0903707 [2009] RRTA 758 (18 August 2009)

DECISION RECORD

RRT CASE NUMBER:	0903707
DIAC REFERENCE:	CLF2008/60126
COUNTRY OF REFERENCE:	Vietnam
TRIBUNAL MEMBER:	Megan Hodgkinson
DATE:	18 August 2009
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship (the delegate) 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 Vietnam, arrived in Australia [in] March 2007 and applied to the Department of Immigration and Citizenship (the Department) for a Protection (Class XA) visa [in] March 2008. The delegate decided to refuse to grant the visa [in] June 2008 and notified the applicant of the decision and his review rights.

3. The applicant sought review of the delegate's decision and the Tribunal, differently constituted, affirmed the delegate's decision [in] December 2008. The applicant sought review of the Tribunal's decision by the Federal Magistrates Court and [in] May 2009 the Court set aside the decision and remitted the matter to the Tribunal to be determined according to law.

4. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

5. The matter is now before the Tribunal pursuant to the order of the Court.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

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

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

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

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

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

16. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant and the Tribunal's file in relation to the previous Tribunal decision (0804297) The Tribunal has also had regard to further documents and research obtained during the present review.

The protection visa application

20. The applicant lodged an *Application for an applicant who wishes to submit their own claims to be a refugee* (an Application for a Protection (Class XA) visa) [in] March 2008. With the application, he provided a copy of his Vietnamese passport.

21. In the application form, he stated that he arrived in Australia in April 2007 as the holder of a visitor's visa and was separated from his spouse in Melbourne in around September 2007. On arrival in Australia, he stayed with his wife's niece at her home. From August or September 2007 until the application was lodged he lived in [suburb deleted in accordance with s431(2) of the Migration Act as this information could identify the applicant]. He was not sure where his wife and son were, he had last heard of them in Australia.

22. With the application, the applicant provided a statutory declaration dated [in] March 2008 which set out his claims against the Refugees Convention. In that statutory declaration, the applicant stated that he had grown up in a rural area where his parents were [occupation deleted: s431(2)]. He attended the village school for five years and then became involved in the family's [business deleted: s431(2)]. The applicant met his wife when he was about 19 or 20 and a marriage was arranged by their families. The applicant continued to assist his parents in the [business deleted: s431(2)] and he and his wife also operated a small [business deleted: s431(2)].

23. He, his wife and their youngest child travelled to Melbourne to visit his wife's niece, leaving their two older children in the care of his parents in Vietnam. After he had been in Australia for two or three months he began to feel very unwell. He went to a doctor who arranged for some blood tests which indicated he had HIV. A second test produced the same result.

24. He told his wife of the results and a short time after she moved out with their child, he thought because she was afraid of catching the disease. He also moved to different accommodation. He gave a message to his wife's niece that he was gifting all his possessions in Vietnam to his wife so that she could bring up the children by herself.

25. He has been receiving treatment at the [medical facility deleted: s431(2)] since 2007. This treatment would be unavailable to him in Vietnam if he returned. Doctors have told him that without the medication the virus would develop and there would be no way to kill the virus. Without the medicine he would die in three to five years.

26. The applicant claimed that his family in Vietnam has disowned him because they were frightened of HIV and blamed him for having contracted it. He stated:

19. When I tried to telephone my family after that, they refused to answer my calls over several days so I have given up trying to contact them. I was very sad at that time and I just wanted to kill myself, I did not want to live With this disease it is meaningless to keep living. People laugh at us and look down on us. They do not want to go anywhere near us. They think that we will be covered with ulcers and so if we start to scratch ourselves they will know right away.

20. If I return to Vietnam, I will not have anywhere to stay because my family and my wife do not want anything more to do with me. I will not be able to find work in my area. I would have to move to another area but I do not know how I will survive. Because everyone is so scared of being infected with HIV Aids, they do not want to work with people who have HIV Aids. They do not want to live with them or let them stay in their houses.

21. I would not be able to tell anyone about this disease because I would be ostracised by people once they know that I have HIV. In my area I know of people with HIV Aids and no-one will go near them. They stay at home and cannot go out because people are scared that they will infect others.

22. I believe that there may be a small amount of treatment for HIV Aids sufferers in Saigon, but I would not be able to afford it. Even if I could afford it, I would be worried to have that treatment because then people would know that I have the disease and the rumours will start. There is very great shame and stigma for those who have HIV in Vietnam.

23. In Vietnam there are many people who have HIV Aids but no-one wants to have any contact with them because they are scared that those with the disease will infect them. I think the same myself and now that I have the disease I have to stay away from people myself so that I do not infect others.

24. I fear that if I return to Vietnam, I will die because I will not be able to afford any treatment for my disease and I will be an outcast The government would not help me because they do not have a humanitarian policy towards people with HIV. The police and the hospitals there as well as the people blame individuals for getting this disease and do not help.

25. In Vietnam people know that you get HIV aids from injecting drug use or prostitution. They will think that I have got HIV from either of these two ways.

26. If the police find out that I have HIV there is a risk that they would think I am an injecting drug user. They may arrest me and put me in a camp for heroin addicts so that I would not infect other people by going to their houses. I have heard from other people that this is what happens. I ask that you do not let the Vietnamese government know about my illness.

27. In Vietnam, I will be prevented from working and from getting accommodation if people know that I suffer from HIV Aids. I will have no means of surviving now that my family knows about my disease and does not want anything more to do with me. I would have move to an area where no-one knows me. As soon as people find out about my condition, I will be ostracised by them, just as my family has ostracised me. I would have to leave work if I had found any and no-one would want me [to] stay with them. There will be no-one to take care of me when I get ill because as soon as it becomes known why I am ill, no-one will want to have anything to do with me.

27. [In] May 2008, the applicant's representative provided further information to the delegate. A letter from [medical specialist and medical facility deleted: s431(2)] dated [in] March 2008 sets out:

> I am writing in support of a Protection Visa application from [applicant] ([date]). [The applicant] has given me permission to release medical details for the purpose of his application, but they of course remain highly confidential.
>
> [The applicant] has been a patient of mine through the [medical facility] outpatients department since December 2007, at which time he was diagnosed with HIV and hepatitis B. At the time of diagnosis, his CD4 count was below 100, meaning that he had a significant immune deficit due to HIV. Untreated HIV infection results in progressive immune damage and eventually, over a variable period of time, death due to opportunistic infections.
>
> Because of his advanced HIV, antiretroviral treatment has been started and [the applicant] is responding well. He has been highly compliant with medication and regular review. Treatment will need to continue lifelong, and it is important that he is consistent with his medical therapy and that it is not disrupted or altered. With continued therapy, I expect [the applicant] to have a considerably prolonged life, while if treatment were not continued his prognosis would be very poor.
>
> [The applicant's] anti retroviral therapy is complicated by his hepatitis B infection, meaning that his options for treatment are considerably reduced. I have discussed his therapy with Colleagues working in Vietnam, and have been advised that the medications [the applicant] requires are not available in Vietnam. If he were to return home, his medical therapy would therefore be stopped or unacceptably altered.
>
> I would strongly argue for [the applicant's] need to remain in Australia in order to obtain appropriate medical care and attention, and would ask for your compassionate support of his visa application.

28. A letter from [social worker and medical facility deleted: s431(2)]dated [in] March 2008 states:

> [date] March, 2008.
>
> To whom it may concern,
>
> Re: [The applicant] (d.o.b. [date])
>
> [The applicant] is well known to me in my capacity as a social worker at [medical facility] and I am writing in support of his application for a Protection Visa.
>
> [The applicant] is known to [medical facility] for the treatment of HIV, a serious and life threatening chronic illness that requires regular specialist medical and allied health follow-up and monitoring. He is also co-infected with Hepatitis B. [The applicant] suffers from depressive symptoms and is currently awaiting psychiatric review and follow-up at the [medical facility].
>
> As you can appreciate living with HIV is a complex issue both medically, emotionally and psychologically, and adjusting to a HIV diagnosis can often be a very long and difficult process for many people.

In managing this condition it is vital that [the applicant] adheres to strict medical regimen, where he is required to take medication daily and attend regular medical and allied health reviews to ensure that his condition is well controlled.

A safe, stable and supportive living environment therefore plays an essential role in [the applicant] being able to engage with health care services as well as maintain his physical and mental health.

I am of the professional opinion that returning to Vietnam would have a detrimental impact on [the applicant's] physical and mental health. He would be faced with physical, social, verbal and institutional stigma and discrimination based on his HIV Status. Essentially he would be faced with a well founded fear of being persecuted based on being HIV positive.

In [the applicant's] specific case he has already been a victim of stigma and discrimination by his family in Vietnam, where his wife no longer wishes to have any contact with him after becoming aware of his HIV status. This has also meant that he also has not been able to have any contact with his child. After disclosing his status to his parents and siblings in Vietnam [the applicant] has had no further contact from them and fears that they have also abandoned him due to his health status.

In returning to Vietnam [the applicant] would be faced with not being able to access HIV and Hepatitis B treatments and appropriate medical care. This would inevitably lead to a significant deterioration in [the applicant's] health where his HIV will progress to AIDS. With deteriorating health he will not be able to sustain employment and a regular income and would not have any family willing to support and care for him when he does become unwell. Essentially we would be sending [the applicant] home to a life of compromised health and pending death in an environment where be ostracised by his community.

At the present time [the applicant] is also dealing with self imposed stigma where he has internalised the same values, norms and beliefs of his own community about what it means to have HIV. This is not surprising as he is basing these on the same cultural, social and moral beliefs of his own community in Vietnam

This self imposed stigma is evident in [the applicant] isolating himself away from others out of a misconceived fear of spreading the virus through casual contact. He also presents with an immense sense of hopelessness and feelings of worthlessness, believing that he has lost his role within his family and loss of reputation and standing within his community. Overall [the applicant] has a fundamental belief that he has no future and that is he returns to Vietnam will be going home to die, a belief which is not ill-founded in this instance.

We are currently working with [the applicant] in relation to the current misconception held in order to support with his specific adjustment to illness concerns through counselling, education and psychiatric review.

I have attached two research articles which specifically outlines the expressions and forms of stigma and discrimination that [the applicant] will be faced with if he is required to return to Vietnam.

Remaining in Australia would mean that [the applicant] would be able to access appropriate health care to manage his HIV and Hepatitis B. He would also be able to access HIV medications and regular medical, allied health and psychiatric review. He has also been referred to the Victorian HIV CALD (Culturally and linguistically

> diverse) Service that will provide [the applicant] with culturally appropriate support and education in the community.
>
> In light of the information presented I strong support [the applicant's] protection Visa application and ask that you will consider his application favourably.

29. Attached to this letter was an article ICWR *Understanding HIV-Related Stigma and Discrimination in Vietnam* July 2002.

30. [In] June 2008, the delegate found that the applicant did not meet the definition of a refugee.

Application for review by the first Tribunal

31. The applicant applied for review by the Tribunal (differently constituted) [in] July 2008 (the first Tribunal). To the first Tribunal the applicant provided a further statutory declaration dated [in] September 2008 in which he contended that the information relied on by the delegate in relation to changes in the law in Vietnam and assistance available to the applicant in Vietnam was incorrect. It was his understanding that he would suffer from severe discrimination from his family and his community if he were forced to return to Vietnam. His family had rejected him and he would have nowhere to live. Because of his family's rejection, he could not return to his previous work or his village and he did not know where else he could go because no one would have anything to do with him when they found out that he had HIV/AIDS. There was no treatment for HIV/AIDS sufferers in his area. While there might be some treatment in big cities he could not get that treatment because he was not from those cities. He could not get household registration in those cities so he could not access treatment. Without the treatment he could not get work, but he could not get work anyway because no one would want to work with him when they found out he had HIV/AIDS. Without work, he would have no way of supporting himself and he would end up as a beggar on the streets. If he were living on the streets the police would notice him and if they found out he had HIV/AIDS they would assume that he was a drug user and would take him to a camp for drug addicts.

32. In relation to the delay in making his application, the applicant stated that when he found out that he had HIV/AIDS he was devastated. He did not now what to do. He knew that if he returned to Vietnam he would die but he did not know anything about applying for a protection visa as he had never heard of that. He only found out that he could make such an application when the hospital referred him to the legal centre.

The first Tribunal's hearing

33. The applicant appeared before the first Tribunal [in] September 2008. He told the first Tribunal that, when he told his sister of his diagnosis, she told him that his parents wanted nothing to do with him. He said that he had not spoken to his parents since being told of his diagnosis and that he was not surprised by his family's reaction to the news

34. He had been diagnosed with HIV, Hepatitis B and C and was being treated for the three conditions. He had been using the prescribed medication and his doctors had told him that the condition was under control.

35. He knew a few people with HIV in Vietnam but they had died and some were in prison. He had heard rumours that people in prison were forced to have an injection which caused them to die about 1-2 weeks after they were released. These people lived in the same hamlet as

him, but they were not his friends. In his home town, people who were caught using drugs and seeing prostitutes were sent to jail and died soon after being released.

36. The applicant said that if he went back to Vietnam, he could not tell people about his condition and that he would have to relocate to another place. He also said that appropriate medication for his condition was not available in Vietnam. He did not know how the local authorities in his town would respond if they learned of his condition. The police send HIV sufferers to jail and treated them like dogs. He lived in a remote area and had not seen things improving for HIV sufferers. He thought people were fearful of people with HIV and kept their distance.

The representative's submissions to the first Tribunal

37. Following the first Tribunal's hearing, the representative provided a submission dated [in] October 2008.

38. The representative submitted that the applicant feared that if he returned to Vietnam he would suffer persecution through the accumulation of a number of forms of harm which were sufficiently serious in combination as to constitute persecution. The applicant feared that he would be discriminatorily denied the right to health care, employment, housing and basic services which, in combination, would threaten his capacity to subsist. Additionally, he feared that he would suffer serious physical and psychological illness, and would be targeted for severe discrimination, ostracism, and serious harm including the possibility of being beaten and detained or having his freedom of movement severely restricted by the Vietnamese authorities or non-actors as a result of his membership of various particular social groups (these are considered further in the findings and reasons section below)

39. The representative submitted that given the applicant's health, financial circumstances and known country information, his treatment by the Vietnamese authorities, society and health care providers if he were returned to Vietnam would amount to serious harm, including death, physical or psychological illness and/or significant economic hardship, detention or a lack of freedom of movement, a denial of basic services and a denial of capacity to earn a livelihood of any kind. The representative submitted that such denials, either separately or cumulatively would threaten the applicant's capacity to subsist, for the purposes of section 91R of the Act.

40. The applicant's representative submitted that the State authorities would be unwilling to assist or protect the visa applicant in relation to the harm he feared from non-State actors such as health workers, employees and food sellers who would discriminate against him and/or members of the community who might target him on account of his membership of the social groups identified. The applicant also feared his membership of a particular social group would be the essential reason the State authorities would deny him protection or assistance from the persecution he faced It was submitted that the applicant claimed the police and/or authorities in Vietnam would refuse to enforce the law against such harassment or discriminatory denials of assistance and such refusal was part of the systematic discrimination against those members of the particular social groups, which was both tolerated and endorsed by the Vietnamese authorities who had further entrenched the stigma and discrimination that HIV/AIDS sufferers faced in Vietnam. The representative contended it was for these reasons that the denial of state protection in these circumstances itself amounted to persecution for a Convention reason. The applicant feared persecution by the local and state authorities on account of his fear that he would be perceived to be an

intravenous drug user and so he could not apply to the authorities for protection and therefore would be denied effective state protection.

41. The representative submitted that country information indicated that it would not be possible for the applicant to relocate within Vietnam to avoid the harm he feared. It was also contended that given the applicant's health and lack of family connections, it would not be reasonable for him to relocate within Vietnam. The representative also submitted that the system of household registration in Vietnam would make it impossible for him to relocate.

42. The representative provided a summary of the country information in support of the applicant's claims for refugee status, including information on the discriminatory denial of health care, employment and food, the risk of homelessness on account of discrimination due to HIV status, social isolation and ostracism, the treatment of HIV/AIDS sufferers by family members and independent evidence in relation to each of the particular social groups of which the representative submitted the applicant was a member.

43. The representative submitted that the applicant's wife had refused to have anything further to do with him when he told her of his HIV status The applicant no longer had any contact with his children and his parents and siblings in Vietnam did not wish to have anything further to do with him. This was consistent with the country information and meant that the applicant would not be able to return to his village, his home or his former employment and therefore would have no-one to support him as his illness progressed, nor would he have access to the means to subsist.

44. In relation to the applicant's fear that he would be perceived to be a member of the particular social group 'intravenous drug users' by the community including hospital staff and the authorities, the representative submitted that the central thrust of the Government's campaign to control AIDS has been by controlling their perception of the people and the behaviours that transmit it. This had the consequence of increasing stigma and discrimination against those who had the infection. The perception that the applicant was an intravenous drug user would lead to other persecutory consequences, such as being detained and treated to inhumane treatment and isolation away from the rest of society, such as to constitute inhuman and degrading treatment.

45. The representative submitted that due to his time in Australia, the applicant will have lost household registration in Vietnam and that the fact he suffers from HIV/AIDS may result in his being discriminatorily denied registration on the basis of being an `undesirable' person.

46. In relation to the delegate's decision, the representative submitted:

> The Delegate canvassed various reports concerning the development of self help centres, the passing of a decree by the Vietnamese government targeting those who disclosed the test results or other details of HIV-positive patients and employers terminating the employment of HIV sufferers as well as the passing of further legislative measures to combat discrimination against people living with HIV. The Delegate concluded that that the applicant would be able to access treatment centres, support groups, legal services and protection against the discrimination he may suffer.
>
> We refer to the applicant's fears and corroborative country information below that, despite new laws and policies regarding HIV/AIDS, the Vietnamese government remains substantially ineffective in relation to the implementation and enforcement of laws and strategies to prevent discrimination against those with HIV/AIDS and associated forms of harm. In our submission, while the question of whether a state provides effective protection is a question of degree, independent country information

cited below clearly indicates that the Vietnamese government, particularly at these early stages, cannot comply with such minimum standards which would afford persons such as the applicant a sufficient degree of protection from the forms of persecution of which he is afraid

In our submission, the new law passed by the Vietnamese government in 2007 offers many important promises that have not yet been fulfilled and may never be given Vietnam's lack of an independent and transparent legal system and judiciary. The Delegate did not provide any information regarding the effective implementation of these laws through a legal or administrative framework in Vietnam.

47. The representative set out country information in relation to antidiscrimination laws in Vietnam and submitted that the country information regarding the ineffective implementation of other laws aiming to protect basic human rights in Vietnam is strongly indicative of the fact that laws aiming to protect HIV/AIDS sufferers from discrimination would not be and could not be effectively implemented by the Vietnamese authorities. The representative continued:

> We submit that the Delegate should not have dismissed the possibility that the applicant, as an HIV/AIDS sufferer in Vietnam, might face significant ostracism, discrimination and hardship affecting his ability to obtain medical assistance, accommodation, employment and that this constitutes serious harm. We submit that, despite increased efforts by the Vietnamese government to overcome the HIV/AIDS epidemic, the government remains ineffective and unable to prevent the applicant from suffering the persecution he fears throughout Vietnam. Country information does not indicate that the persuasive stigma and discrimination directed towards HIV sufferers in Vietnam has changed since new laws were passed in Vietnam last year, nor that these laws are followed or enforced by the authorities, nor is there evidence of an effective legal or administrative system in Vietnam to implement such laws. As such, we submit that recent country information confirms the real, rather than insubstantial, risks of persecution for persons with a profile such as that of the applicant.

48. The representative provided the first Tribunal with a report from [senior researcher and Institute deleted: s431(2)] in Melbourne dated [in] October 2008 This report set out (footnotes omitted):

> **RE: [The Applicant]**
>
> …
>
> **Background to the situation of HIV in Vietnam today**
>
> Vietnam faces a concentrated HIV epidemic - this means that HIV is mainly found in high risk population groups, especially people who inject heroin. The HIV prevalence data in Vietnam is based primarily on HIV/AIDS case reporting which is mandatory for health services and on the HIV Sentinel Surveillance conducted annually in 40 of Vietnam's 64 provinces. HIV is a highly stigmatised disease because of this.
>
> Whilst HIV was first found in Vietnam in 1990, the government now reports HIV cases in all 64 provinces, in 93 percent of all districts, and in half of all the 10,000 communes in Vietnam. However, many high prevalence provinces report cases in 100 percent of communes. Clearly many families in Vietnam are today affected by HIV.

The total number of HIV notifications as at the end of August 2007 was over 132,000 but estimates from UNAIDS in Vietnam show that even by 2005 there were already over 260,000 already living with HIV - clearly there are a large number of people living with HIV who are unaware of their status.

Challenges to implementing HIV programs in Vietnam

It has been recognised by both International and local organisations working in Vietnam, that stigma and discrimination pose one of the major challenges to responding to the HIV epidemic. This must be addressed if HIV positive people are to seek and utilise services and allow caregivers to deliver HIV support openly. As noted earlier, injecting drug use is a major factor driving the spread of HIV in Vietnam, and this poses a number of complex challenges. Detoxification with traditional therapies and government-sponsored rehabilitation centres are the mainstays of drug treatment in Vietnam Those failing to abstain from drug use or sex work (which is also considered a 'social evil' in Vietnam) are enrolled in rehabilitation centres which is both costly and considerable health concerns due to the high number of HIV-positive detainees It is reported that 40 percent of detainees are HIV-infected and many have tuberculosis (TB) or acquire TB in these centres. Vietnam also has one of the highest global burdens of TB with much of it being drug resistant TB. Ten percent of those living with TB in Vietnam are also living with HIV. There are limited other medications for opiate dependent individuals with methadone - a mainstay of the Australian treatment system - only available in two of the largess cites in Vietnam (Haiphong and Ho Chi Minh City).

Vietnam has a relative advantage in delivering health services to its population because the country has a large number of health care workers, but the demands of augmenting HIV/AIDS prevention, treatment and care are exposing serious gaps in the nation's capacity to implement the necessary policies and programs. Policy planning and program management skills are lacking at the provincial, district and commune level across Vietnam.

According to data from a 2008 country profile from the United States (http://www.pepfar.govlpress/81650.html) as of the 30 September 2007 there were only 11,700 people receiving antiretroviral therapy (ART), which is considered standard here in Australia for someone requiring treatment for their HIV. This is less than 10 percent of all the people known to be living with HIV across Vietnam - and likely to be less than 5% of all the people in Vietnam who are actually infected with HIV.

It is not clear how many of the 11,700 people are provided with their ART for free though the increased privatisation of the health care service system currently operating in Vietnam means that there are certain to be substantial individual financial costs. How people who are living with HIV are monitored by health care workers for both adherence and the side affect complications of taking these medications is also unknown and unreported.

The money provided to Vietnam for the provision of HIV medication is not spread evenly across the country. I understand that [the applicant] has family in a district of Ca Mau called [location] - this is not part of the priority provinces in Vietnam Further if he was to return it is unlikely that he would be able to live with his family as they have rejected him once finding out he was HIV positive.

[The applicant's] situation is further complicated by the fact that he has chronic hepatitis B virus (HBV) - coinfection with HIV and HBV where evidence suggests

> that without adequate medical care and support HIV/HBV coinfection greatly accelerates the rate of progression of liver disease and death. This support and care is unlikely to be provided in Vietnam except in the major cities and at great financial cost.
>
> [The applicant] has household registration in an isolated part of Vietnam which means travelling for treatment even if he had the financial capacity is impossible. If I can be of further assistance please feel free to contact me on the numbers below.

49. The first Tribunal was also provided with a report from [medical professional, position and educational institute deleted: s431(2)], the main agency dealing with the clinical aspects of implementation of antiretroviral therapy in Vietnam. He reports that anti-retroviral therapy is extremely limited in Vietnam and that currently less than one third of individuals with AIDS who are at imminent risk of death are able to access treatment. At current levels of upscale it will be many years before all or most people requiring treatment will be able to receive it. He reports that the applicant's province is not covered by the US government funded programs and that the treatment that he currently receives in Australia would not be available to him in his province. [Medical professional deleted: s431(2)] states that he does not see how the applicant could continue to receive adequate treatment should he return to [Vietnam].

50. [Medical professional deleted: s431(2)] notes that it is likely to take a significant length of time before the anti discrimination legislation is uniformly applied across the country given the different levels of government, the diversity of its provinces and the very limited resources for implementation. He also comments that the applicant would be subject to discrimination and stigma within his community and the health care sector. In his opinion the applicant would be at risk of death in the short to medium term with the last months or years of his short life likely to be made more miserable because of discrimination.

51. The first Tribunal affirmed the delegate's decision [in] December 2008. The applicant sought review of this decision in the Federal Magistrates Court. By consent the matter was remitted to the Tribunal for reconsideration.

Reconsideration by the present Tribunal

52. The representative provided the Tribunal with a letter from a Registrar at the [medical facility deleted: s431(2)] dated [in] June 2009 stating that the applicant was an outpatient with medical conditions for which he required ongoing treatment and hospital investigations. He was medically reviewed on a regular basis via the Outpatients Department and would continue to require this. His medical condition and treatment precluded him from work.

53. The Tribunal scheduled a hearing [in] July 2009, however the hearing was postponed due to the interpreter's ill health on that day.

54. The Tribunal requested further information in relation to the applicant's present condition and prognosis. The applicant's representative provided a letter from [health professional deleted: s431(2)] at [medical facility deleted: s431(2)] dated [in] July 2009 which set out that the applicant had been attending the [medical facility deleted: s431(2)] out-patients since he was diagnosed with HIV in 2007. He attends regularly and is compliant with his medications ([medications deleted: s431(2)]). Currently he is well controlled with a viral load of [medical reading deleted: s431(2)]. The doctor reported that the applicant is co-infected with Hepatitis B (and possibly with Hepatitis C in the past) and he is well controlled with both these viruses suppressed to the extent that they are undetectable.

The Tribunal's hearing

55. The Tribunal convened a hearing [in] August 2009 at which the applicant gave evidence with the assistance of a Vietnamese speaking interpreter.

56. The applicant confirmed that he is a citizen of Vietnam and does not have the right to enter and reside in any other country. He had previously resided in [location deleted: s431(2)]..

57. His medical condition was as stated in the doctor's report.

58. The applicant stated that if he returned to Vietnam, there was no medication there. He did not know what his life would be like. There was no life for him in Vietnam. If he had the life he used to have before he came to Australia and was diagnosed with HIV he would be happy to return to Vietnam. However the medication that he required was not available in Vietnam.

59. When he found out he had HIV, he telephoned his younger sister to tell her and the family because he was so sad he wanted to kill himself. Since that time his sister had told him that their parents would not let her talk to him. He was now unable to contact his sister on the number he had previously used and his other siblings were not allowed to talk to him. His parents did not have a telephone. He had not heard from his wife and child and did not know where they were. He and his wife were not divorced.

60. In relation to employment, Vietnamese nationals often went overseas to seek employment and when they returned they were unemployed. Educated people could find work but he was not educated.

61. In the past he had some land where he had some [places deleted: s431(2)] and was preparing to raise [animals deleted: s431(2)]but the [animals deleted: s431(2)]] had since been sold. When he and his wife came to Australia to visit his wife's niece they had paid a bond and because he had not returned they had sold the ponds to repay his wife's niece. His family was still involved in [business deleted: s431(2)] but they had disowned him over a year ago since he found out that he had HIV. They did not want him to be living with the family because they were afraid that he would infect them.

62. If a potential employer found out that he had HIV, he would not be employed. He was required to continue taking medication and would need ongoing treatment or the viruses would return and he would lose weight. The employer would find out that he had HIV. He was also unsure whether his family had told anyone in the hamlet about his condition.

63. He did not know how he would support himself in Vietnam. If he could persuade his parents to let him live with them he might be able to get by, but he knew that his parents would not accept him back. He was not aware of any government services or aid agencies in his province. He could travel to Ho Chi Minh City but he could not live there because he did not have household registration and did not have any money. The journey took 8 or 9 hours by passenger van from [location deleted: s431(2)].

64. The Tribunal noted that the applicant appeared to have previously stated that he would be imprisoned because he would be considered to be an intravenous drug user. The applicant stated that if someone used drugs they would be arrested and imprisoned. The Tribunal noted that the country information appeared to indicate that this was not the case for people who had HIV The applicant stated that people would be imprisoned for detox and then released.

65. One of his friends who was using drugs was put in prison for two years. He was released and then caught using drugs again and he was imprisoned for two more years, released, caught and imprisoned again. Two other people from his hamlet who used drugs and had HIV were put in prison and then released back to their normal lives then they were hospitalised and died.

66. The Tribunal asked whether there was any reason that the applicant would be imprisoned on return to Vietnam. The applicant stated that if he used drugs again and was caught he would be imprisoned. The applicant stated that the local authorities were not aware of his past drug use and there was no chance that he would go back to using drugs.

67. The Tribunal noted that, when considered with the country information, this appeared to indicate that there was not a chance that he would be imprisoned due to his HIV+ status. The applicant thought that this was correct.

68. Later in the hearing, the applicant further explained his evidence on this point. The applicant stated that people in Vietnam thought that HIV was contracted just by being around people with HIV. They also thought it was the result of drug use or having sex with prostitutes. People with HIV were sometimes arrested because they were seen to be drug users. They were sent to the biggest prison camp in Ca Mau and forced to undertake labour. Some went to rehabilitation centres and some went to prison.

69. The applicant stated that he had rehabilitated himself from his addiction at his family home. His wife knew about his addiction and his parents found out when he was deeply into drugs. They reprimanded him but he did not listen to them. Then when they found out he had HIV they did not want to take him back.

70. The applicant stated that there was too much discrimination against people who had HIV in Vietnam. If he returned he would try to prevent the neighbours finding out he had HIV No one had dared to come near another person in the hamlet who had HIV. In Vietnam, news spread quickly and once one person knew his status, ten people would know. A person who was known to have HIV did not have any face to go out in the community.

71. The Tribunal noted that Vietnam had introduced new antidiscrimination laws particularly prohibiting discrimination against people with HIV The applicant stated that he was not aware of these laws. The applicant's representative noted that they had provided country information in relation to the delayed implementation of the new laws and their enforcement. [Medical professional deleted: s431(2)] had noted that Ca Mau was not a priority province. The representative explained that this was because resources were concentrated in areas where there was a high proportion of HIV sufferers such as Ho Chi Minh City and Hanoi and Ca Mau was a remote rural area. [Medical professional deleted: s431(2)] had been approached for an update to his letter but was changing jobs and had noted that the situation had not changed since his previous report.

INDEPENDENT INFORMATION

The medical treatment and facilities available to people with HIV/AIDS in Vietnam.

72. The US President announced the President's Emergency Plan for AIDS Relief in 2003 and in 2004 the Vietnamese Government launched the National Strategic Plan on HIV/AIDS Prevention for 2004-2010. According to a recent summary of its activities, the program

provided $34.1 million in the 2006 financial year and $65.8 million in the 2007 financial year for prevention, care and treatment programs (The United States President's Emergency Plan for AIDS Relief, "2008 Country Profile: Vietnam" (undated) http://www.pepfar.gov/press/81650.htm - Accessed 20 July 2008).

73. The first HIV/AIDS outpatient clinic was established in the Bach Mai Hospital, Hanoi in December 2003. A counselling centre for people living with HIV/AIDS was opened on 29th November in the same year in Ho Chi Minh City ("First HIV/AIDS Out-Patient Clinic in Vietnam" 2004, Source: *JVnet*, 14 January, published UtopiaAsia website http://anan.utopia-asia.com/aidsvie.htm - Accessed 29 July 2008.)

74. By 2005 the World Health Organisation reported that

> At least one voluntary counselling and testing site has been established in most provinces, and more than 100 voluntary counselling and testing sites have been set up at the district level. The National Strategy also states that 70% of those needing antiviral therapy should have access by 2010, through price reduction and local production of antiretroviral drugs and the development of a comprehensive care, treatment and support system.

75. The country has also received substantial support from other overseas donors including the Norwegian Agency for Development Cooperation and the United Kingdom Department for International Development which provided US$25m 2003-2008 for a Preventing HIV in Viet Nam Project; the United Nations, World Bank, Asian Development Bank and Australian International Development Agency (World Health Organisation 2005, "Vietnam – Summary Country Profile for HIV/AIDS Treatment Scale-up" http://www.who.int/countries/vnm/en/ - Accessed 29 July 2008).

76. The *Economist* Intelligence Unit's (EIU) Country Profile for Vietnam in 2007 stated:

> (24.01) "Healthcare provision is relatively good, as measured by such indicators as life expectancy, infant mortality and the number of doctors per head of population… A shortage of funds has meant that improvements in water supply and sewerage systems have been slow in coming. These inadequacies are largely responsible for the most common infectious diseases, such as malaria, dengue fever, typhoid and cholera. Although the number of doctors rose by 73% between 1995 and 2006, the numbers of nurses and midwives stagnated during the 1990s, rising again only in recent years. There is particular concern about the health of people living in the poorer provinces, where malnutrition, although falling, is still common. However, Vietnam's health indicators have improved in recent decades. The infant mortality rate slowed to 16 (per 1,000 live births) in 2005 from 55 in 1970, and life expectancy has risen to 71 years from around 50 in 1970-75." [15] (p14-15)
>
> (24.02) According to the website of the Vietnamese Embassy in the United States, accessed on 6 March 2008, "In the face of economic difficulties, the Vietnamese Government has decided to increase the number of the beneficiaries of free medical charges for poor households and those in mountainous areas, to enhance malaria control, to extend the aid to purchase medical insurance for poor families, war invalids and soldiers. The State has attached great importance to primary health care for the community." [17b] (UK Home Office 2008, Country of Origin Report – Vietnam, April)

77. Many older relatives, parents and grandparents in particular, are reported to be taking a large responsibility for caring for those with HIV/AIDS:

> According to Dinh Van Tu, Vice President of the Vietnam Association of the Elderly, about 70 per cent of people living with HIV are being cared for by parents or grandparents.
>
> A survey released Tuesday by HelpAge International confirmed the prevalent role of older women as main caregivers for people living with HIV.
>
> HelpAge International is a global network striving for the rights of disadvantaged older people to economic and physical security, health care and social services.
>
> The survey says HIV and AIDS can devastate traditional support structures that sustain many families in Vietnam, reversing the trend of parents being looked after by their adult children as they become older.
>
> Instead, older people, mainly women, are confronted with the burdensome task of caring for a sick adult, coping with their eventual death, and possibly looking after a surviving grandchild.
>
> "In this era of HIV, elders' traditional roles as leaders, mentors, role models and spiritual advisors have expanded to include the burden and the privilege of caretaking," said country director of UNAIDS Vietnam Eamonn Murphy.
>
> He provided that more than 100 Vietnamese became infected with HIV every day. Illness, decreased productivity and increasing numbers of orphaned and neglected children were affecting approximately one in 60 households (“Elderly relatives of HIV/AIDS Victims bear brunt of support” 2007, *Vietnam News*, 30 November, UNAIDS Vietnam website http://www.unaids.org.vn/news.php?id=40 – Accessed 29 July 2008).

78. The director of the national HIV/AIDS Prevention and Control Department that 16,500 people were able to access antiretroviral drugs in 2007, from the 6,000 who could in 2006 (“Number of HIV-positive people in Vietnam with drug access increasing, health official says” 2008, *Kaiser Daily HIV/AIDS Report* sourced from *VNA* http://www.thebody.com/content/art45004.html?ts=pf – Accessed 29 July 2008).

Discrimination/stigmatisation of people with HIV/AIDS in Vietnam

79. In relation to HIV sufferers the most recent US Department of State human rights report claims that in 2008, “[t]here was no evidence of official discrimination against persons with HIV/AIDS, but societal discrimination against such persons existed.”

> There were credible reports that persons with HIV/AIDS lost jobs or suffered from discrimination in the workplace or in finding housing, although such reports decreased. In a few cases, children of persons with HIV/AIDS were barred from schools, despite its being against the law. With the assistance of foreign donors, the national government and provincial authorities took steps to treat, assist, and accommodate persons with HIV/AIDS and decrease societal stigma and discrimination, although overall consistency was lacking. Religious charities were sometimes permitted to operate in this area (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Vietnam*, February, Sections 2c, 5).

80. The US Department of State International Religious Freedom report for 2008 provides similar information regarding the efforts of the Catholic Church in Ho Chi Minh City and Hue to operate hospices, shelters, treatment centres and counselling services to HIV-positive children and mothers. It is reported that the Ho Chi Minh City government “allowed the Church to pursue these initiatives quietly” despite the Church having no official legal status to engage in such activities. In addition, Catholic priests and nuns in several provinces in the

Mekong Delta region received training courses in the care of HIV/AIDS patients in early 2008; and although "[c]haritable activities undertaken by religious groups in northern Vietnam were more restricted…a number of northern provinces reportedly became more permissive during the reporting period."

> Thai Binh Province, for example, actively encouraged the Catholic Church's work in HIV/AIDS and the treatment of the sick and disabled. Haiphong authorities also began working with the Catholic Church in areas related to drug addiction treatment and HIV/AIDS during the reporting period, while the Catholic Diocese of Nam Dinh operated an orphanage.
>
> ECVN [Evangelical Church of Vietnam North] leaders reported that provincial authorities in Thanh Hoa and Nam Dinh actively encouraged their churches to expand charitable activities. The VBS [Vietnam Buddhist Sangha] engaged in humanitarian activities, including anti-drug and child welfare programs, as well as HIV/AIDS programs and other charitable work across the country. The province of Hanoi allowed a number of VBS-run temples to run orphanages for abandoned and disabled children, along with HIV/AIDS treatment programs (US Department of State 2008, *International Religious Freedom Report for 2008 – Vietnam*, September, Section II).

81. A report published by the International Center for Research on Women in 2009 describes the implementation of community-based interventions in Vietnam which, it is argued, can be effective in reducing HIV-related stigma. The report highlights the results of community interventions carried out in 2005-2007, involving "work with community leaders and members in two provinces to increase their understanding of stigma and build capacity to reduce it." The findings of the report show that in two communities involved in the study, "[e]xposure to intervention activities was associated with significant reductions in fear-driven stigma;" and "[p]eople's intent to discriminate based on HIV status decreased among survey respondents." However, "the overall level of value-driven stigma remained high. For example, respondents continued to express high levels of blame toward people living with HIV, injecting drug users and sex workers" (Nyblade, L., Hong, K.T., Van Anh, N., Ogden, J., Jain, A., Stangl, A., Douglas, Z., Tao, N. and Ashburn, K. 2009, 'Communities Confront HIV Stigma in Viet Nam', International Center for Research on Women website, pp. 1-2 http://www.icrw.org/docs/2009/Communities-Confront-HIV-Stigma-in-Vietnam.pdf – Accessed 16 June 2009).

82. A report published in December 2008 by a group of international non-governmental organizations (NGOs) argues that "HIV-related stigma and discrimination continue to undermine the national responses to the epidemic, preventing people from using HIV prevention, care and treatment services, as well as accessing employment and social services;" calling for the Government of Vietnam to "set a clear leadership example" and "eliminate confusion between HIV and social evils."

> The above key populations may experience double or even triple stigma due to their involvement in social taboo behaviours, such as sex work, drug abuse and male-to-male sex.
>
> Despite laudable efforts to extend care and treatment services to adults and children living with HIV, coverage is far from universal. It is estimated that less than 50 per cent of those in need of anti-retroviral therapy (ART) have access to it (WHO 2008). Furthermore, palliative care service availability, including treatment of pain, remains highly limited.

…Stigma and discrimination remain problematic for people living with and affected by HIV, as well as among those who engage in social taboo behaviours that put them at risk. Combating stigma and discrimination must, therefore, remain a focus at all relevant levels of policy and across the prevention-to-care continuum. It is important that the Government of Vietnam champion this issue and set a clear leadership example to promote a community environment free from stigma and discrimination. This will also greatly improve access to health services. Of particular concern is the need to ensure that children living with and affected by HIV are able to go to school and experience an educational environment without fear of stigma and discrimination.

Indeed, government leadership is required to eliminate confusion between HIV and social evils, and to reduce HIV-related stigma and discrimination that prevents people from accessing care and treatment services ('International Non-Governmental Organisation (INGO) Statement for the Vietnam Consultative Group Meeting' 2008, NGO Resource Centre website, December, pp. 8-11 http://www.ngocentre.org.vn/files/docs/INGO_Statement_2008.pdf – Accessed 17 June 2009).

83. A 2008 report published by the Global Youth Coalition on HIV/AIDS similarly identifies stigma and discrimination as current concerns for people living with HIV/AIDS [PLHIV], calling for the Vietnamese government to "[act] on its policies to protect people from discrimination."

Stigma and discrimination remain significant concerns for PLHIV. This leads to a reluctance to access prevention methods, testing, and treatment services. Too often, PLHIV face exclusion and rejection from work and family, which results in unstable living situations/conditions that perpetuate risk behaviours and an expansion of the epidemic. It is imperative that the Viet Namese government acts on its policies to protect people from discrimination (Global Youth Coalition on HIV/AIDS 2008, 'National Youth Shadow Report- Vietnam', Global Youth Coalition on HIV/AIDS website http://www.youthaidscoalition.org/docs/vietnam.pdf – Accessed 19 June 2009).

Injecting drug users and those infected with Hepatitis B

84. While no statistical data is available, it is estimated that a high percentage of injecting drug users are suffering from HIV as well as Hepatitis B in Vietnam. In 2003, the Senlis Council, an international think-tank commented that:

Drug use is considered as a social evil, together with prostitution and gambling. In the country, there is a mass campaign on anti-social evils. Nevertheless, the government has always expressed the willingness to adopt a humanistic approach by not treating users as a criminals, but trying to rehabilitate them… HIV in Vietnam is increasing. By September this year there were over 70,000 reported cases of HIV . Experts estimate the real number could be around 160,000. Among them, the majority are injecting drug users (IDUs). HIV prevalence among IDUs is between 40 to 90 percent. They also have other blood borne diseases like hepatitis B or C. Although there are no statistics, we believe deaths due to over-dose are quite high as well. Common belief is that drug users have one or two ways to end - die either of an over dose or of HIV ('Drug policy and public health promotion in Vietnam' 2003, The Senlis Council, http://www.senliscouncil.net/modules/events/lisbon/13_oanh, accessed on 8 May 2007).

85. Similarly, Dr Pham Ngoc Ding, Deputy Director, National Institute of Hygiene and Epidemiology, Vietnam states that "drug users, particularly intervenes [sic] drug users, are

discriminated against in Vietnam. Known users are sent to mandatory detox/rehabilitation centres, where the spread of HIV is exacerbated" (DIAC Country Information Service 2007, *Country Information Report No. 07/45 – Vietnam: Health Services,* (sourced from DFAT advice of 23 May 2007), 25 May).

Anti-discrimination measures by the Vietnamese government

86. The 'Law on HIV/AIDS Prevention and Control', also referred to as the HIV Law, or the National AIDS Law, came into effect on 1 January 2007 and included a comprehensive range of anti-discrimination prohibitions:

> ***Article 8.-*** Prohibited acts
> 1. Purposefully transmitting or causing the transmission of HIV to another person.
> 2. Threatening to transmit HIV to another person.
> 3. Stigmatizing and discriminating against HIV-infected people.
> 4. Parents abandoning their HIV-infected minor children; guardians abandoning their HIV-infected wards.
> 5. Making public the name, address and images of an HIV-infected person or disclosing information on a person's HIV infection to another without consent of that person, except for the case specified in Article 30 of this Law.
> 6. Falsely reporting HIV infection of a person not infected with HIV.
> 7. Forcing HIV testing, except for the cases specified in Article 28 of this Law.
> 8. Conducting transfusion of HIV-contaminated blood or blood products, transplantation of HIV-contaminated tissues or body parts into another person.
> 9. Refusing to provide medical examination or treatment to a patient for knowing or suspecting that such person is infected with HIV.
> 10. Refusing to bury or cremate the corpses of dead persons for HIV/AIDSrelated reasons.
> 11. Taking advantage of HIV/AIDS prevention and control activities to make personal profits or to commit illegal acts.
> 12. Other acts prohibited by the law. (Government of the Socialist Republic of Vietnam 2007, *Law on HIV/AIDS and Control,* 1st January, sourced from AIDSPortal website http://www.aidsportal.org/Article_Details.aspx?ID=3706 – Accessed 30 July 2008).

87. During the course of 2007, the Prime Minister issued documents and decrees to implement parts of the new Law;

> According to the *Vietnam News Agency*, the decree outlines measures to reduce HIV prevalence and the impact of the virus, including increasing access to antiretroviral drugs. The decree also addresses care for HIV-positive children who have been abandoned and displaced HIV-positive people, as well as the establishment of private centers to care for people living with HIV/AIDS.
>
> In addition, the government announced it will increase spending on HIV/AIDS services to 440 billion Vietnamese dong, or about $28 million, from 80 billion dong, or about $5 million, in 2006. According to the Vietnam Department for HIV/AIDS Prevention and Fight, the country spent 80 billion dong, or $5 million, annually on prevention and treatment efforts from 2004 to 2006 and 45 billion dong, or about $2.8 million, annually from 1995 to 1999. ("Vietnamese Government Issues Documents To Increase Access to HIV Care, Treatment; Increases Spending on Prevention, Treatment Efforts" 2007, *Vietnam News Agency*, 10 July, Kaiser Family Foundation website http://www.kaisernetwork.org/daily_reports/rep_hiv_recent_rep.cfm?dr_cat=1&show=yes&dr_DateTime=07-10-07#46102 – Accessed 29 July 2008)

88. According to the 2009 report published by the International Center for Research on Women cited earlier, the law highlights "the need to combat stigma and discrimination in HIV/AIDS prevention work" (Nyblade, L., Hong, K.T., Van Anh, N., Ogden, J., Jain, A., Stangl, A., Douglas, Z., Tao, N. and Ashburn, K. 2009, 'Communities Confront HIV Stigma in Viet Nam', International Center for Research on Women website, p. 4 http://www.icrw.org/docs/2009/Communities-Confront-HIV-Stigma-in-Vietnam.pdf – Accessed 16 June 2009).

89. The website of the HIV/AIDS Asia Regional Program states that "[s]tigma and discrimination towards IDU [injecting drug users] remains a serious…barrier" to the implementation of the Law on HIV/AIDS Prevention and Control:

> While the Government of Vietnam should be commended on passing the law on HIV/AIDS Prevention and Control which contains explicit provisions on harm reduction, implementation remains challenging with the Ministry of Health, Ministry of Public Security and the Ministry of Labour, Invalids and Social Affairs unclear of roles and responsibilities.
>
> At the local level, there is a continuing reliance on punitive approaches to drug users including arrest and incarceration in mandatory rehabilitation centres. Stigma and discrimination towards IDU remains a serious implementation barrier ('Vietnam' (undated), HIV/AIDS Asia Regional Program (HAARP) website http://www.haarp-online.org/www/html/151-vietnam.asp?intLocationID=77 – Accessed 18 June 2009).

90. On the other hand, a fact sheet published by the Joint UN Program on HIV/AIDS in July 2008 claims that since the implementation of the Law on HIV/AIDS Prevention and Control, Vietnam has addressed the stigma and discrimination associated with HIV/AIDS through "increased support for participation from civil society and PLHIV [people living with HIV], approved methadone substitution treatment on a pilot basis, and expanded quality HIV care and support, treatment, condom distribution, Information Education and Communication, needle exchange targeting key populations at higher risk, population-wide access to voluntary testing and counselling, and PMTCT [preventing mother-to-child transmission]."

> In 2006 Viet Nam passed the Law on HIV/AIDS Prevention and Control, which protects the rights of PLHIV and stipulates government and social responsibilities. In 2007 the ministries finalized the Programmes of Action (HIV Prevention, Information Education and Communication and Behaviour Change Communication; Harm Reduction Prevention targeting high risk populations; PMTCT; Management and Treatment of STIs; Care and Support for PLHIV; Access to HIV Treatment including antiretroviral therapy; HIV Surveillance and Monitoring and Evaluation; Capacity Building and International Cooperation Enhancement; and Blood Safety). Major barriers to prevention, treatment, care and support are stigma and discrimination, access for key populations at higher risk, and lack of human resources. To address this Viet Nam has increased support for participation from civil society and PLHIV, approved methadone substitution treatment on a pilot basis, and expanded quality HIV care and support, treatment, condom distribution, Information Education and Communication, needle exchange targeting key populations at higher risk, population-wide access to voluntary testing and counselling, and PMTCT. Finally, provincial AIDS Centres have been established in 90% of provinces to improve and consolidate human resources. The HIV response is linked to the government's poverty reduction, education, and sexual and reproductive health efforts. Recognized as a threat to development, HIV is being mainstreamed into school curriculum and reproductive health services (Joint United Nations Programme on HIV/AIDS 2008, 'Vietnam - Country Situation', UNAIDS website, July

http://data.unaids.org/pub/FactSheet/2008/sa08_vtn_en.pdf – Accessed 18 June 2009).

91. In a 2009 report to the UN Human Rights Council, the Vietnamese government claimed that "[s]trategic programmes and policies on…prevention and control of tuberculosis and HIV/AIDS have proven to be effective." The report further provides the following information:

> 35. …Almost all ethnic minority communes with difficulties have health clinics while community-based health services are available in most villages, contributing importantly to the prevention and control of many fatal diseases and improvement of the people's health and quality of life.
>
> … 84. Viet Nam continues to give priority to healthcare and improvement of people's physical conditions, including the prevention and control of communicable diseases and epidemics, early detection and control of outbreaks, raising awareness on healthcare, improving access to clean water and sanitation services for all, with priority support given to the poor and entitled beneficiaries, ethnic minorities and regions in special hardship, ensuring food safety in accordance with regional and international standards, and gradually driving back and eliminating drug addiction. National Target Programmes (NTP) on the prevention of some dangerous communicable diseases and HIV/AIDS, on population and family planning, on clean water and clean rural environment (total budget of over VND 22,000 billions), on food safety (total budget of VND 1,000 billions) and on the prevention and control of narcotic drugs for 2006-2010 will continue to be implemented (Government of the Socialist Republic of Vietnam 2009, 'National Report submitted in accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1', UN High Commissioner for Human Rights website, 16 February http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf – Accessed 18 June 2009).

92. In addition, the most recent UK Home Office report on Vietnam provides some information on the country's progress towards universal targets in combating HIV/AIDS:

> 24.06 In an article dated 11 May 2009, UNAIDS stated:
>
> "Although the country faces challenges to meet its universal access targets, Viet Nam has made significant progress in some areas. Expansion of coverage and access to quality HIV treatment and care have been considerably improved in those areas with high HIV prevalence since the targets were set in 2006. There has been a 50% increase in the number of eligible pregnant women receiving antiretroviral treatment, and a six-fold increase in access to antiretroviral treatment" (UK Home Office 2009, *Country of Origin Information Report: Vietnam*, June, pp. 58-59).

93. The Tribunal has also taken into account the country information provided by the representative on this point.

Ca Mau province and household registration

94. *Decree No. 51-CP of May 10, 1997 on Household Registration and Management* sets out the requirements in relation to Household Registration in Vietnam.

95. The UK Home Office report for 2009 indicates that all persons living in Vietnam must be registered on a household registry called Ho Khau, and that this registration must be changed when moving from one place to another:

25.02 As recorded by the website of the US State Department's Bureau of Consular Affairs, accessed on 30 April 2009, "Every person residing in Vietnam must be listed on a household registry (Ho Khau), maintained by the Public Security Bureau."

...25.03 A report by the Canadian Immigration and Refugee Board (IRB) dated 16 October 2001 noted that if individuals move from one place to another without changing their household registration, they are moving illegally, and would be unable to obtain a job or schooling for their children. [6c] On the same date the Canadian IRB recorded that a household registration document (ho khau) is one of the documents required for a Vietnamese citizen to secure a passport within Vietnam (the other documents being a birth certificate, a government-issued ID card and a letter of introduction for a passport, if applicable). [6e]

25.04 The Canadian IRB recorded on 16 October 2001 that people would be removed from the household registry (ho khau) if they failed to live continuously at their address for one year. Such people could apply to have their registration restored if they were closely related to the head of the households concerned (sibling, son or daughter, spouse or parent). [6c]

25.05 The same source stated further, "For people who emigrate from Vietnam, the government considers them no longer part of their original household and they would lose their registration." An individual could apply for restoration of his name to the household registry only after returning to Vietnam, but those considered undesirable by the government would not be eligible (UK Home Office 2009, *Country of Origin Information Report: Vietnam*, June, pp. 60-61).

96. The 2007 US Department of State human rights report indicates that Vietnam's household registration system is less intrusive than it was in the past and that in 2008, "migration from rural areas to cities continued unabated." However, "[m]oving without permission hampered persons seeking legal residence permits, public education, and healthcare benefits." (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Vietnam*, February, Sections 1d, 1f, 2d).

97. The International Organization for Migration's World Migration report for 2008 outlines Vietnam's complex household registration system, which is applicable to both urban and rural areas, and "restricts access to government services outside the authorized location of residence/work." The system identifies four categories of residents, KT1, KT2, KT3 and KT4 as follows:

- KT1 – Person registered in the district of residence;
- KT2 – Person not registered in the district of residence, but registered at another district of the same province;
- KT3 – Person who has temporary registration for a period of six months and more;
- KT4 – Person who has temporary registration for a period of less than six months.

There is also a category of "no registration" at the destination (Deshingkar, P. and Natali, C. 2008, 'Internal Migration', Chapter 7 in International Organization for Migration 2008, 'World Migration 2008: Managing Labour Mobility in the Evolving Global Economy', International Organization for Migration website http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/studies_and_reports/WMR2008/Ch7_WMR08.pdf – Accessed 19 June 2009).

98. A 2006 report published by the United Nations Population Fund on the quality of life of migrants in Vietnam highlights some registration difficulties faced by internal migrants,

based on the complex household registration system which include a lack of proper housing lack of access to water, electricity and jobs. (United Nations Population Fund and General Statistics Office 2006, ‘The 2004 Vietnam Migration Survey: The Quality of Life of Migrants in Vietnam’, United Nations Population Fund (UNFPA) website, pp. 1-21 http://vietnam.unfpa.org/documents/TheQualityofLifeofMigrantsinVN_GSO1206_e.pdf – Accessed 22 June 2009).

99. A study of migration to Ho Chi Minh City (HCMC) highlights policies designed to restrict migration to urban areas. It is argued that with the implementation of the Renovation (Doi Moi) Policy in the mid 1980s, “HCMC became the country’s most significant target region for flows of foreign direct investments (FDI) and the growth engine of Vietnam’s economy.” As a result, “household registration procedures no longer affect every aspect of people’s lives…but there are still severe measures that aim to restrict migration.”

> …
>
> …An appreciable step towards the improvement of the legal situation of migrants was made in July 2007, when a new residential law came into effect. Among other measures, the new residential law makes it far easier for KT-3 citizens to get KT-1 status than was previously the case. Now, KT-3 migrants only have to prove that they have had an uninterrupted employment status for one year, and to show that they have held a registered residential record for the same time. Previously, they had to be temporary residents of Ho Chi Minh City for three consecutive years (until 2005 the requirement was even five years) (Thanh 2006). Most important seems to be a change in regulation, which allows migrants to apply for KT-1 status even if they do not own a house, but just rent a housing unit. To apply for permanent residency in houses which are not owned, the applicants must show the house owners’ written approvals. It is estimated that approximately 800.000 migrants in Greater Ho Chi Minh City will benefit from this new law (Thanh 2007).
>
> …So far, rural-urban migrants can not fully participate in the economic success of Greater Ho Chi Minh City. Exclusion effects are strongly related to their legal residential situation, especially in terms of housing…The recent change in governance towards migrants with the introduction of the new residential law in July 2007 can only be seen as a first step in the right direction (Waibel, M. 2007, ‘Migration to Greater Ho Chi Minh City in the course of Doi Moi Policy’, Irmgard Coninx Stiftung website, October http://www.irmgard-coninx-stiftung.de/fileadmin/user_upload/pdf/urbanplanet/Waibel.pdf – Accessed 19 June 2009).

FINDINGS AND REASONS

100. The applicant claims to be a Vietnamese citizen and states that he does not have the right to enter or reside in any country other than Vietnam. He travelled to Australia on a Vietnamese passport. Therefore the Tribunal will assess his claims as a national of Vietnam.

101. The applicant’s evidence has remained consistent throughout the course of the protection visa application.

102. The applicant’s evidence in relation to his medical condition is also supported by the letters from his doctors and the medical reports. The Tribunal accepts that the applicant was diagnosed with HIV/AIDS and Hepatitis B in 2007 and that he is currently taking daily medication for his condition On the basis of the letter from [medical specialist deleted:

s431(2)],the Tribunal also accepts that the applicant's co-infection with Hepatitis B and C has led to his treatment options being reduced and that the antiretroviral medication that he requires as a result of the co-infection is not available in Vietnam. The Tribunal also accepts on the basis of the information from [doctor deleted: s431(2)] that the applicant's chronic hepatitis B co-infection runs the risk that without adequate medical care and support the rate of progression of liver disease and death would be accelerated. On the basis of [doctor's name deleted: s431(2)] report, the Tribunal also accepts that the support and care required is unlikely to be provided in Vietnam except in the major cities and at great financial cost. The Tribunal accepts that Ca Mau, as a remote rural province, is not a priority area and services there are limited. The country information indicates that the community stigma against people with HIV prevents them from seeking help and being treated (Global Youth Coalition on HIV/AIDS 2008, "National Youth Shadow Report – Vietnam cited above). Although the applicant indicated in his evidence that he would attempt to hide his status if he were to return to Vietnam, it would be difficult to do so, because on the basis of the medical evidence, without treatment his health would decline rapidly.

103. The applicant's claim that his wife has left him and his parents have disowned him is consistent with the country information in relation to the treatment of people with HIV in Vietnam, particularly in regional areas. The Tribunal accepts that the applicant's parents have disowned him and it is probable that they will not allow him to stay with them or care for him if he is required to return to Vietnam. The Tribunal also accepts that the applicant's siblings have been instructed not to contact him by their parents and that his wife has left him due to her fear of contracting HIV from him. The Tribunal accepts that the applicant has been shunned by his family and if he returns to Vietnam he will not have any family support. The article "Elderly relatives of HIV/AIDs Victims bear brunt of support" from *Vietnam News* cited above indicates that the burden of caring for people with HIV tends to fall on older relatives. However, the Tribunal accepts that the applicant will not be able to live with family, Ca Mau is not a priority province and there are no specialised care facilities in his area. The Tribunal accepts that he will not have anyone to care for him if his health deteriorates.

104. In light of the attitude of his family, the Tribunal accepts that he will not be employed in the family fishing business if he returns to Vietnam. The Tribunal accepts that the applicant's own ponds have been sold; the Tribunal also accepts that he had given the remainder of his possessions in Vietnam to his wife to assist her to raise their child and that he would not have a strong financial position on return to Vietnam. The Tribunal accepts that the applicant would be required to earn a living in Vietnam in order to subsist. However the country information set out in the US DOS report indicates that persons with HIV/AIDS in Vietnam lost jobs or suffered from discrimination in the workplace or in finding housing.

105. The applicant also claimed that people with HIV are taken to be intravenous drug users and he would be subject to imprisonment as an intravenous drug user This claim is consistent with the country information in being a reason for further stigmatisation of people with HIV and on the basis of the country information regarding injecting drug users and those infected with Hepatitis B set out above, the Tribunal accepts that if the applicant's status as infected with both HIV and Hepatitis B becomes known, there is a chance that he would be considered to be an injecting drug user.

106. The representative submitted that the central thrust of the Government's campaign to control AIDS has been by controlling their perception of the people and the behaviours that transmit it. This had the consequence of increasing stigma and discrimination against those who had the

infection. The perception that the applicant was an intravenous drug user would lead to other persecutory consequences, such as being detained and treated to inhumane treatment and isolation away from the rest of society, such as to constitute inhuman and degrading treatment.

107. The country information referred to above indicates that Vietnam does not officially discriminate against people with HIV/AIDS and has, in fact, enacted legislation in January 2007 which included a comprehensive range of anti-discrimination provisions. The law, which is part of Vietnam's campaign to end discrimination against people with AIDS and HIV, gives new rights and protections to people with HIV. However, the Tribunal accepts that the applicant lives in a remote province where HIV/AIDS education has not disseminated and there is little access to news. Country information which postdates the implementation of the legislation (for example the USDOS report and the report from the International Non-Governmental Organisation (INGO) statement for the Vietnam Consultative Group Meeting cited above) indicates that the legislation has not affected the stigmatisation of the disease to such an extent that the applicant would not be discriminated against and stigmatised due to his medical conditions. Additionally, the representative cited country information from the *Alternative Report on the Implementation of the UN Convention on the Elimination of Discrimination against Women* (CEDAW) released in January 2007 which noted that although Vietnam had antidiscrimination laws they were not enforced and provided for no sanctions against those who contravened them. Despite the Vietnamese government's efforts to overcome the HIV/AIDS epidemic in the country and reduce the stigma and discrimination associated with HIV/AIDS, the Tribunal accepts on the basis of the independent evidence before it, including the country information and expert evidence submitted by the applicant, that discrimination against HIV/AIDS carriers continues to pose a significant dilemma in Vietnam. It accepts that reducing the stigma attached to HIV/AIDS is an ongoing struggle which is made worse by the link between HIV and so-call social evils such as drug abuse and prostitution. Even though the Vietnamese government, with the assistance of foreign donors, has taken steps to treat, assist and accommodate people with HIV/AIDS and decrease social stigma and discrimination, the Tribunal finds that this has not extended to the applicant's province the Tribunal accepts that the implementation and enforcement of these laws has been described as ineffective and that therefore there is no effective state protection for the applicant.

108. The Tribunal accepts that if the applicant returns to Vietnam, he will be returning [location deleted: s431(2)], Ca Mau province, where he previously lived and where he had his household registration. The Tribunal has taken into consideration the expert evidence from [senior researcher and Institute deleted: s431(2)] and [medical professional, position and educational institution deleted: s431(2)], and accepts that the efforts made by the Vietnamese government to reduce stigma and discrimination against persons suffering with HIV/AIDS has not taken effect in the rural areas of Vietnam such as Ca Mau. The Tribunal accepts that the Vietnamese government's laws and policies regarding HIV/AIDS have not been effectively or uniformly implemented across the country, especially in rural areas such as Ca Mau. The Tribunal refers specifically to [medical professional deleted: s431(2)] comments that there was little evidence that the social change required to minimize stigma and discrimination had occurred in remote rural areas like the applicant's home area. The Tribunal accepts [medical professional deleted: s431(2)] evidence that the applicant would be subjected to stigma and discrimination within his community and within the health care sector. When this is taken into consideration with the independent evidence regarding the lack of effective enforcement or implementation of the anti-discrimination laws, the Tribunal accepts that there is a real chance that the applicant may be subjected to discrimination in

employment, access to housing, access to health services and ostracism and stigma from members of his community now or in the reasonably foreseeable future if he were to return to Vietnam.

109. On the basis of the independent evidence before it, the Tribunal finds that considering the applicant's claims cumulatively, there is a real chance the applicant would face serious harm, including the denial of access to basic services threatening his capacity to subsist and denial of the capacity to earn a livelihood of any kind threatening his basic capacity to subsist if he returned to his home area in Vietnam.

110. In submissions, the representative posited varying formulations of particular social groups of which the applicant could be a member, including "HIV/AIDS sufferers in Vietnam"; "HIV/AIDS and Hepatitis B and C sufferers in Vietnam"; perceived membership of a particular social group of "intravenous drug users" and "HIV/AIDS sufferers who are returning from a foreign country" which might form the Convention reason for the persecution.

111. The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

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

112. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

113. The Tribunal accepts on the basis of the country information set out above that people with HIV/AIDS and Hepatitis B share a common characteristic, namely infection with these diseases, which distinguishes them from the rest of society due to the infectious nature of the diseases, as well as community perceptions about the conditions. The Tribunal accepts that in the applicant's case his situation could also be exacerbated by his co-infection with Hepatitis B due to the type of retroviral medication he requires and the perceived link in Vietnam between Hepatitis B and intravenous drug use. Therefore the Tribunal finds that the applicant is a member of a particular social group of "people with HIV/AIDS and Hepatitis B in Vietnam". The Tribunal finds that the persecution feared is for reason of the stigmatisation engendered through the applicant's membership of this group and therefore the Tribunal is satisfied that the persecution feared by the applicant is for reasons of his membership of the particular social group of people with HIV/AIDS and Hepatitis B in Vietnam".

114. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-

1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of "practicable", to expect him or her to seek refuge in another part of the same country. What is "reasonable" in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* [2007] HCA 40 and *SZFDV v MIAC* [2007] HCA 41, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

115. The Tribunal has considered whether it would be reasonable for the applicant to relocate to another part of the country, such as Ho Chi Minh City, where the Vietnamese government's efforts of reducing the stigma and discrimination associated with HIV/AIDS has had more effect and where medical facilities and treatment for HIV/AIDS have been established. The Tribunal accepts that the applicant would experience difficulties in obtaining a household registration certificate in Ho Chi Minh City or any other part of the country which is not his home area, particularly given his low education and the requirement that a person be employed in order to obtain KT-1 status in a place where adequate medical facilities exist and stigmatisation is reduced. This would in turn affect his ability to access any health or welfare support services which he would require. The Tribunal therefore finds that the practical realities, including the applicant's lack of support networks, his lack of finances and medical condition, make it unreasonable for him to relocate to another part of Vietnam.

116. The Tribunal finds that there is a real chance that, if he returns to Vietnam now or in the reasonably foreseeable future, the applicant will face discrimination and stigmatisation which will deny him access to basic services and the capacity to earn a livelihood of any kind such that it threatens his capacity to subsist The Tribunal finds that there is not effective State protection from this harm at this time. The Tribunal finds that, cumulatively, this treatment would amount to serious harm and so constitute persecution within the meaning of section 91R(1) of the Act. The Tribunal finds that the essential and significant reason for that persecution would be the applicant's membership of a particular social group of "people with HIV/AIDS and Hepatitis B in Vietnam" and that it is not reasonable for the applicant to relocate within Vietnam in order to avoid such persecution. Therefore the Tribunal finds that the applicant's fear of persecution for reasons of his membership of a particular social group is well-founded.

CONCLUSION

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

DECISION

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

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

Sealing Officer's I.D. prrt44