

0801177 [2008] RRTA 257 (10 July 2008)

DECISION RECORD

RRT CASE NUMBER: 0801177

DIAC REFERENCE(S): CLF2008/1159

COUNTRY OF REFERENCE: Thailand

TRIBUNAL MEMBER: Ann O'Toole

DATE DECISION SIGNED: 10 July 2008

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 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 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

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.
20. The applicant appeared before the Tribunal twice to give evidence and present arguments.
21. The applicant was represented in relation to the review by his registered migration agent.
22. The applicant comes from Thailand. He claims that his religion is Islam and comes from an ethnic group. He claims to own a business in Thailand. He claims to have resided at the same address for many years until he departed Thailand in a recent year.
23. In a statutory declaration (undated) he claims as follows:
 - He is a Muslim by religion. [Details deleted in accordance with s431]
 - In the 1990s he went to work with a very well known businessman,.
 - "In 2001-2 the situation of the southern three provinces of Thailand Naratiwat, Yala and Pattani started getting bad. The federal government ignored the Muslim minority population by not giving them jobs in the government sector, as well as by not providing enough funding for the development of the region. The Muslim population was not happy... and started protesting.... the army also had a role in it and always suppressed the Muslims in the region because of that, a number of terrorist organisations came into existence in which PULO (Pattani United Liberation Organisation), Gerakan Mujahadeen Islam Pattani (GMIP) Mujahadeen movement (BNP) are some of the popular organisations that are very active in the region and are forcing the local Muslim population to join them. I used to travel to different parts of south Thailand province as there is a lot of rubber plantation for my job.
 - In January 2004 the government imposed martial law in the region to clamp down in insurgency and the army established check points and military camps in the area I used to pass almost daily through these checkpoints for my business. The army started raids in the small villages and towns of the region and acted inhumanely, using disproportionate force and treated the Muslims very badly.
 - On 12 April 2004 a very well known human rights lawyer Somchai Neelaphaijit was disappeared and killed by the army intelligence and his body has never been found.
 - On 26 April 2004 a total of 78 Muslim protestors were killed by the army and about 60 persons were detained for participating in the peaceful protest at Takbai. On 28 April 2004 a total of more than 100 Muslims were killed by the army in and around Songkhla, Petane and Yallah provinces, most of them were teenagers and a few dozen Muslims were shot dead inside the Kru Se Mosque in Petane....
 - In the 2000s I started my own business with the help of my boss, his employer in district 1 . I used to travel to different parts of the region for my business. I made regular customers and a lot of friends as well in the town and the remote villages. I had been stopped almost every day by the army when getting through these checkpoints. I was given hard time by the army and tortured me to work as a spy for them. But I declined and continued establishing my business. I used to talk to

my customers and friends about the current worsening situation in the region and everyone was very worried. I told them to form a comity (sic) and speak out against the barbaric crimes the terrorists and the injustice of the military.

- I and my friends make a program to organise peaceful meetings of the local businessmen and people who are fed up from both army and the terrorists and formed a comity (sic). Our aim was to stop people joining the terrorists groups and to condemn the inappropriate use of power by the army and police against the Muslims. My role in the comity (sic) was to convince the people to join us. We wanted to create a peaceful society because it would be good for our business to have a peaceful environment as well as for our safety. I had the support of some local businessmen, as I tried to convince the local population about our agenda and spoke out against them (army & terrorists). The terrorists were thinking that I was going to create a supportive organisation for the army and considered me as a threat to them and the army accused me of defaming the army and providing information to the outside media. I was approached by different people to stop these activities, I was given threats but I was determined to continue my mission.
- During this time I had a friend (Friend A) in Naratiwat province. He used to go village by village and sell things to the local shops and on the streets. I used to meet him often. one day I met him. He was accompanied with two local Muslim men. He introduced me to them. He seemed very worried, I asked him what the problem was but he would not tell me anything.
- I went to Country Z for marketing purpose for my own business matter. Four months later I went to Country Y from Country Z. After spending a few days there I returned to Naratiwat and met my Friend A who seemed to be very weak and disturbed. After I insisted “what has happened to you?” he confessed to me that the army intelligence had forced him to spy for them. Friend A also told me that his other two friends whom I have met previously were also working for the army intelligence.
- *[Details of an incident involving Friend A deleted in accordance with s431 as it may identify the applicant]* Friend A was told to keep everything secret and not to mention anyone about this incident. He followed the order. A few days later a man contacted him and took him to a house where he was introduced to a third person who seemed to him as an officer. And that officer gave him some photographs of a few persons and was advised that when you (Friend A) go to the remote villages for your work, try to find out more about these persons “when they come to the villages and who they stay with?”
- When Friend A refused to do so he was threatened again and was reminded that you had already signed a confession that you were working against the government. Right now you (Friend A) can be arrested and we will take you to the interrogation centre where there is no one can help you. Then Friend A realised that he had been trapped by the military intelligence. That officer told him, “from now onwards you will be directly dealing with me” and that way Friend A was forced to become a spy for the military intelligence. Within a few months Friend A successfully penetrated into terrorists organisations because he was already known by these people as a businessman from the last ten years. He also managed to make many more agents for the army from those people who were victims of terrorism and who were wanted by the police for small crimes. Then I asked Friend A that “is there anyone else who knows about this?” He said, “No, I even have not told my wife”.
- He wanted to get out but the army had all the information about his residences and the possible hideouts. He was also worried that terrorists had doubts about him and got in trouble from them as well. I promised him that I will help him through my boss’ relative (Friend B) who was a member of the local government, was very well known and well respected in the community as well as in the local government. I informed Friend B about his situation. He promised to help Friend A Friend B informed some of his known military officers that the military intelligence is giving hard time to Friend A and if they can intervene and if they can help him.
- When the other two men, who were working with Friend A as military agent, found out that Friend A want to get out from their network and start a new life. Then they informed the terrorist organisation that Friend A was a military agent. By telling this they prove their sincerity with them and put the blame on him and continue their activities inside this organisation. They also told the organisation that Friend B and Friend C were the ones supporting him.
- During that time Friend A was abducted in day light by men from the roadside and has not been seen since that day. A lot of people witnessed this incident. Men approached him. One hit him on the head then they drove him off on a motorbike. His body was never found but the motorbike was found been blown up in the nearby area. A group of People including me which was headed by Friend B, the local government administrator went to the village where the two men came from

and demanded Friend A's body. The agents had disappeared. Friend B was the leader of the group who demanded the body.

- I and Friend B went to the same military officer, to whom he had asked to help Friend A and we told him that the persons who had kidnapped Friend A, were not from the terrorist organisation but actually they were from military intelligence and army intelligence are responsible for Friend A's disappearance. And angrily shouted at the officer and I warned that officer, "if Friend A was not recovered within 48 hours, I will go and inform the media about the whole story". Because Friend A was my close friend and had told me everything. Then Friend B also told him. "I am also going to meet the governor and will try to contact the central government and lodge a complaint against the military.
- A few days later Friend B was killed: Friend B's employee who accompanied Friend B was also killed.
- On that day I was in Bangkok for my business purpose and some people went to my town and were asking of my whereabouts, one of my friends informed me about the situation. When I tried to go to Friend B's funeral I was told to runaway. One of my friends called me and told me, not to come to Friend B's funeral because it seemed that there were some suspicious people attending the funeral. No-one knew these people and they seemed to be acting like spies. I realised that my life was also in danger and I went into hiding. The situation was becoming quite frightening.
- I tried to change my appearance so that I would look like a tourist. I shaved and changed into tourist looking clothes. I also changed my mobile phone number. I then went to District 1 to visit my boss. I knew almost immediately that I had made a mistake. A few people were following me, so I went out with groups of friends and stayed in the group I kept a low profile and never walked alone. I stayed in a room before slipping away to Bangkok where I stayed with a friend in an apartment building for about one month. I was then informed that someone was walking around the area showing my photograph and asking people if they had seen him.
- I went to one country and then to Country Y where I stayed with one of my friends for 4 days.
- Then I went back to Bangkok and stayed with a female friend. A few days later I moved in to an industrial zone where I stayed with a friend for about six weeks.
- I went to Country Y if I could hide there but Country Y was too under the influence of the terrorist and I was easy to be tracked down by them (military intelligence and terrorists) then I decided to go back to Bangkok and stayed in the Industrial Zone. I then went to a travel agent and asked for a tourist visa to any country where there is a true democracy and could give me some sort of protection.
- Then he arranged me the Australian visa. A week later my travel agent organised me to fly out from Bangkok airport but I decided not to go via Bangkok because by that time everyone was aware that I am trying to escape via Bangkok and I did not want to take the risk. Then I changed my appearance and travelled through different routes to avoid being recognised.
- I entered Country Y on the next day and the same day I took the train to Singapore, from the train station I went straight to the airport and left for Australia, the next day I arrived here."

Statutory declaration

24. The writer stated as follows:

- He has known the applicant since the mid-1990s and when he moved to one province in southern Thailand they were always in contact. "When he moved to province 2 he worked with [his employer] as an assistant. After few years working with [him], he helped him with starting his own business of [goods] in district 1 province Narathiwaa.
- This all happened when Friend C tried to help his close friend Friend A whom I know also and have met him two or three times, got to trouble from [Organisation] and military intelligence and asked for help from Friend C, then Friend C and his ex boss relative know as [Friend B] who was the member of local government tried to help Friend A.
- When Friend A was abducted in day light by two men from the roadside [date] and has not seen since then. Friend B and Friend C had run a campaign against the army and the terrorist organisation to find his body and arrest those who were responsible for his abduction and bring them to justice but they themselves got into trouble from the army intelligence and the organisation.

- Friend B and his assistant was shot dead by unidentified gunmen. On that day Friend C was in another country for his business purpose and some people came to his town and were asking of his whereabouts. Being a local resident of this area since I was born many of my friends and the people I know have trusted me and told me that the organisation is blaming Friend C, Friend A and Friend B as spy for the army intelligence because of that information which I got I told Friend C that his life is in danger and informed him to run away”

Statutory declaration His employer He stated as follows:

- The applicant was working with him as an assistant since the mid-1990s. “He was an honest, reliable, and hard working employee who used to help me in every aspect of my business and I personally like him because of his qualities. After few years working with my company I helped him to start his own business as a sub contractor and the main supplier to my company. Because of his hard work and personal interest he quickly established his own business.
 - One of his friends Friend A had some problem from an organisation and also from Thai army intelligence. During that time my [relative] Friend B, who was a member of the local government, and Friend C tried to help him but someone kidnapped Friend A on [date]. After that on [date] my [relative] and his assistant was shot dead by unidentified gunmen. And then some strange personal try to locate Friend C, and many people told me that Friend C is going to be next. If he returned to his country there is a great danger to him life.”
25. The applicant forwarded photographs of Friend B taken at a hospital ; the assistant’s body and the crime scene.

Tribunal Hearing

26. The applicant attended the Tribunal. An interpreter in the Thai language assisted the Tribunal. . His parents are not alive. He does not have any relatives that he knows of. He did not attend any schools. He stated that he could not read and write Thai.
27. [Details of his upbringing deleted] .
28. He then met his employer who was a very successful businessman. Gradually his boss trusted him and extended his duties to personal assistant.
29. The applicant has never married. He has had some girlfriends. He does not have any children. He would go to his boss’ factory and also the offices. He enjoyed the job.
30. he started his own business. He had a shop and an office. He said the business closed down after Friend B’s death.
31. The applicant’s passport was issued in a recent year He had previously held a passport and had travelled on that. He was sent by his boss to Country Y other countries. He had met a lot of people from Australia during the Tsunami. He had told his agent to find him a country where he could save his life.
32. The Tribunal went through with the applicant the statement that he had provided with his application. The applicant was asked what he meant by his statement that he was given a hard time by the army and tortured to work as a spy for them. He stated that he was constantly questioned at check points and he was carrying goods The army would make him take it all out, search him and on one occasion he was stopped for four hours. He stated the harassment caused him to suffer mental torture. He stated on one occasion when he became angry, one of their soldiers punched him.

33. I asked why his employer was not targeted. He said he was not targeted because he says nothing and he is older. Country Y His family have not suffered any harm.
34. In relation to the committee set up by the applicant and others, there were about twenty five friends of the applicant involved. There were about one hundred members. They used to meet at the Mosque. They usually met on Fridays after prayers. They would have lunch together and talk. When asked what they discussed, the applicant stated that they all agreed that they were 'the meat in the sandwich' between the army and the terrorists. They were of the opinion that they must convince people that Thailand is also their country.
35. I asked the applicant how many meetings had been held since the committee was formed. He stated that there were three big meetings. About a hundred people, including his boss attended The applicant thought the boss attended one meeting but he could not be sure.
36. The applicant stated that one friend, Friend D has since been shot and two other friends, Friend E are missing. Another friend was shot. All these incidents occurred soon after the death of Friend B. He thought that Friend D was shot in district 1, sometime after Friend B was shot. Friend F was missing before the death of Friend B, he just disappeared. A friend had met him and was told that Friend F was on his way home and he was never seen again. Friend E was a close friend of Friend F's and he went missing about twenty five days after Friend F went missing. He lived outside District 1. He stated that three or four people also left District 1 to live in Country Y another country. The applicant stated that he is Thai. The applicant stated that about one hundred people or more attended two meetings and at Friday prayers there would be sixty to seventy people present. A third meeting had been held near Friend D's home.
37. The applicant stated that His employer is a well known person. He is very professional and did not show himself at the committee meetings. He was not involved. The applicant stated that the group tried to solve the situation. He thought he should do something and his friends thought the same. He stated there were about twenty five people on the committee and the committee had about one hundred supporters. He stated out of the twenty five persons on the committee two have disappeared and two were shot.
38. The Tribunal adjourned for fifteen minutes.
39. Friend B was the sponsor of the committee. Friend A also attended the first meeting.
40. The applicant saw Friend A. They often met there. Friend A was in the company of two 'local guys' He introduced the applicant to them. They discussed the committee. The two men with Friend A were selling goods.
41. The applicant received some threats in a recent year. They were light threats which were made while he was at gathering point. He attended that place every day and everyone helped each other. The army people threatened him.
42. The applicant said he suffered real harm when he started his business and he was stopped all the time. They never arrested him. They raided his store in the same recent

year. The army told the applicant that they had some information Friend E and his nephew attended the applicant's store so that they could protect the applicant from being framed, e.g. the army might say that they found a gun at the applicant's premises. On another occasion during a raid they accused the applicant of smuggling Country Y diesel. The applicant stated that raid was about one and a half to two months after the first raid. They were always stopping him.

43. Then the applicant's boss sent him to Country Z on business. His boss told the applicant to explore the market there. He left Country Z 4 months later and arrived in Country Y. I mentioned to the applicant that the visa in his passport stated that he was on a family visit to Country Z. He stated that he has no family there. He said that His employer is from Country Z and he visits His employer's relatives there.
44. The applicant also had a visa to travel to Country Z. He stated that his problems with the peace committee prevented him from going back. After his return to Thailand, he saw Friend A. He stated that he looked weak and was like a person who was taking drugs. I mentioned to the applicant that it surprised the Tribunal that a person such as Friend A, who was known to be an army spy, would be welcome as a committee member. I asked the applicant if he believed that Friend A was informing the army about the committee. The applicant replied that he did not ask him anything about that. I mentioned to the applicant that I was surprised that he would trust Friend A, given his background. The applicant stated the gathering was not a secret gathering and everyone talked openly so there was no need to send a special agent in to spy. He stated that as a friend he believed Friend A would not say anything about them. Friend A had worked in remote villages for ten years and everyone liked him.
45. I asked the applicant why he went out of his way to help Friend A. He said it was because he was a friend on the committee and he looked terrible. He said he had a family. He tried to help him. Friend B was the head of the committee. At the second meeting the prospect of renting a building or an office was discussed. The group never organised anything. Friend B was the village head. I asked how Friend B would be able to assist Friend A. The applicant said that Friend B's relative is an important person in the area. The applicant said he was just a small business man and he could not talk to the Prime Minister.
46. I mentioned to the applicant that his statement indicated that the terrorist organisation had been told that the applicant and Friend B were supporting Friend A. I asked the applicant how he knew this. The applicant stated that he and Friend B went to see a military officer. The applicant threatened to inform the media about Friend A's disappearance. The applicant said the two men with Friend A were army personnel working for intelligence. I asked the applicant if he had told the military officer their names. He replied that they would be able to identify them as a lot of people had witnessed the abduction.
47. Friend B was killed. The applicant was in Bangkok. The applicant had gone to Bangkok to see a girlfriend and to receive some supplies. Friend B's funeral was due to take place. The applicant travelled by plane to Bangkok. Then the applicant heard that Friend B had been injured but did not realise that the injuries were so serious. The next day he spoke to friends and was told about Friend B's injuries. He stated he was very drunk he did not go to the funeral. He returned to District 1. His boss spoke to a Muslim police officer and was told that the applicant was a witness. The applicant had

stayed with another friend until he travelled to District 1. He stayed in District 1 for four or five days waiting to hear from the police. He thought he might be okay His employer called the police officer and told him he was there. He went to evening prayers at the Mosque. He stayed in the room at work. Staff their observed a motorcycle and other people hanging around. He then travelled back to Bangkok. He spent about one month in an apartment building with a friend

48. The applicant appeared uncomfortable and stated that he felt a little bit weak as he had taken medication for an injury. The Tribunal decided to adjourn the hearing and to proceed on another day.

Resumed Tribunal Hearing

49. The applicant attended the Tribunal. An interpreter in the Thai language assisted the Tribunal. Most of the hearing was conducted in the English language and at times the applicant sought the assistance of the interpreter. The applicant informed the Tribunal that he had not taken any medication for pain. He was having treatment.
50. I asked the applicant if he wished to comment on anything that was discussed during his first attendance. The applicant stated yes, and said that he needed protection in Australia because life was dangerous in Thailand. He helped Friend A and he has problems with the army and the insurgents. Both see him as an enemy. I asked if he had any fears in relation to the police. He stated the Thai police are mafia. He stated that his employer had spoken to a Muslim police officer after Friend B's death. His employer is a well known businessman and is a 'big gun' in that area of Thailand. He spoke to the police officers about his relative's case and was told that he was killed by unknown people. His employer said to the police officers that his relative was not killed by persons unknown and his death was linked with the Friend A case. He stated that he was aware of a person (the applicant) who knew about this case. He did not mention the applicant by name.
51. The applicant stated that when Friend A disappeared it was common knowledge within hours. There were many witnesses to the event. The applicant and another person went to visit Friend A's friend at his shop. Present also at the meeting were neighbours, family and the shop owner's wife. The person who witnessed the incident told the applicant's friend about it. The applicant stated he was convinced that the two men who were in the company of Friend A and previously referred to were involved in the abduction. When asked what made him so sure about this, he said that these two men were known and were often seen with Friend A in cafes. The applicant talked to one Malay man who saw them take Friend A. He saw them often with Friend A. One of these men had a peculiar walk. Friend A had told the applicant they were from army intelligence. The applicant was told about them after he returned from Country Z. This was when he was told the whole story by Friend A.
52. I discussed the statement of His employee and mentioned to the applicant that the writer had stated three persons were killed instead of two. The applicant said that she probably made a mistake because he told her about Friend A being taken and said that he was probably killed.

53. I asked the applicant where his employer was at present. The applicant said he was in Country Y. The applicant telephoned a Country Y friend who saw him in the city before the last hearing. His employer has business dealings in Country Y. The applicant has only spoken to him once or twice since coming to Australia. When asked why he had not had more contact with him, given the dangerous happenings in that area of Thailand and the applicant's relationship with him, he stated that he was not a blood relation. He said he just asked him to send a letter for him. The applicant said there had been no progress in finding Friend B's killer. The applicant stated he also believed that the same two men who had kidnapped Friend A had also killed Friend B. He said that they were from army intelligence but also worked with the stated organisation.
54. The applicant stated that most of the main members from his organisation have now gone and he is the only one alive. They showed their power in the Friend A case. Another village head was also shot. I asked the applicant why he had not mentioned Friend D, another friend, Friend E and Friend F prior to the Tribunal hearing. I asked if his employer knew about these people and the applicant stated that perhaps he knew about them. I asked why he had not referred to them in his statement. The applicant stated that he just referred to his brother and to the applicant in his statement. I mentioned to the applicant that significant events such as murders and disappearances would warrant inclusion in one's claims. The applicant said he just had ten days to complete the statement. He was told by the agent that DIAC would interview him, as they interview everyone. The applicant stated that all of his friends that were affected in one way or another were young men who have relatives in Thailand. The applicant stated that the terrorists and the army were targeting the committee members.
55. The applicant stated that he spoke to fellow committee members and members of local government. He stated that he went to the village where the two persons suspected of abducting Friend A resided and told the villagers to hand over Friend A either dead or alive. He stated that if Friend A had been killed they hoped to have his body so that he could have a proper funeral. I asked the applicant when he went there. He said he went on the day after the abduction. He had spoken to some people and went to the spot where Friend A was abducted. The village head told the applicant that he did not know where Friend A was and that he had not been taken to that village. He went there about six pm. He was with his friend.
56. The applicant's store was raided. This was the second raid that took place at his store. During the first raid they were looking for ammunition. The applicant called his friends called two or three persons and asked them to attend the applicant's store so it could be searched in their presence.
57. I discussed with the applicant his return to District 1. He said he saw a lot of unknown people in the area. He said they were watching him. I asked why he was not taken. He replied 'why would they?' He stated that his employer is a very powerful man in the area and he also has a bodyguard who was armed. He stated they would not do anything in front of him. I reminded the applicant that they had killed his relative. The applicant stated yes, they did so at night. I asked why they did not seek him out at night. I asked why they had not arrested him. He stated that if they had arrested him they could not kill him, they would have to put him before a court.

58. His employer had spoken to a Muslim police officer in the area. his employer believed that the police could do something if the applicant had come forward. He then said that was a big mistake. The applicant stated that his employer and other people (relatives of Friend B) spoke to lawyers about this. They were advised that if they had some concrete evidence the police could pursue it. The applicant said they did not have anything concrete. The applicant remained in District 1 for about five days.
59. In relation to the claim that a person carrying the applicant's photo was present in Bangkok the applicant stated that he was known by many people in the area where he was staying. He stayed close to the Mosque and food area. On this occasion he went to a friend's home in another area. He hid in his apartment. His friend locked the door with a padlock on the outside each day when he left. I asked what would happen if there was a fire. He stated that he did not know. His friend was single at that time and married about three or four months ago. They used to cook together. He purchased chickens from a Muslim street. An old man and is unable to walk told the applicant's friend that a person came and asked if anyone had seen the applicant. The applicant stated that he often gave this old man 100, 200 or 300 Baht to help him out. The person enquiring about the applicant gave him 200 Baht and said he would give him more if he could provide any further information. This occurred about twenty five days after the applicant had arrived in Bangkok.
60. The applicant stated that he can sleep in Australia and is experiencing peace of mind. He feared for his life in Thailand. I asked if he had approached any of the non-government organisations before coming to Australia and he replied no.
61. I asked the applicant what was happening with the committee during the time he was in Country Z. He said that they were meeting all the time and often met at a tea shop. I asked the applicant what, in fact, the committee had achieved. He said they had big ideas and if they had time they would have shown that they could solve problems in that area. He stated that they could convince the people. He stated that the Muslims are angry about the Thai government. They would talk to local government to contact the army and to do something about the situation. They wanted to do something about the terrorists in that area. The applicant was of the opinion that the Thai government is only interested in looking after the Buddhists in Thailand and are trying to create an anti-Muslim environment. The applicant stated that he believes there will be a civil war in Thailand.
62. Regarding relocation, he stated that he could not do that because of his appearance. The northern area of Thailand is full of Buddhists and he stated that he would look like an 'elephant amongst a thousand sheep' He stated that he is Muslim even though he drinks alcohol but he still prays five times every day at the Mosque. He stated there are a lot of Europeans in the north but he does not look European.
63. I mentioned to the applicant that the Tribunal had some concerns about his application. Firstly the Tribunal was of the opinion that if he had been in such fear, as claimed, he would have left Thailand a lot sooner than he did. The Tribunal remarked that he had remained in Thailand from the time of Friend B's death some 7 months later. The Tribunal also noted that the applicant had travelled outside Thailand during that period. The applicant travelled on his own passport. The applicant stated that he could not apply for a visa in Thailand or Country Y to come to Australia.

64. The Tribunal also mentioned to the applicant that his evidence about the committee seemed vague and non-specific in relation to what it was doing, and it did not seem to have achieved any progress relating to the issues in that area. The applicant stated that the members did not think it would attract a lot of attention. He stated that there were about one hundred people involved and they would contact others. He stated they were convincing the people. They spoke to the authorities. A lot of people liked Friend A and the applicant believes that the committee and its power will grow.
65. I asked what has happened since he left Thailand. He stated that members have been shot, have disappeared and have left. I asked the applicant if he was telling the Tribunal that one hundred people were involved and many others were told about the committee. He then stated nothing much has been happening because the main people were killed. He stated out of the twenty five main members four or five went to Country Y. The applicant spoke to one person since coming to Australia and he told him that he is being very careful.
66. The applicant stated that his enemy is army intelligence and they just want to silently finish him off. They want to get rid of the last witness. I reminded the applicant that he did not have any solid evidence which he could provide. The applicant stated that he called a friend a few days ago and he was told to run. He was speaking to his friend in Bangkok This is not the same person he stayed with but a man who borrowed from the applicant. The applicant asked him to return the money. However the friend said that business was not good. The friend told him that the applicant's name was in the local paper. His friend said that he did not want to get involved with the applicant because to touch him would lead to danger. His friend said that they would kill him also.
67. In relation to his late departure from Thailand the applicant stated that his business was running from District 1 and he had people to pay and they paid him. He was wondering if they really wanted to kill him and if there was any way he could settle the matter. He then realised he could not settle it, so he settled his business and ran. His business shut down in that year.
68. He left Thailand through Country Y.
69. Prior to leaving Thailand he had been staying in various places. At one time he stayed with a girlfriend which is north of Bangkok. He spent a few days there.
70. In relation to not including details about his friends being killed and having disappeared the applicant stated that he did not include these details because his friend said that some things might be irrelevant. His friend was present at the hearing with the applicant and he had assisted the applicant in preparing his statement. His friend said that because they were not blood relations it may not be relevant.
71. The applicant resided in the industrial zone in Bangkok and stayed with a different friend. He again remained indoors all the time.
72. I asked the applicant if he wished to add anything further about his application. He stated that life is safe in Australia and he would prefer to be in prison in Australia than to return to Thailand.

73. I mentioned to the applicant that it might be prudent for him and his friend to sit and listen to the hearing tapes and if he wished to make any further submissions he could do so by a stated date.

Post Hearing Submissions

74. The Tribunal received a facsimile from the applicant which stated as follows:

- that the idea of the organisation was not the applicant's but he felt that he had to do something better. His friend Friend E put forward the idea and was excited about the prospect.
- "In the organisation Friend E and [another] were very aggressive individuals. Friend D and one of his friends were having a political touch and I myself was up to it for the welfare and betterment of the conditions and situation. After long negotiation, all of us agreed on some basic points of the organisation law. All of us aimed that the first thing that we had to do was to get all the close friends and relatives confidence on us and on the organisation, and after that we will arrange a meeting in which we will decide the future strategy and the structure of the organisation body."
- The first meeting was held in District 1 Mosque after Friday prayers and was attended by the applicant, other members of the organisation, friends, relatives and about 100 other "*common individuals*". "*There we delivered the charter of the organisation*" which included the following:

“. [Statements forming the charter deleted] ”

- The first meeting attracted a lot of attention and it was decided to arrange a second meeting the same month.
- The organisation attracted aggressive attention from the terrorists who started "make it a propaganda by associating us with the Jews and CIA and were calling us their agents, most of the time they warned other people to be away from us because they did not want to help people out of the scare they were facing before. On the other hand army also started blaming by calling us political wing of the movement of Separatist. Due to the political parties lack of coordination and irresponsible behaviour towards us, we were unable to clear our position to the people. We got a lot of warnings from both the army and the terrorists to be away from politics and all other social things we were involved in. After [date] meetings we arranged another meeting and till the month of [two months later] we informed a lot of different people about the organisation. But after that terrorists and army started threatening us, first in a conservative way and after that they started giving our members calls and were telling them to be away from the organisation and politics and stop your on-going movements".
- The applicant left for [Country Z] on [date] and when he returned from Country Z he met [Friend A] who told him everything about himself.
- "On 29 March 2007 [Friend A] was kidnapped and I ran away to Narathiwat. At that time I came to know that [Friend A] kidnappers were those two boys who were apparently working for [terrorist organisation] but were basically working for army intelligence, actually some time ago [Friend A] told me about these two guys' links with army intelligence and I told only [Friend B] about that, and I did not tell anyone else about that. I invited other members of the organisation and some other people of about 180-200 people in total and in the leadership of [Friend B] we went to that village and one of these two guys were basically from and asked the people of that village to give us [Friend A] back. Me, myself and other members worked very hard to find

[Friend A] but could not find [Friend A] . We made some small teams and in which we included the local elite. In the meantime we increased pressure on the government to help us in the process of finding [Friend A] , within three days the whole south came to know that [Friend A] has been kidnapped, and the local peoples who were very much on our side.

- Our organisation members Friend E, Friend F , Friend D, and [another] including me under the supervision of [Friend B] were running the campaign for [Friend A] . We contacted [name] and other terrorist organisations and told them that if they do these sort of things to local Muslims that will create a lot of problems for them. [Friend B] did warn me not to tell anyone that [Friend A] and the other two guys were working for intelligence, that's why nobody of my friend was aware of that. The terrorist organisation who were considering themselves the champions of the local Muslims, that's why the situation for them was not ideal. Because they wanted the locals to be under their fear and under their feet, so that is why they didn't like the organisation who is against they raised the fatwa and called us [name], that's why they didn't like us to make the local people go against them and ruined their terrorism business.
- On [date] me, myself and [Friend B] went to call on the military officer and warned him that we will go to media and will run a campaign about their brutality. Army was having a look at our effective campaign and cooperation of the local people with us and that was obvious that the army officer should have reported that thing to his superiors and would have informed them about his apprehensions, that if the local people started blaming us about that, and any kind of media campaign against them, that will be very harmful for all the army and their honour, as well as very dangerous, because they were already in a huge pressure which was increased after the incidents of [location] Mosque and [location].”
“. They were considering our organisation the real threat. In the area where there are riots, insurgency and problem and have killed thousands of people and kidnapped hundreds, so for them taking off few people from the scene is not a big deal for them.”
- On [date] while the applicant was in Bangkok he heard the news that [Friend B] had been killed and that is why he ran away to [location]. He was very afraid and frightened for about 25 days “but after that I recovered from the fear and I started contacting my organisations members and other friends, and I told them everything, that's why all my friends decided not to take this matter the easy one, will not let the offenders go freely, we decided we will take the revenge of what happened to us and because of our aggressive attitude and unconventional behaviour, we suffered a lot.”
- In relation to His employer he is a reserved and professional businessman. The applicant worked with him for many years and learnt a lot about business skills. “When I started the organisation matters he told me many times directly and indirectly to concentrate on the business instead of going for organisation's meetings, he told me that this is the time to make my business stable, and he also made it clear to me that a businessman thinking has to start and end only and only on his business. ... and when I handled the organisation's matters His employer stepped behind and slowly and gradually made distance with me.” His employer was born in Country Z and spent his first 19 years there. His [relatives] were born in Thailand. His employer used to live with his grandfather and grandmother in Country Z and because he was away from the family for many years, and because he carried out his life in the Country Z culture and his siblings adopted the Thai culture he did not have relations with his family members when he went to Thailand. Also [Friend B] married a girl he loved and his wife used to have 'bad relations' with the other members of her husband's family. She used to keep her children away from his employer's children. “When [Friend B] got shot his wife and his [child] tried hard to keep his employer away from all the matters and give him very less importance in all the dealings, like making police reports and transferring him from one hospital to another one, and when he got died, they did not have any importance to him in the funeral as well. In all these matters as his employer was giving less importance he made conventional presence and my friends met a lot of contribution in all the matters happened after [Friend B] 's death. Due to his family and business his employer did not show much attention to other matters and kept himself away and he was too scared from the army and terrorists to get involved. And he had cleared his position both to the army intelligence and terrorist's organisations that he does not want to get involved in anything.”

- In relation to the applicant's travel movements, after [Friend B] died, he travelled three times out of Thailand. He first travelled [date] from Bangkok to Country X and Country Y because he heard someone in the Bangkok area knew the apartment he was living in, and was asking questions about him and showing his picture. After 4-5 days he left Country Y for three reasons. Firstly, he did not have any right to stay and live in Country Y. Secondly, Country Y was under the influence of terrorist organisations from south Thailand where they could easily come and go. Thirdly, he hoped that he could continue to live in Thailand. "But when my friends started getting worse punishments and some people came to my place at Province where I used to live before. That's why on [date] I went to Country Y through [name] Border and I met my friend. He suggested me to go to any European country. And you will be safe there. That's why I went back to Thailand because I was not able to apply for a visa in Country Y. After [Friend B]'s death I was not able to run my business any more. And in Bangkok I met an agent with the help of one of my friends and that took one month for him to arrange a visa for me and after some days of getting the visa I left for Australia. I tried my best to live in Thailand because I did not want to leave my own country because a foreign country can never replace someone's own country at all, but when I felt danger all around me and saw my friends Friend D, Friend F, Friend E and another, etc getting killed and disappeared I have to flee Thailand for my own safety, and that was the main reason I left for Australia."
- The applicant wished to refer to "some important points" and thanked the Tribunal for giving him a chance to express himself once again. The first point he wished to refer to was his economic situation and because of that, he could not afford to hire a solicitor to deal with his case and to guide him about all the proceedings. Secondly, he was not medically fit and was taking strong pain killers when he appeared for the first Tribunal hearing. He has become used to the pain killers to the extent that he could not sleep if he did not have a tranquiliser. During the second hearing, he thought he would be okay if he did not use the pain killer and that would be better for him but it did not work well. He became nervous and was "mentally absent" during the whole hearing. Because of that he was unable to understand some questions and could not answer a couple of questions correctly, like when he went to Country Y on [date] through [name] border and "also got back on the same border but due to severe and mental pressure I incorrectly said that I went from Bangkok, and that is quite clear in my passport and my statement. And I am pretty much sure that I had made some more small mistakes in the hearing, that's why I want to make a request by saying "due to my physical and mental conditions overlook the small mistakes I made during the hearing should not be considered."
- The applicant stated that there were no criminal cases filed against him anywhere in Thailand. He stated that the army intelligence people do not want to openly arrest him because they would have to show identification to the airport or border security forces and his arrest would be placed on record. "In this situation they will not be able to kill me, but they want to kill me silently. I am not the agent of the enemy nor am I some kind of traitor, but Intelligence want to quietly take me off the way, in order to bury the evidence of their brutality which I know. On the other hand the terrorists wanted me to be killed in order to tell the people that our authority is not just in the south but they can kill people everywhere in Thailand. Basically they wanted my death to be an example for others and to teach a lesson to Munafiqeen."

FINDINGS AND REASONS

75. The Tribunal accepts that the applicant is a citizen of Thailand.
76. In assessing the claims made by an applicant, the Tribunal will need to make findings of fact in relation to those claims and this will more often than not involve an assessment of the applicant's credibility. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an Applicant has not been made out. See *Randhawa v MILGEA*

(1994) 52 FCR 437 at 451, per Beaumont J; Selvadurai v MIEA & Anor (1994) 34 ALD 347 at 348 per Heerey J and Kopalapillai v MIMA (1998) 86 FCR 547.

77. In *Abebe v The Commonwealth of Australia* (1999) 162 ALR 1 at 52 Gummow and Hayne JJ observed:

“..the fact that an Applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising. It is necessary always to bear in mind that an Applicant for refugee status is, on one view of events, engaged in an often desperate battle for freedom, if not for life.”

78. The Tribunal must keep in mind that if the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (*See MIMA v Rajalingam* (1999) 93 FCR 220).
79. The Tribunal has taken into account the applicant’s claims in his protection visa application, his evidence before the Tribunal and supporting documents lodged in support of his claims. Essentially, the applicant claims to fear persecution because of his attempt to help a friend called Friend A. The applicant claims that because of his and other people’s involvement in this matter, persons including Friend A and others were abducted and killed. He claims that if he returns to Thailand he will be killed. The Tribunal accepts that there have been ongoing clashes between various factions in parts of Thailand and that persons have been seriously harmed. However, the Tribunal did not find the applicant to be credible on some key aspects of his claims as outlined below. The Tribunal is not satisfied that the applicant left Thailand because of a fear of persecution, as described in his application and evidence before the Tribunal.
80. The following inconsistencies and implausibility lead the Tribunal to conclude that the applicant is not truthful or credible:
- In the applicant’s protection visa application, he provided a lengthy statement outlining his claims. He referred to his Friend A being abducted and also to the murder of his Friend B one month later. During his evidence before the Tribunal, he mentioned his Friend D was shot in District 1 that same month; some time after Friend B was shot. He mentioned that his Friend E went missing before the death of Friend B. He mentioned that another Friend E went missing about five days after Friend F went missing. He mentioned that another friend was shot a few months later. When asked by the Tribunal why he had not referred to these friends in his protection visa application, he stated that his friend who helped him with the statement had stated that some things might be irrelevant. His friend said that because these people were not blood relations it might not be relevant. The applicant also stated that he just had 10 days to complete the statement. The Tribunal does not accept that, had the applicant’s friends been harmed as claimed, he would not have included such significant information in his protection visa application. The Tribunal is of the opinion that the applicant mentioned these additional events in an effort to strengthen his claims to fear serious harm should he return to Thailand. The Tribunal finds the explanations provided for the omission of such information to be unconvincing.
 - In relation to the organisation which the applicant claimed was set up in a recent year, he stated that three big meetings had been held, two of which occurred in that

year when the organisation was allegedly formed. The applicant could not provide any dates of the meetings. When asked questions by the Tribunal about the organisation, the applicant responded in a vague and non-specific way in relation to the organisation's dealings and achievements. In his post-hearing written submissions he referred to the organisation's "Charter", which is set out above. It did not provide specific details as to the methods to be adopted by the said organisation. The applicant also stated in his post-hearing written submissions that the organisation received warnings from the army and terrorists to stay away from politics and other social things they were involved in. He stated that after the meetings, they arranged another meeting and by two months later, many people were informed about the organisation. He stated that the terrorists and army then started to threaten persons from the organisation, first in a conservative way and then by calling members and telling them to keep away from the organisation. He also stated that the organisation was regarded as a threat. The Tribunal accepts that the applicant and others engaged in conversations about the situation in their area. The Tribunal is not satisfied that they set up an organisation which attracted adverse attention from the army and the terrorists as claimed by the applicant. It is the Tribunal's view that the applicant provided details about the organisation in an effort to portray himself as a political activist who could attract adverse attention.

- The applicant's delay in departing Thailand is of major concern to the Tribunal. The applicant claims that various people were seriously harmed, abducted and murdered on various dates. He claimed that his life was in danger if he remained in Thailand. The applicant held a valid passport and, he travelled out of Thailand on two separate occasions. He even returned to District 1 in a recent year and remained there for 4-5 days. He attended evening prayers at the Mosque. He stayed in a room where he had previously stayed. He stated that he avoided harm by going out with a group of friends. He told the Tribunal that he thought it might be safe to return to District 1 at that time, despite his claims that in addition to the abduction of Friend A and the murder of Friend B, his friend Friend D was shot in District 1 some time after Friend B was shot; his friend Friend F went missing before the death of Friend B and another friend Friend E went missing about 25 days after Friend F went missing. The Tribunal notes when these events all took place, yet the applicant returned to District 1. The Tribunal finds this implausible given the applicant's claims about friends suffering various fates because of their involvement with the organisation and efforts to locate Friend A. The Tribunal is of the view that had the applicant been a target, as claimed, he would not have returned to District 1 and he would have departed Thailand a lot sooner than he did.

81. The Tribunal accepts that the applicant knew Friend B and Friend A in Thailand and that they were the victims of harm. However, the Tribunal is not satisfied that the applicant attracted any adverse attention because of his connection to these men. The Tribunal is not satisfied that the applicant was involved in an organisation which attracted any adverse attention, as claimed. The Tribunal is not satisfied that the friends referred to for the first time at the hearing, were harmed, as claimed. The Tribunal does not accept that the applicant was the subject of threats or that his property was the subject of two raids by the authorities in Thailand. The Tribunal is not satisfied that the applicant will suffer serious harm for any Convention reason should he return to Thailand.

82. The applicant has provided evidence to the Tribunal that he was injured at work. He is under the care of health professionals and was taking pain medication. The Tribunal conducted two hearings in relation to this matter because it was of the view that the applicant would not benefit from long hearings. The Tribunal also organised breaks during the hearings. The applicant stated in his post-hearing submissions that he was sure that he had made some small mistakes during his attendance before the Tribunal and requested that because of his physical and mental condition the Tribunal overlook the small mistakes. The Tribunal is satisfied that the applicant is not suffering from any health problems, such that they impeded his ability to give evidence before the Tribunal.

Documents and photographs provided by the applicant

83. In making the above findings, the Tribunal has had regard to the documents and photographs forwarded by the applicant to the Tribunal. However, given the degree of the credibility problems with the applicant's evidence, the Tribunal cannot give any weight to the statements relating to the applicant's material claims as set out in these documents and photographs. In light of the fundamental lack of credibility within the applicant's evidence, the Tribunal is not satisfied that the statements relating to the applicant's material claims in these documents and photographs are true.
84. Accordingly, the Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason.

CONCLUSIONS

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. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officer's I.D. PRDRSC</p>
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