/czech_article0002.html

So far, no celebrity converts to Islam are known in the Czech Republic although it is noteworthy that at least two prominent Czech Orientalists of the Communist era were secret Muslims (a professed Islamic adherence is certain of old-generation Mideast scholars Ivan Hrbek and Jiří Bečka at their young age; Czech Muslim author Petr Pelikán has academic education in Arab and Oriental studies; finally, going back to earlier generations, some speculate that Felix Tauer, who has translated the Thousand and One Nights into Czech, may have been a Muslim secretly).

As for the non-Czech Muslims who live in the country, most of them are Arabs (see above), apparently followed by Afghans, sub-Saharan Africans, Pakistanis, refugees from Bosnia- Herzegovina, and people from the Central Asian and Caucasian republics of the former Soviet Union. Turks, Persians, and Kurds are relatively very few in the Czech Republic.

56. The Tribunal has had regard to other country information contained in the pre-hearings submission, summarised above. As discussed at the hearing, most of the information concerns community concerns at the establishment of Muslim mosques and institutions. Some information refers to violence against foreigners, some of whom were Muslims, but it is not clear whether religion itself was a motivating factor. The Tribunal has found no reporting on the mistreatment of Czech Muslims.

FINDINGS AND REASONS

57. The Tribunal accepts on the available evidence that the applicant's true identity is [name deleted: s.431(2)], and that he is a national of the Czech Republic. It therefore assesses his refugee claims against that country.
58. The applicant claims to fear persecution in the Czech Republic as a person who has adopted Islam. He also claims to have a political opinion concerning the Czech Republic's EU membership – he opposes EU (particularly German) dominance in Czech affairs, and is worried about the future of the Czech Republic and the EU as a whole, particularly the southern Member States.
59. The applicant spoke in English, and impressed the Tribunal with his straightforward evidence. The Tribunal accepts that he has suffered some long-term health problems, including stress, but observed nothing to suggest that these had an impact on his ability to present his case. The Tribunal accepts that the applicant is apprehensive about returning to the Czech Republic but, for the reasons that follow, finds that his fears are not well-founded.
60. **Religion:** The Tribunal accepts that the applicant grew up without religion, and has recently adopted Islam as his faith. It finds on the available evidence that he is still learning about Islam, and that it is essentially a matter of private conviction and practice.
- The applicant claimed to have become a Muslim in the Northern Territory, based on contacts with tourists, farmworkers and other people he had met there. They told him about Islam, and he prayed with them. He has read about it. He also abstains from certain foods, such as pork and alcohol, although it was clear from his further evidence that he restricted his diet before becoming a Muslim, and for mainly health reasons. These overlap with Muslim restrictions, but also go well beyond these.
 - The Tribunal accepts the sincerity of the applicant's beliefs. However, despite his claim to have adopted Islam some 2 years ago, it is striking that he did not enquire about

mosques or other communal practices in the Northern Territory; he appears to have made only some efforts to look for *halal* food in Australia; and he has not observed Ramadan.

- The applicant's religious devotion appears to have grown since his transfer to Villawood IDC. For instance, he mentioned contacts with Muslim detainees, and said that he now values wearing the *keffiyeh* from Mecca, which has some religious significance for him.
- The Tribunal finds that the applicant's commitment to Islam, while sincere, is very limited in scope. Significantly, he indicated his interest in returning to the Northern Territory, if he is permitted to remain in Australia, rather than got to places where there are a larger Muslim community and facilities. The applicant's past conduct in the Northern Territory, and his interest in returning there, indicate that his real attachment to Islam is essentially private and personal in nature; that he places little priority on communal practice or overt manifestations of his faith.

61. The applicant claimed that he would be at risk of persecution in the Czech Republic, as a Muslim, basically because Christian extremists or others could readily find out that he was Muslim, and may be motivated to seriously harm him. The Tribunal accepts that the applicant is genuinely concerned about this prospect, but for the reasons that follow, finds that his fear is not well-founded.

- First, the applicant's practice of Islam is very low-key and essentially private. In Australia, he has talked to other Muslims, read and prayed, and made some modest modifications to his way of thinking and his lifestyle. The Tribunal finds that, if the applicant returns to the Czech Republic, he will continue to practice in this manner, and he may also choose to make contact with former Muslim friends or make other contacts. The Tribunal accepts that the applicant may wish to wear an Arab headscarf or other items. The Tribunal does not accept that the applicant will engage in other forms of public worship, social or political groups, or other outward manifestations of his faith.
- Second, the Tribunal claimed that the community at large, and extremists, would come to know that he is a Muslim, and he did not want to deny or conceal this. The applicant was vague as to how this would occur, referring mainly to the Czech Republic and Prague being small (or perhaps small-minded). The Tribunal notes that the applicant appeared to be drawing a contrast between the Czech Republic and his preferred option, the Northern Territory. The Tribunal is prepared to accept – given the small number of Muslims and the even smaller number of Czechs who have adopted the faith – that some friends and members of the local community might come to know of his faith, and regard it as an oddity. However, the applicant claimed to have few contacts in Prague, and the Tribunal does not accept that his beliefs and personal practices would arouse the interest of the community at large.
- Third, country information indicates that nationalist and extremist groups have, as the US State Department put it, 'racist, xenophobic, anti-Semitic, and anti-Muslim attitudes', are a small minority. However, the cited examples of anti-Muslim violence involve mainly foreigners, and (as in the case of the Uzbek held in detention) raised obvious issues of nationality, language and also ethnicity. While it is not possible to analyse whether any individual case also had a religious dimension, the Tribunal considers that the applicant's situation – as an ethnic Czech, national and native speaker – is markedly different from the examples that are before the Tribunal. (See paragraphs 63 and 64 below.)

- Fourth, alongside the applicant's concern that the community would learn about and react negatively to his faith, the Tribunal explored with him if there were any other features of his practice that might attract potentially adverse attention. He alluded to his clothing – he now wishes to continue wearing the *keffiyeh* from Mecca – although he said that this was a much less important concern. The Tribunal accepts that the applicant may wish to wear the *keffiyeh*, but does not accept that this Arabic headdress is, or would be seen to be, as a sign of adherence to Islam, let alone provoke aggressive responses. The applicant suggested that his 2 Czech friends wore other Arabic garments, but the Tribunal does not accept that the applicant would do so in the Czech Republic, or that he would be perceived to be Muslim for this reason alone.
 - Fifth, the Tribunal has before it country information about Czech community and official sensitivity towards the building of Islamic mosques, the establishment of Islamic schools and the like. These have even resulted in protest activity. As discussed at the hearing, these issues are topical in many countries, with motivations that range from practical considerations, to underlying suspicion and even Islamophobia. While there may be strong Christian and social conservatism in the Czech Republic, the Tribunal does not accept such forces put the applicant at risk of serious harm merely for practising Islam as he has in Australia.
 - Sixth, the applicant spoke of other discrimination, particularly in the field of employment. The Tribunal accepts, given information that there is some mistrust of Muslims in Czech society, that this may spill over into some forms of discrimination. The applicant thought, tentatively, that some private companies might actively discriminate in recruitment. Taking into account the applicant's qualifications and past employment in the restaurant sector, and his martial arts interests, the Tribunal does not accept that there is a real chance of him experiencing job discrimination, based on his Muslim faith, amounting to serious harm.
 - Finally, while the Tribunal accepts that the applicant may face some broader discrimination as a Muslim, for instance some mistrust or social distance, it does not accept that this involves serious harm.
62. The Tribunal has taken into account the fact that native Czech Muslims are believed to be few in number – probably upward of 400 – and that some caution should therefore be used in drawing conclusions about their prospects. However, they lack the risk factors of other Muslims. In the Tribunal's view, Muslim, human rights and EU groups, as well as the media, would be keen to publicise violence or other serious harm perpetrated against Czech Muslims on religious grounds. The Tribunal considers the lack of such reports significant.
63. The applicant gave 3 examples of friends, among his group of some 10 or 20 Muslim acquaintances, who have been assaulted. The applicant said that he knew Muslims of differing backgrounds (Czech, Thai and French/African), even before he adopted the religion. The Tribunal accepts that there were some incidents, but it does not attach to them the same meaning as the applicant does. He focused on each of the persons having been abused as a Muslim, but had little else to say about the incidents – such as whether the Thai person's ethnicity or other factors might have played a role, the exact circumstances in which the incidents occurred, or the authorities' response to them (apart from the arrest of and unspecified action against the perpetrators in one incident). While the Tribunal accepts that the victims may have been Muslim, it does not accept on the limited available evidence that the incidents involved religiously motivated violence.

64. The Tribunal acknowledges that extremist gangs in the Czech Republic target minorities, and that they voice (among other things) anti-Muslim views. However, the Tribunal finds that there is no real chance of the applicant facing serious harm at the hands of such gangs, for religious or any other Convention-related grounds.
65. The applicant pressed the point that, while he is prepared to defend himself, he wants the right to practice his faith without having to deny or conceal it. The Tribunal finds that the applicant can practice Islam, as he has practiced it in Australia and in accordance with his level of conviction and his interests, without having to refrain from activities or modify his conduct so as to avoid persecution.
66. The applicant's submission and the tenor of his oral evidence suggested that the Czech authorities would not protect him if he were assaulted or otherwise harmed. This derives mainly from evidence about broader community concerns about Muslims, and instances of political statements and administrative decision-making which, it is argued, also reflect such prejudices. The Tribunal considers that, while there may be some instances of official discrimination, these do not support a more general proposition that the authorities would fail to provide the applicant adequate and effective protection should the need arise. On the contrary, the applicant's evidence that the police arrested the perpetrator of one of the attacks against a friend (a Czech Muslim) and took some kind of official action indicates that the victim's religion (irrespective of whether it played a role in the attack) did not significantly affect the authorities' willingness to protect him.
67. The pre-hearing submission invites the Tribunal to consider the principle in *MIMA v Khawar & Ors*³, as it relates to the actions of non-State actors and the denial of State protection for a Convention reason. The Tribunal assumes this to mean that, if it were to find that the applicant faces a real chance of harm from non-State actors for non-Convention reasons, then it should consider whether there would be a discriminatory failure of state protection from the Czech authorities, attributable to a Convention reason (his Muslim faith). The submission later states that the Tribunal must assess whether the Convention ground is the 'essential and significant reason' for the feared harm, and not whether it is the sole reason. The relevance of this is not immediately clear. There are no claims or evidence to suggest that the applicant is at risk of serious harm from members of the community for reasons other than his religion. Although the Tribunal has no medical evidence, it accepts the applicant's evidence that he faces some health and stress-related problems, and considers that he may face challenges adapting to life in the Czech Republic after his transient lifestyle in the Northern Territory. However, the Tribunal does not accept on the available material that the applicant faces a real chance of serious harm in the Czech Republic, including for non-Convention reasons. The issue that arises in *Khawar*, the discriminatory denial of State protection from non-Convention related persecution from non-State actors, therefore does not arise on the facts.
68. In sum, the Tribunal accepts that the applicant is a practising Muslim, sincere but with a quite limited, personal practice; and that he is one of relatively few native Czech Muslims. It does not accept that he faces a real chance of persecution for reason of his religion; nor does it accept that he will need to modify his conduct in order to avoid such persecution.
69. **Politics:** The Tribunal accepts that the applicant is concerned about Europe's future, including the dominance of the European Parliament and Germany; the decline of the southern Member States' economies and power; and the possibility of the EU fracturing, with

³ (2002) 210 CLR 1.

the possible loss for Czech citizens of freedom of movement and labour. While his perspective is pessimistic and perhaps even alarmist, the Tribunal considers that many people share his underlying concerns. His concerns about Europe's economic, political and social conditions do not amount to persecution, as they do not involve systematic and discriminatory conduct, as required by s.91R(1)(c) of the Act. The applicant did not claim, and there is no evidence to indicate, that he is at risk of persecution for reason of holding or expressing any such political opinion.

70. **Third State protection:** The Tribunal discussed with the applicant the issues of internal relocation (if it were satisfied that he has a well-founded fear of Convention-related persecution in one place in the Czech Republic). It also discussed whether, as a EU citizen, he has a right to enter and reside in any other EU country, where he does not have a well-founded fear of Convention-related persecution, or a well-founded fear of being refouled to the Czech Republic (if the Tribunal were to find that he has a well-founded fear of Convention-related persecution there). The applicant acknowledged these points, but said that he fears fanatics 'all over the world' – in other words, he was at risk of Convention-related persecution throughout Europe. As the Tribunal has found that the applicant does not have a well-founded fear of Convention-related persecution in the Czech Republic, it is not necessary to determine whether he has effective protection in any other EU country; whether he has availed himself of this right; and whether Australia is taken not to have protection obligations towards him if he has not taken all possible steps to avail himself of such a right.
71. **Humanitarian consideration:** The applicant has requested that the Tribunal refer the case to the Department for consideration by the Minister pursuant to s.417 of the Act which gives the Minister a discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so.
72. The applicant's request refers to his family circumstances (with both parents and his brother deceased); his lack of social contacts in the Czech Republic; and the risk that he will experience discrimination and prejudice as a Muslim, with impacts on his human dignity, his employment prospects and capacity to obtain government assistance. He also referred in this context to the difficulties he would experience in other EU countries, because he lacks social networks. The Tribunal appreciates that the applicant may have little incentive to return to the Czech Republic, if he has few family or social contacts there, and that he may be apprehensive about people's reactions to his conversion to Islam. However, the Tribunal is not satisfied that there is 'a significant threat to his personal security, human rights or human dignity', as referred to in the ministerial guidelines. It is also not satisfied on the available material that they involve 'unique and exceptional circumstances' of the kind that may invoke the public interest.
73. The Tribunal has considered the applicant's case and the ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' but has decided not to refer the matter. The Tribunal notes that the applicant can still make a request directly to the Minister.

CONCLUSIONS

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

DECISION

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