

1112951 [2012] RRTA 281 (1 May 2012)

DECISION RECORD

RRT CASE NUMBER:	1112951
DIAC REFERENCE(S):	CLF2011/88643
COUNTRY OF REFERENCE:	Syria
TRIBUNAL MEMBER:	Shahyar Roushan
DATE:	1 May 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

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 Syria, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2010 and applied to the Department of Immigration and Citizenship for the visa [in] June 2011. The delegate decided to refuse to grant the visa [in] November 2011 and notified the applicant of the decision.
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] December 2011 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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.

Complementary protection criterion

19. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).
20. ‘Significant harm’ for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. ‘Cruel or inhuman treatment or punishment’, ‘degrading treatment or punishment’, and ‘torture’, are further defined in s.5(1) of the Act.
21. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

22. 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.

Protection Visa Application

The Form

23. According to the information provided in the applicant’s protection visa application, he was born in [Town 1], Syria in [date deleted: s.431(2)]. He lists his profession before coming to Australia as ‘student’. He was an army ‘conscript’ from May 2005 to June

2007. He states that he resided at a single address in Syria from January 2000 to October 2010. He departed Syria legally using a passport issued in his own name.

Written Statement

24. In a statement attached to his application for a protection visa, the applicant made the claims set out below:

...

5. I am a Druze and remain a committed member of my faith.
6. I arrived in Australia [in] October 2010, on a student visa. I am currently [studying] at [State 2] TAFE.
7. My parents and 6 siblings continue to reside in Syria. I also have one [sibling] who resides in [City 3] and is an Australian citizen.
8. Between the periods May 2005 until June 2007, I had completed national military service.
9. However, given the current political violence I have been recalled as I am a reservist.
10. I do not wish to complete military service because I oppose the current regimes mistreatment of political dissidents. I did not wish to serve a regime which slaughters its own people.
11. I fear that if I return to Syria I will be immediately detained by the Syrian authorities and suffer severe mistreatment amounting to persecution because of my objection to complete military service.
12. I will suffer mistreatment because of my political views and regarded as a political dissident.
13. Since the political uprising calling for the ousting of the current regime, Syrian military have been used by the central authorities to quash the demonstrators. They have inflicted over 1500 deaths and many thousands more have been injured. The Syrian army has turned against its own people, brutally clamping down on protestors.
14. Accordingly, I do not wish to serve a regime which has lost its legitimacy and turns its guns on its own people.

Departmental Interview

25. The applicant was interviewed by a delegate of the Minister [in] October 2011. The Tribunal has listened to the audio recording of the interview and what follows is a summary of the applicant's oral evidence to the delegate.
26. The applicant stated that his brother who was studying at the university has been called to complete his compulsory military service. He stated that his family's situation in Syria was 'good' and he had nothing to add in that regard.
27. The applicant stated that before he came to Australia, in about September 2010, the police went to his house and told him that he had to serve in the army if he was called.

He was told that he had to be ready at any time. He explained that he was given a secret name and told that when he hears the name being called in the media he would have to be ready to serve. About two months before the interview, the police went to his house and asked about him. This meant that they wanted to take him away to serve in the army. He was not sent any documents or letters. Usually when the police come to notify someone about a recall, the person has to sign a paper as proof that he has been notified.

28. The applicant stated that he would have served in the army if Syria had to fight a foreign country. However, if he were to go back he would have to defend the President who is killing the demonstrators.
29. The applicant stated that in July or August 2011, he posted a video critical of the Syrian government on Facebook. However, he took it down after he was advised by a friend that this may cause a problem for his family.
30. The applicant stated that a pro-government rally was organised in [City 3], but not many people attended. In connection with the rally, the government took statements or information from people about other Syrians who did not attend the rally. They drew the conclusion that those who did not attend were anti-government.
31. The applicant stated that if he were to return to Syria he will be asked why he did not return earlier to serve in the army and he will be labelled a traitor. He will be told that he knew he was going to be called but he did not return. He explained that one needs not oppose the regime. Not expressing support for the regime is sufficient to attract punishment.
32. The applicant stated that his brother is fine because his father paid money to have him transferred [to Damascus] which is safer.
33. The applicant stated that other than what is stated in his claims, he has no interest in politics or religion.

The Delegate's Decision

34. The delegate found that the applicant's underlying reason for objection to military service is his political opinion. However, he found that there was insufficient evidence to support the applicant's claim that he will be called upon to serve as a reservist or that he will be targeted as a traitor because he had remained overseas instead of returning to support the regime. The delegate found that the applicant has received no threats and his family in Syria have not been subjected to ill treatment due to the applicant's failure to attend a pro-government rally in [City 3] or because he had briefly posted a video on his Facebook page. The delegate found the applicant's fear of persecution is not well-founded.

Application for Review

35. The applicant was represented in relation to the review by his registered migration agent.

The Hearing

36. The applicant appeared before the Tribunal via video link-up from [City 3] [in] February 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. Due to problems relating to the standard of interpreting, the Tribunal adjourned the hearing. The hearing resumed [in] March 2012 with the assistance of a different interpreter in the Arabic and English languages
37. The applicant was asked about the preparation of his application for a protection visa. He stated that he was assisted by his representative in completing his application for a protection visa and the accompanying statement. He confirmed the accuracy of the contents of both documents and stated that he did not wish to change any of the information contained therein.
38. The applicant stated that he was born in [Town 1] in [date deleted: s.431(2)]. He resided at the family home with his family until 2004 when he moved to a flat in [Town 1]. He resided at that apartment until his departure from Syria. He explained, however, that occasionally he resided with friends in Damascus. He stated that he first arrived in Australia in November 2007 and remained for about 5 months. He returned to Australia in October 2010.
39. The applicant stated that he completed high school in [Village 4] and in 2004 entered university in Damascus. However, he resided mainly in [Town 1] as it was expensive to rent a flat in Damascus. He only spent three days a week at university and during these periods he either commuted from [Town 1] or stayed with friends in Damascus. The applicant stated that he did not complete his [Bachelor degree] because in May 2005 he was called to serve his compulsory military service. He completed the service about 2 years and 1 month later. Following his discharge in June 2007, he intended to return to university. Instead, however, he decided to leave the country.
40. He was asked about his military service. He stated that he served in the Special Forces. It is one of the most difficult regiments to serve in. This regiment is usually required to engage in combat and was responsible for invading Lebanon 30 years ago. He stated that he did not like serving in the army because he did not like the hardship he was subjected to.
41. He was asked about his family. He stated that his father is currently working in [another country] and his mother continues to reside in [Village 4]. He has [seven siblings]. He stated that one of his [brothers] is currently serving in the army and [another one of his siblings] is in Australia.
42. The applicant stated that [his brother] was called to perform his compulsory military service. He is currently based in Damascus. He explained that [his brother] was studying at university when he was called to serve. He has been allowed to return to university in order to sit his exams. He stated that because his brother is based in Damascus, he is under less pressure.
43. He was asked whether he was ever a member of or associated with any political or religious party, movement or organisation. He said he was a member of Baa'th at

university as membership is compulsory in Syria. However, he was not active and disliked the party.

44. The applicant was asked if he has in fact been recalled as a reservist. He stated that when one applies for a passport one needs to get a letter from his military camp for the passport office. Under Syrian law one has to inform the authorities when one departs Syria, as well as when a person intends to remain overseas for 3 months. He had to watch out in case he was recalled through the TV. Before he departed Syria again in 2010 he did not notify the authorities because he did not think that the country will undergo the crisis it is currently experiencing. During the last few months the military police went to his house asking about him. However, they did not tell his parents why they wanted the applicant. He was asked how he knew he was wanted in order to serve in the military. He said he was not sure. A few days before he departed Syria, he was told that he has been called as a reservist and he had to sign a document. He then departed as soon as he could. The Tribunal noted that Syria was not experiencing problems around October 2010. He was asked why he had been recalled at that time. He stated that it was a routine that happened all the time. People are either called to serve in the army and there is no point in arguing with the authorities.
45. The Tribunal asked the applicant why he had told the delegate that he had been recalled in July or August 2010. He explained that the authorities visited his house twice. The second time the authorities had visited his house he had travelled to Jordan on two separate occasions in order to sit for his IELTS test and collect his result. Upon his return to Syria on each occasion, he was questioned by the authorities because they thought he wanted to go to Israel. They also asked him why he wanted to migrate to the UK. In fact, he had only visited the British Council to book his IELTS test. The Tribunal again asked the applicant why he had told the delegate that he had been recalled in July or August 2010.
46. The applicant was asked why he did not want to return to Syria. He stated that if he were to return to Syria he will be asked why had opposed the regime and wrote about the regime on Facebook. He has recently heard that a number of soldiers had been shot dead because they had refused to serve. He stated that he fears being questioned and mistreated for opposing the regime.
47. The applicant was asked why the authorities will perceive him to be anti-regime. He stated that he wrote about the regime and posted photographs on his Facebook page. A friend told him that he should be fearful for his safety and the safety of his family. He took off the material from his Facebook page after a week. It is illegal for any Syrian citizen to oppose the government. He was asked why he believed that the material he posted a year ago may have come to the attention of the authorities. He stated that the authorities rely on their investigations. His uncle in [Australian city deleted: s.431(2)] opposes the regime and he has been told that his uncle's name is on a black list and he is not allowed to return to Syria.
48. He was asked about the rally in [City 3]. He stated that a rally supporting the Syrian government took place in May or June 2011. The rally was organised by pro-Syrian organisations. The rally was filmed and the video was sent to Syria. The applicant did not attend the rally. He is concerned, however, because the government would be able to recognise those who are opposed to and those who support it. Everyone knows that he is opposed to the regime and that he did not participate in the rally. He was asked

why the Syrian authorities would think that the reason he did not attend the rally was because he is opposed to the regime. He stated that he had expressed his opinions to other Syrians who were now aware of his views. All Syrian returnees are stopped at the airport and questioned about the place they were residing in and their activities.

49. He was asked if his family has been subjected to harm or harassment. He said 'no'.
50. The Tribunal put to him that he has provided no evidence to show that he had been called as a reservist. He stated that if one is called to the army, he has to report immediately. No one is allowed to oppose that. Many thousands have been killed and thousands more have been displaced. He stated that the President is running the country, his brother is running the army and his wife is running the ministries. He does not want to serve these people. He stated that the government wants him to appear on TV and denounce everything. The government is killing people and he does not want to kill anyone or anyone to kill him.
51. It was put to the applicant that under Syrian law he would have been required to obtain permission or exemption from the authorities in order to leave. He stated that as soon as he obtained his visa, he left the country and did not require an exemption.
52. The applicant's representative reiterated the arguments put forward in his submission of [March] 2012. It was submitted that, given the current events, the applicant is likely to be called as a reservist and the applicant is politically opposed to the regime's slaughter of its own people. The applicant does not wish to put himself in the position of being an instrument of oppression. He was prepared to complete his compulsory military service previously because the circumstances in Syria were different at that time. The applicant objects to serving in a military which is turning its weapons against its own people. If the applicant were to voice his objection, he would be killed as country information would show.

Evidence from other Sources

53. The following extract from the International Crisis Group's (ICG) Policy Briefing on Syria chronicles and details the escalating Syrian regime repression and human rights violations:

[T]he regime has dramatically escalated its repression. For the past several weeks, it has undertaken military operations designed to crush armed resistance, which itself had intensified in reaction to the security services' brutal suppression of protesters. It has used heavy weapons against residential areas, trapping civilians in the crossfire. In Ba-ba 'Amro, a tightly-knit conservative district of Homs, a month of relentless bombing forced opposition armed groups to retreat, leaving the area destroyed and deserted; although civilians presumably were not specifically targeted, the regime made no serious effort to spare them, nor has it shown any concern for residents displaced by the confrontation. In many parts of the country over which it recently has regained control, there is evidence of extensive looting by loyalist troops.

Allegations of summary killings, disappearances, arbitrary arrests and other forms of abuse are as rampant as they are difficult to document. But it is even more difficult to identify a single regime measure designed to alleviate the suffering of beleaguered communities; instead, army troops and security services have carried out operations that are tantamount to collective punishment.

Over time, the regime's modus operandi has shifted. In the conflict's early stages, it held back its security forces to some degree, although this was overshadowed by the routine beating of demonstrators, torture of detainees, overreaction to genuine threats and deliberate provocation of incidents in order to justify opening fire. During this period, protests by and large were gaining momentum, questioning the regime's viability and causing considerable anxiety within its ranks.

Mid-summer 2011 marked the transition to what is known as the security solution – namely, the regime's decision to give security services a freer hand to contain and roll back the popular movement. They attempted to do so by compartmentalising the territory through a network of check-points; stimulating sectarianism to strengthen communal divisions; and using scare tactics to reinstate the wall of fear. The tactics largely backfired. Protesters redoubled efforts to bridge geographic, social and confessional boundaries and developed an increasingly sophisticated culture of dissent, in which singing, dancing and political wit were deployed as counterpoints to the regime's crude methods. In tandem, armed opposition groups gradually organised themselves to protect areas in which such irreverent displays could proceed. Fighting back lightly-armed security personnel and their civilian proxies (known as shabbiha), these anti-regime neighbourhood vigilantes were joined by a small, steady stream of army defectors.

As they grew in number and confidence, these opposition groups increasingly went on the offensive, weeding out inf[Village 4]ts, tracking snipers, attacking checkpoints and ambushing busloads of loyalist troops. In central Syria in particular, they also became caught up in communal strife, as predominantly Sunni armed groups faced off with pre-dominantly Alawite security forces, shabbiha and their own, pro-regime neighbourhood vigilantes. Tit-for-tat killings ebbed and flowed but progressively became a daily pattern. The criminalisation of elements within both the security services and opposition, searching out and preying on new resources in an emerging 'economy of violence', took several forms, notably kidnapping for ransom and car-jacking. Contrary to regime claims, religious fundamental-ism at this stage, though present, was not a prevalent feature of the opposition.

While activists clung to a virtuous narrative, emphasising peaceful protests and ignoring these more ambiguous trends, the regime did precisely the opposite. The picture it painted had it struggling to restore law and order, and it blamed the deteriorating situation on virtually everything – extremism within society, foreign media fanning the flames and a global conspiracy – save its own security personnel's behaviour.

By early 2012, pressure was building both from within the regime's ranks and from its social base to hit even harder and crush the unrest. Army units carried out military operations, first in the vicinity of the capital then at flashpoints throughout the country in order to reclaim territory that had escaped regime control. By deploying elite units with overwhelming firepower, the regime soon was in a position to declare a string of 'victories' against a ragtag, ill-equipped and scattered insurgency. But this apparent success concealed deep-seated problems. The fighting came at a huge cost to civilians and, in its aftermath, security forces engaged in widespread abuse, further radicalising large swathes of society.

Under such conditions, it is highly difficult to imagine a return to normalcy. Residents, viewing the presence of ruthless, sectarian security forces as akin to a foreign occupation, presumably will subject them to sniper attacks and ambushes. In turn, security forces will resort to yet more arrests, disappearances and killings. All of which looks likely to fuel a drawn-out insurgency/counter-insurgency struggle.

In the process, there is reason to believe the armed opposition groups themselves may have begun to change. They initially grew out of a peaceful protest movement that sought protection from the security services; in that sense, their legitimacy derived from a popular mandate of sorts. Although some elements engaged in criminal activity and perpetrated inexcusable acts of violence, their behaviour for the most part was constrained by the need to safeguard civilians, defend the aforementioned 'culture of dissent' and assist in the overarching, legitimate goal of toppling the regime by demonstrating its lack of support on the streets. This implicit understanding appears to be coming to an end.

As the regime, feeling emboldened, systematically targets opposition strongholds and suppresses all forms of protest, armed opponents are likely to adopt new methods and increasingly rely on guerrilla warfare. Under this scenario, they will retreat when loyalist troops prove overwhelming, redeploy to other areas and spoil whatever 'progress' the regime will claim to be making, following a pattern witnessed in other insurgency/counter-insurgency dynamics. Indeed, even as the regime effectively shrinks the space available for peaceful protests, it will be unable to reduce the armed groups' manoeuvring room as long as it cannot normalise relations with the communities within which they evolve.

The growing disconnect between an insurgency and a popular movement which to date had been deeply intertwined could have serious repercussions, a fear shared by anti-regime activists in Syria and abroad. It could produce an even more scattered armed opposition (in the absence of a clear collective project) with a more pronounced religious ideological underpinning (for lack of an alternative overarching narrative) and resorting to more extreme forms of violence (in light of the failure of all other options and as the image of a peaceful popular uprising gives way to the reality of a ruthless struggle to the bitter end). Should religiously-oriented Gulf states and Islamist networks come to play a predominant role in arming or supporting the opposition, as is very possible, there is every reason to believe they will play an equivalent role in shaping its ideological outlook as well.¹

54. The UN Human Rights Council provides the following more specific information in relation human rights abuses in Syria:

47. The crackdown on peaceful protesters and raids on neighbourhoods suspected of supporting the opposition continued. The commission received additional accounts of military, security forces and Shabbiha using live ammunition against unarmed protesters. Defectors indicated that soldiers continued to receive 'shoot to kill' orders. The Government also carried out reprisals in response to opposition calls for strikes. Participants in strikes on 11 December 2011 in Rif Dimashq and on 24 January 2012 in Hama were attacked by State forces...

52. In practice, freedom of expression and information has continued to be severely restricted. The Government systematically uses censorship and the arbitrary denial of media licenses to control the media. Journalists and bloggers who have expressed dissenting views have been harassed, dismissed from Government jobs, arbitrarily arrested and detained...

58. The Government has continued to arbitrarily arrest and detain suspected protesters, opposition activists, human rights defenders and deserters. Arbitrary arrests typically were not formally acknowledged and suspects were often held

¹ International Crisis Group 2012, *Policy Briefing: Syria's Phase of Radicalisation*, 10 April

incommunicado without their families being notified about their arrest or whereabouts.

59. Arbitrary arrests across the country followed similar patterns. During protests, military and security forces would often encircle the protesters. Those arrested, including the wounded among them, would be transported in Government buses and trucks to detention centres operated by security agencies, sometimes after being temporarily held in facilities such as sports stadiums or schools. In addition, soldiers and security agents often carried out arrests at checkpoints on the basis of lists of wanted persons prepared by the local security branch.

60. More large-scale raids were conducted, especially in areas where defectors are presumed to be hiding or in areas perceived as being sympathetic to the protesters. The regular army normally cordoned off the area before security forces or elite army units, sometimes accompanied by Shabbiha, carried out house-to-house searches. In such raids, women were targeted for arbitrary arrest and detention, in many cases also to force male relatives to turn themselves in. Many women also emphasized the traumatic invasion of their privacy when security forces raided their houses, typically at night, and vandalized or looted their personal possessions.

61. The commission received additional testimonies from persons who, long after their family members were arrested, had received no information from the authorities or through informal channels about where their family members were and whether they were still alive. The commission remains concerned about such cases of enforced disappearance.

62. Torture in places of detention continued. Victims and witnesses provided credible and consistent accounts of places and methods of torture...

63. Security agencies continued to systematically arrest wounded patients in State hospitals and to interrogate them, often using torture, about their supposed participation in opposition demonstrations or armed activities. The commission documented evidence that sections of Homs Military Hospital and Al Ladhqiyyah State Hospital had been transformed into torture centres. Security agents, in some cases joined by medical staff, chained seriously injured patients to their beds, electrocuted them, beat wounded parts of their body or denied them medical attention and water. Medical personnel who did not collaborate faced reprisals.

64. The above campaign has created a climate of fear. Doctors operated clandestinely on patients facing arrest and hospitals did not keep operated patients for post-surgical care. Some women chose to give birth in unsafe conditions rather than go to a State hospital. In many places of unrest, civilians set up clandestine field hospitals with volunteer practitioners, rudimentary equipment and medical supplies smuggled from abroad, donated by concerned citizens or diverted from State hospitals.

65. The commission received frequent accounts of security officials threatening men with the rape of female relatives.

66. On 19 January 2012, the Government informed the League of Arab States observers that it had released 3,569 detainees under the amnesty declared on 15 January. The observers were able to verify the release of 1,669 detainees under the said amnesty.

67. Given the large number of arbitrary arrests and the fact that most arrests and releases have occurred outside formal procedures, it is difficult to determine with any

degree of certainty how many people remain in detention. The commission has requested the Government to provide pertinent figures.

68. According to the Violations Documenting Centre, which gathers the names of detainees and the place and date of their arrest from families and local coordination committees, more than 18,000 detainees, including more than 200 women and girls and more than 400 boys, remained in detention at 15 February 2012.

69. Armed groups, including FSA groups, carried out abductions. In some instances, victims were killed or tortured.

70. The Government informed the commission that, between 15 March and 19 December 2011, 666 civilians, 70 soldiers and 164 police officers were abducted. According to the Government, between 23 December 2011 and 10 February 2012 a further 506 military and security personnel were abducted.²

55. In relation to military service, According to a 2007 Immigration and Refugee Board of Canada (IRBC) research response, Article 40 of the 1973 Syrian Constitution states that ‘military service is compulsory and regulated by law’.³ Syrian males are required to register for military service upon reaching the age of 18 and may complete military service from 18 to 42 years of age.⁴ Exemptions are provided for males who are the only son in a family, have health problems, are studying or are living abroad.⁵ In March 2011, Syrian President Bashar al-Assad issued Legislative Decree No.35, which reduced the duration of military service from 21 months to 18 months for men who had completed the fifth grade, effective 1 June 2011.⁶ The period of mandatory military service for men who have not completed the fifth grade is 21 months.⁷
56. An October 2011 Middle East Reporter article points out that ‘even before the uprising began in Syria in mid-March, the structure and strength of Syria’s army was shrouded in mystery’⁸
57. A 2007 statement from a Canadian Embassy Official in Damascus to the IRBC indicates that the Syrian government considers individuals who have completed

² Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/19/69, 22 February 2012.

³ Immigration and Refugee Board of Canada 2007, *SYR102395.E – Syria: Compulsory military service, including age limit for performing service; penalties for evasion; occasions where proof of military service status is required; whether the government can recall individuals who have already completed their compulsory military service*, 8 March http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=451040&l=e ; and War Resisters International 1998, *Syria – Conscription*, 25 April http://www.wri-irg.org/programmes/world_survey/reports/Syria

⁴ Arwashan, Naji 2008, ‘When can I pay back the badal?’, *Honorary Consulate General of Syria in Detroit eNewsletter*, Vol.1, No.10, 21 June <http://www.syrianconsulate.org/Newsletter/10-062008.pdf>; US State Department 2011, *Background Note: Syria*, 18 March <http://www.state.gov/r/pa/ei/bgn/3580.htm>; Immigration and Refugee Board of Canada 2007, *ibid*.

⁵ Immigration and Refugee Board of Canada 2007, *ibid*; US State Department 2011, *ibid*; Coalition to stop the use of Child Soldiers 2008, *Child Soldiers Global Report – Syria*, Refworld website, 20 May <http://www.unhcr.org/refworld/docid/486cb134c.html>

⁶ ‘Legislative Decree reducing mandatory Syrian Military Service’ 2011, *SANA*, source: *Dp-news*, 20 March <http://www.dp-news.com/en/detail.aspx?articleid=78445>; US State Department 2011, *Syria – Country Specific Information*, 12 July http://travel.state.gov/travel/cis_pa_tw/cis/cis_1035.html.

⁷ US State Department 2011, *Syria – Country Specific Information*, *ibid*

⁸ The Middle East Reporter 2011, *The Syrian Army*, 22 October.

military service to be ‘reservists’, in that they are able to be recalled for military service:

The Canadian Embassy Official stated that the government can recall individuals who have already completed their military service.⁹

58. A 2004 report from the Swedish Embassy in Damascus states that ‘Generally, there is no reserve service’, unless the government believes that the political situation warrants recalling ‘reservists’¹⁰ The report states that:

Generally, there is no reserve service. However, there may be during these political situations. For instance, during the Iraq war last year, there was no reserve service. In case there is reserve service, it is for not more than three months. Notification is through an individual note as in the case of mandatory service.¹¹

59. In 2011, Weiss, *AFP* and *The Christian Science Monitor* reported that the Syrian government had recalled reservists in the wake of the Syrian uprising, which supports the applicant’s claim that he could be recalled to serve as a reservist.¹² However, this 2011 recall reportedly had mixed success with ‘credible evidence’ suggesting that the regime was ‘unable to call back more than 60 per cent of its reserves’.¹³

60. Available information suggests that reservists have been intentionally inaccessible in order to evade recall. The most frequently reported reason given for deserting or defecting from the Syrian army is a refusal to perpetrate violence against the civilian population.¹⁴ Sectarian divisions in Syria are also a key reason why reservists have evaded recall – Syria is a Sunni majority country and STRATFOR reports that Sunni conscripts, faced with fighting against their ‘coreligionists’, have been deserting or defecting to the Free Syrian Army’¹⁵

⁹ Immigration and Refugee Board of Canada 2007, *ibid*.

¹⁰ Swedish Embassy in Damascus 2004, ‘Request for military service in Syria’, Swedish Migration Board website, 22 April http://translate.googleusercontent.com/translate_c?anno=2&hl=en&rurl=translate.google.com.au&sl=sv&tl=en&twu=1&u=http://lifos.migrationsverket.se/dokument%3FdocumentAttachmentId%3D34057&usg=ALkJrhjii52gTsemJs2ZV-o8mQW7rFocCw

¹¹ Swedish Embassy in Damascus 2004, *ibid*.

¹² Weiss, Michael 2011, *Safe Area for Syria: An Assessment of Legality, Logistics and Hazards*, Foreign Policy website, 24 December, pg.10

http://www.foreignpolicy.com/files/fp_uploaded_documents/111228_intervention_Syria_paper_.pdf; Peterson, Scott 2011, ‘We were ordered to shoot on the people’, *The Christian Science Monitor*, 13 June <http://www.csmonitor.com/World/Middle-East/2011/0613/Syrian-Army-deserter-We-were-ordered-to-shoot-on-the-people>; ‘Despite cohesion, Syria regime could fall’ 2011, *AFP*, 19 June http://www.google.com/hostednews/afp/article/ALeqM5jrD6bDpjfp9_bYAhpVGsmn2Tv8g?docId=CNG.3c87464718e1d06029b507a4b825c92c.811

¹³ Weiss, Michael 2011, *ibid*.

¹⁴ Bilefsky, Dan 2012, ‘Soldier Says Syrians Atrocities Forced Him to Defect’, *The New York Times*, 1 February http://www.nytimes.com/2012/02/02/world/europe/soldier-says-atrocities-made-him-a-syrian-defector.html?_r=1&pagewanted=all; Fordham, Alice 2012, ‘Syrian defectors call for international help’, *The Washington Post*, 8 January http://www.washingtonpost.com/world/middle_east/syrian-defectors-call-for-international-help/2012/01/05/gIQA0ikfP_story.html; Human Rights Watch 2011, *By All Means Necessary*, December, pp.8-9 http://www.hrw.org/sites/default/files/reports/syria1211webwcover_0.pdf.

¹⁵ ‘Despite cohesion, Syria regime could fall’ 2011, *AFP*, 19 June http://www.google.com/hostednews/afp/article/ALeqM5jrD6bDpjfp9_bYAhpVGsmn2Tv8g?docId=CNG.3c87464718e1d06029b507a4b825c92c.811; STRATFOR 2012, *The Use of Mercenaries in Syria’s Crackdown*, 12 January <http://www.stratfor.com/analysis/use-mercenaries-syrias-crackdown>.

61. Although no specific reports were found where reservists faced punishment or ill-treatment for failing to respond to the government's recall, Weiss states that an 'unpleasant' jail sentence faces any soldier who is 'absent without leave'.¹⁶ Human Rights Watch reports that 'the consequences for disobeying orders (in the army)...have been severe', with defectors claiming that they witnessed officers or intelligence agents killing military personnel who refused to follow orders and were themselves detained and tortured for disobedience.¹⁷ The Syrian government has also reportedly sought to keep soldiers' families in Syria and threatened to 'punish' such family members should soldiers defect.¹⁸ Yet despite the threat of such punishments, on 9 February 2012, Weiss reported that an estimated two-thirds of army reservists had failed to report for call-up duty.¹⁹ Of note, Sarah Leah Whitson, Director of the Human Rights Watch Middle East team, reported the following to *The Washington Post*:

'What we hear from soldiers is fear, fear of retribution,' she said, citing an incident in Jabal Zawiya in Idlib province on Dec. 20 in which more than 100 soldiers were reportedly killed after attempting to defect.

'I hear — not just from soldiers, but also from diplomats — that we're not seeing defections because the Assad regime has made sure that their family members always remain in the country,' and people fear their families will be harmed if they desert their posts, Whitson said.²⁰

62. A January 2012 *Reuters* interview with General Mostafa Ahmad al-Sheikh, 'the most senior commander to abandon the Syrian military', provides some information on the possible whereabouts of reservists who have failed to report for the recall.²¹ According to Sheikh, 'most deserting soldiers have not taken up arms against pro-Assad forces' because 'their primary concern has been to evade capture by secret police units in charge of stifling dissent within the military'.²²

FINDINGS AND REASONS

63. The applicant travelled to Australia on a valid passport issued by the Syrian Arab Republic. Having sighted a copy of the applicant's passport on the department's file, the Tribunal accepts that the applicant is a national of Syria.
64. The applicant claims that he does not wish to return to Syria because, as a reservist, he will be recalled to serve in the army and forced to kill or harm other Syrians. He does not wish to engage in this conduct and fears being killed or harmed by the Syrian authorities if he disobeyed their orders.
65. The Tribunal did not find the applicant's evidence at the hearing regarding his reasons for not wishing to serve in the army entirely convincing. More specifically, he did not present a compelling case that he objected to serving as a reservist because of his

¹⁶ Weiss, Michael 2012, 'The Syrian rebels' war of attrition', *The Telegraph* news blog, 30 January <http://blogs.telegraph.co.uk/news/michaelweiss/100133520/the-syrian-rebels-war-of-attrition/>.

¹⁷ Human Rights Watch 2011, *By All Means Necessary*, December, p.8 http://www.hrw.org/sites/default/files/reports/syria1211webwcover_0.pdf.

¹⁸ Weiss, Michael 2012, *ibid*; Fordham, Alice 2012, *ibid*

¹⁹ Weiss, Michael 2012, *ibid*

²⁰ Fordham, Alice 2012, *ibid*

²¹ Oweis, Khaled Yacoub 2012, 'Syria's army weakened by growing desertions', *Reuters*, 13 January <http://www.reuters.com/article/2012/01/13/us-syria-defections-idUSTRE80C2IV20120113>.

²² *Ibid*.

express or imputed political opinion. The Tribunal also found his evidence regarding the authorities' efforts to notify him that he has been recalled or will be recalled as a reservist before he travelled to Australia not entirely persuasive. As the delegate noted in his decision, there is insufficient evidence to support the applicant's claim that he will be called upon to serve as a reservist or that he will be targeted as a traitor because he had remained overseas instead of returning to support the regime. That said, the delegate accepted that the applicant's underlying reason for objection to military service is his political opinion. Despite the Tribunal's reservations, having regard to the evidence as whole, the Tribunal is prepared to accept that the applicant objects to serving as a reservist because of his opposition to the regime and/or his fundamental objection to engaging in conduct that may result in seriously mistreating his compatriots.

66. While the Tribunal remains somewhat concerned about the nature of the applicant's evidence regarding the manner in which the authorities have attempted to notify him of his military service obligations, the country information before the Tribunal indicates that the Syrian government considers individuals who have completed military service to be 'reservists', in that they are able to be recalled for military service, particularly when the political situation warrants recalling reservists.²³ There are credible reports that the Syrian government had recalled reservists in the wake of the Syrian uprising, which supports the applicant's claim that he could be recalled to serve as a reservist.²⁴ Reports also suggest that the regime was 'unable to call back more than 60 per cent of its reserves'.²⁵ Reservists have been intentionally inaccessible in order to evade recall. The most frequently reported reason given for deserting or defecting from the Syrian army is a refusal to perpetrate violence against the civilian population.²⁶ According to the UN Human Rights Council, the military, security forces and *Shabbiha* have used live ammunition against unarmed protesters and soldiers continued to receive 'shoot to kill' orders.²⁷
67. The Tribunal has found scant information in relation to whether reservists have faced punishment or ill-treatment for failing to respond to the government's recall. Nevertheless, information located indicates that soldiers who are 'absent without leave' and military personnel who refused to follow orders have been detained and tortured for disobedience.²⁸ The Syrian government has also reportedly sought to keep soldiers' families in Syria and threatened to 'punish' such family members should soldiers defect.²⁹
68. The Tribunal, therefore, accepts that there is a real chance that the appellant will be recalled as a reservist if he were to return to Syria. The Tribunal accepts that Syrian soldiers have been ordered to carry out acts of extreme violence against the opposition and portions of the civilian population perceived to be opposed to the regime or sheltering the opposition. The Tribunal accepts that the applicant may refuse to carry out such orders because he does not wish to perpetrate violence against other Syrians.

²³ Immigration and Refugee Board of Canada 2007, *ibid*.

²⁴ Weiss, Michael, 2011, *ibid*.

²⁵ Weiss, Michael, 2011, *ibid*.

²⁶ Bilefsky, Dan 2012; Fordham, Alice, 2012; Human Rights Watch 2011, *ibid*

²⁷ Report of the independent international commission of inquiry on the Syrian Arab Republic, *ibid*

²⁸ Weiss, Michael 2012; Human Rights Watch 2011, *ibid*

²⁹ Weiss, Michael 2012, *ibid*; Fordham, Alice 2012, *ibid*.

The Tribunal accepts that soldiers who disobey orders have been subjected to serious mistreatment at the hands of the security forces.

69. The Tribunal finds that there is a real chance that the applicant will face a threat to his life or liberty, significant physical harassment and/or ill-treatment if he were to return to Syria now or in the reasonably foreseeable future. The Tribunal finds that the harm the applicant would be subjected to involves 'serious harm' as required by paragraph 91R(1)(b) of the Act. The Tribunal is satisfied that the applicant's political opinion is the essential and significant reasons for his fear of persecution as required by paragraph 91R(1)(a) of the Act. The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason. The Tribunal is satisfied that the applicant does not have adequate and effective state protection available to him. The Tribunal is satisfied that the applicant would not be able to avoid the harm he fears by internally relocating.
70. For the reasons outlined above, the Tribunal is satisfied that the applicant's fear of persecution is well-founded.
71. In these circumstances, it is not necessary to consider the remainder of the applicant's claims in relation to any adverse political opinion that may have been imputed to him by the Syrian authorities while living Australia.
72. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of nationality, Syria. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

CONCLUSIONS

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

DECISION

74. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.