1413480 (Refugee) [2016] AATA 3370 (21 February 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1413480
COUNTRY OF REFERENCE:	Fiji
MEMBER:	Linda Symons
DATE:	21 February 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 21 February 2016 at 12:47pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).

2. The applicant, who claims to be a citizen of Fiji, arrived in Australia [in] August 1996 as the holder of a Visitor visa. He was subsequently granted 38 Bridging visas. He remained in Australia as an unlawful non-citizen for 4 periods during that time including for a period of 9 years and 5 months between [June] 2002 and [November] 2011.

3. The applicant applied to the Department of Immigration and Border Protection (the Department) for his first Protection visa [in] September 1996 as a dependent on his father's application. This application was refused [in] March 1997. On 14 April 1997, an application for review was lodged with the Refugee Review Tribunal. On 21 August 1997, the Tribunal (differently constituted) affirmed the Department's decision. [In] September 1997, the applicants lodged a request for Ministerial intervention under s.417 of the Act. [In] March 1998, the request for Ministerial intervention was unsuccessful.

4. [In] May 1998, the applicant applied for a Residence – Family visa as a dependent on his father's application. This application was refused [in] June 1998. On 7 July 1998, an application for review was lodged with the Migration Review Tribunal. On 20 May 1999, the Migration Review Tribunal affirmed the Department's decision. [In] March 2012, the applicants lodged a request for Ministerial intervention under s.351 of the Act. [In] December 2013, this request was unsuccessful.

5. The applicant lodged his second application for a Protection visa with the Department [in] December 2013, pursuant to *SZGIZ v MIAC* (2013) 212 FCR 235 (*SZGIZ*), and the Department refused to grant the visa [in] July 2014. On 5 August 2014, he applied to the Tribunal for review of that decision.

6. The applicant appeared before the Tribunal on 7 August 2015 and 27 January 2016 to give evidence and present arguments. The Tribunal also received oral evidence from his [sister].

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

8. The issue that arises on review is whether Australia has protection obligations to the applicant under the complementary protection criterion.

RELEVANT LAW

9. The criteria for a Protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit of such a person and that person holds a Protection visa of the same class.

Refugee criterion

10. Section 36(2)(a) provides that a criterion for a Protection visa is that the applicant for the visa is a non-citizen in Australia in respect of 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).

Complementary protection criterion

11. 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 in respect of 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').

Section 499 Ministerial Direction

12. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Further application for a Protection visa made before 28 May 2014

13. Section 48A imposes a bar on a non-citizen making a further application for a Protection visa while in the migration zone in circumstances where the non-citizen has made an application for a Protection visa which has been refused. The Full Federal Court in *SZGIZ* has held at [38] that the operation of s.48A, as it stood at the time of this visa application, is confined to the making of a further application for a Protection visa which duplicates an earlier unsuccessful application for a Protection visa, in the sense that both applications raise the same essential criterion for the grant of a Protection visa. The Federal Court in *AMA15 v MIBP* [2015] FCA 1424 (*AMA15*) upheld the Tribunal's approach of considering only claims in relation to the complementary protection criterion in s.36(2)(aa), where the applicant had previously been refused a visa on the basis of the refugee criterion in s.36(2)(a). In light of these authorities, the Tribunal has considered the applicant's claims only in relation to s.36(2)(aa).

CONSIDERATION OF CLAIMS AND EVIDENCE AND FINDINGS

14. In his first application for a Protection visa lodged [in] September 1996, the applicant did not make any claims in his own right and was included as a member of the same family unit of his father.

15. The applicant's claims in his second application for a Protection visa lodged [in] December 2013 are summarised as follows:

- He came to Australia as a child in 1998 and has lived here since then. He considers Australia to be his home and has little knowledge of Fiji.
- As an Indian Fijian he fears for his safety if he returns to Fiji. He fears he will become a victim of racial discrimination which could lead to physical harm. He has no relatives or friends in Fiji, has no support, home or understanding of the way of life. His friends from Fiji have told him about the ethnic divide between indigenous Fijians and Indian Fijians. Coups have led to physical harm to people from the Indian Fijian community.

- He values and has become accustomed to a democratic way of life. Fiji is an authoritarian country run by a military government. He fears that his democratic rights will be taken away if he returns to Fiji. He will be perceived as having a particular political opinion against the current military government.

- He has no family in Fiji. In Australia, he has the support of family and friends in a democratic society. He fears that he may be perceived as a person of wealth as he has been living in Australia and may be abducted or have money extorted from him.

- He has a young [child] who he will be separated from if he is forced to return to Fiji. This will be a loss of a relationship. He will not be able to contact his [child].

- He will face serious harm if he returns to Fiji because he is an Indian Fijian and in a minority ethnic group in Fiji, he will be perceived as a person holding a political opinion against the military government and as a person with wealth.

- He cannot get State protection and if he relocates he will continue to face harm. He seeks protection in Australia.

16. The applicant attended an interview with the Department [in] July 2014. During the interview, he re-iterated his written claims.

17. The applicant has lodged with the Tribunal a copy of a Birth Certificate for [the child] who was born on [date]. This Birth Certificate indicates that the child's mother is [Ms A] and it does not have any details of the father. He also provided to the Tribunal a Child Support Assessment dated [in] September 2013, a Notice of Child Support deduction dated [in] September 2013, the results of DNA paternity testing dated [in] November 2012, copies of photographs with his [child] and a Relationship Certificate dated [in] August 2014.

18. The applicant has also lodged with the Tribunal a letter dated [in] June 2015 from [Ms B], an Australian Citizenship Certificate for [Ms B], a letter dated [in] June 2015 from [Ms C], a letter dated [in] June 2015 from [name], a letter dated [in] June 2015 from [name], a letter dated [in] June 2015 from [name], a letter dated [in] June 2015 from [Ms A] and photographs of the applicant.

Findings in relation to the Refugees Convention

19. Pursuant to the decision of the Full Court of the Federal Court in *SZGIZ* and the Federal Court in *AMA15*, an applicant who had previously applied for and been refused a Protection visa on the basis of one of the criteria was enabled to make a further application for a Protection visa on the basis of one of the other criteria. Thus an applicant who had previously been refused a Protection visa on the basis of the Refugees Convention (s.36(2)(a) of the Act) was able to apply for a Protection visa on the basis of complementary protection (s.36(2)(aa) of the Act).

20. The applicant was previously refused a Protection visa [in] March 1997 on the basis of the Refugees Convention. [In] December 2013, he lodged a second application for a Protection visa. Applying the reasoning in *SZGIZ* and *AMA15,* the Tribunal finds that it does not have the power to consider the applicant's claims under the Refugee Convention criterion in s.36(2)(a) of the Act and has proceeded on the basis that it can only consider his claims under the complementary protection provisions in s.36(2)(aa) of the Act.

Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia, there is a real risk that he will suffer significant harm

21. The Tribunal finds that the applicant is a citizen of Fiji, based on his passport which is before the Tribunal, and will assess his claims on this basis. The Tribunal finds that the applicant is outside his country of nationality. There is no evidence before the Tribunal to suggest that he has a right to enter and reside in any country other than his country of nationality.

22. During the hearings, the Tribunal discussed with the applicant his background, his family, his life in Australia and why he fears returning to Fiji. The Tribunal found him to generally be a forthright and credible witness. However, he made a number of assertions without any evidentiary basis.

23. The Tribunal discussed with the applicant his claims in relation to being an ethnic Indian Fijian. He stated that his friends have visited Fiji and have told him that indigenous Fijians do not get along with ethnic Indian Fijians and that they have conflicts over land. When asked why he feared harm because of being an ethnic Indian Fijian, he responded that he is nervous and has forgotten. He then stated that because he did not grow up in Fiji he does not know anything about the culture or anything about Fiji and could be taken advantage of and discriminated against.

24. The DFAT Country Report on Fiji[1] indicates that Fiji has an estimated population of approximately 903,000 people in 2014 and that in the most recent census, in 2007, approximately 57% of the population are indigenous Fijians and 37.5% of the population are of Indian descent. It indicates that the 2013 Constitution provides for freedom from discrimination on the basis of race/ethnicity. However, the land rights of indigenous Fijians and Rotumans are protected under the Constitution.

25. The DFAT Country Report on Fiji[2] indicates the following in relation to official discrimination :

> In practice, Indo-Fijians are able to access employment, education, healthcare and other government services on the same basis as other Fijians. The number of Indo-Fijians in Parliament, in Cabinet and in FijiFirst, the governing party, is broadly proportionate to the broader population. The main opposition party, SODELPA (the Social Democratic Labour Party) is nationalist-leaning and has very few Indo-Fijian members….
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> Instances of official discrimination are limited. In the September 2014 election, the Bainimarama government drew strong support from the Indo-Fijian population (up to 80 per cent of the Indo-Fijian vote). DFAT assesses that the strength of Indo-Fijian support for the government is in large part because of its non-discriminatory policies in contrast to the strong nationalist stance of the major opposition party, SODELPA.
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> Overall, DFAT assesses that Indo-Fijians face a low level of official discrimination on the basis of their race/nationality.

26. The DFAT Country Report on Fiji[3] indicates the following in relation to societal discrimination:

> In general, Indo-Fijians and indigenous Fijians co-exist amicably. While the two groups have distinct cultural traditions, over 100 years of co-existence in Fiji has led to a substantial degree of cultural overlap between the two groups and a level of social symbiosis exists….

[1] DFAT Country Report on Fiji, 14 April 2015.
[2] Ibid.
[3] Ibid.

> In certain geographic areas (particularly Suva), relations between the two ethnic groups have been difficult at times of political tension. Political power has been a key driver of division between the two communities. For example, riots followed the 2000 coup (in which Fiji's first Indo-Fijian Prime Minister was deposed). Indo-Fijian merchants in Suva were targeted with violence and vandalism. The 2000 riots were generally assessed to be the exception to the norm….
>
> State protection for Indo-Fijians is generally assessed to be only partially effective. However, this is because of poor police capacity and there is not a significant disparity between the quality of state protection provided to Indo-Fijians and to indigenous Fijians. Indo-Fijian groups assessed the police to be under-resourced and unresponsive, while the military (despite its overwhelmingly indigenous Fijian make-up) was assessed to be effective and responsive.
>
> Overall, DFAT assesses that Indo-Fijians face a low level of societal discrimination on the basis of their race/nationality.

27. Having considered the applicant's claims and the evidence, the Tribunal accepts that the applicant came to Australia at the age of [age] years and has lived in Australia since then. The Tribunal accepts that his knowledge of Fiji may be limited but does not accept that he does not know anything about Fiji. The Tribunal accepts that he may not have the guidance of close family members in Fiji. The Tribunal accepts that his limited knowledge of Fiji may lead to him being taken advantage of or even discriminated against but does not accept that it would lead to physical harm. The Tribunal does not accept that he would not be able to obtain State protection. Based on the evidence before it, the Tribunal is not satisfied that any discrimination that the applicant may be subject to would amount to significant harm.

28. In view of the above country information and the findings, the Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because he is an ethnic Indian Fijian if he returns to Fiji now or in the reasonably foreseeable future.

29. The Tribunal discussed with the applicant his claims in relation to his loss of democracy in Fiji and his perceived political opinions. The applicant gave evidence to the Tribunal that he does not follow politics in Fiji and only knows what he has been told. When asked what he knows about politics in Fiji, he responded that there is no democracy in Fiji, the military runs the government and they have coups. When asked if he knew when the last coup occurred in Fiji, he responded that he thinks it was in 2006. When asked why he fears being perceived as having a political opinion against the government, he responded that he has grown up in Australia and seen people vote and know what they want. He stated that if he goes to Fiji and speaks up and the government does not like it, he could be harmed.

30. When asked whether he is involved in politics in Australia, the applicant answered no. When asked whether he is aware that democratic elections were held in Fiji in September 2014 and that Fiji has had a democratically elected government since then[4], he answered yes. When asked whether he was aware that a new Constitution was passed in Fiji in September 2013 and that the Constitution contains a comprehensive Bill of Rights[5], he answered no. When asked why he is claiming that he will be perceived as having a particular political opinion against the current democratically elected government, he responded that "the government in Fiji isn't run right" and the person who was elected is still in the military. When asked whether he was aware that Mr Bainimarama has resigned from the military[6], he answered no.

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[4] Ibid.
[5] Ibid.
[6] Ibid.

31. The DFAT Country Report on Fiji[7] indicates the following in relation to political opinion:

> Fiji's constitution guarantees freedom of speech, expression and publication, assembly and association. However, each of these rights is subject to broad caveats and can be limited by laws relating to national security, public safety, public order, public morality, public health and the orderly conduct of elections. A range of decrees in place prior to the 2013 Constitution limits these rights in practice….
>
> In practice, the environment for the public expression of political opinion in late 2014 was more open than in previous years. Public commentary on political issues, including criticism of government policies, is permitted and occurs regularly. The media is increasingly open, and regularly carries articles outlining opposition political party views, or on issues which might embarrass the government. Public gatherings are permitted, including, for example, to discuss the outcomes of the 2014 election. At times such gatherings include robust political criticism of FijiFirst and the government, though most commentators are circumspect in any public criticism of Prime Minister Bainimarama or Attorney-General Sayed-Khaiyum.
>
> However, some uncertainty remains about the permissible limits on public commentary. Broad powers and harsh penalties under relevant decrees, and a relatively recent history of prosecutions mean that public figures continue to tread carefully in their expression of public opinion. In general, DFAT assesses that those at risk are high-profile public figures, including the leaders of organisations which might be seen to challenge the government's authority or undermine its legitimacy.

32. In view of the applicant's evidence that he does not follow politics in Fiji, his poor knowledge of politics in Fiji and the fact that he is not involved in politics in Australia, the Tribunal is not convinced that he may wish to express any political views that may or may not bring him to the adverse attention of the Fijian authorities. He is not a public figure or a person of high profile in Australia or Fiji. On the evidence before it, the Tribunal is not satisfied that the applicant will be perceived as having a political opinion against the government. In view of the above country information, the Tribunal does not accept that the applicant will have his democratic rights taken away if he returns to Fiji.

33. In view of the above, the Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because of his actual or implied political opinions or that he would have his democratic rights taken away if he returns to Fiji now or in the reasonably foreseeable future.

34. The Tribunal discussed with the applicant his claims in relation to being perceived as a person of wealth because he has been living in Australia and that he may be abducted or have money extorted from him. When asked on what basis he makes these claims, he responded that he has heard that when people go to Fiji they try to take money from you. When asked why they do that, he responded that he has "a feeling they will say you have money and try and take it away". When asked if he had any country information to support these claims, he answered no. When asked if he was just speculating, he answered yes.

35. Having considered the applicant's claims and the evidence, the Tribunal accepts that the applicant may be perceived to be a person of wealth because he has been living in Australia. The Tribunal was unable to find any country information to indicate that returnees to Fiji from overseas are targeted for abduction or extortion. On the evidence before it, the Tribunal is not satisfied that there is any basis for these claims.

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[7] Ibid.

36. In view of the above, the Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because he will be perceived to be a person of wealth if he returns to Fiji now or in the reasonably foreseeable future.

37. The Tribunal has considered the applicant's claim that he will have no home or support in Fiji. In view of the evidence before the Tribunal that the applicant's [Australian] sisters have been mother figures to him throughout his life and his sister [Ms C] has been responsible for his care since 2009, the Tribunal is not satisfied that his sisters will not make appropriate arrangements for his accommodation and financial support if he is required to return to Fiji. The evidence before the Tribunal is that the applicant's partner is currently supporting him financially, that they plan to get married, have a family and a future together. In these circumstances, the Tribunal is not satisfied that the applicant's partner would not continue to financially support him if he is required to return to Fiji.

38. The Tribunal discussed with the applicant his claims that if he returns to Fiji he will be separated from his [child]. will not be able to contact his [child] and will lose his relationship with [his child]. He gave evidence that his [child] is [age] years old. He stated that [the child] lives with [the] mother and he has fortnightly contact with [the child] as well as during school holidays. He stated that in between visits he has telephone contact with [him/her]. He stated that there are no Court orders in relation to his contact with [him/her] but that he has an agreement with [the] mother. He stated that he is not currently paying child support and last paid child support in 2014. He stated that he has a good relationship with his [child].

39. The applicant has provided to the Tribunal a Parentage Testing Procedure Report dated [in] November 2012 from [a company] which indicates that the probability that he is the genetic father of [the child] is 99.994%.

40. The Tribunal has been provided with a Statement dated 15 June 2015 from [Ms A]. She stated that she is the mother of [the child] and that she and the applicant have a verbal agreement in relation to his contact with [him/her]. She stated that he has contact with [the child] every second weekend, that he occasionally visits [him/her] out of this time, that [the child] stays with him for longer periods during the school holidays and that he has telephone [contact]. She stated that when he was working he paid child support. She stated that he is a loving and caring father and has a strong relationship with their [child]. She stated that if he has to leave Australia it would have a negative impact on [the child] and that he would be too far away for regular visits. She stated that it is important that [the child] continue to form a bond with [the] father and if he returns to Fiji [he/she] would lose [the] father.

41. Having considered the applicant's claims and the evidence, the Tribunal accepts that the applicant is the father of the [child]. The Tribunal accepts that [the child] lives with [the] mother and has regular contact with [the] father. The Tribunal accepts that the applicant has a good relationship with his [child]. The Tribunal accepts that if he returns to Fiji it will have a detrimental impact on him and his [child] and on their relationship. The Tribunal does not accept that he will not be able to contact his [child] if he returns to Fiji. He will be able to continue to have telephone contact with [him/her] and face to face contact over the internet on programmes such as Skype. The Tribunal does not accept that he will lose his relationship with his [child] or that [he/she] will lose [his/her] father.

42. In view of the above findings, the Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because he would not be able to have regular personal contact with his [child] if he returns to Fiji now or in the reasonably foreseeable future.

Cumulative findings

43. Having considered all of the applicant's claims, individually and cumulatively, and all the evidence, Tribunal is not satisfied that the applicant will be arbitrarily deprived of life, the death penalty will be carried out on him, he will be subjected to cruel or inhuman treatment or punishment or he will be subjected to degrading treatment or punishment if he returns to Fiji now or in the reasonably foreseeable future.

44. Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, there is a real risk that he will suffer significant harm as defined in s.36(2A) of the Act. Therefore, the Tribunal finds that the applicant does not satisfy the criterion in s.36(2)(aa) of the Act.

Ministerial intervention

45. The Tribunal considers that the circumstances of this case may raise the following matters:

- The length of time the person has been present in Australia (including time spent in detention) and his level of integration into the Australian community.

- Strong compassionate circumstances such that a failure to recognize them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or Australian permanent resident).

46. The applicant is a [age] year old man. The evidence before the Tribunal indicates that he arrived in Australia [in] September 1996 as the holder of a Visitor visa. He was [age] years old at that time. He was accompanied by his parents and [sister]. His evidence to the Tribunal is that he has [sisters] who were adopted by his [grandparents] when they were very young. He stated that they travelled to Australia when they were young and are now Australian citizens. He stated that his father passed away in 2001 and his mother left him and his [sister] a couple of months after his father's death. He stated that he has no idea of her whereabouts and has not tried to find her.

47. The applicant's evidence to the Tribunal is that most of his father's siblings have passed away. He stated that he has a paternal uncle in [suburb] and a paternal aunt in [suburb]. He stated that his maternal grandfather has passed away and his maternal grandmother lives in [city]. He stated that one of his maternal uncles has passed away and another lives in [city]. He stated that he also has two maternal aunts who live in [suburb] and [suburb] respectively. He stated that as far as he is aware he has no family in Fiji.

48. The applicant's evidence to the Tribunal is that he attended school in Australia and left school in [year] after completing Year [level]. He stated that he undertook a [course] in 2012 and worked as [occupation] for 2 years. He stated that he stopped working in 2013 when his application for Ministerial intervention was unsuccessful. He stated that since then he has helped friends [with work].

49. The applicant is the father of a [age] year old [child]. [He/she] is an Australian citizen. He has been exercising regular face to face and telephone contact with [him/her]. He has supported [him/her] financially when he was employed. He claims to have a close and loving relationship with [him/her]. The child's mother has provided the Tribunal with a Statement dated 15 June 2015 in which she attests to the above. She stated that he is a loving and caring father and has a strong relationship with their [child]. She stated that if he has to leave Australia it would have a negative impact on [the child] and that he would be too far away for regular visits. She stated that it is important that [their child] continue to form a bond with

[the] father and if he returns to Fiji [he/she] would lose [the] father. The Tribunal has been provided with copies of photographs of the applicant with his [child].

50. The applicant's [sister], [Ms C], attended the hearing and gave evidence. She stated that her paternal grandparents immigrated to Australia and adopted her and her sister when they were very young. She stated that the applicant and their [sister] have been in her care since 2009. She stated that they have been brought up "in an Australian way". She stated that they have no family members in Fiji, nowhere to live or means to live in Fiji. She stated that she wants a better future for them and their safety and well-being are her main concern. She also provided the Tribunal with a Statement dated 8 June 2015. In her statement, she refers to the applicant's close relationship with her [children]. She also refers to his close relationship with his own [child] and her observations of him as a loving father. She also refers to his relationship with his partner, [Ms B], and her observations of him as a thoughtful partner.

51. The applicant's partner, [Ms B], has provided the Tribunal with a Statement dated 18 June 2015. In her Statement she states that she and the applicant have been partners since mid-2011. She stated that they moved in together as a couple in 2014. She stated that because of his visa restrictions the applicant has not been able to work and she has been supporting him financially. She stated that they plan to get married, buy a property and have children. She stated that his immigration status is restricting them and preventing them from pursuing their plans. [Ms B] attended the hearing and gave evidence. She stated that she has known the applicant for a long time and does not know what she would do without him. The Tribunal has been provided with a copy of [Ms B]'s Certificate of Australian Citizenship, a Relationship Certificate and photographs of her with the applicant.

52. The Tribunal has been provided with Statements from [name] dated 10 June 2015, Timothy James Garnon dated 10 June 2015 and Jessica Lee Fontana dated 8 June 2015 attesting to the relationship between the applicant and [Ms B].

53. Having regard to the circumstances in this case and having considered the Ministerial guidelines relating to the Minister's discretionary power under section 417 set out in PAM3 "Minister's guidelines on Ministerial powers (sections 345, 351, 417 and 501J)" the Tribunal considers that this case should be referred to the Department to be brought to the Minister's attention.

CONCLUSION

54. The Tribunal finds that the applicant does not satisfy the criterion in s.36(2)(aa) of the Act.

55. There is no suggestion that the applicant satisfies s.36(2) of the Act on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or s.36(2)(aa) of the Act and who holds a Protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) of the Act.

DECISION

56. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Linda Symons
Member