

1202004 [2012] RRTA 837 (20 September 2012)

DECISION RECORD

RRT CASE NUMBER: 1202004

DIAC REFERENCE(S): CLF2011/163594

COUNTRY OF REFERENCE: Syria

TRIBUNAL MEMBER: Shahyar Roushan

DATE: 20 September 2012

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration 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, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the Migration Act 1958 as this information may identify the applicant] September 2011.
3. The delegate refused to grant the visa [in] January 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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.

15. 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

16. 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').
17. '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.
18. 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

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Protection Visa Application

Application Form

20. According to the information provided in the applicant's protection visa application, he was born in Damascus, Syria. He is [age deleted: s.431(2)]. He is Orthodox Christian and of Assyrian ethnicity. He arrived in Australia [in] December 2009 on a temporary Spouse visa issued [in] December 2009. He and his wife separated [in] February 2010.
21. The applicant has completed 9 years of education and lists his profession before coming to Australia as 'security guard' He worked in that profession at [an international] school in Damascus from February to April 2009. From May to September 2009 he worked as a '[clothes] seller on [a] casual basis'.
22. In response to questions in relation to his reasons for claiming protection in Australia, the applicant submitted a statutory declaration in which he made the claims outlined below:

Why did you leave that country?

1. I left Syria because I was persecuted because of my race and religion. I also left Syria because I was granted a Spouse Visa.
2. I am Assyrian.
3. My religion is Christian.
4. Assyrians are the minority race in Syria. Christians are the minority religion in Syria.
5. The conditions in Syria were terrible. I was in threat of being murdered by a Muslim group because of my race and religion.
6. I worked as a security guard in an international school where [language] and English was taught... In my last year in Syria in 2009 I received threats because I worked at the school. The students at the school are all Christian and we as security guards were there to protect them and to ensure their safety.
7. In 2009 I was attacked and threatened with death by Sunni Muslims. There were 4 Sunni Muslims and they stopped me from entering the school. They were aware I was protecting the Christians and they knew I was Christian of an Assyrian race. They said to me if I do not get out of work from here they would kill me. They stole my I.D which showed the address of the school and it had a photo I.D with my name and my address. I was scared that they would come after me at my home. I reported to the police but I did not know who the perpetrators were, I did not have their names.
8. I did not return to the school, I went into hiding at my relative's place for 1 month in a different suburb. I heard that other security guards that were Christian were attacked for working at that school. My family had told me that those Sunni Muslims came knocking on my door asking for me, luckily I was not living there at the time. Shortly thereafter, thankfully by coincidence I was granted the spouse visa to leave Syria to come to Australia.

What do you fear may happen to you if you go back to that country?

9. I believe that the same people that threatened me will harass me or kill me.
10. I have a well-founded fear of persecution if I return to Syria because of my race and religion and the personal threats made to my safety. I have seen a doctor in psychology... in Australia and she has diagnosed my psychological condition...
11. My family has been continually receiving threats towards me. I received a letter from my family recently that was sent on [date] June 2011..., warning me not to return home because of the current situation and threats.
12. The current political situation is terrible...

Who do you think may harm/mistreat you if you go back to Syria?

13. The Muslims, terrorists and extremists.
14. The group of Sunni Muslims that threatened me working in the English and [country] school that forced me to go into hiding and leave the country.

Why do you think this will happen to you if you go back?

15. Because I am Assyrian and I am Christian and I am the minority.

16. As I worked in the English and [country] school I am afraid of getting back.

Do you think the authorities of that country can and will protect you if you go back. If not, why?

17. No they will not protect me. The police were unable to find the perpetrators and do anything that threatened me. The police do not do anything and they do not report the crimes.

23. In support of his application, the applicant submitted the following the news articles and report relating to the 'current situation' in Syria:

- Syrian Christians fear regime change could hasten extinction, *Assyrian International News Agency*, 5 December 2011.
- Black, Ian and Hassan, Nidaa, UK and France seek UN action on Syria as thousands flee, *guardian.co.uk*, 8 June 2011.
- Buchanan, Patrick, When dictators tumble, who rises?, *Tulsa World* 29 April 2011.
- United Nations Press Release, Special Advisers of the United Nations Secretary-General on the Prevention of Genocide, Francis Deng, and on the Responsibility to Protect, Edward Luck, on the situation in Syria, 2011.
- Karouny, Mariam, Syria Christians fear for religious freedom, *thewest.com.au*, 18 May 2011.
- Kendal, Elizabeth, Syria: Christians vulnerable, *Assist News service*, undated.
- Mackey, Robert, Syria's Ruling Alawite Sect, *The New York Times*, 14 June 2011.
- Manthorpe, Jonathon, Middle East bombings mark dwindling religious diversity; Although region still displays spectrum of religions, intolerance, persecution grow, *Edmonton Journal*, January 2011
- Meral, Ziya, An uncertain future, *Sojourners*, May 2011.
- Mullins, Michael, Peace in Syria will stop the boats, *Eureka Street.com.au*, 26 June 2011.
- For Syrian Christians, protests are cause for fear, *The Washington Post*, 24 April 2011.
- UN News Centre, Syria: Ban reiterates calls for end to deadly violence and mass arrests, 9 May 2011.

24. In addition, the applicant submitted the following documents:

- Letter from the General Manager, [company deleted: s.431(2)], dated [in] June 2011 and addressed to [company deleted: s.431(2)], certifying that the applicant was employed in 'our company' as a security guard from [February] 2009 to [April] 2009.
- Psychological Report, authored by [Dr A], Registered Psychologist. Using psychometric assessment tools, including the Depression Anxiety Stress Scale, [Dr A] diagnosed the applicant with 'extremely severe levels' of depression, anxiety and stress. The report noted that 'an examination of [the applicant] to part I of the HTQ [Harvard Trauma Questionnaire] indicated that he has experienced oppression and persecution because of his religion' [Dr A] viewed the applicant's 'psychological condition as severe and prognosis for recovery nil if returned to Syria'.

- Letter from the applicant's [brother], dated [in] June 2011, asking the applicant not to return to Syria because the situation is bad in Syria. The letter refers to implementation of checkpoints, demonstrations, deployment of the army, possibility of civil war 'between different sects' and lack of law and order.
25. In a covering submission, dated [in] September 2011, the applicant's then representative referred to the applicant's key claims and made submissions in relation to the applicable law.

Interview with the Department

26. The applicant was interviewed by a delegate of the Minister [in] December 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.
27. The applicant stated that he resided at a single address from birth until his departure from Syria. He stated that he has a brother in Sydney and a sister in Melbourne. He also has cousins in Sydney. His parents and the remainder of his siblings reside in Syria. He added that he also has a sister in Lebanon. He is in contact with members of his family every fortnight.
28. The applicant stated that the current situation in Syria prevents him from returning. The army is killing the people and there are also armed militias.
29. The applicant stated that he was working at [an international] school in Syria when 4 people attacked the school. As a security guard the applicant tried to apprehend them, but they escaped. The police was informed, but no action was taken. One day, when he was returning home from school, the same people attacked him and told him that he had to leave the school. The delegate asked him why they wanted him to leave the school. He stated that the children of most embassy officials attended this school and these people wanted to do something to the school. The 4 other security guards working at the school were also threatened. He stated that after he left the school, the police randomly visited the school in order to protect it.
30. The applicant stated that following the incident, he went to live with relatives in a different suburb of Damascus for a while, but they came to his home asking about him. When asked why, he said they just came to ask in order to make sure. He was asked how he knew the people who were asking about him were part of the same group which had attacked the school. He said no one else would have asked about him. He was asked if he was safe where he was residing with his relatives. He said yes, it was peaceful there.
31. The applicant was asked if his family has continued to receive threats against him. He said yes, from time to time. It is very dangerous for his family because they are Christians. When asked what is happening to Christians in Syria, he said something similar to what happened in Iraq or Egypt could happen to them.
32. The delegate asked the applicant if there were any other reasons as to why he did not wish to return to Syria. He said there are checkpoints and demonstrations on a daily basis.

The Delegate's Decision

33. On the basis of the country information before her, the delegate was not satisfied that there is a real chance that the applicant would be persecuted for a Convention reason in Syria.

Application for Review

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

The Hearing

35. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
36. At the outset of the hearing, the Tribunal explained to the applicant the complementary protection limb for the grant of a protection visa and that the Tribunal must also assess whether he would come within Australia's complementary protection obligations under other treaties not to return people to their country of origin.
37. The applicant was asked about the preparation of his application for a protection visa. He stated that he was assisted by his previous representative in preparing his application for a protection visa and the document containing his separate answers to questions relating to his reasons for claiming protection. He confirmed the accuracy of the contents of both documents and indicated that he did not wish to make any amendments.
38. The applicant stated that in Syria he resided at a single address in a suburb of Damascus from 1978 until his departure for Australia [in] December 2009. He was asked if he had resided anywhere else in Syria. He stated that he resided at his maternal cousins' home, located about an hour away from Damascus, for 20-30 days when he was working as a security guard in April 2009.
39. The applicant stated that he left school after completing grade 9 in [year deleted: s.431(2)]. He then started working in a variety of jobs. In 1992 he started working as a packager in a [factory]. He remained in that job until January 2009. In February 2009, he started working [as a security guard]. His assignment was to guard [an international] school. The school was attended by children of embassy officials. He worked as a security guard at the school until the end of April 2009. However, in the middle of the April 2009 he went to reside with his maternal cousins and during the time he resided with his cousins he worked at their shop. He explained that he used to work as a [courier] outside of the normal work hours from the time he was employed at the [factory]. After he returned to Damascus in approximately May 2009, he resumed his work as a courier and continued working until he came to Australia. He also continued to assist his cousins in operating their shop.
40. The applicant was asked about his military service. He stated that he completed his compulsory military service in 1992.
41. He was asked about his employment in Australia. He stated that he worked for 2 or 3 months as a [tradesman]. He has not worked in any other capacity. He is currently financially supported by his brother.
42. He was asked about his family. He stated that he arrived in Australia on a Spouse visa. He married his former wife, an Australian citizen, in Syria, but they separated soon after he came to Australia. He stated that his parents are currently in Syria and continue to reside at the family home in Damascus. He has [details relating to siblings deleted: s.431(2)]. He contacts his parents every 4-6 weeks. They are 'ok', but afraid of what is happening in Syria.

43. The applicant was asked why he did not want to return to Syria. He stated that in mid-April 2009 he was working as a security guard at the [international] school when 4 people tried to attack the school. They were 'terrorists' The applicant and his colleague saw these people trying to sneak into the school, which resulted in the culprits fleeing. The applicant and his colleague tried to chase these people but they ran away. Later that day, after the applicant had finished his shift at around 4pm, he and one of his colleagues were walking towards the bus stop to catch the bus home. The 4 people who had tried to enter the school obstructed their way, grabbed them, stole their IDs, warned them to leave their jobs and escaped. He stated that his ID contained his name, address and contact details. He was asked if he was told why they wanted him to leave the school. He said no, but he had stopped them from entering the school. He was asked how he knew they were terrorists. He said he thought they were terrorists based on their appearance. They had beards and were wearing something akin to *shalwar kamis*, usually worn by people from Pakistan. He was asked if anyone else in Syria wears this type of clothing. He said 'no' The Tribunal noted that historically the regime has shown lack of tolerance for Sunni Islamists He was asked why people with such distinct appearance, which would no doubt attract attention, would attack a school in the middle of the day. He said previously people with Al-Qaida connections had been captured by the authorities.
44. The applicant stated that 5 days after the incident some people went to his house, asking about him. His brother told them that he was not home and they left. He stated that these people wanted to make sure that he had left the school. After this visit, the applicant went to stay with his cousins and about 2 weeks later he quit his job as a security guard.
45. The applicant was asked if anything else happened after that. He stated that every now and then they would return and ask his neighbours about the applicant's whereabouts and if he had left the job. Also, before he quit his job as a security guard, these people went to the school to check if he worked there. He was asked about his colleague who had accompanied him to the bus stop on the day he was attacked. He said he also left his job as a security guard and he has not heard from him since.
46. He was asked whether the matter was reported to the police. He said they informed the police, but they did not do anything until the school lodged a complaint. After that a police car was sent to the school to protect it. He was asked what else the police could do. He said he had provided the description of the 4 people to the police and the police should have enquired further. He was asked how he knew they did not. He said it was their job.
47. It was put to the applicant that the people who had attempted to attack the school had his contact details and address. He resided at that address for 6 months before he came to Australia. It was put to him that if these people wanted to harm him they had ample opportunity to do so. He said yes, but they wanted him to leave his job and they succeeded. He was asked why he is afraid to return if he had left the job and had no further interest in working as a security guard. He stated that the situation in Syria is bad, terrorists groups have increased. There are Al-Qaida affiliated groups, the Free Syrian Army and the authorities. Each group is looking after its own interests and none of these groups have any regard for the people. President Assad will not resign and the situation is likely to deteriorate into civil war.
48. The applicant was asked why these people wanted him to leave his job as a security guard. He said that the students who attended the school were the children of officers and consular officials. He did not allow them to enter the school and they wanted him to leave the school

so that they would not be hindered in the future. He added that following the incident in April 2009, the security measures at the school increased.

49. It was put to him that he was not targeted by these people because he was a Christian or Assyrian, but because he had prevented an attack on the school. The applicant's representative referred the Tribunal to paragraph 7 of his statement, stating that those who had attempted to attack the school knew he was Christian and Assyrian.
50. The Tribunal put to him that it has not been able to locate any information in the sources consulted to suggest that foreign schools, embassies or foreign institutions in Damascus has been targeted by Muslim groups or anyone else. He stated that it is true that Damascus has remained relatively safe because the authorities have been protecting sensitive locations in Damascus. There have been bombings that have targeted military installations belonging to the regime.
51. The Tribunal put to him that while it appreciates that Christians are concerned about the events in Syria, the Tribunal it has not been able to locate any information in the sources consulted to suggest that Christians, including Assyrian Christians, in Damascus have been targeted by Muslim groups or anyone else. According to the country information before the Tribunal, Christians in Syria are generally not subjected to systematic mistreatment or targeting by government forces or other social groups' Christians are allowed to practice their faith freely, are granted significant latitude in certain areas of personal status and family law, and hold senior positions within government as well as other educated professions. Christians in Syria can practise their religion freely. Christians are supporting the government. They have ministers, high ranking military officers and participate in every sphere of government. He stated that he had not said anything against the government. The Tribunal put to him that the Tribunal has found no information in the sources consulted to indicate that the recent uprising against the Syrian regime has had any particular impact on the Christian community in Syria. It was put to the applicant that Human Rights Council's Report of the independent international commission of inquiry on the Syrian Arab Republic, dated 22 February 2012 states that attempts to mobilize political support have given rise to tensions and crimes with sectarian undertones, especially in Homs. However, the report is devoid of any references to Christians being harmed by Muslim extremists in Syria. The applicant stated that there have been attacks on a monastery in Deir Seyd Naya, and a priest was killed in Hama. Assyrian Christians are very concerned as there have been thefts and killings. His aunt has told him that in Hasaka young people are committing theft and other crimes
52. The Tribunal noted that Damascus remains relatively safe and he had been able to avoid the problem he was facing in 2009 by moving to an area surrounding Damascus. It was put to him that it appeared that he was able to return to Damascus or internally relocate to the surrounding areas to avoid the harm he feared. He stated that Damascus has been subjected to bombings and attacks and the situation is similar to Hama and Idlib. In his area there was an explosion killing 3 people and injuring others.
53. The Tribunal put to the applicant that it appeared that adequate and effective protection was available to him in Damascus. He stated that this is correct and Damascus is guarded by the Republican Guard. However, the general public is at risk and those who have been harmed are citizens without any connection to anyone.

54. The Tribunal put to the applicant that fears of general violence does not necessarily invoke Australia's protection obligations under the Refugee Convention or complementary protection provisions. He said he had no comments.
55. The applicant's representative made an oral submission, stating that information coming out of Syria is subject to heavy censorship. The situation in Syria is unstable and volatile. Christians are concerned in Syria and the situation is similar to the situation in Egypt. If the situation deteriorates and the regime is removed, the Christian minority is at risk. The applicant's representative requested further time to provide written submissions. She agreed to provide the written submission by [a date in] June 2012.

Post-Hearing Submissions

56. [In] June 2012, the Tribunal received a submission from the applicant's representative (see folios 49 to 54 of the Tribunal file). It was essentially submitted that the applicant is at real risk of being harmed if he were to return to Syria because of his race, Christian religion, his imputed pro-Western political opinion and Membership of a particular social group, Security Guard in Foreign Schools. It was submitted that country information indicates that Islamists are active in Damascus. The people who are after the applicant have visited his home on several occasions. Christian minorities in Syria are fearful of current and future harm. It was submitted that country information also reports that the violence and instability is likely to lead to a collapse of the President Bashar al-Assad's regime. The government is 'losing its grip on security' and state protection cannot be guaranteed. It was also submitted that relocation is not reasonable in the applicant's case.
57. In her submission, the applicant's representative requested the Tribunal to inform the applicant 'of any adverse information or any other reason it is considering for refusing his application and provide him with an opportunity to comment before an adverse decision is made' As all issues determinative of the case and relevant information was put to the applicant at the hearing in the presence of his representative and his representative was afforded a further opportunity to provide comments in writing, the Tribunal did not consider it necessary to provide the applicant with any additional opportunities to 'comment'.

FINDINGS AND REASONS

58. The applicant travelled to Australia on a valid passport issued by the Syrian Arab Republic. Having sighted the applicant's passport at the hearing, the Tribunal finds that the applicant is a national of Syria.
59. The applicant's claims are based on the Convention grounds of race, religion, imputed political opinion and membership of a particular social group. Essentially, he claims that he worked as a security guard in [an international] school in Syria. When he foiled an attempted attack on the school, he was threatened and told to leave his job. Those who threatened him also visited his house asking about him. The applicant fears serious harm at the hands of Islamist groups if he were to return to Syria.
60. The Tribunal accepts that the applicant is an Assyrian Christian. The Tribunal accepts that he worked as a security guard at [an international] school in Damascus from February to April 2009. The applicant claims to be fearful because of an incident that occurred in April 2009 at the school. The Tribunal is prepared to accept that after foiling an attempted break and enter into the school by 4 individuals, thought to be Muslim extremists by the applicant and his

colleagues, he was stopped on his way home, his ID was taken and he was warned to leave his job. The Tribunal accepts that the applicant became fearful, resigned from his position a few days later and resided with his cousins in a different suburb of Damascus for about 2-3 weeks before returning home. He departed Syria for Australia in December 2009.

61. The applicant stated at the hearing that those who had taken his ID, by virtue of the personal information contained in the document, knew his name, address and other personal details. They also knew that he was an Assyrian Christian. He also gave evidence to the effect that these persons visited his home every now and then, enquiring as to his whereabouts and if he had left his job as a security guard. In addition, these individuals went to the [international] school to ensure he was not working there. When asked why these people wanted him to leave his job as a security guard, he said because he had foiled their plan they wanted him to leave his job so that they would not be hindered in the future. The applicant's evidence strongly suggests that this was the extent of the Islamists' interest in him. They wanted him to leave his job, which he had already done approximately 2 months after he had started. The purpose of the visits to his home and the school was to ensure that this was the case. It is clear from the evidence that they had no other interest in and no intention to harm him. Indeed, in view of the fact that they knew his name, address and other details, they had ample opportunity to harm him between April and December 2009. Not only did they not, it appears that they did not engage in any other conduct to indicate that they had any intention to harm him.
62. The applicant's evidence at the hearing indicated that he had no inclination and felt no compulsion to work as a security guard. He had other employment options and had made a seamless transition after resigning from his [position]. As indicated above, the purpose behind the visits to the applicant's house was to ensure that he had left his employment at the school. The Tribunal is of the view that it is reasonable to assume that by now these individuals have certainly ascertained that the applicant is no longer employed at the school. On the basis of the evidence before it, the Tribunal finds that there is no real chance that the applicant will continue to be visited or monitored by those who had visited his house in the past. The Tribunal finds that there is no real chance that he will be seriously harmed by the individuals who had attempted to break into the school in April 2009 or any other Islamists for the reason of his race, religion, imputed pro-Western political opinion and/or membership of a particular social group, namely Security Guard in Foreign Schools or any other group apparent on the face of the evidence.
63. With regard to the applicant's race and religion more generally, the Tribunal appreciates and understands Syria's Christians' sense of vulnerability and their fears for their future and safety should the regime fall. Based on country information pointing to an increase in violence and the deteriorating security situation, the applicant's representative has submitted that the fall of the regime is likely. While the Tribunal does not dispute the reports relating to the state of security in Syria, it does not agree with the representative's assessment. In the absence of any other indicators, any predictions, other than continuation of violence, what may or may not happen in Syria in the reasonably foreseeable future is a matter of pure speculation.
64. As it was put to the applicant at the hearing, the sources consulted by the Tribunal indicate that Christians in Syria are generally not subject to systematic mistreatment or targeting by government forces or other social groups. No information could be located by the Tribunal to suggest the situation for Christians has changed since that time. Reports indicate that Christians are allowed to practice their faith freely, are granted significant latitude in certain

areas of personal status and family law, and hold senior positions within government as well as other educated professions.¹

65. The Tribunal has considered the articles submitted by the applicant and the country information referred to by the applicant's representative in her submission. This information essentially relates to Syria's Christians fearing for their future, feeling threatened by the general violence and fleeing the country. The applicant representative's post hearing submission referred to an April 2012 report by the International Crisis Group stating that in some parts of the country protests are taking on a progressively more sectarian tone. The report refers to a prominent opposition leader in Homs who was caught on video participating in chants calling to 'exterminate the Alawites' The segment of the report quoted was devoid of any references to Christians. The submission also quoted a report by the Assyrian International News Agency, dated 29 March 2012, referring to attacks against Syria's Christian community, including kidnappings and murder, by Islamists. The report did not indicate where and under what circumstances these attacks have occurred. Indeed, as it was put to the applicant at the hearing, a report by the Human Rights Council, dated 22 February 2012, states that the Government, on the one hand, and the opposition Syrian National Council, Syrian Revolutionary General Commission and local coordination committees, on the other, have consistently proclaimed their commitment to non-sectarianism.² The report indicates that attempts to mobilise political support have given rise to tensions and crimes with sectarian undertones, especially in Homs. This may explain the applicant's claims relating to the attack in Deir Seyd Naya and theft and other crimes committed by young people in Hasaka. The Tribunal has also found information relating to a church in Homs, Um al-Zunnar, which was badly damaged during the military's month-long shelling of the city in February³ and Christians in Qusayr being warned to either join the Sunni-led opposition or leave.⁴
66. The Tribunal has found no information in the sources consulted to suggest that Assyrians or, more specifically, Assyrian Christians in Damascus are being targeted or harmed by anyone, including Islamists, the Free Syrian Army or anyone else. On the basis of the evidence found in the sources consulted by the Tribunal, which it considers reliable, the Tribunal finds that the applicant's chance of facing harm for the reason of his religion and/or race is remote.

¹ Minority Rights Group International 2008, *World directory of minorities and indigenous peoples – Syria: Christians, Armenians and Assyrians* <http://www.minorityrights.org/5277/syria/christians-armenians-and-assyrians.html>; Berbner, Bastian 2011, 'Syria's Christians side with Assad out of fear', *Der Spiegel*, 30 November <http://www.spiegel.de/international/world/0,1518,800450,00.html>; Jacinto, Leela 2011, 'In unsettling times, Syria's Christians walk a tightrope', *France 24*, 14 December <http://www.france24.com/en/20111214-syria-christian-assad-security-crackdown-christmas-church-mass-damascus>; 'For Syrian Christians, protests are cause for fear' 2011, *The Washington Post*, 24 April http://www.washingtonpost.com/world/for-syrian-christians-protests-are-cause-for-fear/2011/04/21/AFTNd3VE_story.html – Accessed 24 January; Freedom House 2011, *Freedom in the World 2011 – Syria*, 26 May, http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2011&country=8143&pf – Accessed 30 January 2012; 'Life for Christians in Syria: Interview with Archbishop Mor Malatius Malki Malki' 2012, ABC Radio National 1 February <http://www.abc.net.au/radionational/programs/religionandethicsreport/life-for-christians-in-syria/3805228>

² Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, 22 February 2012.

³ USA Today, Christians in Syria live in uneasy alliance with Assad, Alawites, 11 May 2012 <http://www.usatoday.com/news/world/story/2012-05-09/syria-christians-crisis/54888144/1>

⁴ The New York Times Syria's threatened Christians, 28 June 2012 http://www.nytimes.com/2012/06/29/opinion/syrias-threatened-christians.html?_r=1

67. The Tribunal appreciates the applicant's fears relating to the ongoing conflict and strife in Syria. As noted at the hearing, the Convention definition of 'refugee' does not encompass those fleeing generalised violence, internal turmoil or civil war.⁵ For the reasons already discussed, the Tribunal finds that there is nothing in the applicant's circumstances to suggest that as a result of the political violence in Syria he would be subjected to persecution for a Convention reason, including his race, religion, imputed pro-Western political opinion and/or membership of a particular social group, namely Security Guard in Foreign Schools or any other group apparent on the face of the evidence. There was no evidence before the Tribunal to suggest, and it does not accept, that he will be selectively or discriminatorily affected by the violence in Syria. Having considered the totality of the applicant's circumstances, the Tribunal is not satisfied the civil strife in Syria gives rise to a real chance of persecution for a Convention reason in the applicant's case.
68. There is no evidence before the Tribunal, and the applicant has not claimed that he will suffer serious harm for a Convention reason as a result of his psychological condition.
69. Having considered all the applicant's circumstances, including his race, religion, past employment as a security guard and claims relating to his past employment, the Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Syria, there is a real risk that he will suffer significant harm at the hands of Islamist groups, militias, the Free Syrian Army or anyone else.
70. There was no evidence before the Tribunal to suggest that the violence the applicant fears is faced by him personally. The Tribunal is satisfied that the applicant fears violence faced by the population generally and not by him personally. The Tribunal finds that there is taken not to be a real risk that the applicant will suffer significant harm in Syria as a result of general violence and lack of security.
71. In her Psychological Report, [Dr A] stated that the applicant's psychological condition [is] severe and prognosis for recovery nil if returned to Syria'. [Dr A]'s report, which at times inappropriately borders on an assessment of the applicant's claims, appears to link the applicant's prognosis for recovery to his past experiences, as narrated by the applicant to [Dr A], and the current situation in Syria. Neither the applicant nor his representative made any specific claims for protection in relation to the applicant's psychological condition. In any event, the Tribunal is not satisfied that if the applicant, upon being removed to Syria, were to continue to suffer from the psychological ailments he has been diagnosed with, this would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant for the reasons specified in paragraphs (a)-(e) of the definition of torture in s.5(1). The Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer harm from the authorities that would involve the infliction of severe pain or suffering, either physical or mental, such as to meet the definition of cruel or inhuman treatment or punishment in s.5(1). Nor is it satisfied that it has substantial grounds for believing that there is a real risk that he will suffer such harm as to meet the definition of degrading treatment or punishment in s.5(1) which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is not satisfied that it has substantial grounds for believing that there is a real risk that the applicant will suffer arbitrary deprivation of his life or the death penalty. Having considered the applicant's claims, the Tribunal finds that there are

⁵ *MIMA v Haji Ibrahim* (2000) 204 CLR 1 at [141] per Gummow J, Gleeson CJ and Hayne J agreeing.

no 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', as that term is exhaustively defined in s.36(2A).

72. The Tribunal does not accept that the applicant has been harmed in the past or that, if he were to return to Damascus now or in the reasonably foreseeable future, there is a real chance that he will be harmed for the reason of his race, religion, imputed political opinion or membership of any particular social group. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason in Syria. The Tribunal finds that the applicant does not meet the criterion in s.36(2)(a)
73. Having considered all of the applicant's claims, both individually and cumulatively, the Tribunal finds that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention as referred to in paragraph 36(2)(a) of the Act. The Tribunal finds that the applicant is not a person to whom Australia has protection obligations under paragraph 36(2)(aa) of the Act.

CONCLUSIONS

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

DECISION

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