

**0900540 [2009] RRTA 396 (30 April 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0900540

**DIAC REFERENCE(S):** CLF2008/128361

**COUNTRY OF REFERENCE:** Vietnam

**TRIBUNAL MEMBER:** Sydelle Muling

**DATE:** 30 April 2009

**PLACE OF DECISION:** Melbourne

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Vietnam, arrived in Australia [in] June 2003 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2008. The delegate decided to refuse to grant the visa [in] January 2009 and notified the applicant of the decision and her review rights by letter [on the same] date.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] January 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

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

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

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

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

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

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to the protection visa application, the applicant is a Buddhist female born [in] May 1975 in Ho Chi Minh City, Vietnam. She lived in Ho Chi Minh City from May 1974 to June 2003. The applicant received 12 years education and is fluent in Vietnamese. She described her occupation before coming to Australia as payroll officer. From January 1995 to June 2003 she worked as an accountant at [a] Garment Company in Ho Chi Minh City. The applicant departed Vietnam legally [in] June 2003. She was separated from her partner [in] September 2004 in Adelaide, Australia. The applicant's mother, father and brother are residing in Vietnam.
21. In a statutory declaration made by the applicant and attached to the protection visa application, the applicant claimed that she feared that if she was forced to return to Vietnam she would suffer severe harm and sexual assault at the hands of her former husband, other men in Vietnam and the Vietnamese authorities because she was a woman who had left her husband and also because of the political opinion imputed to her due to her father's political opinion and activities. She claimed that the authorities would not protect her due to her family's anti-government views and because she was a single woman who had left her husband.
22. The applicant claimed that her father fled Vietnam in 1989. She knew her father did not like the communist regime in Vietnam and that he had to flee the country. She remembered her father was very vocal about his opposition to the government. He would often criticise the government at home and also when he was with his friends. She, her mother and her brother had to live with her grandparents. The applicant claimed that life was hard for her family after her father left the country. The police constantly watched their home to see if they had received any news or communication from her father. Her mother was not permitted to work in government jobs at all so her employment was limited and she could only do odd jobs here and there to survive.
23. The applicant claimed that her parents could only afford to send one of their children to high school and so her brother sacrificed his education for her. She discussed the bullying her brother was subjected to whilst he was at school because he did not have his father living with them. Although she achieved well at school, her brother did not. The applicant claimed she could not get into better schools because she did not have good family connections. She was also teased at school because she did not have a father.
24. After finishing school she found it difficult to gain employment. However, a woman who lived down the road from her family helped her to get a position in a company owned by her and her husband and she gradually worked her way up.

25. The applicant claimed that her father was captured by Indonesian authorities and held in a refugee camp on the border [in] October 1989. He was sent back to Vietnam by the Indonesian government [in] June 1996. When her father returned, life continued to be very difficult. She was the only person working regularly to support the family. The police continued to watch their house and monitor her father's movements. To this day her father has been unable to find employment. Since she had left Vietnam, her mother had been working in various low paid casual jobs so the family could survive. Her brother also worked for small private companies. She claimed the police still came to check her parents' house once a week. They come and ask her father, what he had been doing and what he intended to do.
26. The applicant provided details regarding her relationship with her former husband, to whom she was introduced by her aunt who lived in Australia. She discussed the development of their relationship, their decision to become engaged, her arrival in Australia in June 2003 and their marriage in July 2003. The applicant described her life together with her husband after their marriage as being good initially but after a few months things deteriorated. She discussed how her husband changed, his subsequent treatment of her and her decision to leave him. The applicant claimed that when she came to Melbourne she contacted her mother and told her what had happened. Her mother told her that her husband called her and told her that if he found her he would call the police and have her arrested. Her husband had also threatened to hurt her if he found her and if she returned to Vietnam, he would arrange for someone to come after her and punish her and her family. The applicant claimed that she was terrified of returning to Vietnam after coming to Australia and marrying. The shame this would bring to her family was too much for them to bear. She claimed her mother blamed her for leaving her husband and was very angry.
27. The applicant discussed the details surrounding her being diagnosed with Tuberculosis. She claimed that she completed a full course of medication two months ago and her physical health had completely improved. However, she was still depressed and very fearful of her husband and what he would do if he found her.
28. The applicant claimed she could not return to Vietnam because once a woman was married she belonged to her husband so if she went back, her parents would bear the burden of her suffering. If she returned, she would have nowhere to go. Her parents will disown her. She would not dare go home and bring shame to her parents. The applicant claimed that she did not believe she was brave enough to face the difficulties her father faced when he left Vietnam and was forcibly returned. She claimed her husband had threatened he would send someone to find and hurt her if she returned to Vietnam. He knew where her family was and was capable of arranging this. She could not go to the police to seek protection because they would offer her none due to her father's political activities and beliefs. In addition, the police considered disputes between husbands and wives were private family matters and they would not intervene. The applicant claimed although she did not support the Vietnamese government because of the way her father suffered, she had not been politically active. She was always too scared to be politically active or express her anger towards the government. She feared if she returned to Vietnam, the police and authorities would think she was against the government because of her father's political belief. She would not be able to get any protection and feared she may be targeted or harmed because she left Vietnam.
29. The applicant claimed that her mother told her after she left Vietnam her name was deleted from the household register and this meant she did not live there anymore. She claimed she would not be able to work because of this and her father's political profile and if she was

unable to work she would not be able to survive. She did not believe her parents would allow her to return to live in their house because of the shame she would bring them. She claimed she would be looked down on by other Vietnamese people because she was a woman who had left her husband. Her mother told her the company she had worked for in Vietnam had been declared bankrupt so she would not be able to return to her old position. The applicant referred to the situation of a friend of hers called Lyn whose marriage to an Australian citizen did not work out and who returned to Vietnam.

30. The applicant claimed that Vietnamese women who are considered to have deviated from the social norms by divorcing their husbands are punished and then ostracised by the community. She was fearful of being punished by the community. Although she was from Ho Chi Minh City, which was a big city, she would stand out as a woman who had left her husband. All the people she knew would be aware of her situation once she returned to Vietnam. She feared she would be a social outcast because she separated from her husband. It would be difficult for her to form new relationships and gain employment because women were always blamed for marriage breakdowns. As a woman who left her husband and with a bad family background, she would be at risk of assault by members of the community and by the police and authorities. She claimed women who have left their husband were considered lowly and vulnerable to violence and sexual abuse.
31. The Department refused the applicant's protection visa application [in] January 2009.
32. [In] January 2009, the applicant applied to the Tribunal for review of the delegate's decision refusing her application for a protection visa.
33. [In] April 2009, the Tribunal received a statutory declaration made by the applicant in which she stated that she relied on the information provided in her previous statutory declaration regarding her fears of persecution due to her status as a woman who had left her husband and that she would not receive protection from the authorities in Vietnam. The applicant claimed that she would not be protected by the authorities because of her father's anti-government political opinion and therefore the political opinion imputed to her and because she was a woman who had left her husband.
34. The applicant reiterated that she did not believe that she would be able to reinstate her household registration due to her long absence from Vietnam and her family's anti-government status. However, if she were able to, it would be an incredibly lengthy process and she would be required to pay a substantial bribe, which she could not afford. She did not know how she would be able to earn a living or look after herself during this time. She referred to her father's situation in which he was unable to reinstate his household registration for many years after his return to Vietnam despite having documents from the United Nations stating that the government must assist his return and reintegration in the country.
35. The applicant claimed that she would have the same difficulties as her father had in finding work if she returned to Vietnam due to her long absence from the country and her relationship with her father. She claimed her mother had been unable to find good employment in Vietnam due to her father's status and continued to sell fruit and vegetables in the market. The applicant claimed that her mother had not been able to purchase a stall due to her father's anti-government political opinion and was often chased away from the market by police because she did not have a proper stall, making it incredibly difficult for her to make a living.

36. The applicant claimed that in a recent phone conversation with her mother she was told that her brother had lost his job and was not able to work legitimately in Vietnam any longer. She claimed that her brother was already unable to find work at any government department due to her family's status and now he was unable to work for private companies. The applicant claimed that her brother had no option but to work illegally and she was very scared that he would be caught and put in jail.
37. The applicant explained the delay in lodging her protection visa application was because when she first arrived in Australia she was hopeful that her marriage would work and so she did not look into any other options for staying in Australia. After she left her husband she was scared and did not understand the laws of Australia or what options were available to her to stay permanently in the country. She was incredibly scared that if she contacted the authorities her husband would be able to find out where she was. She was also incredibly scared that if she came to the attention of the authorities she would be deported to Vietnam and she was terrified of returning.
38. The applicant appeared before the Tribunal [in] April 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
39. The applicant was represented in relation to the review by her registered migration agent.
40. Prior to the commencement of the hearing the Tribunal received a submission from the applicant's adviser outlining their submissions and response to the department's decision refusing the applicant's protection visa application. The adviser specifically addressed the human rights situation in Vietnam generally, persecution or severe discrimination of people with imputed anti-government political opinion, persecution or severe discrimination of people without household registration in Vietnam, persecution of the applicant on the basis of membership of a particular social group, the ability of the applicant to seek effective protection from the Vietnamese authorities and internal relocation within Vietnam. Attached to the submission was a letter from [name deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant], Clinical Psychologist from [location deleted: s.431(2)] Community Health Service dated [in] March 2009 in which it was stated that the applicant attended counselling to better manage her anxiety and depression related to the uncertainty of her temporary residence status, as well as the emotional impact of personal losses and a failed abusive marriage.
41. The applicant confirmed her full name and stated that she was born on [date of birth deleted: s.431(2)] in Saigon. She lived in Saigon. She completed school up to year 12 and studied business administration at Open University. She could not remember very well when she started this course but as far as she could recall she began the course when she started working at about 20 years of age. She did not complete the course. She finished more than a year of the course but did not complete it because she came to Australia. The applicant stated that she spoke Vietnamese and a little English. She worked at a garment company called [name deleted: s.431(2)] in Saigon. When she first started there she did data entry but later on she was assigned to do payroll as well. The applicant stated that she departed Vietnam legally in June 2003. Her parents and younger brother were residing in Saigon. She was in contact with them by phone very rarely; once a month or once every two weeks. The last time she spoke to her family was two weeks ago.

42. The applicant confirmed that she separated from her husband in September 2004. She stated that she ran away. She was still married to her husband. She had thought about getting a divorce She had not divorced him yet because she was scared of confronting him again so she had not done so. The applicant stated that she could not remember very well when she first met her husband because it was a long time ago but she thought it was in 2001. She was introduced to him by her aunt in Australia. She first met him when he travelled to Vietnam but prior to that they had contact through email and chat rooms. As far as she could remember her husband visited her in December 2001 because it was near Christmas time. They became engaged [in] December 2002 and they were married [in] July 2003.
43. The applicant stated after they were married, in the initial stage, all was good in their relationship. They had a happy time but gradually, since she started working, things got worse and worse. She confirmed things deteriorated when she started working but she could not remember when that was. She did not really want to run away from her husband but she could not take anymore. He inflicted both mental and physical pain on her and deprived her of her freedom. The applicant stated that whilst she was with her husband she spoke to her family but she did not dare tell her parents the problems she was experiencing in her marriage because she did not want to cause them any pain by knowing the truth. She told her family about what had happened to her only after she had left her husband. She remembered about 1 or 2 weeks after she had left her husband, she rang her parents and her mother was very upset. She learnt that her husband had rung and told them about her departure and her husband was very angry. Her husband told her mother that if he met her he would beat her and expel her back to Vietnam. The Tribunal asked the applicant what her family's reaction was to news of her separation from her husband. She stated that her mother was very upset and reproached her. Her mother scolded her and questioned why she had ran away from her family Her mother told her that her family had suffered so much in the past and questioned why she had to aggravate the situation. Generally her mother was not happy about her actions The Tribunal asked the applicant if her husband had said anything else to her parents. She stated that her husband told her mother that she could never live in peace and she reiterated that he stated if he saw her he would beat her up and send her back to Vietnam He also stated that if he was found guilty of an offence and was deported back to Vietnam he would not let her live in peace. The Tribunal asked the applicant if she went to the police and reported her husband. She stated that she dared not do that. She just tried to protect herself by finding a safe place to live and a way to survive. The Tribunal asked the applicant if her husband made any threats to her family. She stated that he rang a couple more times and told her mother that she did not know how to raise or educate her daughter and so she could reap the result. Her husband also asked her mother if she knew anything about her whereabouts and demanded that she tell him. He also told her mother that if she agreed to disclose where she was, he would send her money as a reward. Her husband contacted her mother to say these things within 1 year after she left him. After that first year she did not hear anything from her mother about any contact from her husband and she did not ask so she did not know if her husband been in contact with her family after a year. The applicant stated that she had not had any contact with her husband since she left him in September 2004.
44. The Tribunal asked the applicant why she feared returning to Vietnam because of the fact that she had left her husband. The applicant stated that there were many reasons why she feared returning. This first was that she had seen her father experience a lot of miserable things when he was forced to return to Vietnam after living 7 years in a refugee camp. Her father was discriminated against by the authorities and neighbours. The second was that her mother was a difficult person. Her mother's mind was full of feudalistic ideas and they were living in



a difficult situation. She did not know what would happen to her. She may face discrimination from the authorities. She may also face harsh treatment from her mother due to her mother's feudalistic ideas and the fact she considered it unacceptable for her to have run away from her husband.

45. The Tribunal asked the applicant who she feared would harm her if she returned to Vietnam. The applicant stated the authorities. When the Tribunal asked the applicant what she believed would happen, she reiterated that she had seen her father suffer and believed she would be treated the same. Her father was watched over like a prisoner. She did not know how she could live or what her means of earnings would be. She just could not bear the scrutiny of her neighbours because her family was like a black spot because of the record of her father who was forced to return to Vietnam and now she would also be expelled by the Australian government, as well as being rejected by her husband.
46. The Tribunal asked the applicant if she feared anyone else would harm her because she had separated from her husband. The applicant stated that she could be harmed by anyone surrounding her and also her husband. She could not be protected at all. When the Tribunal asked the applicant why anyone would want to harm her she stated because she was not protected at all and she was a person who had run away from her husband. She would be terribly disdained. She also feared that her husband one day may hire anyone to harm her.
47. The Tribunal noted that she had claimed that her parents would disown her and although she had claimed in the hearing that she was only in contact with her family once a month or every two weeks, in her protection visa application she claimed that she had remained in regular contact with her family since she had left her husband, speaking to them on a weekly basis. The Tribunal put to the applicant the fact she had been in contact with her parents since she separated from her husband 4 years ago did not suggest that they had or would disown her. The applicant stated that the way they contacted each other and spoke over the phone was just a way to communicate to them her situation. She knew for sure that if she returned to Vietnam they would disown her and would not want to know her. The Tribunal put to the applicant that it was difficult to accept that if her family wanted to disown her, they would also be interested in how she was going in Australia over the last 4 years since she left her husband. It noted that these two concepts appeared to be inconsistent. The applicant stated that her mother only talked to her because she was her mother but she knew her mother would not let her return home. Her mother told her she would not let her come back when she had learnt that she had left her husband and kept advising her to go back to him regardless of how he treated her.
48. The Tribunal put to the applicant that she had left her husband over 4 years ago and had not had any further contact with him and nor had her family and asked her why she believed he would want to harm her now, after such a long period of time. The applicant stated as she had said earlier she had not asked her mother about her husband contacting her so she did not know if he had so she was not quite sure if he had the idea of harming her or hiring someone else to do so. The Tribunal asked the applicant if her husband did threaten her or try to harm her could she not seek protection from the police. She stated she would not have any protection from the police at all because her father was ostracised by society. Neither she or her father would have protection. The Tribunal asked the applicant why the police would not protect her. She stated it was because her father's record had had an influence over her and her family from a long time ago, even before she came to Australia.

49. The Tribunal asked the applicant if she believed anything else would happen to her if she returned to Vietnam because she had left her husband. The applicant stated that she feared harm would come from her husband, the authorities and people around her and she would not be able to defend herself. The Tribunal asked the applicant why the authorities or people around her would target or harm her because she had left her husband. She stated that she thought she would be prejudiced against by the local authorities and people around her who were against women who left their husbands and were deported from Australia. The Tribunal noted that she had discussed the fact divorced women were punished by the community in Vietnam and asked her how they were punished and why. She stated that the community would not punish her in such a way by beating her up but by disdain and prejudice. She did not know what would happen to her because she was despised. She had seen a lot in Vietnam. In her neighbourhood there was a woman who ran away from her husband and family, and who suffered a mental disorder. This woman wandered about and was raped by a group of drunk men and the police would not resolve her case or find justice for her.
50. The Tribunal noted that she had claimed she would stand out as a woman who had left her husband and asked the applicant how this would be obvious. The applicant stated that because the community in a crowded neighbourhood spread rumours very quickly, she would stand out. The Tribunal put to the applicant that the country information which was referred to by the delegate suggested that divorce was on the rise in Vietnam. Divorce, which once was almost unheard of, had increased rapidly in recent years. In light of this information and the absence of any independent evidence to suggest divorced or separated women were targeted in Vietnam for this reason, the Tribunal put to the applicant it had difficulty accepting that she would be persecuted for this reason if she returned to Vietnam. The applicant stated that different people had different circumstances and this information was about women who were divorced in Vietnam. She stated that she was in Australia and she would be returning to Vietnam and her family had suffered a lot of prejudice because of her father and now she was the same, so her circumstances were different.
51. The Tribunal noted that in the submission that was received prior to the hearing her adviser provided a lot of information regarding domestic violence in the Vietnam and asked the applicant to explain how this was relevant to her situation especially given that her husband would be continuing to live in Australia. The applicant began to discuss the financial, emotional and physical mistreatment that she was subjected to from her husband. The Tribunal interjected and after repeating the question, the applicant claimed that domestic violence happened and it had happened in her family. She explained that her father suffered a lot and was under some sort of depression. He was distraught because he could not find a job and was looked down upon by people so it was very easy for her father to get upset and use violence against her mother, as well as her. When the Tribunal sought to clarify whether she was claiming to be a victim of domestic violence from her father, the applicant stated that this was possible. The Tribunal asked the applicant if her father had hurt her in the past. She stated yes and explained when her father returned from the refugee camp and she advised him that he should not drink so much he threw a plate at her, which missed. She stated that this happened quite frequently. The Tribunal asked the applicant if there was anything else she wanted to say in relation to her claim of domestic violence. The applicant stated that domestic violence existed between her father and her mother and her father and brother. Her father would beat her brother up and it was likely that this could happen to her. She claimed her father had beat her in the past, during the process of bringing her up.

52. The Tribunal noted that she had also raised her father's political opinion and activities as a reason she would be persecuted if she returned to Vietnam and asked the applicant if her father belonged to a political party. The applicant stated not that she knew of but she was aware that her father was very much against the Vietnamese government. She did not know what activities or what he did to express his opposition but he had said he could not live in Vietnam anymore and then left. She could not remember when her father fled the country but it was in the 1980's. When asked why her father fled at this time, she stated that he was very dissatisfied with the socialist government and to her he was a dissenter. The Tribunal asked the applicant why she believed her father was a dissenter. She stated that she could tell from his behaviour with the local authorities as he always told her mother and his friends that it was a government of suppression because it deprived people of freedom in every field. The Tribunal asked the applicant what happened to her and her mother and brother after her father fled the country. She stated that they were prejudiced against and discriminated. There were a lot of rumours at school because of her dad. It was also difficult getting a job because of her bibliography.
53. Her father returned to Vietnam in 1996. When he returned it was like a bomb dropping into their family. Her father was such a burden. It was intolerable. The police would come and ask questions about why he had left and what he did when he was out of the country. The police would come every day. Sometimes they would come to their home and interrogate him there or sometimes they would take her father to the local police station. She could not remember how long this continued for. Later on the police did not come every day but once a week. The Tribunal asked the applicant if her mother was working before she left Vietnam. She stated her mother could not find any job because her personal record was like a black spot. Her mother sold things at different markets. Since she left the country her mother had been doing the same sort of work. Her brother was also working before she left Vietnam. He was trying to work as a broker and earn a commission by selling things to people and matching buyers to sellers. Her brother had been doing this work until recently but he had stopped because he could not find any work to do that way. She only learnt of this from her mother when she rang 2 weeks ago. The Tribunal noted that she had claimed that her brother could not work in Vietnam legitimately any longer and asked the applicant why this was the case. She stated that because of her family's personal record he was not eligible to enter the work force legitimately. He was not able to be accepted for any job that he applied for both in the public and private sector because either a person had to have a good record or very good connections.
54. The Tribunal asked the applicant what she feared would happen to her if she returned to Vietnam because of her father's profile. The applicant stated that she could tell her father had not had a future at all and she would follow the same route. She would not be able to find a job and she did not know what the future would hold for her. The Tribunal asked the applicant why she would not be able to find a job given that she was educated and had worked previously. She explained it would be extremely difficult to get a job given the current situation in regard to the labour force, in addition to her father's bad profile. When she graduated from high school she received a good score but she was not able to enter the official university or colleges because of being discriminated against because of her family record. She was very lucky to get the job she did because the owner of the company was American and he did not go through the details of her family record. The other reason she got the job was because the American's wife was a neighbour and knew she was a good girl.

55. The Tribunal asked the applicant why she believed she would be considered to be against the government. The applicant stated that she had been treated like that before she came to Australia because of her father. She was now following the same route because she had obviously fled the country and they would conclude that she belonged to a no good sector of society. The applicant stated that she had not been politically active in Vietnam or in Australia. The Tribunal put to the applicant if she had been imputed with an anti-government political opinion because of her father why would the government have allowed her to leave the country to come to Australia to marry her husband. The applicant stated that she experienced a lot of hurdles on the way to Australia because of the influence of her father. The local authorities did not approve and did not certify a lot of the documents needed for her application and she had to move to another location so a different local authority would approve and certify the documents she needed. She also claimed her husband also had to provide bribes so they could be approved. The applicant stated that she moved from District 3 to District 5 which was not very far away.
56. The Tribunal asked the applicant if she experienced any other difficulties from the authorities in the past because of her father's profile. She stated that she would be stateless in Vietnam now because in Vietnam the household registration was very important as every right and obligation of a citizen was through being registered in the household registration book and her name had been crossed out of the book. The Tribunal repeated its question. The applicant reiterated that every kind of document she needed certified for an application to get a job was difficult to get.
57. The Tribunal put to the applicant the country information available indicated that initially there was discrimination against people with bad family backgrounds which in some instances amounted to persecution, but over time this discrimination had lessened and the situation changed quite drastically from 1999 when people who were considered to have bad family backgrounds were no longer discriminated against. The information also suggested that in the current time bad family background appeared to have no real effect on an individual in Vietnam. The applicant stated that she thought that this was only the surface and that the government were trying to expose this to the international community but in reality everything was different as they always tried to suppress and conceal the truth.
58. In regards to her removal from the household registration, the Tribunal noted that her removal from the household register was consistent with the country information her adviser provided in the submission the Tribunal received that morning, which was that if a person failed to live continuously at their address for one year they were removed from the registry. However the same country information also provided that such people could apply to have their registration restored after returning to Vietnam and only those who had committed felonies or who were otherwise considered undesirable by the government would not be eligible. Further, in an article published on the Vietnamese Saigon Giai Phong Daily website on 29 June 2007, the Head of the Police Bureau of Administrative Management on Social Order commented on the implementation of the Residence Law in relation to Vietnamese people who went overseas to study and stated that based on Article 2 of the Law on Residence, Vietnamese people who lived in a foreign country but still retained their Vietnamese citizenship could apply for a ho khau when returning to the country to live. The applicant stated that Article 2 of the Law of Residence was always presented as the policy of the government but she did not know if in her personal circumstances she would be treated that way or not because of her personal status and bad family background.

59. The Tribunal noted that she had appeared to raise in the hearing for the first time the issue of her application for protection in Australia and if she was not successful the requirement that she return to Vietnam and asked the applicant to explain what her fears were in relation to this. The applicant claimed that her purpose today was to apply for protection from Australia and if she was not successful she would have to return to Vietnam. She requested that if she was not eligible for protection, could she just have the approval and authority to just stay in Australia as she had been in the past few years because now she was a stateless person as she had no home to go back to and no means of living.
60. The Tribunal asked the applicant if there were any other reasons why she feared returning to Vietnam other than what she had already discussed with the Tribunal. The applicant pleaded that the Tribunal give her the opportunity to have a future because she could see her future in Vietnam was a blind alley given the situation of her bad family background and her father's bad profile.
61. The applicant's adviser agreed that the applicant's fear of being returned to Vietnam from Australia if her application for a protection visa failed was connected to her fears in relation to her father's background and the fact that she may experience the similar problems he had when he was returned to the country.

## **COUNTRY INFORMATION**

### ***People with bad family backgrounds or supporters of the former South Vietnamese Government***

62. The country information available to the Tribunal indicates that initially there was discrimination against people with bad family backgrounds which in some instances amounted to persecution, but over time this discrimination has lessened until the current time when a bad family background appears to have no real affect on an individual in Vietnam. The Tribunal refers to the US Department of State 1993, *Country Reports on Human Rights Practices for 1992-Vietnam*, February, Section 5, Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status which states:

Many citizens still face discrimination in employment, education, and social services, or are subject to relocation in NEZ's, based on family background or political views. Although less than in previous years. Family members of former south Vietnamese Government and military officials and people affiliated with anticommunist associations or religious sects have been systematically discriminated against. According to refugees, people released from re-education camps face considerable discrimination in education housing and employment.

63. In a memorandum from the Australian Embassy in Hanoi dated 10 June 1992 DFAT states that between 1977 and 1980 there was some discrimination in employment against people with a bad family background and such individuals could have had difficulties in gaining government employment or a place at university. However, its current view, and also the view of UNHCR is that there is no active discrimination against people from a bad family background and access to government employment and education is not restricted. (Dept. Foreign Affairs and Trade, 10 June 1992, Advice From Australian Embassy, Hanoi). DFAT further reports the UNHCR's views on this question in cable HN27072 of 11 May 1992. It states:

UNHCR reports that there is no discrimination in employment or education against people with "unfavourable" family connections, be they former regime, capitalist or

Chinese. (DFAT 11 May 1992, Cable HN27072)

64. US Department of State 1994, *Country Reports on Human Rights Practices for 1993-Vietnam*, February, Section 5, Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status states:

Varying levels of discrimination have been reported by people released from reeducation camps in the areas of housing or education. Those released from reeducation camps generally are not eligible to regain their citizenship rights until 1 year after their release date. They and their families are not allowed employment with the Government, which restricts their access to housing and other benefits given to state employees.

Priority in social services is given to families of party members and families of soldiers who fought for the Government. Testing standards of university entrance examinations are reportedly lower for children of party officials. Arbitrarily high standards are set to keep the children of suspect background out of a university. Study abroad is also restricted to politically acceptable persons.

65. The US Department of State, *Country Reports on Human Rights* in subsequent years has indicated that people released from re-education camps have reported varying levels of discrimination in the areas of housing and education. They generally are not eligible to regain their citizenship rights until 1 year after their release. They and their families are not allowed employment with the Government, though this prohibition was less problematic than in the past because of the growth of private sector job opportunities.

66. Country Information Report 56/99.(Source doc.: RRT Request:VNM13450: Freedom Of Speech And Religion-Update) 25 February 1999 Cisnet CX33969 states:

#### Summary

The Department cannot see any reason why a person of "bad family background" who has not experienced any serious problems in the past because of this background, and who has not been involved in anti-government activities, would suffer any discrimination at all on return to Vietnam. The Vietnamese government does however remain concerned about the activities, especially military activities, of groups dedicated to its overthrow.

#### General

The department prefaces its responses to the specific questions asked with the following comments about the human rights situation in Vietnam today.

As a general point the department would note that the capacity to legally obtain a passport by a Vietnamese citizen provides a strong indication that the person concerned is not of adverse interest to the Vietnamese authorities. Indeed, it provides strong prima facie evidence to the contrary.

The situation in relation to civil and political rights in Vietnam has been gradually improving with the growing economic wealth and the integration of Vietnam into the regional and wider global community. While problems remain, Vietnam today is very different from the Vietnam of the 1970s and 1980s.

Political dissent remains frowned upon, though the treatment meted out to violators varies significantly according to their background. The increase in dissent within and outside the Communist Party in the last few years, aided by the radical upgrade of mass-communication potential provided by the internet, has not resulted in any widespread crackdowns by authorities. Leading dissidents in Vietnam now include among their number former senior members of the Communist Party and military.

This is an awkward situation for the Communist Party, and one with which it is not comfortable, but it is tolerating the situation.

According to a 1999 DFAT report on the treatment of supporters of the former South Vietnamese government :

THE SITUATION REGARDING THE TREATMENT OF SUPPORTERS OF THE FORMER SOUTH VIETNAMESE GOVERNMENT IS ONE THAT HAS CHANGED SIGNIFICANTLY IN THE 24 YEARS SINCE THE FALL OF THAT ADMINISTRATION.

IN THE FIRST YEARS AFTER THE FALL OF THE SOUTH VIETNAMESE GOVERNMENT THERE WERE MASS ARRESTS OF SENIOR MEMBERS OF THE SOUTH VIETNAMESE GOVERNMENT AND MILITARY, AND TENS OF THOUSANDS MORE WERE FORCED TO LIVE IN RE-EDUCATION CAMPS FOR VARYING PERIODS, IN SOME CASES FOR OVER TEN YEARS. THE SITUATION HAD CHANGED SIGNIFICANTLY BY 1996. AN ECONOMIC REFORM PROGRAM (WITH DIRECT SOCIAL CONSEQUENCES) WAS ADOPTED IN 1986. THE LAST RE-EDUCATION CAMPS WERE CLOSED IN 1989.

CURRENTLY THERE ARE SOME PEOPLE HELD IN DETENTION FOR ACTIVITIES WHICH ARE POLITICAL IN NATURE, BUT CONSIDERED CRIMES BY THE GOVERNMENT OF VIETNAM. HOWEVER THE ARREST, TRIAL AND DETENTION OF SUCH PEOPLE STEMS FROM PROHIBITED POLITICAL OR RELIGIOUS ACTIVITIES, NOT ALLEGIANCE TO THE FORMER GOVERNMENT OF SOUTH VIETNAM. IN LATE 1998, A PRESIDENTIAL AMNESTY WAS EXTENDED TO A NUMBER OF THESE PEOPLE. FURTHER AMNESTIES HAVE BEEN FORESHADOWED FOR 1999 AND ALSO THE YEAR 2000.

THE EMBASSY HAS NO EVIDENCE OF SIGNIFICANT DISCRIMINATION OR HARASSMENT AGAINST SUPPORTERS OF THE FORMER REGIME, OR AGAINST PEOPLE OF PARTICULAR PROVINCES. MORE LIKELY IS POSITIVE DISCRIMINATION IN THE BUREAUCRACY IN FAVOUR OF THOSE WITH LINKS TO FAMILIES THAT WERE STRONG SUPPORTERS OF THE FORMER NORTH VIETNAMESE GOVERNMENT. IN COMPETING FOR JOBS IN THE COMMUNIST PARTY OR IN SENIOR LEVELS OF GOVERNMENT MINISTRIES, HAVING A "BAD FAMILY BACKGROUND" COULD STILL BE A HANDICAP, BUT ONE THAT COULD BE OVERCOME.

- THE MOST NOTABLE EXAMPLE IS THAT OF THE THEN ACTING PRIME MINISTER (1965-1966) AND DEPUTY PRIME MINISTER (1963-1967) OF THE GOVERNMENT OF SOUTH VIETNAM, NGUYEN XUAN OANH. AFTER THE WAR ENDED, OANH SPENT NINE MONTHS IN A RE-EDUCATION CAMP. HIS REHABILITATION WAS RAPID, AND HE IS WIDELY CREDITED WITH BEING ONE OF THE BEHIND-THE-SCENES ARCHITECTS OF THE DOI MOI (RENOVATION) ECONOMIC REFORMS COMMENCED BY THE VIETNAMESE GOVERNMENT IN 1986. HE NOW RUNS A SUCCESSFUL BUSINESS MANAGEMENT CONSULTANCY IN HO CHI MINH CITY.

- ANOTHER WELL KNOWN CASE IS THAT OF DR TRAN THANH TRAI, A FORMER COLONEL IN THE SOUTH VIETNAMESE ARMY MEDICAL CORPS, WHO AFTER 1975 SPENT 3 YEARS IN A RE-EDUCATION CAMP. AFTER RELEASE HE RESUMED HIS MEDICAL CAREER, BECOMING ONE OF VIETNAM'S LEADING SURGEONS. IN 1997, DR TRAI WAS ELECTED AS A DELEGATE TO VIETNAM'S NATIONAL ASSEMBLY. HIS NOMINATION, ALONG WITH THOSE OF ALL OTHER CANDIDATES, HAD TO BE APPROVED BY A COMMUNIST PARTY-CONTROLLED ORGANISATION.

TREATMENT OF PEOPLE WHO LEFT VIETNAM AS REFUGEES  
NOT ALL VIETNAMESE WHO FLED VIETNAM AFTER 1975 HAD LINKS WITH THE FORMER SOUTH VIETNAM GOVERNMENT, BUT MANY DID.

MANY OF THOSE WHO FLED WERE NOT ACCEPTED FOR RESETTLEMENT. VIETNAM AGREED IN 1996 TO ACCEPT BACK PEOPLE NOT RESETTLED. BETWEEN 1996 AND 1999, 110,000 PEOPLE WERE RETURNED TO VIETNAM BY THE UNHCR. THE UNHCR THEN INDIVIDUALLY VISITED AND MONITORED THE SITUATION OF 40 PERCENT OF THESE

RETURNEES. UNHCR OFFICIALS HAVE CONFIRMED WITH US THAT IN NO CASE MONITORED, DID A RETURNEE COMPLAIN OF ARREST, PERSECUTION OR DISCRIMINATION BECAUSE OF THEIR POLITICAL BACKGROUND OR DECISION TO FLEE. THE IMPROVEMENT OF RELATIONS WITH VIETNAMESE WHO WERE ACCEPTED FOR RESETTLEMENT OVERSEAS IS A PRIORITY FOR THE GOVERNMENT OF VIETNAM A "COMMITTEE FOR OVERSEAS VIETNAMESE" HAS BEEN ESTABLISHED. THE GOVERNMENT HAS ALSO PUT IN PLACE POLICIES SPECIFICALLY AIMED AT ENCOURAGING THESE FORMER REFUGEES TO RETURN TO VIETNAM, FOR THE PURPOSES OF VISITING FAMILY, TOURISM AND/OR BUSINESS. IN JANUARY 1999, THE GOVERNMENT ANNOUNCED A SERIES OF MEASURES WHICH INCLUDED FINANCIAL INCENTIVES (EXEMPTION FROM APPLICATION OF VIETNAM'S DUAL PRICING SYSTEM AND THE GRANTING OF PREFERENTIAL AIR FREIGHT CHARGES) AND SIMPLIFICATION OF VISA ENTRY REQUIREMENTS. THESE PRIVILEGES HAVE NOT BEEN GRANTED TO OTHER OVERSEAS VISITORS. CLOSE TO 200,000 FORMER REFUGEES VISITED VIETNAM IN 1997, AND 214,000 IN 1998.

RECOGNITION BY THE UN AND OTHER GOVERNMENTS OF CHANGES IN VIETNAM THE SIGNIFICANT CHANGES THAT HAVE OCCURRED IN VIETNAM OVER THE LAST 24 YEARS HAVE BEEN RECOGNISED BY THE UN, AND BY OTHER GOVERNMENTS.

- THE UNHCR BEGAN OPERATIONS IN VIETNAM IN 1973. IN 1979, IT SIGNED AN "ORDERLY DEPARTURE PROGRAM" WITH THE GOVERNMENT OF VIETNAM AS AN ALTERNATIVE TO THE UNCONTROLLED FLIGHT OF BOAT PEOPLE. THE UNHCR HELPED MORE THAN 330,000 PEOPLE EMIGRATE FROM VIETNAM SAFELY AND LEGALLY. IN 1989, 70 GOVERNMENTS ADOPTED A COMPREHENSIVE PLAN OF ACTION (CPA) IN A BID TO HALT CONTINUING CLANDESTINE DEPARTURES. THE CPA ENDED IN 1996. SINCE COMPLETING THE MONITORING OF PEOPLE RETURNED TO VIETNAM, THE UNHCR HAS DRAMATICALLY SCALED BACK ITS PRESENCE IN VIETNAM.

- IN 1979, THE UNITED STATES SET UP AN ORDERLY DEPARTURE PROGRAM (ODP) TO ALLOW VIETNAMESE CITIZENS TO EMIGRATE TO THE UNITED STATES. TWO PROGRAMS WERE SET UP. THE FIRST WAS OPEN FOR THOSE WHO WERE DETAINED FOR AT LEAST THREE YEARS IN RE-EDUCATION CENTRES BECAUSE OF THEIR ASSOCIATION WITH THE FORMER SOUTH VIETNAMESE GOVERNMENT OR WITH THE UNITED STATES PRIOR TO 1975. REGISTRATION FOR THIS PROGRAM CLOSED IN 1994.

- THE SECOND PART OF THE ODP WAS THE "RESETTLEMENT OPPORTUNITIES FOR VIETNAMESE RETURNEES" TO VIETNAM REGISTRATION FOR THIS PROGRAM CLOSED IN 1996. THE UNITED STATES ANNOUNCED IN JANUARY 1999 THAT ALL OPERATIONS OF THE ODP WILL CONCLUDE IN SEPTEMBER 1999. AFTER SEPTEMBER 30, ALL PROSPECTIVE MIGRANTS MUST ENTER THE UNITED STATES THROUGH NORMAL IMMIGRATION CHANNELS AND PROCESSES.

ANSWERS TO SPECIFIC QUESTIONS

Q1. DID FORMER MEMBERS OF THE SOUTH VIETNAMESE GOVERNMENT AND THEIR FAMILIES EXPERIENCE ANY FORM OF HARASSMENT OR DISCRIMINATION AS LATE AS 1996?

A1. IT IS MOST UNLIKELY THAT FORMER MEMBERS OR SUPPORTERS OF THE SOUTH VIETNAMESE GOVERNMENT WOULD HAVE SUFFERED ANY SIGNIFICANT HARASSMENT OR DISCRIMINATION IN VIETNAM IN 1996. THE CLOSING OF THE UNITED STATES' ORDERLY DEPARTURE PROGRAM FOR VIETNAMESE WITH LINKS TO THE FORMER GOVERNMENT OF SOUTH VIETNAM IN 1994 INDICATES THAT THE SITUATION ON THE GROUND IN VIETNAM IN 1996 IN RESPECT OF PEOPLE IN THIS CATEGORY WAS VERY DIFFERENT TO THE SITUATION IN EARLIER YEARS.

- THE CHANGED ROLE FROM 1973 TO 1989 OF THE UNHCR IN VIETNAM, AND ITS REDUCED PRESENCE IN VIETNAM, ALSO DEMONSTRATES THE DEGREE OF CHANGE IN VIETNAM.

- SENIOR MEMBERS OF THE FORMER GOVERNMENT OF SOUTH VIETNAM WERE ABLE, BY 1996, TO PLAY A FULL ROLE IN VIETNAMESE BUSINESS AND SOCIETY.

- THE FACT THAT THE APPLICANT IN THIS CASE DEPARTED VIETNAM ON A LEGAL PASSPORT SUGGESTS THAT THE APPLICANT WAS NOT A PERSON OF CONCERN TO THE VIETNAMESE GOVERNMENT. WE ARE AWARE OF INSTANCES WHERE PEOPLE HAVE NOT BEEN ABLE TO TRAVEL OVERSEAS BECAUSE OF SENSITIVITIES IN VIETNAM ABOUT THEIR CURRENT POLITICAL ACTIVITIES.

Q2. DOES MISTREATMENT STILL HAPPEN AT THE PRESENT TIME?

A2. WE HAVE NO EVIDENCE THAT SUCH TREATMENT CONTINUES.



- THE UNHCR'S EXPERIENCE IN THE MONITORING OF PEOPLE WHO FLED, BUT WERE NOT ACCEPTED FOR RESETTLEMENT, REVEALED NO EVIDENCE OF SUCH TREATMENT.  
- THE DEVELOPMENT OF POSITIVE RELATIONS WITH PEOPLE WHO FLED VIETNAM AFTER THE WAR, AND WHO WERE ACCEPTED FOR RESETTLEMENT IN OTHER COUNTRIES, IS A PRIORITY FOR THE PRESENT GOVERNMENT OF VIETNAM. MANY OF THESE PEOPLE WOULD HAVE HAD CLOSE LINKS WITH, OR BEEN MEMBERS OF, THE FORMER GOVERNMENT OF SOUTH VIETNAM.

Q3. WOULD HARASSMENT BE LIKELY TO INCLUDE '...BEING PROHIBITED FROM EARNING A LIVING FROM TRADING.'

A3 THIS IS ALSO MOST UNLIKELY, AS THE EXAMPLE OF SENIOR PEOPLE OF THE SOUTH VIETNAMESE REGIME DEMONSTRATES (EG FORMER DEPUTY PRIME MINISTER OANH NOW RUNS A SUCCESSFUL BUSINESS MANAGEMENT CONSULTANCY IN HO CHI MINH CITY).

- HOWEVER THIS ASSESSMENT SHOULD BE READ AGAINST THE FACT THAT ONLY IN RECENT TIMES (IE SINCE THE ADOPTION OF ECONOMIC REFORMS IN 1986) HAVE ANY VIETNAMESE - OF WHATEVER POLITICAL, PROVINCIAL OR FAMILY BACKGROUND - BEEN ABLE TO ENGAGE IN PRIVATE ENTERPRISE.

- SINCE 1986, PRIVATE ENTERPRISE HAS BEEN PERMITTED BY THE VIETNAMESE GOVERNMENT AND MANY VIETNAMESE WHO FLED THE COUNTRY AS REFUGEES HAVE RETURNED TO SET UP AND OPERATE BUSINESSES IN VIETNAM.

- ACCORDING TO OFFICIAL STATISTICS, THE GOVERNMENT OF VIETNAM HAD, BY THE END OF 1997, LICENSED 176 INVESTMENT PROJECTS OWNED BY PEOPLE WHO HAD LEFT THE COUNTRY AS REFUGEES. MOST OF THESE PROJECTS WERE IN THE GARMENTS, ELECTRONICS, FOOD PROCESSING, HOSPITALITY AND TOURISM SECTORS. BUSINESSES OWNED BY "OVERSEAS VIETNAMESE" IN HO CHI MINH CITY ARE ESTIMATED TO EXPORT PRODUCTS WORTH \$100 TO \$150 MILLION FROM VIETNAM EACH YEAR. (COUNTRY INFORMATION REPORT NO. 120/03)

67. The 2000 Human Rights Watch report 'Vietnam: the Silencing of Dissent' stated in part:

Twenty-five years after the reunification of Vietnam, the country remains under the close control of the ruling Communist Party of Vietnam (CPV). Increasingly though, recent years have seen a progressive opening up of the country to the international community and a quickening pace of economic and social change. These years have also seen improvements in human rights, with the release of tens of thousands of political detainees and re-education camp inmates, the return of thousands of Vietnamese who had fled abroad as refugees, and increased willingness on the part of the government to cooperate with the U.N. on human rights issues. From 1975 until the late 1990s, many of those who opposed or criticized the government or called for pluralism and democratic reforms were imprisoned or sent to re-education camps. Nowadays, however, the Vietnamese government appears keen to avoid the international opprobrium that such overt repression provokes and to prefer to use other, less obvious means to try and silence key political and religious dissidents. Those who go too far in criticizing or confronting the government, however, still risk being subjected to house arrest, administrative detention or prison sentences (HRW, 2000, *supra*, Section III. Repression of dissident voices). (Human Rights Watch, 2000, *Vietnam: The Silencing of Dissent*, Vol. 12, No.1, Summary, May at <http://www.hrw.org/reports/2000/vietnam/Viet004.htm#TopOfPage>)

68. DFAT Country Information Report no. 120/99, 21/04/99, Vietnam: Khanh Hoa Special Police Force: CIS request VNM-AC908, Cisnet CX34658, states:

In general terms, discrimination against officials of the former southern regime has receded significantly in the last two decades, and continues to do so. While such a background would make it significantly more difficult, and in some cases impossible, for persons to obtain communist party or government posts. Beyond this the consequences of such a background at the current time have abated to the point where they are likely to be no more than minor irritants, if at all.

*Divorce in Vietnam*

69. The following article from Agence France Presse (AFP) suggests that divorce is on the rise in Vietnam and that once almost unheard of, in recent years, the number of divorces had increased rapidly:

VIETNAM: Modern age hitting Vietnam family life: survey

Modern pressures are changing the Vietnamese family structure, with divorce on the rise and the very young and old spending more time alone, said a joint UN-government survey released Thursday.

Gender equality is improving, but men still dominate households, and domestic violence occurs in 20 percent of marriages, said the first nationwide survey of the family unit, a joint project with UN children's agency UNICEF.

"After 20 years of doi moi, or renovation (market reforms), Vietnam has changed in nearly all aspects of life, including in family relationships," found the survey of 9,400 households across all 64 cities and provinces.

Vietnam has for millennia been a traditionally rural and patriarchal society, where Confucian values stressed the family unit and dictated that the young respect their elders, and that women are obedient to their husbands.

However, the survey found social mores are changing fast in communist Vietnam, which emerged from decades of war in 1975 and started to re-open its doors to the outside world in the 1990s, ushering in rapid economic growth.

Divorce, once almost unheard of, has "increased rapidly in recent years," to 2.6 percent of respondents aged 18 to 60, with most divorcees citing "differences in opinion about lifestyle, adultery and economic difficulties."

The survey also found that many parents now feel they are no longer able to spend enough time with their children and, with a lack of affordable child care, worry for their offspring's mental and emotional development.

"It's not a matter of not wanting to, or ignorance," said UNICEF country chief Jesper Morch. "Parents need to work in order for their families to survive ... and therefore don't have time to spend with their children."

Only one third of households have elderly family members, the survey found.

"Three-generation households were less common and are decreasing, possibly due to industrialisation," said the report, co-produced by Vietnam's Institute of Family and Gender Studies. CX203980: VIETNAM:Modern age hitting Vietnam family life: survey, Agence France Presse (AFP) - France, 26 June, 2008

### ***Violence against women in Vietnam***

70. The following information from the US Department of State, *2008 Country Report on Human Rights Practices – Vietnam*, details the prevalence of violence, particularly domestic violence, in Vietnam and the laws and protection available to women:

Women

The law prohibits using or threatening violence, taking advantage of a person who cannot act in self defense, or resorting to trickery to have sexual intercourse with a person against that

person's will. This appears to criminalize rape, spousal rape, and in some instances sexual harassment; however, there were no known instances of prosecution for spousal rape or sexual harassment. Other rape cases were prosecuted to the full extent of the law. No reliable data were available on the extent of the problem.

The law prescribes punishment ranging from warnings to a maximum of two years' imprisonment for "those who cruelly treat persons dependent on them." The 2007 Law on Domestic Violence Prevention and Control went into effect on July 1. It specifies acts constituting domestic violence, assigns specific portfolio responsibilities to different government agencies and ministries, and stipulates punishments for perpetrators of domestic violence; however, NGO and victim advocates considered many of the provisions to be weak. While the police and legal system generally remained unequipped to deal with cases of domestic violence, the government, with the help of international and domestic NGOs, began training police, lawyers, and legal system officials in the 2007 law.

Officials increasingly acknowledged the existence of domestic violence as a significant social concern, and this was discussed more openly in the media. Domestic violence against women was considered common, although there were no firm statistics measuring the extent of the problem. Several domestic and international NGOs worked on the problem. Hot lines for victims of domestic violence operated by domestic NGOs existed in major cities. The Center for Women and Development, supported by the Vietnam Women's Union, also operated a nationwide hot line, although it was not widely advertised in rural areas. While rural areas often lacked the financial resources to provide crisis centers and domestic hot lines, the 2007 law established "reliable residences" allowing women to turn to another family while local authorities and community leaders attempt to confront the abuser and resolve complaints. Government statistics reported that approximately half of all divorces were due in part to domestic violence. The divorce rate continued to rise, but many women remained in abusive marriages rather than confront social and family stigma as well as economic uncertainty.

The government, with the help of international NGOs, supported workshops and seminars aimed at educating women and men about domestic violence and also highlighted the issue through public awareness campaigns. Domestic NGOs were increasingly engaged in women's issues, particularly violence against women and trafficking of women and children. A government-supported national center provided services to victims of trafficking, including a shelter and vocational training. The center was partly supported by foreign foundations and NGOs.

Prostitution is illegal, but enforcement was uneven. Estimates varied widely--the government reported more than 30,000 prostitutes, but some NGOs estimated that there were up to 300,000 in the country, including those who engaged in prostitution part-time or seasonally. As in past years, some women reportedly were coerced into prostitution, often victimized by false promises of lucrative employment; many more felt compelled to work as prostitutes because of poverty and a lack of other employment opportunities. There were fewer reports that parents coerced daughters into prostitution or made extreme financial demands that compelled them to engage in prostitution. The Women's Union as well as international and domestic NGOs engaged in education and rehabilitation programs to combat these abuses.

While there is no legal discrimination, women continued to face societal discrimination. Despite the large body of legislation and regulations devoted to the protection of women's rights in marriage and in the workplace, as well as labor code provisions that call for preferential treatment of women, women did not always receive equal treatment.

The act of sexual harassment is clearly defined; however, its prevention is not specified in legal documents. Ethical regulations for government and other public servants do not mention the problem, although it existed.

Victims of sexual harassment may contact social associations such as the Women's Union to request their involvement. In serious cases victims may sue offenders under Article 121 of the penal code, which deals with "humiliating other persons" and specifies punishments that include a warning, noncustodial reform for up to two years, or a prison term ranging from three months to two years. However, in reality sexual harassment lawsuits were unheard of, and most victims were unwilling to denounce the offenders publicly.

The Women's Union and the National Committee for the Advancement of Women (NCFAW) continued to promote women's rights, including political, economic, and legal equality and protection from spousal abuse. The Women's Union also operated microcredit consumer finance programs and other programs to promote the advancement of women. The NCFAW continued implementing the government's national strategy on the advancement of women by the end of 2010. Key areas of this strategy focus on placing more women in senior ministry positions and in the National Assembly. The strategy also focuses on increasing literacy rates, access to education, and healthcare.

71. The following is further information regarding violence against women obtained from the UK Home Office report for Vietnam, April 2008:

21.08 As recorded by Freedom House in its report, Freedom in the World 2007, "Many women are victims of domestic violence, and thousands each year are trafficked internally and externally and forced into prostitution." [29] The USSD Report 2007 stated:

"The law prescribes punishment ranging from warnings to a maximum of two years' imprisonment for 'those who cruelly treat persons dependent on them,' but the police and legal system generally remained unequipped to deal with cases of domestic violence. On November 21 [2007], the National Assembly passed the Law on Domestic Violence Prevention and Control, highlighting the issue and providing additional penalties for abusers and resources for victims. The new law specifies acts constituting domestic violence, assigns specific portfolio responsibilities to different government agencies and ministries, and specifies punishments for perpetrators of domestic violence, although these were considered to be vague. Implementing decrees were scheduled to be written and approved in 2008. Officials increasingly acknowledged the existence of domestic violence as a significant social concern, and this was discussed more openly in the media. Domestic violence against women was considered common, although there were no firm statistics measuring the extent of the problem." [2a] (section 5)

21.09 The report continued:

"Several domestic and international NGOs worked on the problem. Hot lines operated by NGOs existed in major cities for victims of domestic violence. While rural areas often lacked the financial resources to provide crisis centers and domestic hotlines, many villages established 'intervention groups' allowing women to live with another family while men in the women's families confront the abuser. Approximately two-thirds of divorces reportedly were due in part to domestic violence. The divorce rate continued to rise, but many women remained in abusive

marriages rather than confront social and family stigma as well as economic uncertainty. The government, with the help of international NGOs, supported workshops and seminars aimed at educating both women and men about domestic violence and also highlighted the issue through public awareness campaigns. In March [2007] the Vietnamese Women's Union opened up the government-supported national Center for Women and Development. The center provided services to victims of trafficking, including shelters and vocational training. The center was partly supported by foreign foundations and NGOs.” [2a] (section 5)

21.10 The USSD Report 2007 also noted, “By law it is a crime to use violence, threaten violence, take advantage of a person who cannot act in self-defense, or resort to trickery to have sexual intercourse with a person against that person's will. This appears to criminalize rape, spousal rape, and in some instances sexual harassment; however, there were no known instances of prosecution for spousal rape or sexual harassment. Other rape cases were prosecuted to the full extent of the law.” [2a] (section 5)

21.11 A report by the Canadian Immigration and Refugee Board (IRB) dated 16 March 2007 stated:

“Domestic abuse is reportedly widespread in Vietnam...The Women's Union reportedly found that about 40 percent of women have experienced abuse in the home. Also according to Viet Nam News, a survey reportedly conducted by a Vietnamese research organization found that 20 to 25 percent of families have reported incidents of domestic violence... Sources suggest that unless abuse results in ‘serious injury’, it is often accepted - by both men and women - as a ‘normal’ part of domestic life... Therefore, many Vietnamese believe that domestic violence refers only to ‘extreme physical violence’... Several sources highlight cultural attitudes related to the roles of men and women in Vietnam as a factor in the way spousal abuse is perceived in the country... Rather than face social stigmatization, some women remain in abusive relationships... spousal abuse is not generally considered to be a criminal act deserving of punishment to the same degree as other crimes... According to the results of a four-year research study on domestic violence in Vietnam... women who report domestic violence to the police are often encouraged to return home to reconcile with their partners... In general, police will not intervene in situations of domestic violence unless the victim specifically asks them to... the law forbidding spousal abuse is ‘only rarely enforced’” [6j]

21.12 The same report stated further:

“Non-governmental organizations (NGOs) have established some services for victims of domestic abuse... For example, a women's centre for counselling and healthcare runs a hotline that provides counselling to victims of domestic abuse... With the support of international donors, a provincial branch of the Women's Union is educating the public about spousal abuse, providing counselling to and intervention services for abused women, as well as running ‘husband and father’ clubs... There is a domestic violence hotline in Ho Chi Minh City, as well as several shelters - however these services are reliant on donor funding. Viet Nam News reports that the Women's Union supports ‘many’ projects to prevent domestic violence and help victims.”

### ***Household Registration***

72. A newsletter published on the VN LawFind website in January 2007 provided the following synopsis of the Law on Residence, which came into effect in Vietnam on 1 July 2007:

The law provides for the rights to reside freely in the territory of the Socialist Republic of Vietnam; the order and procedures for residential registration and control; rights and obligations of citizen, households, agencies and organisations in residential registration and control.

Residence is that a citizen lives in a location in a commune, ward, or district town permanently or temporarily. The Law on residence is applied to Vietnamese agencies, organisations, households and citizens, Vietnamese settling overseas but still retain their Vietnamese citizenship and come back to live in Vietnam.

Apart from regulations on rights and obligations of citizens on residence right, the Law on Residence also provides for registration of permanent and temporary residence, notice of residence, temporary absence declaration. Under the law, citizens shall register his permanent address in province where he has legal residence. In case citizens live in rented or borrowed residence or lives with other people, he shall get the written agreement of the owner, lender or host thereof.

In case of registering permanent address in a city directly under central governance, citizens are required to have legal residence and have been continuously residing for one years upwards in that city. In case the citizen lives in rented or borrowed residence or lives with other people, he/she shall get the written agreement of the owner, lender or host thereof. It is required to get agreement to enter into family record book by the person keeping such in case where wife comes to live with husband and vice versa; children come to live with parents and vice versa; people over working age, retiring from work, losing health retirement or being made unemployment come to live with his brothers or sisters...

The family record book is granted to each household. Each family shall appoint a person of full civil act capacity to become the householder to implement and instruct other members to obey the regulations on residential registration and control. If no member of the family is at 18 upwards or someone is at 18 upwards but his/her civil act capacity is lost or limited, one member in the family shall be appointed as householder.

...People living in same legal residence and having family relationship such as grandfather, grandmother, wife, husband, children, brothers, sisters, or grandchildren, etc. shall be granted with one similar family record book.

The law shall come into full force as from July 01, 2007 ('VnLawfind Legal Newsletter No. 48/2006' 2007, Vn LawFind website, 25 January  
<http://www.vnlawfind.com.vn/default.aspx?tabid=192&ID=4342&CateID=75>

73. No specific information was located in the sources consulted to establish that Vietnamese authorities currently withhold household registration from citizens who return to Vietnam after long absences, or after seeking asylum overseas.
74. In regard to the issue of Vietnamese citizens whose household registration is cancelled, a 2001 paper published by the Immigration and Refugee Board of Canada reported that Vietnamese citizens absent from their usual place of residence for more than a year may have their names removed from the household register by authorities. The same source indicates that persons returning to Vietnam after an absence from the country can apply to have their registration re-instated, but does not provide further details on the process by which this may be achieved:

If a citizen did not live in her/his residence continuously for one year, the government would remove her/him from the household registration. The individual may apply to be restored if

he/she is closely related to the Head of the Household (sibling, son or daughter, spouse, parent). 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 needs to return to Vietnam first before applying for his/her name to be restored. People who committed felonies or who are otherwise considered undesirable by the government would not be eligible (Immigration and Refugee Board of Canada 2001, VNM37802.E *Vietnam: Whether Vietnamese citizens or residents are required to cancel their Household Registration (ho khau) when leaving Vietnam to live abroad; whether the registration can be restored upon returning to Vietnam after two or more years of absence; grounds for refusal to issue a household registration to a returnee*, 16 October

75. Similarly, an article published on the Vietnamese *Saigon Giai Phong Daily* website on 29 June 2007 featured comments by Senior Lieutenant-Colonel Vo Van Nhuan, Head of the Police Bureau of Administrative Management on Social Order on the implementation of the Residence Law. The article included a reference to Article 2 of the 2007 Residency Law, indicating that persons who have their household registration cancelled after travelling overseas can apply to have it renewed:

My daughter went to study abroad in 2002 and her name was removed from the *ho khau*. Can she apply for a *ho khau* again when she returns to Viet Nam? What papers will be needed for the application?

Answer: Based on Article 2 of the Law on Residence, Vietnamese people who live in a foreign country but still retain their Vietnamese citizenship can apply for a *ho khau* when returning to the country to live (“Online Exchange between Police Leader and SGGP Readers about Residence Law Implementation” 2007, *Saigon-GP Daily*, 29 June, <http://www.saigon-gpdaily.com.vn/Law/2007/6/56583/#>

## **FINDINGS AND REASONS**

76. The applicant claims to have been born in Vietnam and to be a Vietnamese citizen. She travelled to Australia on a Vietnamese passport. Therefore the Tribunal accepts Vietnam as the country of reference.
77. The applicant has claimed that she faces a real chance of persecution if she returned to Vietnam because she is a woman who has left her husband and also because she would be imputed with a political opinion due to her father’s political opinion and activities.
78. The Tribunal accepts that the applicant was introduced to her husband by her aunt and that they were engaged in Vietnam and married in Australia in July 2003 after her arrival in the country in June 2003. The Tribunal accepts that initially the applicant’s relationship with her husband was good, however after a few months when she started working, things deteriorated. The Tribunal accepts that the applicant may have been subjected to financial, emotional and physical abuse from her husband and for this reason she decided to leave him in September 2004. The Tribunal accepts that the applicant did not disclose to her family the problems she experienced in her marriage until after she moved to Melbourne because she did not want to cause them any pain. However, by that stage her family had already learnt about her departure from her husband. The Tribunal accepts that the applicant’s husband may have made threats to her mother that if he found the applicant he would hurt her and then send her back to Vietnam. It also accepts that the applicant’s mother’s reaction to the news of

her separation was that she was very upset and angry with the applicant for running away from her husband.

79. The applicant claimed that she feared harsh treatment from her mother as a result of her leaving her husband because of her mother's feudalistic ideas and the fact she was a difficult person. The Tribunal accepts that applicant's mother may be a demanding individual and that she may be critical of the applicant's actions of leaving her husband. However, the Tribunal does not accept that any familial disapproval or problems that she may have with her mother because of her separation from her husband constitutes persecution within the meaning of the Convention. The Tribunal does not accept the applicant's assertions that her family will disown her and not allow her to return home. The Tribunal notes that the applicant has maintained regular communication with her family since she left her husband over 4 years ago. Although the Tribunal accepts the applicant's mother may have initially reacted to the news of her separation by stating that she would not allow her to come back, the Tribunal does not accept that if her family, and in particular her mother, had rejected her or intended to disown her, she would have continued to maintain regular contact with the applicant over all these years. However, even if the applicant's family did reject or disown the applicant if she returned to Vietnam, the Tribunal notes that such treatment is not regarded as persecution within the meaning of the Convention as it is purely a private matter. As the Court stated in *MMM v MIMA* (1998) 90 FCR,

Persecution for the purposes of the Convention connotes some official approbation of the feared conduct, or at least official failure or inability to do something about it, when the general standards of civilised countries would entitle the putative refugee to the protection of the State ... There is nothing in such general standards to suggest that adults not under a disability have such an entitlement when, for private reasons, their families reject them.

The Tribunal therefore does not accept that the applicant's fear that she would be rejected by her family is either well-founded or that it constitutes persecution.

80. In addition to her family, the applicant claims to fear harm from her former husband. As discussed above, the Tribunal accepts that the applicant's husband may have made a number of threats against the applicant when she first left him in September 2004. It also accepts that within the year that she left him, her husband may have continued to contact her family in Vietnam in an effort to intimidate and try to locate the applicant. However, the Tribunal does not accept that since that time the applicant's husband has been in contact with her family in Vietnam given that in the regular conversations the applicant has had with her mother, contact from her husband has not been mentioned. The Tribunal does not accept that because the applicant did not specifically ask her mother if her husband had called she was not made aware if he had or not. The Tribunal finds it implausible that the applicant's mother would not advise the applicant of any calls from her husband, especially if they were of a threatening nature. The Tribunal therefore finds that the applicant's husband has not demonstrated any interest in the applicant or her whereabouts since sometime in 2005. In light of this and the fact that it has now been over 4 years since she left her husband, the Tribunal does not accept that the applicant's husband would pursue the applicant in Vietnam, either himself or through a third party. The Tribunal finds the applicant's fear of what her husband might do to her if she returned to Vietnam is purely speculation particularly given that she has not had any contact with him since September 2004. The Tribunal therefore does not accept that there is a real chance that the applicant's husband would seriously harm her if she returned to Vietnam because she left him.



81. The applicant has also claimed that she would face persecution from the authorities and people around her because she had run away from her husband. She claimed she may be severely harmed and sexually assaulted by other men in Vietnam and the Vietnamese authorities and that she would be prejudiced against because she had left her husband. The Tribunal refers to the information put to the applicant in the hearing that divorce was on the rise in Vietnam and the fact that there was an absence of independent evidence to suggest that divorced or separated women were targeted in Vietnam for this reason. Although the applicant fears that she will face social discrimination, harassment and stigma to such a degree that it amounts to persecution on the account of the fact that she is permanently separated from her husband, the Tribunal has not identified any evidence to substantiate these claims. The Tribunal accepts that as a separated woman the applicant may suffer a level of shame, embarrassment and humiliation on account of her status, however the Tribunal does not accept that any emotional or social difficulties the applicant may face on account of her failed marriage amounts to serious harm within the meaning of s91R(2) of the Act. The Tribunal has taken into consideration the example provided by the applicant in the hearing of a woman in her neighbourhood who ran away from her husband and wandered around and was raped by a gang of drunk men. The Tribunal does not accept the applicant's situation is comparable given that she claimed the woman in her example was suffering a mental disorder and this would be the reason attributed to her wandering around and also being more vulnerable to such a heinous crime, as opposed to her status as being a divorce woman. On the basis of the absence of evidence that separated or divorced women in Vietnam are targeted for serious harm by either the authorities or the general public, the Tribunal does not accept that the applicant faces a real chance of being persecuted because she had left her husband.
82. The applicants' adviser has posited a number of particular social groups to which the applicant may belong, including "Vietnamese women victims of family violence"; "Vietnamese women who are separated/divorced"; "Vietnamese women who are separated/divorced and initiated the separation/divorce", "Vietnamese women without male protection"; and "Vietnamese women". Even if the Tribunal accepted that the applicant belonged to any of these particular social groups, the Tribunal is not satisfied on the evidence before it, and for the reasons discussed above, that there is a real chance that the applicant would be persecuted for reason of her membership of any such groups. The Tribunal therefore does not accept that the applicant's fear of persecution because she had left her husband in Australia is well-founded.
83. In the submission provided by the applicant's adviser on the morning of the hearing, a discussion of country information outlining the situation of domestic violence in Vietnam was included. When the Tribunal asked the applicant how this information was relevant to her situation given that her husband would be living in Australia and she was no longer with him, the applicant raised for the first time her experiences of violence within her family. The applicant claimed that her father was violent toward her mother as a result of the depression he suffered once he returned to Vietnam and it was possible that he could be violent toward her. She recounted an incident when she had told her father he was drinking too much alcohol and he had thrown a plate towards her. The Tribunal does not accept that the applicant has been a victim of domestic violence from her father. When the Tribunal discussed this further with the applicant, she spoke about her father beating her and her brother when they were growing up. The Tribunal finds that what the applicant is referring to is corporal punishment which her father used on his children as opposed to domestic violence. The Tribunal does not accept that the physical disciplinary action of the applicant's father against her and her

brother during her childhood constitutes serious harm within the meaning of s91R(2) of the *Migration Act 1958*. The Tribunal does not accept given the lateness of this claim and the nature of the evidence provided by the applicant in the hearing, that the applicant fears she will be subjected to domestic violence from her father are well-founded.

84. The Tribunal has taken into consideration the information provided by the applicant's adviser in relation to domestic violence in Vietnam generally. However, given that the applicant is no longer with her husband and that he is an Australian citizen who is residing in Australia, the Tribunal does not accept that this information is relevant to the applicant's circumstances. As the Tribunal has found above, the chance of the applicant's husband returning to Vietnam to harm her is remote, especially given that the applicant has not been in any contact with her husband over the last 4 years. The Tribunal therefore does not accept that there is a real chance that the applicant would be subjected to domestic violence either by her husband or her father if she returned to Vietnam.
85. The applicant also made claims in relation to being imputed with a political opinion against the Vietnamese government due to her father's political opinion and activities. The Tribunal accepts that the applicant's father fled Vietnam in 1989. However, the Tribunal does not accept that the applicant's father was politically active or had a political profile on the basis of the applicant's evidence. The Tribunal accepts that the applicant's father may not have been happy with the regime in Vietnam and that he decided he could not live in Vietnam anymore. Although the applicant claimed that in her eyes her father was a dissenter, the Tribunal finds that the applicant's father only voiced his opinions and dissatisfaction with the Vietnamese government to his family and friends. The Tribunal does not accept that her father had a political profile prior to his departure from the country.
86. The Tribunal accepts that life for the applicant, her mother and her brother may have been difficult after her father fled. The Tribunal notes the country information from the US Department of State 1993, *Country Reports on Human Rights Practices for 1992 – Vietnam* cited above, which discussed the fact that at that time there was still some discrimination in employment, education and social services against people with bad family backgrounds although it had decreased somewhat than in previous years. The Tribunal also accepts that the applicant's father may have experienced difficulties once he was returned to Vietnam in 1996 because he had fled the country. Yet the Tribunal notes the information from the Department of Foreign Affairs and Trade from 1999 which discussed the return of 110,000 people who left Vietnam as refugees to the country between 1996 and 1999 and confirmation from UNHCR officials that in the 40% of the returnees they were monitoring, there was no cases in which a returnee had complained of arrest, persecution or discrimination because of their political background or decision to flee. Despite this information, the Tribunal accepts that the applicant's mother may have experienced some difficulties finding employment during the applicant's father's absence and that the applicant and her brother may have been teased at school because of her father's departure from the country. The Tribunal also accepts that following the applicant's father's return her family may have initially continued to face discrimination because of his departure from the country. The Tribunal accepts that the applicant's father may have experienced some difficulty securing employment soon after his return to Vietnam because he had fled as a boat person. However, the Tribunal does not accept that the applicant's father's inability to gain employment has continued to be for reasons of his departure from Vietnam or an imputed political opinion rather than other issues such as the applicant's father's mental health, his age and the general labour situation in the country. Similarly, the Tribunal accepts that when the applicant's father returned to Vietnam

in June 1996 the police may have watched the applicant's family home and monitored his movements. However, the Tribunal does not accept that the monitoring or visits from the police have continued, as the applicant claimed. The Tribunal notes that the applicant was unable to state in the hearing how long the surveillance of her father persisted. Based on the Tribunal's finding that the applicant's father did not have a political profile, as well as the country information cited above in relation to the significance of bad family background in Vietnam, the Tribunal finds the applicant's claim that the authorities have continued to attend her home once a week to inquire about her father to be implausible.

87. The Tribunal notes despite the difficulties the applicant claimed her family experienced because her father had fled the country, the applicant's mother was able to earn money by selling items at the market whilst her father was out of the country and since his return. Although the applicant claimed that her mother had not been able to purchase a stall because of her father's anti-government political opinion, the Tribunal does not accept on the evidence before it that the inability to be granted such a licence was directly related to the applicant's father's departure from the country and not some other reason. The Tribunal notes that despite not having the licence for a market stall, the applicant's mother has continued to work selling items at the market to this day. Also, the applicant completed her schooling and subsequently undertook tertiary studies through Open University. She was also able to secure employment and work her way up in the organisation. Similarly, her brother had worked as a broker until recently. The Tribunal does not accept that the applicant's brother's recent loss of his job was connected to his family background or that he was not eligible to work in either the public or private sector as the applicant claimed. The Tribunal again refers to the country information cited above which provides that although a bad family background may make it significantly more difficult, and in some cases impossible, for such a person to obtain communist party or government posts, beyond this the consequences of such a background have abated to the point where they are likely to be no more than minor irritants, if at all. The Tribunal also finds the fact the applicant's brother had previously been employed as a broker for a number of years to be inconsistent with the applicant's claim that he had no right to work legitimately in Vietnam.
88. The Tribunal refers to the country information cited above which provides that bad family background has had no real effect on an individual in Vietnam since the late 1990's and that from 1999 people who were considered to have bad family backgrounds were no longer discriminated against. In light of the country information, and also taking into consideration the applicant's own experiences in Vietnam, the Tribunal does not accept that the applicant would be persecuted if she returned to Vietnam because of her father's profile or her family background. Although the applicant indicated in the hearing that she had experienced some difficulties getting documents certified by her local authorities, the Tribunal does not accept that any problems the applicant experienced was due to her family background, as she suggested, given the country information cited above. The Tribunal accepts that the applicant's husband may have had to pay some money to the authorities, which the applicant characterised as being a bribe, however the Tribunal finds that this payment may have been for numerous reasons including having the matter dealt with expeditiously.
89. The Tribunal does not accept that the applicant would experience any of the difficulties that her father experienced when he fled the country as a boat person in the 1980's given that their situations are in no way comparable. Whereas her father escaped the country as a refugee during a particularly volatile period in Vietnam's history, the applicant left legally for the purpose of marrying in Australia. The applicant's current situation is vastly different from her

father's situation when he departed the country nearly 20 years ago, as are the conditions in the country. The Tribunal therefore does not accept that the applicant's departure from the country would be considered to be a political act or that she would be imputed with an anti-government political opinion. The Tribunal does not accept that the applicant would not be able to get a job if she returned to Vietnam because of her bad family background. The Tribunal notes that the applicant has worked in the past in Vietnam, as has her brother and mother. Although the applicant claimed she only got her job because the owner of the company's wife was her neighbour, the Tribunal notes that this appears to be consistent with the applicant's own evidence that having the appropriate connections assists in finding employment in Vietnam, especially during difficult economic times. The Tribunal does not accept based on the country information or the applicant's family's experiences that the applicant would be denied employment for a Convention reason if she returned to Vietnam.

90. The applicant has also raised her removal from her family's household registration as evidence that she is suspected of being against the government. The Tribunal refers to the country information cited by the applicant's adviser, and which is included above, which states that any person who fails to live continuously at their address for one year is removed from the registry. The same source provides that such people can apply to have their registration restored after returning to Vietnam. Further information provided by the head of the Police Bureau of Administrative Management on Social Order in an article published on the Saigon Giai Phong Daily on 29 June 2007 in response to a query about Vietnamese people who go overseas to study, was that Vietnamese People who lived in a foreign country but still retained their Vietnamese citizenship would apply for their household registration when returning to the country to live. Based on the independent information, the Tribunal finds that the removal of the applicant's name from her family's household registration was consistent with normal practice and if the applicant returned to Vietnam, she would be able to apply for her household registration to be reinstated. Although the applicant has claimed that she did not believe she would be able to obtain her household registration due to her long absence from the country and her family's anti-government status, or if she did, it would be an incredibly long process and she would be required to pay a bribe, the Tribunal finds these claims to be purely speculation and not supported by the independent evidence. The Tribunal also does not accept that the applicant's circumstances are analogous to her father's situation when he returned to Vietnam 20 years ago. Based on the above, the Tribunal therefore does not accept that the applicant would be refused her household registration if she returned to Vietnam and subsequently denied anywhere to live or any of the other rights that are associated with the household registration because of an imputed political opinion or for any other Convention reason.
91. The applicant has not raised any claims in relation to her health as a result of being diagnosed with Tuberculosis. The Tribunal notes that the applicant has received treatment and completed the full course of her medication and her physical health had completely improved. The Tribunal has therefore not considered the applicant's health as an issue which may give rise to a claim for protection.
92. Considering the applicant's claims individually, as well as cumulatively, the Tribunal does not accept that there is a real chance that the applicant would face persecution, now or in the reasonably foreseeable future, if she returned to Vietnam for reasons of her membership of any particular social group arising out of her separation from her husband in Australia or for an imputed political opinion based on her father's departure from Vietnam in the 80's or her

own relatively recent legal departure from Vietnam to marry her husband. The Tribunal finds that the applicant's fear of persecution is not well-founded.

### **CONCLUSIONS**

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

### **DECISION**

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

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 Officers ID: RCHADW