

071177786 [2007] RRTA 90 (15 May 2007)

DECISION RECORD

RRT CASE NUMBER: 071177786

COUNTRY OF REFERENCE: Vietnam

TRIBUNAL MEMBER: Mary Urquhart

DATE DECISION SIGNED: 15 May 2007

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the following direction:

that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Vietnam, arrived in Australia in the early 2000's. The applicant was refused a different visa and she sought a review of that decision, which

was then affirmed by a differently constituted Tribunal. The applicant applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

The delegate refused the visa application on the basis that the applicant does not have a genuine fear of harm and that there is not a real chance of persecution occurring and that the applicant's fear of persecution, as defined under the Refugees Convention, is not well founded.

The applicants applied to the Tribunal for review of the delegate's decisions.

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 applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

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.

Section 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is either:

- (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol

or

- (b) a non-citizen in Australia who is the spouse or a dependent of a non-citizen
 - (i) to whom Australia has protection obligations under the Refugees Convention and
 - (ii) who holds a protection visa.

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. Under those provisions, family members are derivatively entitled to a protection visa on the alternative basis that they are members of the same family unit as an applicant who is found to be a refugee: *Munkayilar v MIMA* (1998) 49 ALD 588 at 592-593, *Mijoljevic v MIMA* [1999] FCA 834 at [14]-[18], *Dranichnikov v MIMA* (2001) 109 FCR 397 at [22]-[23], *MIMA v Shtjefni* [2001] FCA 1323 at [17].) However, all applicants must satisfy the remaining criteria.

Definition of 'refugee'

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.

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.

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.

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

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.

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.

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.

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.

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.

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

The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision.

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant was not represented. The services of a Vietnamese interpreter were engaged for the hearing.

In her primary application to the Department, the applicant set out a number of claims which are here summarised as:

- While in Vietnam, she helped out in a pro-democracy group to fight against communism. The group believed people in Vietnam were being treated unjustly. The group wanted to be free to talk and act as they wished.
- The applicant claims this group held secret meetings to voice their ideas about democracy and freedom.
- She assisted by collecting information for a newsletter which was circulated among members.
- Since arriving in Australia the applicant states she joined a 'fighting against communism' group in Australia.
- In the early 1970s, she was involved in an Organisation in Vietnam. As a student she participated in another organisation. The functions of these organisations consisted of studying religion and doing charitable activities for society. The applicant claims in the 1970s when the Communists seized political power all the activities of religious and non communist political organisations were banned. The temple she attended was destroyed.
- Some of the Buddhist members were persecuted or told not to do religious activities such as studying religion or coming to the temple.

In a letter to the Tribunal, the applicant states she would like to clarify the claims put in her application to the Department for a protection visa. She states as follows:

"In the early 1970s, I was involved in an Organisation in Vietnam. I also participated in another organisation. The functions of these organisations consisted of studying religion and doing charitable activities for society. In the early 1970s, when the communists seized political power, all the activities of religious and non-Communist political organisations were banned. Our temple was destroyed. Some of the Buddhist members were persecuted or told not to do religious activities such as studying religion or coming to the temple.

In the 1990s the communists changed their policies a little and started allowing some religious and charitable activities for society. However, we were still controlled intensely by the same Communist government.

Since coming to Australia, I have not joined a political group as such. But as a Buddhist I attend a Temple and go to many works in the temple as a volunteer. In Vietnam, Buddhist is suppressed and that is why I wrote in my application I joined a "fighting against communism" group. I do not speak much English and I used a friend to fill out the forms. I did not realise that when I wrote that I had joined a "fighting against Communist group" I made it sound as if I had joined a political party.

I never intended to mislead the Department of Immigration and Citizenship.

I can clarify my claims at the refugee review Tribunal hearing."

The Convention grounds relied upon by the applicant appear to be (imputed) political opinion in that the applicant fears persecution resulting from her exposure of corruption, particular social group, being Vietnamese women whose marriages have failed, and religion in that she fears persecution because of her continuing practice of her religion.

Background

The applicant, a Vietnamese national, first arrived in Australia in the early 2000s with her child (the secondary applicant). She has not returned to Vietnam. [Information relating to the applicant's history has been deleted in accordance with s.431 as it may identify the applicant]. She lodged her protection visa application in the early 2000s.

Tribunal Hearing

The Tribunal put the details of the history set out above to the applicant who agreed they were so; however, she indicated to the Tribunal, she felt the circumstances had been unjust for her.

The applicant was asked about her recent letter to the Tribunal in which she sought to clarify her claims in relation to being a member of a pro-democracy group in Vietnam and in Australia. She was asked by the Tribunal about these claims and she explained that the protection application had been filled out by a friend and that there had been some misunderstanding.

The applicant said she did not belong to any political group in Vietnam but was only unhappy with the way the "company" had treated her, so she "passed on all the information she had about their corruption so it could be brought to the attention of people". It was her evidence that her original application which mentioned belonging to a pro-democracy group, secret meetings and assisting with literature were not matters that she was claiming, rather it was her claim that she had exposed corruption in the company she worked for and feared the consequences of having done so. These fears were for her future if she had to return to Vietnam and her child's future.

The applicant maintained her concerns in relation to the practise of her Buddhist religion as originally set out in her protection visa application.

The Tribunal sought more information from the applicant about the new claims she introduced at the hearing.

It was the applicant's evidence that before coming to Australia, she was working for a government run organisation. She said she worked there for several years. [Information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. She was working in a particular department and as such was privy to much adverse information about the company's affairs. The applicant then told the Tribunal that she had exposed corruption in the company. [Information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. She came to Australia in the early 2000s. She had appealed the Department's decision in relation to her application for a different class of visa and had lost. She has one child, the secondary applicant of whom she is very proud.

Upon further questions from the Tribunal, the applicant revealed that the company she worked for was in fact a large government organisation.

The applicant explained that when she was working for the company she held significant positions.

The Tribunal asked the applicant about the company. The applicant described the company she worked for as a government run organisation. She said because of her position there, she had come to know a lot of information about the financially "bad things" and "inappropriate things" the company was doing. The company was run by powerful people and she wanted to expose them and was brave enough to do so because of her future plans. She said she knew the "exposure" was a double-edged sword and that there would be disadvantages to her, [information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. The review applicant's exposure consisted of passing on information to higher ranked officials, [information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. It was her evidence that she fears as a result of this, if she were to go back to Vietnam, she would be targeted and penalised, would have great difficulty obtaining employment and that her character would be questioned by the Communist government. The applicant told the Tribunal that if she were to return to Vietnam, she fears she will be persecuted for criticising the corruption in the company she worked for, this is because it was a government run company, and her exposure of corruption amounted to criticising the government and she fears reprisals because of this. When asked by the Tribunal how she could depart Vietnam on her own passport if she was known for what she had exposed, she replied it was possible for her to leave on her own passport because at that time, what she had done had not become widely known.

The applicant gave evidence she believed that if she were to return to Vietnam she would not be trusted. She believed she would be singled out, and would be a "suspected" person. [Information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. The applicant feared that as a consequence of what she had done, she would have no references, no good "CV", and she would be unable to obtain work to support herself and her child. Further she said she was "known" and she feared "being tracked down and singled out for punishment". Furthermore the applicant claimed she fears that if she returned to Vietnam, she and her child would have nowhere to live and no money. This situation she said would be further compounded as she had married and divorced. It was her

evidence that divorced women were discriminated against and that this would also prevent her from gaining employment and supporting herself and her child.

The applicant claims she is a fervent Buddhist. It was her evidence that in the 1970s when the Communists seized political power, all the activities of religious and non-communist organisations were banned. She said the temple that she attended, was closed as such, statues were all removed and the building was turned into a recreational place. The applicant did say, however, that under “new policy” she has heard that the temple has since been restored.

The applicant told the Tribunal that she had attended the temple for religious practices and for charitable purposes, however, the government claimed that people going to the temple may have been organising anti-government activities. This led to the arrest of the temple leaders. It was the applicant’s belief that even under the “new policy”, on the surface it appears there is religious freedom to worship, really the government still monitored what happened and anything could be thought to be against the government.

The applicant's evidence was that since coming to Australia she has continued in her Buddhist religion and attends a temple where she is able to practise religion freely and her religion is respected. It was her claim that she is a fervent Buddhist who saw her leaders arrested.

The Tribunal inquired as to who she had seen arrested. It was her evidence that within the Buddhist family there were “big brothers or big sisters” who were the leaders. She said they provided guidance but after the early 1970s they were told that they were organising anti-government activities and so arrests were made. Some of the leaders she knew were charged with organising anti-government activities. Although they protested, they were put in prison. She said that she was terrified at this time and didn't dare go back to the temple again and she didn't dare contact any of the leaders and she didn't know what had become of them. It was her evidence she later found out that some had been sent to the “new economic zone” which was a deserted uncultivated area of land where people were sent to work on the land to make it viable. Such areas were generally deep in the jungle with unclean and poisonous water and people sent there suffered great hardship. The applicant added that some of the leaders also became monks.

The applicant was asked if she herself had been threatened and she said no. However, her evidence was that when her leaders were arrested she was terrified that through leaders others would be found including her and so she was terrified. It was her evidence that even now with open policy, which says there is freedom to worship, there is still strict monitoring from government and one can be arrested if doing something against the government.

She explained that she joined a student group. The group organised charitable work particularly when there had been a civic disaster of some kind. Their aim was to help and support victims. Again the government caused this group to cease its activities she said. This came about through general notification that no private organisation could do anything and that to join a private organisation was to go against the government. She said the group did not continue for fear of imprisonment.

Her other claim in relation to her Buddhist religion was that she was forced to stop practising her religion and charitable activities and it is her belief that even with freedom of religion as

expounded in “new policy” that there is still monitoring of religion by the communist government.

INDEPENDENT COUNTRY INFORMATION

Country Reports on Human Rights Practices - 2005 Released by the Bureau of Democracy, Human Rights, and Labour March 8, 2006

The Socialist Republic of Vietnam is an authoritarian state, ruled and controlled by the Communist Party of Vietnam (CPV). Its population is approximately 83.5 million. The CPV's constitutionally mandated primacy and the continued occupancy of all senior government positions by party members allowed it to set the broad parameters of national policy. However, the CPV continued to reduce its formal involvement in government operations and allowed the government to exercise significant discretion in implementing policy. The most recent elections to choose members of the National Assembly, held in 2002, were neither free nor fair, since all candidates were chosen and vetted by the CPV's Vietnam Fatherland Front (VFF), an umbrella group that monitors the country's popular organizations. The National Assembly remained subject to CPV direction; however, the government continued to strengthen the assembly's capacity. The civilian authorities generally maintained effective control of the security forces.

The government's human rights record remained unsatisfactory. Government officials, particularly at the local level, continued to commit serious abuses, despite improvement during the year. Economic developments remained a major influence on the human rights situation as the country carried on with its rapid transition from a centrally planned economy to a "socialist-oriented market economy." Economic reforms and the rising standard of living continued to reduce CPV and government control over, and intrusion into, daily life. However, many persons in isolated rural areas--including members of ethnic minority groups in the Northwest Highlands, Central Highlands, and the central coastal regions--continued to live in extreme poverty. The government continued to seek greater (primarily economic) links with the outside world, with some parallel change in attitude toward human rights. Thus the more urban areas of the country continued to show improvement in this respect, while the Central and Northwest Highlands remained areas of international concern. The following human rights problems were reported:

- inability of citizens to change their government;
- police abuse of suspects during arrest, detention, and interrogation;
- harsh prison conditions;
- arbitrary detention or restriction of the movement of persons for peaceful expression of political and religious views;
- denial of the right to fair and expeditious trials;
- imprisonment of persons for political and religious activities;
- limited privacy rights;

- restrictions on freedoms of speech, press, assembly, and association;
- restrictions on religious freedom;
- restrictions on freedom of movement;
- prohibition of the establishment and operation of human rights organizations;
- violence and discrimination against women;
- child prostitution;
- trafficking in women and children;
- societal discrimination against some ethnic minorities;
- limitations on worker rights;
- child labour.

The US Department of State 2006 Country Reports on Human Rights Practices in relation to treatment of women, states in part:

- “The law prescribes punishment ranging from warnings to up to two years' imprisonment for "those who cruelly treat persons dependent on them", but the police and legal system were generally not equipped to deal with cases of domestic violence. Officials increasingly acknowledged domestic violence, which also was discussed more openly in the media. Domestic violence against women reportedly was common, although there were no firm statistics measuring the extent of the problem. Hotlines for victims of domestic violence operated by domestic NGOs existed in some major cities. There were no reports of police or judicial reluctance to act on domestic abuse cases. Approximately two thirds of divorces reportedly were due in part to domestic violence. The divorce rate has risen in the past few years, but many women remained in abusive marriages rather than confront social and family stigma as well as economic uncertainty”;
- “While there is no legal discrimination, women faced societal discrimination. Despite the large body of legislation and regulations devoted to the protection of women's rights in marriage as well as in the workplace and labour code provisions that call for preferential treatment of women, women did not always receive equal treatment”;
- “The law prohibits discrimination based on gender, ethnicity, religion, or social class; however, enforcement of these prohibitions was uneven”.

The following information was provided by the Paris based Vietnam Committee on Human Rights, 29 November 1996, its states in part:

Vietnamese society is based on the Confucian belief system, which accords special importance to the family. Families that do not conform to the traditional family model, including those headed by a single mother would thus be seen in an “unfavourable light”.

This information is corroborated by a September 1993 report from the Refugees, Immigration and Asylum Section (RIAS) of Foreign Affairs and Trade. The latter report states that as families, which by definition includes [sic] a husband in Vietnam”, receive priority consideration for already very scarce housing, single women who do not live with their families face a lack of protection as there is no accommodation available to them (7). Finally, “single women with children face even more difficulties” in terms of accessing housing. (ibid) (Immigration and Refugee Board of Canada 1996).

- Vietnamese Women’s Experiences in Domestic Violence, Integration Vol 2 No.6 [p62-64] refers to Psycho- Cultural factors reported in CX5474 December 1994 and added to in April 1995 and states in part “due to the tradition of “Bride Price” being paid to the wife’s family at the wedding, many Vietnamese men tend to believe that wives and children are their possessions and that they have legitimate powers to mistreat or abuse them. There is no equality between male and female in the Vietnamese family relationship. The common belief is that the children should be taught when they were young, normally with the Vietnamese culture, “Teaching” is associated with “Punishment”.
- In regards to women, the common fear is that a woman cannot survive without a husband because traditionally women are subservient to men and taught the 3 degrees of dependence, e.g. to be subordinate to father in youth, to husband in marriage and to son in widowhood.
- The Vietnamese use metaphors to describe men and women’s relationships. The woman is often compared to a flower, and the insects such as bees and butterflies are symbolic of the man.
- When the flower has lost its bloom, it is abandoned by the insect. So it is in a woman’s life. If she is abandoned by her husband she thinks this is due to fate.
- With the existing cultural pressures, the Vietnamese women are expected to endure, suffer and sacrifice for the family and to keep the respect of her community.
- In marriage breakdown she is seen as a bad woman. If anything goes wrong, it is assumed that she is not a good enough woman and must improve herself.”

Freedom of Religion

The US Department of State 2006 Country Reports on Human Rights Practices states: “Although the constitution and government decrees provide for freedom of worship, the government restricted religious freedom to a significant degree. However, during the year (of the Report, 2006) the government continued to relax restrictions, and participation in religious activities continued to grow significantly.

In June commune employed security officers detained and beat two Protestants belonging to an unregistered house church in Thanh Hoa Province. The incident resulted partly from a familial dispute involving members of the church and neighbourhood leaders. However, in July commune officers beat two women of the same group after they attempted to visit the home used by the congregation as a place of worship. In all instances the provincial security department reportedly conducted investigations into alleged official abuse. In September two

commune security officers received administrative punishment from the commune leadership in connection with the June incident (see section 1.c.).

Hong Thien Hanh, leader of the small To Dinh Tan Chieu Minh Cao Dai religious group in Tien Giang Province, remained in prison serving an eight year sentence after being convicted in 2005 on charges of engaging in illegal religious activities and defrauding his followers. Some independent Cao Dai confirmed the government's fraud allegations against Hanh.

By year's end most churches affiliated with the government recognized SECV in the Central Highlands were able to operate, although the process of according the congregations full legalization remained slow. At least 29 Protestant churches affiliated with the government recognized Evangelical Church of Vietnam North were granted registration in the Northwest Highlands during the year as part of a pilot program to accelerate registrations in the region. Two small Buddhist groups, a Danang based Protestant organization, and two Protestant house church organizations based in Ho Chi Minh City received national level registration. Registrations for the Baha'i Faith and additional Protestant house church organizations awaited registration at year's end. Congregations belonging to previously recognized faiths were able to register their activities and places of worship.

The 2005 government framework on religion maintained overall government control of religious organizations and kept in place significant limitations on education, medical, and charitable work by religious groups. The government continued to use the recognition and registration processes to monitor and limit the activities of church organizations. The government officially recognized Buddhist, Roman Catholic, Protestant, Hoa Hao, Cao Dai, and Muslim religious organizations. To obtain recognition a group must obtain government approval of its charter and leadership. Official approval is required for the registration of new congregations and places of worship, ordination of clerics, establishment of religious teaching institutions, and entry of students into those institutions. Officially recognized religious organizations were able to operate with increasing ease throughout most of the country, and followers of these religious bodies were usually able to worship without government harassment even if their local congregation was not registered.

The law mandates that the government act in a time bound and transparent fashion, but the approval process for recognition and registration could be slow and non transparent. Some local authorities continued to demand that even recognized religious organizations provide lists of all members of sub-congregations as a precondition to registration, although this requirement is not codified in the legal framework on religion. Some registered congregations in the northern region and the Northwest Highlands complained that officials used such lists to keep unlisted members from participating in services. Annual activities by congregations also must be registered with authorities, and activities not on the accepted annual calendar require separate government approval.

In addition to officially recognized religious denominations, numerous non-recognized denominations operated in the country, including independent Buddhists, Baptists, Mennonites, Jehovah's Witnesses, Mormons, the Baha'i Faith, independent Cao Dai and Hoa Hao groups, and ethnic Cham Hindus. Some non-recognized Protestant groups received what appeared to be local official recognition of their organizations. In addition to the three Protestant groups that received national registration, a fourth group affiliated with the Mennonites had its registration pending in other provinces.

As in past years, official oversight of recognized religions and their registered sub-congregations, as well as problems faced by followers of non-recognized religions or unregistered sub-congregations of recognized religions, varied widely from locality to locality, often as a result of ignorance of national policy or varying local interpretations of the policy's intent. In general, central level efforts to coordinate proper implementation of the government's religious framework reduced the frequency and intensity of religious freedom violations. Nevertheless, activities of non-recognized and unregistered religious groups remained technically illegal, and these groups occasionally experienced harassment. The level of harassment declined in comparison with previous years, and the vast majority of unregistered churches and temples were allowed to operate without interference.

Buddhists practicing their religion under the Vietnam Buddhist Sangha Executive Council, the officially sanctioned Buddhist governing council, were generally free to practice their religion. While these constituted the vast majority of Buddhists, the government continued to harass members of the banned UBCV and prevented them from conducting independent religious activities outside their pagodas. Since 2003 senior UBCV leaders, including Patriarch Thich Huyen Quang and Thich Quang Do, have been confined to their pagodas and had restrictions on their ability to travel and meet with followers (see section 2.d.). Until September Thich Quang Do's attempts to meet with Thich Huyen Quang were blocked repeatedly. However, foreign diplomats were able to meet with Patriarch Thich Huyen Quang and Thich Quang Do on several occasions during the year. In September the government allowed Thich Quang Do and 19 other UBCV leaders to meet with Thich Huyen Quang during his hospitalization in Ho Chi Minh City.

The government restricted and monitored all forms of public assembly, including assembly for religious activities. Large regularly scheduled religious gatherings were allowed, such as Protestant and Catholic Christmas celebrations, the Catholic celebrations at La Vang Pilgrimage Center in Quang Tri Province, and the Cao Dai celebrations in Tay Ninh Province. The Hoa Hao were allowed to hold large public gatherings to commemorate some traditional anniversaries.

Open adherence to a religious faith generally did not disadvantage persons in civil, economic, or secular life, although it would prevent advancement in government and military careers. However, there were some reports that ethnic minority boarding schools discriminated against children from religious, especially Protestant, families. Religious practice does not preclude membership in the CPV. Some government and CPV officials admitted that they followed traditional and Buddhist religious practices.

A government publishing house oversees the publishing of all religious materials. Many Buddhist sacred scriptures, Christian Bibles, and other religious texts and publications, including some in ethnic minority languages, were printed by government approved organizations.

The government allowed religious travel for some religious persons. Muslims were permitted to make the Hajj, and more Buddhist, Catholic, and Protestant officials were able to travel and study abroad. The government allowed many Catholic bishops and priests to travel freely within their dioceses and allowed greater, but still restricted, freedom for travel outside these areas, particularly in ethnic areas. Many Protestant house church leaders travelled overseas and within the country during the year. In the past government officials discouraged officially recognized clergy from entering the provinces of Son La, Dien Bien, Lai Chau, as well as Ha

Giang and other "sensitive" ethnic minority highlands border provinces; however, some Protestant and Catholic leaders reported that this policy eased significantly during the year."

Government Corruption

In relation to corruption the US Department of State Report on Human Rights Practices, 2006 states in part:

"Corruption continued to be a major problem. The government showcased its efforts to fight corruption, including publicizing budgets at different levels of government and streamlining government inspection measures. Cases of government officials accused of corruption were publicized widely (see section 2.a.). In March and April, the press extensively reported a corruption story involving PMU 18, a government office handling large infrastructure projects, some with substantial foreign contributions. The press revealed that Bui Tien Dung, the head of PMU 18, was part of a betting ring. Deputy Minister of Transportation Nguyen Viet Tien was implicated in the scandal by a March 28 MPS report and required to step down; on March 30, a spokesman for the prime minister declared that "the transport minister must take responsibility, and after that deputy ministers must follow." On April 1, the CPV announced that a proposal to remove Transport Minister Dao Dinh Binh had been submitted to the Politburo. Binh submitted his resignation on April 3; however, he was not formally punished despite significant protests from National Assembly deputies. In late November the Government Inspectorate also found that two local party officials in Quang Ngai Province had illegally allowed their relatives to use large stocks of land for personal use; the party eventually removed the officials from their positions. In December the inspectorate found party officials had misused \$4.3 million (685 billion VND) intended for the upgrade of Highway 5, although it remained unclear if anyone would be punished in connection to the scandal.

During the year senior government officials in Khanh Hoa Province faced sanction, investigation, and possible imprisonment for a corrupt land deal. In August the director of one of Ho Chi Minh City's most prestigious high schools was arrested for corruption. The cases remained under investigation for possible prosecution.

At year's end neither Vice Minister of Trade Mai Van Dau nor his son, Mai Thanh Hai, had been tried after their 2004 indictment on charges of accepting bribes in exchange for arranging textile quotas."

Country of Origin Information Report Vietnam, 21 December 2006 states in part:

"According to the NGO, Transparency International (TI), in its Corruption Perceptions Index 2006, Vietnam ranked at 111 out of 158 countries, based on the perceptions of business people and country analysts regarding levels of corruption throughout the world. Vietnam scored 2.6 out of 10 (ten representing zero perception of corruption)".

A DFAT report, number 630, dated 20 April 2007 states

"Local authorities advise that Cong Ty Kinh Doanh Phat Trien Nha Tp My Tho no longer exists as it had been merged some time ago with another company, Cong Ty Kinh Doanh Nha Tien Giang. According to Cong Ty Kinh Doanh Nha Tien Giang their company used to be a state-owned enterprise, but was equitised and became a joint stock company in 2005."

The report also states that:

“According to the company’s office the government retains a small portion of the total shares of the company”.

Civil Judicial Procedures and Remedies

The US Department of State Report on Human Rights Practices, 2006 states in part:

“There is no clear or effective mechanism for pursuing a civil action to redress or remedy abuses by authorities. Civil suits are heard by "administrative" courts, civil courts, and criminal courts, which all follow the same procedures as in criminal cases and are adjudicated by members of the same body of judges and lay assessors. All three levels were subject to the same problems of corruption, lack of independence, and inexperience. Officials reported that, in theory, a citizen seeking to press a complaint is required first to petition the officer accused of committing a human rights violation for permission to refer the complaint to the administrative courts. If a petition is refused, the citizen may refer it to the officer's superior. If the officer or his superior agrees to allow the complaint to be heard, the matter is taken up by the administrative courts. If the administrative courts agree that the case should be pursued, it is referred either to the civil courts for suits involving physical injury seeking redress of less than 20 percent of health care costs resulting from the alleged abuse, or to the criminal courts for redress of more than 20 percent of such costs. In practice this elaborate system of referral and permission ensured that citizens had little effective recourse to civil or criminal judicial procedures to remedy human rights abuses, and few legal experts had experience with the system.

The law allows citizens to complain openly about inefficient government, administrative procedures, corruption, and economic policy. In general citizens freely exercised this right, but the government considered any overt political criticism stemming from such commentary a crime. Attempts to organize those with complaints to facilitate action are considered proscribed political activities. Senior government and party leaders travelled to many provinces reportedly to try to resolve citizen complaints. Corruption related to land use was widely publicized in the press.”

FINDINGS AND REASONS

The Tribunal is satisfied that the applicant entered Australia on a Vietnamese passport together with her child. There being nothing to the contrary the Tribunal finds the applicant is a Vietnamese national, outside her country.

The Tribunal has considered the original claims made by the applicant and that they did not include the claims made at the hearing. Indeed there is great discrepancy between the two sets of claims. In a letter to the Tribunal, the applicant states she would like to clarify the claims put in her application to the Department for a protection visa and does so, as set out above. However, that correspondence still does not refer to the matters raised at the hearing. The Tribunal is none the less satisfied, that the account given at the hearing was given by the applicant, almost as an after thought, and without embellishment, and as such was a credible and plausible account of her work history, the exposure of corruption and the consequences which follow these events and is supported by independent country information as to the widespread occurrence of corruption.

The Tribunal accepts the review applicant's evidence that incidents of serious harm were directed against Buddhist monks and leaders of Buddhist groups at the review applicant's Temple but finds these occurred in the 1970's and that according to independent country information would be unlikely to reoccur in the reasonably foreseeable future. The Tribunal accepts the applicant's evidence that she is a devout Buddhist who continues to practice her religion in City 1. Having considered the applicant's fears of persecution in relation to religion, should she return to Vietnam in the reasonably foreseeable future, and taking account of the independent country information cited above, the Tribunal does not consider that the applicant's testimony in relation to the practice of her religion would result in any serious harm in a Convention sense. The Tribunal notes the country information cited above indicates that the government generally allows persons to practice in the religion of their choice, that there is an officially recognized Buddhist organization, and that Buddhists practicing under this organization, are generally free to practice their religion. The Tribunal finds the review applicant to be mainstream rather than a dissident figure and for this reason would not face a real chance of persecutory treatment arising from her Buddhist practices in the reasonably-foreseeable future. On the basis of the applicant's evidence the Tribunal is not satisfied that she has been subjected to serious harm or mistreatment or systematic and discriminatory conduct arising from her religious beliefs and activities or that she faces a real chance of such treatment should she return to Vietnam.

The Tribunal accepts the review applicant's evidence that she worked for several years in a government run company. The Tribunal accepts the evidence that during this time she came to know of corrupt financial practices which she then exposed. [Information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. The Tribunal finds the evidence that the applicant exposed corruption as a result of her professional knowledge working in the company plausible. On its own, this evidence is insufficient for the Tribunal to find the applicant has a well-founded fear for a Convention based reason such that should she return to Vietnam in the reasonably foreseeable future she would face a real chance of serious harm. However, when this evidence is considered cumulatively, with the applicant's fear that as a consequence, should she return to Vietnam, she would face economic hardship that would threaten her ability to earn a living and obtain housing for herself and her child, the Tribunal finds the evidence sufficient and a Convention based fear is established.

The Tribunal is satisfied that the applicant's past employment and accommodation were connected to her employment with the company she subsequently exposed. The Tribunal accepts that her action in exposing the corruption within the company would be known information within the community in which she formerly lived and worked. Based on independent country information, in particular in relation to the societal discrimination faced by women despite the large body of legislation and regulations devoted to the protection of women's rights in marriage (and out of it), as well as in the workplace and labour code provisions that call for preferential treatment of women, the Tribunal accepts that women do not always receive equal treatment. Further, despite the law prohibiting discrimination based on gender, ethnicity, religion, or social class the Tribunal finds that enforcement of these prohibitions is uneven. The Tribunal has considered the importance given to traditional family models, and accepts that the review applicant and her child fall outside this description and that a family headed by a single mother would be seen in an "unfavourable light". The consequence of this may be that the review applicant could be overlooked for housing, priority being given, in what is already a scarce market, to "model" families.

The Tribunal accepts the review applicant's claim that in all the circumstances she would be unable to present a satisfactory CV for the purpose of employment, [information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant], should she return to Vietnam in the reasonably foreseeable future, she would have great difficulty finding not only somewhere to live but also a means to support herself and her child.

The Tribunal finds the applicant has a well-founded fear of serious harm for reasons of her membership of a particular social group, resulting from her status as a divorced woman and that such well-founded fear is a Convention based fear and is both subjective and, taking into account independent country information set out above, objective. In reaching this conclusion the Tribunal has also considered the principles set out in *Applicant S*.

The meaning of the expression "for reasons of ... membership of a particular social group" was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

Whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

The Tribunal cannot dismiss as remote the possibility that the applicant, a divorced woman in Vietnam, might face significant discrimination and hardship affecting her ability to obtain employment and somewhere for herself and her child to live and this constitutes serious harm. The Tribunal finds that the applicant faces a real chance of suffering harm in her own community in Vietnam for reason of her membership of the particular social group, constituted by divorced Vietnamese women because, as set out above, she would face societal discrimination.

Furthermore the Tribunal has considered whether the applicant could be protected from this harm by relocating to another part of Vietnam where people would be unaware of her circumstances and whether it would be reasonable to expect her to do so. The Tribunal has accepted that the applicant lived and worked in a particular area for an extended period before coming to Australia. For this reason the Tribunal is of the view that she does not have ready networks or support in other parts of Vietnam. The Tribunal finds that the practical realities including the applicant's age and her lack of finances make it unreasonable to expect her to relocate to another part of Vietnam in order to avoid the harm she fears.

The Tribunal finds the review applicant fears two kinds of harm. Both for Convention based reasons. [Information relating to the applicant's history deleted in accordance with s.431 as it may identify the applicant]. This she fears would be compounded by her status as a single mother, made worse by the circumstances of her failed marriage which would attract

discriminatory treatment. There is present harm, which relates to her ability to again work and house herself and her child, in the reasonably foreseeable future, should she return to Vietnam, and is founded under the provisions in section 91R(2)(d) and (f) namely the real chance that she would suffer economic hardship that would threaten her capacity to subsist and that she would be denied the capacity to earn a livelihood of any kind, where the denial threatens her capacity to subsist.

The Tribunal finds the harm feared is such that the government has or would fail to protect the applicant from the persecution because, as set out above, in independent country information, it would be extremely difficult for her to take action against societal discrimination which may result in less opportunities for her to gain housing and employment as *“there is no clear or effective mechanism for pursuing a civil action to redress or remedy abuses by authorities. Civil suits are heard by "administrative" courts, civil courts, and criminal courts, which all follow the same procedures as in criminal cases and are adjudicated by members of the same body of judges and lay assessors. All three levels were subject to the same problems of corruption, lack of independence, and inexperience”*.(US Department of State Report,2006, on Human Rights Practices).

CONCLUSIONS

The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.

No specific claims were made by or on behalf of the other applicant. The fate of the other applicant's application therefore depends upon the outcome of the first named applicant's application. The other applicant will be entitled to a protection visa provided she satisfies the criterion set out in s.36(2)(b) of the Act and the remaining criteria for the visa.

DECISION

The Tribunal remits the matter for reconsideration with the following direction:

that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. ntrevva