

1001947 [2010] RRTA 645 (3 August 2010)

DECISION RECORD

CASE NUMBER: 1001947
DIMA REFERENCE(S): File number CLF2010/1001947
COUNTRY OF REFERENCE: Thailand
TRIBUNAL MEMBER: Dominic Lennon
DATE: 3 August 2010
PLACE OF DECISION: Melbourne
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

In accordance with s.431 of the *Migration Act 1958*, the Refugee Review Tribunal will not publish any statement which may identify the applicant or any relative or dependant of the applicant.

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 Thailand, arrived in Australia [in] November 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2009.
3. The delegate decided to refuse to grant the visa [in] February 2010. The applicant applied to the Tribunal [in] March 2010 for review of the delegate's decision.
4. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act and that the Tribunal has jurisdiction to review the delegate's decision under s.411(1)(c) of the Act.

RELEVANT LAW

5. 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.
6. Subsection 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

7. Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

8. 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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

11. 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.

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

13. 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.

14. 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.

15. 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.

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

CLAIMS AND EVIDENCE

17. 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.

Application for Protection

18. In her application for a protection visa, the applicant stated that:

19. She was educated between January 1983 and December 1988 in [location deleted: s.431(2)] and again between May 1999 and 2000 in Bangkok.

20. She was employed as a farmer between 1989 and 1998 and a sales lady between 2008 and November 2009 when she travelled to Australia.

21. She came to Australia to visit her boyfriend [Mr A]. She does not want to go back to Thailand because:

My family's religion is Buddhist and we always had Muslim people living around us in Thailand but we disliked them. Couple of years ago I met my husband [Mr A] in Bangkok, Thailand. We now love each other but at first I didn't know he was Turkish and Muslim. During our relationship, I found out that he was Muslim and that he was from a Turkish background. When I found out, I gave a bad reaction and I was confused to what I was supposed to do. But then I realised that I truly loved him and I started to meet Muslim people and a few of his friends. I got along with them really well and I started to love the Muslim religion, but my family and my friends don't know that my boyfriend is Muslim.

On [date] November 2009 I went to Australia for holiday and to see [Mr A]. I visited my boyfriend and I saw his life. We believe that if we got married we would be very happy together as we are in love with each, doesn't matter what religion we are. We legally got married on [date] December 2009 and I changed my religion to Muslim. I'm very happy with my life and my husband. Then I told my family, my brother, and my work friends, but I thought they would be very happy and overwhelmed but instead they were very upset at me and didn't want to see me again. They were disgraced of me because I changed my religion and they told *me to never come and see them in Thailand including all my friends and my loved ones*. My father told me to come to Thailand so he could fix me up, and I'm sure he would kill me. If I go back the Thai national Buddhist police will kill me as well. I know Thailand has a few Muslim people there, but because I changed my religion they hate me. This reason I will like the Australian government to protect me.

(emphasis in original)

22. She further stated that:

I change my religion from Buddhist to Muslim so if I go back I'm sure Thai Buddhist nationalist police could kill me. At the same time I am also scared from my family too. I also explained in my statement in question 43 (the above-cited statement)

23. She further stated that:

The Thai government wouldn't protect me and I'm very scared from the Thai police that they will attack me.

24. The delegate interviewed the applicant [in] February 2010.

25. The delegate decided to refuse to grant the visa [in] February 2010 and [in] March 2010 the applicant applied to the Tribunal for review of the delegate's decision.

The hearing

26. A hearing was conducted [in] June 2010 at which the applicant gave evidence with the assistance of an interpreter and was represented by an agent. The applicant gave the following evidence:

27. She was born [date of birth deleted: s.431(2)] into a Buddhist family and grew up in a city [distance deleted: s.431(2)] drive from Bangkok.

28. She met her future husband while sitting in a coffee shop in mid-2007. He approached her and they exchanged numbers. They spent some time together. He returned to Australia. He later visited her in Thailand again for about a week in mid 2008. He made a number of subsequent trips to Thailand to spend time with her.

29. She came to Australia in November 2009 on a visitor visa and she and her husband were married [in] December 2009 in Australia.

30. The Tribunal asked the applicant what her religion was. She stated it was Buddhism but she has converted to being a Muslim.

31. The Tribunal asked since when. She stated about two months ago but was unsure. Asked again, she stated a bit more than a month ago.

Conversion to Islam

32. The Tribunal asked about what was involved in the process of conversion from Buddhism to Islam. The applicant stated prayers. Asked whether there was any formal period of instruction in which she learned the basic principles of Islam, she stated that there were no formal lessons. She just has to study the Koran and fill in a form and to attend the Mosque sometimes.

33. The Tribunal asked the applicant when she first attended the Mosque. She stated that she has not attended yet. She has to make an appointment to go to the Mosque. The Tribunal asked why she had not made an appointment to visit the Mosque. She said it was because her

husband had been too busy at work. The Tribunal suggested that she did not have to ask her husband to make an appointment and asked why she hadn't made an appointment. She stated that she wanted to go with him. The next time he is eligible for a day off he will take her to the Mosque.

34. She stated that she had met with a priest. Her husband arranged the meeting and they both attended. She can't remember the priest's name (the agent wrote the name and submitted the note to the Tribunal—[Imam's name deleted: s.431(2)]). The meeting was held at a home (she is not sure whose home it was) and went for over an hour.

35. That was the only meeting she has had with the priest. The Tribunal asked whether the priest told her how to become a Muslim. She stated that he did not tell her much, just that she had to promise to start attending the mosque. When she does attend the mosque he will explain it all to her. The Tribunal asked whether she could recall anything from her meeting with a priest. She stated that she was told to change her name (which she has, to [name deleted: s.431(2)]) and that they swear to be husband and wife and that there would be no wrongdoing between her and her husband.

36. The priest gave her a Koran. She thinks the priest was Turkish but he spoke English to her to try to make her understand.

37. The Tribunal asked whether she had taken any other steps as part of her conversion to Islam. She stated that she is reading the Koran but it is too slow as it is in English. The Tribunal asked whether she had purchased a Thai translation of the Koran. She stated that she did not know whether one was available. The Tribunal asked if she had made any inquiries about whether the Koran was available in the Thai language. She stated that she asked friends. Asked to identify the friends, she stated that they are friends she met at the Buddhist temple in December 2009. She then stated "this friend" (i.e. singular). Asked for the friend's name, she stated that she only knew the woman's nickname-[name deleted: s.431(2)], which is a Thai nickname. [Name deleted: s.431(2)] said that it was difficult to get a Koran in the Thai language. The Tribunal noted that she had referred to friends rather than a friend and asked about the other friends. She stated that it was just one friend.

38. The Tribunal asked whether she had checked the Internet or bookstores for a Thai language Koran. She stated that she did not do that as she is not very good on the computer.

39. The applicant stated that she had read a bit of the Koran (up to page 58 of about 650 pages) but had to use a Thai dictionary. The Tribunal noted a table and index and noted that she had read less than 50 pages in six months. She stated that she was busy with the housework and was tired and in poor health and had to exercise in the park and go to the doctor. The Tribunal asked how much housework she does, she stated two hours a day. Asked about her reason for going to the doctor, she stated that she was feeling tired and her husband suggested that she spent some time outdoors getting exercise. Asked what the doctor's diagnosis was, she said that she did not go to the doctor for treatment for tiredness but for a general check-up. The results were normal.

40. The Tribunal queried why, at the start of the hearing, she had elected to make an affirmation rather than swear an oath on the Koran. She stated that she had forgotten that she had a Koran in her handbag. The Tribunal noted that the hearing attendant had asked her to

indicate a preference for an affirmation or a religious oath and she chose an affirmation and asked why. She stated that she thought the book on the hearing room table in front of her (a Koran) was a Christian bible. She thought there were only two options: either to make an oath on the Christian Bible or to make an affirmation, so she made an affirmation.

Knowledge of Islam

41. The Tribunal asked when Islam started. She didn't know. The Tribunal gave the example that Christianity started 2000 years ago and asked again when Islam started. She didn't know. The Tribunal asked where Islam started; what part of the world? After a pause, she stated that she read about it but could not remember. The Tribunal asked whether, according to Islam, there were any holy cities. There was a long pause and no answer.

42. The Tribunal asked about the religious practices of Muslims. The applicant stated fasting. Asked whether there was anything else, she stated that her husband did not explain anything else other than that the conversion did not involve anything "serious" as it was like Buddhism i.e. no adultery, no alcohol, no stealing and that the principles are essentially the same as the five principles of Buddhism.

43. The Tribunal asked the applicant to identify the holy books in Islam. The applicant stated the Koran. Asked who Mohammed was, she stated that he was an important person. Asked why, she stated that she didn't know how to explain. The Tribunal gave her some time to think. She stated that he was like Jesus. The Tribunal asked the applicant again why he was important in Islam. She stated that she did not know.

44. The Tribunal asked about the life of Mohammed, the approximate time of his birth where he was from, his family (whether noble or simple), his education, work and when he became religious. She stated that she could not remember.

45. The Tribunal noted that it had mentioned Mohammed and she had mentioned Jesus and asked whether there was anyone else in the religion who, in Islam, was regarded as special messengers of God. She stated that she could not remember. She stated that she knew that was a bad answer.

46. The Tribunal asked about practical matters; things that Muslims were supposed to do. She reiterated that there prohibitions on drinking, lies, adultery and stealing. The Tribunal noted that these were prohibitions rather than obligations and asked again about practical matters; things that Muslims were supposed to do. She stated that they can't eat pork. The Tribunal asked what they do to practice their faith and the things the Koran tells them to do. What were the things they did as practical expressions of their faith? She stated that her husband wanted her to make a gradual conversion to Islam and an Islamic lifestyle. Asked what that the Haj was, she didn't know. Asked whether Muslims were expected to, at some stage in their life make a special trip somewhere, she stated that she didn't know. Her husband had not explained that to her.

47. When asked again to identify some of the beliefs of Islam the applicant stated in English that she knew but could not say. Invited to use the interpreter, she did not provide an answer.

48. The Tribunal asked who the God was in Islam. She said Mohammed. The Tribunal noted that Mohammed was a prophet and asked her again who was God. She did not respond. The Tribunal noted that she did not seem to have learnt much about Islam.

49. The applicant stated that she is a refugee because her family do not like Muslims. Before her wedding her father voiced his objection to her relationship with her partner (over the phone). After the wedding she telephoned her father. Her father said that they he did not want to see her and would kill her. Her father also said that her brother would kill her. She tried to speak to her brother on the phone but he told her to fuck off and hung up. The Tribunal asked the applicant whether she was claiming that her father would kill her if she tried to see him or he would kill her even if she sought to avoid him. She stated that he would find out where she was and kill her. She could not seek protection from the police. Her [relative] is a big policeman in the police force and he would let her father know where she is so he (her father) could kill her.

Country information

50. The Tribunal noted that the delegate has referred to country information and also that the Tribunal had conducted its own research into:

- Muslims in Thailand
- Thai Buddhists who have converted to Islam
- Thai Buddhists who have converted to Islam and marry Muslims
- Thai Buddhists who converted to Islam and marry foreign Muslims

51. The Tribunal noted to the applicant that the country information did not support her claimed fear of persecution by reason of being a Muslim in Thailand (or failure by the State to provide protection against persecution for that reason). The Tribunal noted that there were millions of Muslims in Thailand but no evidence of ill feeling to Muslims other than in specific areas. The Tribunal noted that the Thai Constitution enshrines freedom of religion and that although there was an isolated incident in 2003 and riots in relation to Hambali in 2004 generally Muslims and Buddhists co-exist harmoniously. The Tribunal noted that some people in Thailand saw Muslims as less Thai than Buddhist Thais but that is not in itself persecution. The Tribunal noted that, although the perpetrators of 2004 violence against Muslims were not brought to justice following the 2006 coup, a general had apologised to the Muslims.

52. The Tribunal noted that there were only isolated anti-Muslim incidents and in any event these were largely confined to the south and Chang Mai in the north. The Tribunal noted that even if it accepted that she might be affected by isolated episodes of anti Muslim feeling, if she returned to her home [distance deleted: s.431(2)] drive from Bangkok there would be no real danger to her as a Muslim. She stated that she is worried about her father and the police will not protect her. On the contrary they will help her father by arresting her

at the airport and detain her until her father can get at her. The Tribunal noted that there was no evidence that the police/airport authorities would withhold protection *for a convention reason* (as distinct from something the police/airport authorities would do for her father). The Tribunal noted that Country Information does not support the contention that the police/airport authorities will detain her for a convention reason. She stated that her father had instilled in her the belief that he will do what he says he is going to do, including kill her.

53. The Tribunal noted that the country information did not support her claimed fear of persecution by reason of being a *convert to Islam* in Thailand or her claimed fear of failure by the State to provide protection against persecution for that reason. Country information did not support her claim that converts to Islam are shunned by Buddhist families. The Tribunal noted that the only hostile language against a convert to Islam was on a blog in which, for example there was criticism of the actor Hugo Chaprokorn for converting but that that material simply reflected a range of individuals' views. She stated that her friends have abandoned her because she married a Muslim. Some didn't answer her telephone calls and others think she is crazy- they wonder why she had to change her religion. Her father and brother are angry and her mother is very upset at her marrying a Muslim without telling her before.

54. The Tribunal noted that the country information did not support her claimed fear of persecution by State agents by reason of being a *Thai Buddhist who converted to Islam and married a foreign Muslim* (or her claimed fear of failure by the State to provide protection against persecution for those reasons). The Tribunal noted country information indicated that sometimes pejorative views are taken and that an assumption is sometimes made that Thai women who marry foreigners are working in the sex industry but also notes that some communities welcome such marriages as there are economic benefits from remittances. The Tribunal noted that the country information indicated that some politicians promoted the economic and cultural benefits of such marriages. The Tribunal noted that there was no evidence supporting her claim to be exposed to *persecution* for marrying a foreigner. The reaction to such marriages ranged from disapproval to encouragement but there was no evidence to suggest that she would be exposed to persecution. She reiterated that her family will harm her. She stated that as a result of her marrying a foreigner her family will think that maybe she has not been in a good job. They will also manipulate the current conflict between red shirts and yellow shirts.

55. The Tribunal noted in closing that there were two main issues:

56. First, her ignorance of the basic history of Islam and its personages, tenets and practices which could cast doubt on the credibility of her claim to have converted to Islam. The Tribunal noted that conversion was an important decision in which a person abandoned one religion and adopted another and that usually the convert had reasons for abandoning the first religion and being attracted to the second. If the Tribunal found that her ignorance did undermine the credibility of her claim to conversion it might also find it undermined her credibility generally including her claims in relation to her father and her brother and [relative] and her claim to have fear of persecution upon her return to Thailand. The applicant responded that if she returns to Thailand she will be killed.

57. Second, the Tribunal noted that the country information did not support her claims. The Tribunal noted that it understood that she was claiming that her father and brother and

other family members would target her by reason of her being a Muslim, a convert to Islam, someone who married a foreigner and someone who married a Muslim foreigner. The Tribunal noted that she claimed that her father had threatened to kill her. She also claims that the Thai National Police would kill her by reason of her being a Muslim, a convert to Islam, someone who married a foreigner and someone who married a Muslim foreigner. She also claimed that she was unable to obtain protection in Thailand and that that protection was being denied to her by reason of her being a Muslim, a convert to Islam, someone who married a foreigner, someone who married a Muslim foreigner. The Tribunal noted, however, that the country information did not support her claims of failure of state protection on Convention grounds. She stated that she would be detained at the airport until her father arrives and, when he arrives, that would spell the end of her life.

58. The Tribunal asked whether she had lodged a spouse visa application. At this point her agent tendered a handwritten note to the Tribunal indicating that her visitor visa was subject to condition 8503 (this condition prevents the visa holder from lodging any further application whilst being the holder of that visa).

59. The agent submitted a few pages of Country Information (which is discussed below).

FINDINGS AND REASONS

60. 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. 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 & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169 70.)

61. The Tribunal has carefully considered the applicant's claims. The applicant is a [age deleted: s.431(2)] married woman. She claims to be a Muslim convert. She married her husband in Australia in December 2009. She claims that she will be persecuted by her family for converting to Islam and marrying a foreigner. She also claims that the Thai National Police will kill her and that she would not be able to obtain protection in Thailand and that protection would be denied to her by reason of her being a Muslim, a convert to Islam, someone who married a foreigner and someone who married a Muslim foreigner.

Political opinion/ imputed political opinion/membership of a particular social group

62. At the hearing the applicant made an oblique reference to the recent conflict between red shirts and yellow shirts stating that her family will manipulate the current conflict between the two groups. The reference was in passing and in the context of the conduct she feared from her family (presumably informing the State that she was a red shirts or yellow shirts depending on who is out of favour at the time) because she had married a Muslim and to a lesser extent because she had married a foreigner. This claim was not developed either in her statement or in her oral evidence at the hearing as a separate ground of political opinion

(fear of persecution by reason of supporting the political agenda of the red shirt or the yellow shirts) or imputed political opinion (fear of persecution by reason of being perceived to support the political agenda of red shirts or yellow shirts) or membership of a particular social group (red shirts or yellow shirts).

63. The applicant is not claiming that the characteristics that will attract persecution to her are her membership of the red shirts or yellow shirts and/or her support for the political agenda of the red shirts or red shirts and/or a *perception* that she is a member of the red shirts or yellow shirts and/or supports the political agenda of the red shirts or red shirts. Rather, the applicant is claiming that the characteristics that will attract persecution (acts of violence against her by her father and brother and possibly other family members) to her are her characteristics of her being a Muslim, being a convert from Buddhism to Islam and marrying a Muslim and to a lesser extent a marrying a foreigner. The manipulation of the current conflict between the red shirts and the yellow shirts is said to be *one of the means* by which it is feared that persecution will be carried out rather than the *actuating element* for the persecution. No claims have been made that she is a member of the red shirts or yellow shirts and/or supports for the political agenda of the red shirts or red shirts or might be perceived to be a member of the red shirts or yellow shirts and/or someone who supports the political agenda of the red shirts or red shirts.

64. In conclusion the Tribunal does not consider that the applicant has claimed there is a real chance that she would suffer persecution or serious harm, should she return to Thailand now or in the reasonably foreseeable future, for reasons of political opinion/ imputed political opinion or imputed membership of the red shirts or yellow shirts.

65. Accordingly, the Tribunal considers that the applicant is claiming that she faces persecution on the basis of:

- Being a Muslim in Thailand (religion)
- Being a Thai Buddhist who converted to Islam (membership of a particular social group)
- Being a Thai Buddhist who converted to Islam and married a foreigner (membership of a particular social group)
- Being a Thai Buddhist who converted to Islam and married a Muslim foreigner (membership of a particular social group)

Conversion from Buddhism to Islam

66. The applicant asserted (see paragraph 21) that “We legally got married on [date] December 2009 and I changed my religion to Muslim. I'm very happy with my life and my husband. *Then I told my family*, my brother, and my work friends, but I thought they would be very happy and overwhelmed but instead they were very upset at me and didn't want to see me again.” However in her oral evidence to the Tribunal at the hearing she stated that *before her wedding* her father voiced his objection to her relationship with her partner. Also the applicant asserted (see paragraph 21) that “We legally got married on [date] December 2009 and I changed my religion to Muslim” but in her oral evidence to the Tribunal at the hearing

she stated that she was *still in the process of converting* from Buddhism to Islam. The Tribunal, however, puts aside these apparent inconsistencies as it is possible, if difficult, to reconcile the two statements. A credibility problem nevertheless remains. The Tribunal has considered the applicant's explanations for the apparent delay in her progress toward conversion (see paragraphs 29-39). The Tribunal does not find the applicant's explanations for her delay in converting persuasive and considers that the dilatory manner in which she has embarked upon her claimed conversion to Islam reflects a lack of interest in the religion.

67. Furthermore, when tested on her knowledge of the basic history of Islam and its personages, tenets and practices, the applicant's ignorance on these subjects reinforced the view that she is neither a genuine Muslim convert nor genuinely converting to Islam.

68. The Tribunal notes the following basic information about Islam:

- Islam has always existed about it was revealed over 1400 years ago to Mohammed.
- it originated in Mecca, Arabia
- Mecca and Medina are important cities
- there is only one God, Allah
- The final prophet was Mohammed. Mohammed was born in Mecca in what is now Saudi Arabia in 570. He was a deeply spiritual man and often spent time in meditation. The Koran tells of how in 610 he was meditating in a cave and was visited by the angel who ordered him to recite. Mohammed began to recite words which he came to believe were revelations. He continued to receive revelations and those revelations came to form the text of the Koran
- other prophets include Abraham, Moses, David and Jesus
- Muslims place their laws on the holy book of the Koran
- there are five basic pillars in the practice of Islam:
 - the declaration of faith
 - praying five times a day
 - giving money to charity
 - fasting
 - a pilgrimage to Mecca at least once

(source *BBC Guide to Religions*)

69. The Tribunal accepts that the applicant is claiming to have only been recently introduced to the religion. Accordingly, the Tribunal does not expect the level of knowledge of an Islamic scholar or long-term convert. However her ignorance, six months after the

conversion is said to have commenced, of such fundamental matters such as when and where the religion originated, at least one of the holy cities, the practice of Haj, some awareness of Mohammed and who Muslims regard as God (see paragraphs 41 to 49 above) suggests a lack of any real interest in the religion.

70. Having regard to the applicant's delay in conversion to Islam and her ignorance of the basic features of that religion the Tribunal is not satisfied that:

- the applicant is a Muslim
- the applicant is a genuine convert to Islam
- the applicant is genuinely converting to Islam
- her assertion that "I changed my religion" was a true statement

71. The last of these findings diminishes the applicant's credibility in relation to her claims and her credibility generally including the credibility of her claim to fear retribution from members of her family.

72. The findings that the applicant is not a Muslim or a convert to Islam make it unnecessary to consider whether the applicant faces a real chance of persecution on either of those two grounds. However, as indicated above, the applicant also claimed to fear persecution on the basis of being:

- a Thai Buddhist woman who married a Muslim (membership of a particular social group)
- a Thai Buddhist woman who married a foreigner (membership of a particular social group)
- a Thai Buddhist woman who married a Muslim foreigner (membership of a particular social group)

73. Whilst not articulating it the applicant also implicitly claimed to fear persecution on the basis of being:

- a Thai Buddhist woman who is perceived to be a Muslim

Persecution – Convention nexus- whether the applicant will be persecuted by State actors or, if non- State actors that she cannot avail herself of State protection from those non-State actors- Country Information

74. The applicant claims to have been threatened by her father and shunned by her brother but not to have suffered any physical harm by reason of her membership of these particular social groups due to the fact that she made the revelation that provoked the threats from her father and brother after arriving in Australia.

75. The Tribunal has considered the applicant's claim that she has been threatened by her father and shunned by her brother. The Tribunal notes that the certificate of marriage indicating the applicant's marriage to [Mr A] and accepts that the applicant has married a Muslim and, from a Thai perspective, a foreigner. Noting that it is unreasonable to expect an applicant to produce corroborative evidence of the claimed incidents of persecution where those incidents took place in private, the Tribunal accepts that the applicant may have received a censorious response from her father and that her father may have even threatened to kill her. Moreover, whilst often a useful indicator of whether there is a real chance of persecution in the future, it is not necessary for an applicant to prove past persecution to establish that there is a real chance of persecution in the future. That said, it is only convention related persecution that the Tribunal looks at in assessing whether an applicant satisfies the definition of "refugee". As indicated above at paragraph 71 the applicant's credibility is weakened generally by the Tribunal's findings that her claim to have changed her religion is false. However, even if the applicant was subjected to threats of violence from her father by reason of her membership of these particular social groups or her perceived religion, and the Tribunal accepts that the applicant faces a real chance of persecution for a convention reason *at the hands of her father and possibly her wider family* should she return to Thailand, the applicant would not meet the definition of "refugee" unless the Tribunal is satisfied that there is also a real chance that she will be persecuted *by State actors or that she cannot avail herself of State protection* and that relocation within Thailand is not reasonably possible.

76. The Tribunal has considered whether the applicant would be persecuted by State actors if she returns to Thailand. Country information accessed by the Tribunal indicates that the 2007 Constitution prohibits discrimination based on religion and obligates the state to help fund Islamic organisations and schools. Most sources indicate that the relationship between Muslims and Buddhists in Thailand, outside of the southern provinces, is harmonious. Whilst there is a long running separatist conflict it is confined to the far south by ethnic Malay Muslims. This has in the past contributed to a suspicion of Muslim loyalty to the state. In any event since 2006 coup tensions and suspicions have eased and human rights abuses in the conflict zone have declined. This information was sourced from reports by United States Department of State 2009, Freedom House 2009 Amnesty International 2009 Human Rights Watch 2010 as well the other sources set out in Attachment A to this decision record.

77. The sources set out in Attachment A revealed no support for the proposition that women who marry Muslims or marry foreigners (Muslim or otherwise) are subjected to serious or any harm in Thailand for those reasons.

78. The Tribunal has also had regard to Country Information provided by the applicant's agent. The information consisted of extracts from "BareNakedIslam.word press.com" and an article from "Rupee News" The extracts from "BareNakedIslam.word of press.com", include a 10 line article on the front page and 10 comments by individuals. The front page article refers to the conflict between Muslims and Buddhists in the South and the attacks on Buddhists by Muslims and retaliation against Muslims who are seen as collaborating with the Buddhists. The comments are either attributed to "BareNakedIslam" or individuals giving names such as "QV", "Wyatt Earp" and "Auntie Madder". The 10 comments reflect extremist anti-Muslim views. The article from the "Rupee News" contains an article dated 7 April 2010 "Patani Malay Sultanate: Muslims face Thai violence" reporting that in Pattani (a

southern province) six teenagers were found dead presumably killed by Muslim separatists and reporting on the retaliation by the Thai army.

79. The Tribunal attaches more weight to the country information it accessed (set out at attachment A) than to the country information provided by the applicant. "BareNakedIslam" merely reflects the exchange of personal anonymous views the tenor of which ranges from emotive to inflammatory. In any event, the views relate to the Muslim insurgencies and provide no insight into the position of Buddhist who convert to Islam or marry Muslims, foreigners or foreign Muslims. The article from "Ruppee News" also provides no insight into the position of Buddhists who convert to Islam, people who marry Muslims, foreigners or foreign Muslims and is also confined to the situations in the three troubled provinces of South Thailand.

80. Proceeding on the basis that the applicant is in a genuine relationship with [Mr A] the Tribunal does not accept that the applicant faces a real chance of persecution in Thailand by reason of being perceived to be a Muslim (the Tribunal has already found that she is not a Muslim or converting to Islam), marrying a Muslim or a foreigner or a Muslim foreigner or having several or all of those characteristics. As indicated above, the Country information accessed by Tribunal (and, which is, for the reasons already, preferred to the applicant's Country Information) does not provide any support for those claims.

State Protection

81. There are three limbs to this issue. First, the applicant states that she cannot avail herself of state protection because the Thai National Police would themselves persecute her. As already indicated above, the claim that the Thai National Police would persecute her or deny protection to her on the basis of any of her claimed convention characteristics is not supported by Country Information and is rejected. Second, the applicant states that elements in the police force (including [a relative] who was said to be a big policeman which the Tribunal takes to mean senior) will assist her father in locating her should she re-enter Thailand, including enlisting the aid of the airport authorities to detain her upon arrival. Rogue elements within the police and immigration officialdom, however, do not represent the State. This leads the Tribunal to the third aspect of this issue, namely whether the applicant can avail herself of state protection from harm brought by her father, brother and others including rogue elements of the State within the police and immigration officialdom.

82. The claim that State protection would be discriminatorily denied to the applicant on the basis of her being or being perceived to be a Buddhist who converted to Islam and/or someone who married a Muslim and/or married a foreigner or a foreign Muslim is not supported by Country Information and is rejected. On the basis of this country information the Tribunal is satisfied that a reasonable level of state protection against the claimed harm she faces at the hands of her father, brother and others including rogue elements of the State is available to the applicant.

83. Given the above findings, and having considered the applicant's claims singularly and cumulatively, the Tribunal finds there is not a real chance that the applicant would suffer persecution or serious harm, should she return to Thailand now or in the reasonably

foreseeable future, by virtue of her religion, perceived religion or membership of a particular social group or for any other Convention reason.

84. For the reasons set out at paragraphs 63-82 the Tribunal is not satisfied that the applicant does have a well-founded fear of persecution should she return to her home in Thailand because of her religion, perceived religion or membership of a particular social group or for any other Convention reason. The Tribunal further finds that its adverse credibility findings also leave it unsatisfied that the applicant's practice of Islam in Australia is otherwise than for the purpose of strengthening her claim to be a refugee and for that reason disregards his conduct in Australia pursuant to section 91R(3) of the Act.

CONCLUSION

85. Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant does not satisfy the criterion set out in s.36(2) for a protection visa.

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