

1310969 [2013] RRTA 821 (6 December 2013)

DECISION RECORD

RRT CASE NUMBER: 1310969
DIBP REFERENCE(S): CLF2012/233162
COUNTRY OF REFERENCE: Indonesia
TRIBUNAL MEMBER: Christine Cody
DATE: 6 December 2013
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

1.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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

SUMMARY

2. The applicant is [an] Indonesian national who seeks to be granted a protection visa on the grounds that she is a refugee or entitled to protection under Australia's complementary protection provisions. The applicant claims that she has been targeted by an ex-boyfriend who is also a government official. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason, nor that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Indonesia, there is a real risk that she will suffer significant harm. The Tribunal has accordingly affirmed the decision of the delegate to refuse to grant the applicant a protection visa.

BACKGROUND TO THE APPLICATION FOR REVIEW

3. 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act). The applicant applied to the Department of Immigration for the visa [in] November 2012 and the delegate refused to grant the visa [in] July 2013. She lodged her application for review with the Tribunal [in] August 2013. According to the relevant forms, the applicant was not represented by a registered migration agent.

The law

4. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of 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 as such a person and that person holds a protection visa.
5. 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).
6. 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

7. 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 of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.

THE TRIBUNAL'S CONSIDERATION OF THE CLAIMS AND EVIDENCE, AND ITS FINDINGS

Country of reference

8. The applicant provided to the Tribunal, with her application for review, an uncertified photocopy of the identity page of her passport issued by the Indonesian authorities [in] June 2011, which was the same as the copy of the identity page provided to the Department. The Department was prepared to accept that the applicant was an Indonesian national. There is no evidence before the Tribunal to suggest that the applicant is a national of any country other than Indonesia, nor that she has the right to enter or reside in any other country. The Tribunal finds that the appropriate country of reference for the assessment of her refugee claims, and the receiving country for the purpose of her complementary protection claims, is Indonesia.

The applicant's claims

9. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is 'well-founded' or that it is for the reason claimed. Similarly, that an applicant claims to face a real risk of significant harm does not establish that such a risk exists, or that the harm feared amounts to 'significant harm'. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
10. The applicant's claims are set out in a statement and her protection visa application provided to the Department. In summary, the applicant says that she speaks, reads and writes in both Indonesian and English, and her religion is Hindu. Prior to travelling to Australia, she travelled to [another country] in October 2011, and in November 2011, and she travelled to [a different country] in September 2011 and January 2012. She resided at a single address in Bali from her birth until the time she left Indonesia. In early 2012, she was held captive and tortured by her ex-boyfriend, who is a government official, when she declined his marriage proposal. He held her passport. She was only released when she finally agreed to the marriage, she secretly stole back her passport, and was then able to leave Indonesia legally to flee to Australia, arriving [in] October 2012 (after having been granted a tourist visa [in] October 2012¹). She left Indonesia because her life was in danger. After she left, he threatened that she must return before the wedding, and after the wedding day passed, he also went to her parents' home and they were injured. She fears harm from her ex-boyfriend and says that nowhere is safe for her in Indonesia; she claims that she wants to be protected as a female at risk of being hurt by her boyfriend.
11. There is no evidence that the applicant attended an interview with the Department to provide further information about her claims (indeed the delegate's decision record indicates that she did not attend a scheduled interview, and that the delegate considered the applicant's claims were "patently scant and lacking in detail").

¹ The applicant also provided her Visitor Visa Grant Notice with her protection visa application.

12. [In] November 2013 the Tribunal wrote to the applicant inviting her to give oral evidence and present arguments at a hearing [in] December 2013. The applicant was advised that if she did not attend the hearing and a postponement was not granted, the Tribunal may make a decision on her case without further notice. No response was received. The applicant did not appear before the Tribunal and at the scheduled time and place, on the day at which she was scheduled to appear. In these circumstances, and pursuant to s.426A of the Act, the Tribunal has decided to make its decision on the review without taking any further action to enable the applicant to appear before it.
13. The Tribunal is not satisfied, on the evidence before it, that the applicant satisfies the criteria under consideration for a protection visa.
14. The Tribunal notes that the applicant claimed that in early 2012 her boyfriend proposed to her, and she refused, at which time he locked her in the room for [weeks] (and beat her). This would mean that she was released in early 2012, however she said that she escaped Indonesia in October 2012. The applicant does not explain what she did, and what occurred between her and her ex-boyfriend (other than claiming that his assistant followed her), between the time she was released and when she left Indonesia, which seems to have been a period of at least six months. Further, the applicant claimed that her ex-boyfriend was a powerful government officer, and that his family was rich and powerful, however she did not explain his position in the government, nor the position and influence of his family, and why she was unable to approach any other authorities for assistance, such as the police, or her boyfriend's superior, upon her release. Further, the applicant claimed that once she was released, she told her family about her experience, but she does not explain why they did not assist her in reporting to the police. Also, the applicant claimed that her boyfriend (and his assistant) had such control over her such that she could not manage to escape from him, yet she claims, without explaining how, she was able to steal her passport secretly from him. The applicant also claims, without explaining how, that despite being followed by his assistant, she managed to leave the country, presumably without his knowledge, and come to Australia (although it is noted that she claimed that she worked [for a particular] company in Indonesia). Further, the applicant claims that she cannot return to Indonesia, however she is not explain why she could not relocate, and why it would not be reasonable for her to live elsewhere in Indonesia.
15. On the evidence before it, the Tribunal is not satisfied that the events occurred as claimed by the applicant. The Tribunal is not satisfied that the applicant had a boyfriend who was a powerful government officer from a rich and powerful family, who beat and tortured her and held her captive and threatened her and her family and friends and injured her parents, and who keeps asking about her whereabouts and wants to have her killed if she returns. The Tribunal is not satisfied that anyone, including a past boyfriend or his assistant, or anyone else, is interested in harming the applicant, either now, in the reasonably foreseeable future, or at all.
16. Accordingly, on the evidence before it the Tribunal is not satisfied that there is a real chance that the applicant will face serious harm for the purposes of the Convention, either now or in the reasonably foreseeable future, if she returns to her country. It follows, for the above reasons, that the Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution within the meaning of the Convention.
17. It also follows, on the evidence before it, that 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 a receiving country, in this case Indonesia, there is a

real risk that she will suffer significant harm for the purposes of s.36(2)(aa) ('the complementary protection criterion').

CONCLUSIONS

18. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
19. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
20. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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

Christine Cody
Member