

1311126 [2014] RRTA 173 (3 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1311126

COUNTRY OF REFERENCE: Stateless

TRIBUNAL MEMBER: Rowena Irish

DATE: 3 March 2014

PLACE OF DECISION: Sydney

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

CLAIMS AND EVIDENCE

2. The applicant claims to fear returning to Myanmar because he is a Rohingya. He claims that he left Rohingya in December 2004, fleeing to [other countries] for a number of years before coming to Australia.
3. The applicant states that he was born [in] Arakan Province, Myanmar. He states in his form that he speaks Rohingya and Malay. He claims to have arrived in Australia [in] December 2011 but that his agent took his passport (which was under a false name) and details of his visa. The decision record states that the Department has been unable to locate any record of the applicant's arrival in Australia nor a flight which matches his description. His parents are both deceased and he has no siblings.
4. The applicant who claims to be a stateless Rohingya from Myanmar, applied to the Department of Immigration for the visa [in] February 2012. He was interviewed by the delegate [in] June 2012 and the delegate refused to grant the visa [in] July 2013. The Tribunal has listened to a recording of the interview and refers to it, where relevant, below. In support of his claims he provided what he claimed was an original Burmese birth certificate (a translation of which was provided to the Tribunal). He also provided a letter from [a senior official] of the Burmese Rohingya Community in Australia dated [in] January 2012 stating that the applicant is a [Rohingya] man from [Village 1] Sittwe, Arakan, Myanmar.
5. The applicant appeared before the Tribunal [in] January 2014 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A and Ms B]. The Tribunal hearing was conducted with the assistance of an interpreter in the Rohingya and English languages. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing. At the hearing the applicant provided identification in the form of a keypass with his name and address in Australia.
6. [In] January 2014 the Tribunal sent the applicant an invitation to comment on or respond to information pursuant to s.424A. [In] February 2014 the Tribunal received a written response attaching a Psycho-Socio Report/Assessment dated [in] February 2014 from [a counselling service] which is unsigned or attributable to any individual counsellor, psychologist or doctor.

FINDINGS AND REASONS

7. The law upon which the findings below are based is set out in Attachment 1.

8. The treatment of Rohingya in Arakan State (also known as Rakhine State) is well documented in many international reports.¹ The Tribunal accepts that if the applicant is a stateless Rohingya from Arakan State then he would be entitled to protection in Australia. However, the Tribunal has very serious concerns about the applicant's evidence. These concerns are so numerous and significant that the Tribunal is not satisfied about any aspect of the applicant's claims. The Tribunal has carefully considered the psychological report provided and the applicant's claimed illiteracy but is not satisfied that these can explain the significant deficiencies in the applicant's evidence. For the reasons discussed below the Tribunal is not satisfied that the applicant is a credible witness. For the reasons set out below it is willing to accept that he is a Rohingya but it is not satisfied that he is stateless or from Myanmar as he has claimed.

9. **First**, the applicant claims to have left Myanmar in 2004 and to have been born in [a stated year]. This would mean that he was [a young adult] at the time he left Myanmar. However at the Departmental interview he claimed that he left Myanmar when he was [ten years younger]. The Tribunal considers this to be a significant inconsistency which raises concerns for the Tribunal about whether the applicant ever lived in Myanmar. When this was put to the applicant in the s.424A letter he stated that he is illiterate and did not go to school so does not understand the numbers about the relevant dates. While the Tribunal accepts that the applicant may be illiterate it does not consider that this is sufficient to explain the difference in his evidence as to whether he left Burma (Myanmar) as a child or an adult. At the Tribunal hearing the applicant's evidence in relation to when he left Myanmar was also vague, inconsistent and confused. When it was discussed with him about whether he left when he was [in his teens or ten years older] he stated that he is not educated and was frightened when talking to the delegate. He claimed that he clearly remembers that he left Myanmar in around November 2004. When the Tribunal asked how he was so sure that this was the date he stated that it is the only event he can remember. When asked how old he was when he left Myanmar he stated that he was late teens or close to [young adulthood]. He also claimed that he left one year after his last parent died in 1993, when he was [a pre-teen]. When the Tribunal put to him that this would mean that he left in 1994 he stated that it was 2004 when he left. When the Tribunal put to him that this was 11 years after his parents died the applicant stated that he was confused but he is sure he left around November 2004. The Tribunal did not find this convincing and considers that even if he is illiterate the applicant would have some idea of whether he left 1 year or 11 years after his parents died. The applicant has been specific in terms of dates and times in his written statements and the Tribunal does not accept that he has no concept of dates or years.

10. **Second**, the applicant claims to be from [Village 1] in Arakan, Myanmar. While the Tribunal was able to locate an area in Sittwe called [a certain name] the applicant's knowledge of his claimed home area was almost non-existent. At the Departmental

¹ For example United States Department of State, *2012 Report on International Religious Freedom - Burma*, 20 May 2013, available at: <http://www.refworld.org/docid/519dd4df18.html> [accessed 29 May 2013]; Amnesty International, *Amnesty International Annual Report 2013 - Myanmar*, 23 May 2013, available at: <http://www.refworld.org/docid/519f51834d.html> [accessed 29 May 2013]; United Kingdom: Home Office, *Operational Guidance Note: Burma (Myanmar)*, May 2013, OGN v 7.0, available at: <http://www.refworld.org/docid/51a4a0a44.html> [accessed 29 May 2013]; United States Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Countries of Particular Concern: Burma*, 30 April 2013, available at: <http://www.refworld.org/docid/51826f01f.html> [accessed 29 May 2013]

interview he was unable to provide any detailed description of where [Village 1] was located or what it was like and stated that he could not remember his local area very well. The applicant was adamant at the hearing that he left [Village 1] in 2004, meaning he was [a young adult]. If he had lived in [Village 1] for [the years] he has claimed the Tribunal would expect that he could provide some level of detail about the area. When this was put to him in the s.424A letter he responded that he just stayed at home because of fear of kidnapping and killing by rogue Buddhists and therefore could not give more details. The Tribunal finds this unpersuasive. On the basis of the applicant's evidence to the Tribunal he remained in [Village 1] for 11 years after the death of his parents and during this time he was living alone and supporting himself. The Tribunal considers that during this time he would have had to move around the local area in order to support himself, acquire food, et cetera.

11. At the Tribunal hearing the applicant stated that it is a [few hours'] walk from [Village 1] to the centre of Sittwe. However the evidence of [Ms B] was that it was a [much shorter] walk from [Village 1] to the centre of Sittwe. The Tribunal finds it surprising that the applicant and [Mr B], who both claim to be from or familiar with [Village 1], would provide such differing explanations of where it is located in reference to the centre of Sittwe. When this was put to the applicant in the s.424A letter he responded that he has a problem understanding numbers so he made mistakes in his answers. The Tribunal found this unpersuasive. The applicant's lack of knowledge of his claimed home area raises concerns for the Tribunal about whether he grew up in Myanmar as claimed.
12. **Third**, the applicant's evidence in relation to the death of his parents was so inconsistent as to not be credible. As discussed above, the applicant's evidence in relation to how long he remained in Myanmar after the death of his parents was inconsistent and unpersuasive. Furthermore the applicant has provided inconsistent evidence in relation to which of his parents died first and how his parents died. In his written claims the applicant states:

My father died when I was [age] and my mother was died too after two year of my father passed way.
13. This was repeated in the statutory declaration provided to the Tribunal in support of the applicant's claims. It is consistent with the evidence of [Ms B] who states that the applicant's father died before his mother. However the evidence of the applicant at the Tribunal hearing was that his mother died first and his father died two years later. At the Departmental interview when asked whether his parents died of natural causes or were killed the applicant stated that his parents were old and sick and passed away. This is consistent with the evidence of [Ms B] who stated that the applicant's mother died of an illness. However at the Tribunal hearing the applicant stated that his parents were both killed in a riot in Myanmar.
14. When the evidence of [Ms B] was put to the applicant in the s.424A letter he responded that he could not remember the dates of his parents' deaths, the dates they passed away, which parent died first or the causes of their deaths but the evidence of [Ms B] is correct and his was incorrect because of difficulties with his long term memory. The Tribunal found this unpersuasive. Even if the Tribunal was to accept that the applicant is unable to remember or understand dates, it considers that he would be able to recall which parent died first and whether they were killed in riots or died from illness/old

age. His failure to provide consistent evidence in relation to this raises concerns for the Tribunal about whether the applicant has been truthful about his family background.

15. **Fourth**, the applicant has provided a birth certificate from Myanmar in support of his claims. However the Tribunal has serious concerns about that document. The applicant did not provide the birth certificate until the Departmental interview. At the Departmental interview he was asked why he did not provide it with his application and he stated that he asked a relative whether they had, then he got it and that was why he was providing it at the interview. This is inconsistent with the applicant's evidence to the Tribunal that he brought the birth certificate with him from Myanmar. When this was put to the applicant in the s.424A letter he responded that:

his birth certificate had brought from Myanmar while he (review applicant) fled from Myanmar. The birth certificate was with his relative's possession while he fled from Myanmar with the same boat and later living in [Country 2]. When the review applicant arrived in Australia then he requested his relative to send it Australia by post. He also emphasis that the birth certificate is genuine and can be verified by the relevant issuing authority of the Myanmar.

16. The Tribunal does not consider this explanation is consistent with the applicant's evidence at the hearing. He stated at the hearing that he had carried the birth certificate all the way from Burma when he exited and that he had not travelled with any relatives. When the Tribunal asked why he had not provided it with the protection visa application he stated that he did not know that he had to. When the Tribunal put to him that he wrote that it would provide it later which suggested that he was aware he had to provide it, he stated that he did not know this earlier but later when they asked for it he provided it. The Tribunal considers that the applicant's inconsistent evidence about when and how he obtained his birth certificate raises concerns for the Tribunal about whether the birth certificate is a genuine document or whether it was fabricated after the lodgement of his protection visa application in order to support his claims.
17. These concerns are compounded by the findings of the delegate and the Document Examination Unit of the Department. As put to the applicant in the s.424A letter (and discussed at the hearing), the results of the examination of the birth certificate were inconclusive but it did not exhibit manufacturing security characteristics which would be expected in secure documents. The delegate also noted that the ink on the certificate was wet. The Tribunal shares the delegate's concerns about why the ink on a certificate issued in 1981 would still be wet and considers that this suggests that the birth certificate is not a genuine document. The applicant responded to the s.424A letter saying that it is a genuine document and it was wet because it was not carried in a folder when he fled from Myanmar. The Tribunal found this unpersuasive. The delegate did not refer to the entire document being wet, only the ink on the document. Therefore the Tribunal does not accept that this could have been caused by the document getting wet when the applicant fled Myanmar in 2004. Furthermore, the Tribunal considers it reasonable that even if the document had gotten wet in 2004 it would have dried by 2013.
18. The Tribunal finds that the birth certificate is not a genuine document and considers that this reflects poorly on the applicant's credibility and also on his claim to have been born in Myanmar.

19. **Fifth**, the Tribunal found the applicant's evidence about his journey to [Country 2] from Myanmar was inconsistent and unpersuasive. At the Departmental interview he stated that he took a large boat to [Country 3] from Myanmar and this took 3 days. However at the Tribunal hearing he stated that the boat he travelled in to [Country 2] was not very big and that the journey took 5-6 days. These inconsistencies were put to the applicant in the s.424A letter. The Tribunal is willing to accept his explanation in relation to the size of the boat and does not draw any adverse conclusions about this evidence. However in response to the inconsistency about how long the journey took the applicant responded:

The boat that he took with other Rohingayn (sic) Community flee from Myanmar took 3 days journey to reach the border of [Country 3] and its took another 2-3 days journey to reach to the shore of [Country 2] Border.

20. This is not consistent with the applicant's evidence to the Tribunal where he clearly stated that it took 5-6 days to reach [Country 3] from Myanmar. Furthermore it is inconsistent with the applicant's evidence that he stopped in [Country 3] and worked for a few weeks before he travelled by motor vehicle to [Country 2]. His evidence did not suggest that the boat continued on to the [Country 2].
21. **Sixth**, the Tribunal found the applicant's evidence in relation to his travel to, and employment in, [Country 2] to be inconsistent and unpersuasive. At the Departmental interview the applicant stated that he caught a bus from [Country 3] to a small town in [Country 2] where he met a Rohingya friend. However at the Tribunal hearing the applicant stated that he travelled by car with five other people, including the agent and two other Rohingyans from Thailand, straight to [City 4]. He only stopped for petrol and when he arrived in [City 4] he was taken by the agent to the workshop where he started work and the other two Rohingyans went to a different place. When this was put to the applicant in the s.424A letter he replied that he travelled in a minibus which could also be called a car. However the Tribunal does not accept that this explains the differences in the accounts provided by the applicant. At the Departmental interview he stated that he arrived in a small town in [Country 2] where he met a Rohingya friend. However at the Tribunal hearing he stated that he went straight to [City 4] where the first person he met was the mechanic he worked for who was not a Rohingya.
22. The applicant's account at the Tribunal hearing was also inconsistent with his written claims in which he states:
- In December 2004, I entered in [Country 2] and arrived in [City 4]. In January 2005, I met with one of Rohinga Muslim in [City 4] and ask him for a job. He took me to a car mechanic/workshop nearby, where I have got a job. I have started my job as an assistant to the car mechanic. My owner name was [Mr C].
23. However at the Tribunal hearing the applicant claimed that the agent who brought him from [Country 3] (and was not Rohingya) introduced him to his employer, the car mechanic (who was also not Rohingya). When the Tribunal put to the applicant that his written account was substantially different he then stated that he went with his agent and the other people he arrived with to a mosque and was introduced to some other Rohingyans. These Rohingya people he met had recommended the car mechanic. The Tribunal found this to be unpersuasive. It was inconsistent with the applicant's earlier evidence that he did not know any other Rohingya in [Country 2]. It appeared to

the Tribunal that the applicant was fabricating his evidence in response to concerns put to him by the Tribunal.

24. The applicant stated at the hearing that he did not know the name of any of these Rohingya friends from the mosque and did not know anyone by the name of [Mr D] in [Country 2]. However at the Departmental interview the applicant had stated that he met with a Rohingya Muslim in [City 4] by the name of [Mr D] who he asked about a job and he took the applicant to the workshop where he started working. When this was put to the applicant in the s.424A letter he stated that his boss's name was [deleted] and it was [Mr D] who helped him to find a job in the car mechanic workshop in [Country 2]. The Tribunal finds this response to be inconsistent and unpersuasive and considers that it further undermines the applicant's credibility. At the Tribunal hearing the applicant stated that the agent who brought him to [Country 2] was called [deleted], that his boss, the car mechanic, was called [Mr C] and that he did not know anyone by the name [Mr D]. His written claims also refer to his boss as [Mr C]. The applicant's inconsistent evidence in relation to how he travelled to [Country 2], who he first met in [Country 2], the names of the relevant people, who introduced him to the car mechanic and when he got the job leads the Tribunal to find that the applicant has not been truthful in relation to his travel to, or employment in, [Country 2].
25. In the applicant's written statement he says:

I was not paid any money for 02 years, but the owner gave me food and accommodation for that periods. Form 2007 the owner gave me some money including accommodation and food. I was not much familiar with the [City 4]. I always depended on my employer for my safety and shelter in [Country 2] as I was illegal there. I kept most of my salary with my owner.
26. However this was inconsistent with the applicant's evidence to the Tribunal that he received a steady salary from January 2005 when he first started working. When the Tribunal put this inconsistency to the applicant at the hearing he stated that he asked his employer to keep the money aside. The Tribunal does not consider that this explains the inconsistency with his written statement which clearly suggests that the applicant did not receive any salary for the first 2 years and after that his employer kept most of the money for the applicant.
27. **Seventh**, the applicant's evidence in relation to which Rohingyas he knew in [Country 2] was inconsistent and unpersuasive. He initially stated at the Tribunal hearing that he did not know any other Rohingyas in [Country 2]. This was consistent with his evidence at the Departmental interview that there were no other Rohingyas in his area, there were no other Rohingyas in his workshop, he had no Rohingya friends and he did not know any other Rohingyas because he did not travel. However, this evidence was inconsistent with his later evidence at the Tribunal hearing that he did know other Rohingyas who worked in the same vicinity as him and attended the same mosque. When the Tribunal put to him that he had earlier stated that he did not know any other Rohingyas he then said that he did not have any contact with them but just knew them by face from that vicinity. The Tribunal finds this unpersuasive as the applicant stated that he knew a Rohingya man called [Mr D] who got him the job at the workshop in [Country 2]. When the information was put to the applicant in the s.424A letter he responded that other Rohingya people in [Country 2] recognised him but he had no personal relation with them in [Country 2]. The Tribunal does not consider that this explains the apparent inconsistencies in his responses.

28. The applicant stated that his boss in [Country 2] was not Rohingya. At the hearing he stated that he did not know whether his boss knew any other Rohingyans. When the Tribunal put to the applicant that he had stated at the Departmental interview that his boss's wife was Rohingya he replied that his boss had told him that his wife was Rhingyan but the applicant did not know for sure. When the Tribunal asked whether the applicant had met his boss's wife he stated that he had and he spoke with her in Rohingya. As the Tribunal put to the applicant it does not find it credible that the applicant's boss would tell the applicant that his wife was Rohingya, that the applicant would meet and talk with his wife in Rohingya yet the applicant would say that he does not know whether or not she is Rohingya. When this was put to the applicant in the s.424A letter he responded that he heard from his boss that his wife had a Rohingyan background but the applicant did not know whether she was born in Myanmar or [Country 2] as he did not talk with her. This is not consistent with the applicant's evidence at the Tribunal hearing that he did talk with his boss's wife on more than once occasion at the workshop.
29. The applicant's evidence that he did not know any other Rohingyans in [Country 2] is also inconsistent with the evidence of [Mr A] at the Tribunal hearing that he had verified the applicant's identity with three other members of the Rohingyan community who knew the applicant in [Country 2]. When this was put to the applicant in the s.424A letter he responded:
- The review applicant says, the Rohingaya people who identified him in Australia were not personally known to him in [Country 2] but occasionally he saw them in mosque but recognised their faces in Australia. [The applicant] also says that, when he approached to [Mr A] for a membership of the Rohingaya Community Members in Australia then [Mr A] paraded him before some Rohingaya Community Members in Australia who had lived previously in [City 4], [Country 2] and settled in Australia as asylum seekers.
30. The Tribunal does not consider that this response is consistent with [Mr A]'s evidence that he verified the applicant's identity as this response suggests that he merely asked whether other people in [Country 2] had seen him before. This raises concerns for the Tribunal about the applicant's credibility and the strength of the supporting evidence from [Mr A].
31. **Eighth**, the applicant's evidence in relation to the completion of his application for protection was so inconsistent as to not be credible. He stated at the Departmental interview that the person who helped him to complete the form was called [Mr E] and that he only met [Mr E] once or twice in the mosque. However at the Tribunal hearing the applicant stated that the person who assisted him to complete the application form was called [Mr F] and that he lost contact with [Mr F] when he [moved]. He stated at the hearing that [Mr F] was not known by any other name. When the Tribunal put to him that he had stated at the Departmental interview that the person who completed the form was called [Mr E] he stated that this was incorrect and his name was [Mr F]. When the information from the Departmental interview was put to the applicant in the s.424A letter he replied that:

[The applicant] says that the person who helped him to make his statement of the protection visa application his name was [Mr E alias Mr F]. He is known to [Mr E] as well as [Mr F]. The review applicant also says that he heard that [Mr F moved] from his friend.

32. The Tribunal considers that this is clearly inconsistent with the applicant's evidence to the Tribunal and reflects poorly on his credibility.
33. The applicant has provided details in his protection visa application which he appeared to be unaware of at the Tribunal hearing and was unable to provide a consistent explanation of where those details came from. In the application form he states that he worked at "[name and address deleted] [City 4] [Country 2]". However at the Tribunal hearing the applicant stated that he did not know the address of the car workshop where he was employed but it was in [a certain location] and that it did not have a name because it was very small. When the Tribunal put to him that the application form contained a name and address of his employer he stated that he just put [a certain location] and the Department themselves found out the address from looking at Google. When the Tribunal discussed this further with the applicant he then stated that he rang his boss who gave him the address during the preparation of the application and that he had provided the phone number of his boss to the delegate at the interview. The Tribunal put to the applicant that the recording showed he told the delegate that he had lost his phone with the number in it and could not provide it to the delegate. This was put to the applicant in the s.424A letter and he replied that he could not recall what he said due to his memory loss. At the hearing the applicant then changed his evidence and stated that he did say that at the interview but later he phoned the owner and got the address from him after the interview. As put to the applicant at the hearing, the Tribunal does not accept as plausible that the applicant could have included in his application form details about his employer that were only obtained after the Departmental interview. The applicant then changed his evidence again and stated that the person who filled out the form had phoned his employer and obtained the details. The Tribunal considers that the applicant has not been truthful in relation to how his protection visa application was prepared.
34. **Ninth**, the Tribunal has concerns about the claimed relationship between the applicant and [Ms B]. It is claimed that [Ms B] is the applicant's [relative]. As discussed above, the applicant and [Ms B] provided inconsistent evidence at the hearing in relation to how the applicant's mother ([Ms B's relative]) died and whether the applicant's mother or father died first. This raises concerns for the Tribunal about the claimed familial connection between them. Furthermore, the applicant stated at the hearing that he did not know whether [Ms B] had children or not. When the Tribunal put to him that it found it surprising that he would not know whether or not [Ms B] has children he replied that in their culture it is embarrassing to ask and he does not see any children around so he assumes that she does not have children. However in her evidence to the Tribunal [Ms B] stated that she has [several] children and that the applicant met the eldest of her children when he was a teenager. When this was put to the applicant in the s.424A letter he responded that he was only referring to her children in Australia not in other countries. The Tribunal did not find this persuasive as it would have expected him to have referred to her [several] children living overseas when asked if she had children rather than stating that he does not know. The Tribunal does not accept that he would have thought the Tribunal was only referring to children living in Australia and therefore restricted his answer to this. The Tribunal finds that [Ms B] is not the applicant's [relative] as claimed and is not satisfied that [Ms B] is a credible witness. The Tribunal has placed no weight on her evidence in support of the applicant's claims.

35. **Tenth**, the Tribunal found the applicant's evidence in relation to [Mr G] to be inconsistent and unpersuasive. In his written statement the applicant says:
- On [date] of December 2011 at 3.30pm our flight left from [Country 2] and arrived at [Australia] at 4.00am the next day [date]12/2011. From [here] I called [Mr G] a relative of me who knew me from Burma and has been living [in another city in Australia].
36. However at the Tribunal hearing the applicant stated that [Mr G] was not a relative but just a friend from Myanmar. He claimed that the reference in his statement to him being a relative was because culturally you say a relative for a friend. The Tribunal found this unpersuasive. He claimed that [Mr G] was a friend from a neighbouring village but he has not provided any evidence from [Mr G] to support his claims. When this was discussed with him at the Tribunal he stated that he did not know what he had to provide. However following the hearing the applicant has had approximately one month to submit any further evidence but has not done so.
37. At the Departmental interview the applicant stated that he got [Mr G]'s contact number from a person he knew in the village in Myanmar a long time ago. He then changed his evidence and stated that he got the number when he was in [Country 2] from a friend from his village who used to live in [Country 2]. He stated that he knew [Mr G]'s friend ([Mr D]) from Myanmar and met him in [Country 2]. However this is inconsistent with the applicant's evidence to the Tribunal that he got two separate numbers for [Mr G], one from a person from his village while he was in Myanmar and a second from a person in [Country 2] who he did not know from his village and that he did not know anyone by the name of [Mr D] in [Country 2]. When this was put to the applicant in the s.424A letter he responded that he could not recall what he said at the Departmental interview but he got [Mr G]'s mobile number from [Mr D] who helped him to find work in the workshop in [Country 2]. The Tribunal does not consider that this explains the inconsistencies in the applicant's evidence. Also it is inconsistent with the applicant's evidence at the Tribunal hearing that he got the number from a man who came to visit the workshop to repair his car.
38. Having considered the above concerns on a cumulative basis, the Tribunal considers that they are so numerous and significant that the Tribunal was not satisfied that the applicant was truthful in his evidence to the Tribunal. On the basis that the applicant communicated in Rohingya and has provided a letter from the Burmese Rohingya Community in Australia, it is willing to accept that he is Rohingya.
39. The Tribunal has considered the letter provided by the Burmese Rohingya Community in Australia and the oral evidence of [Mr A] at the hearing who is a representative of the Burmese Rohingya Community in Australia. However, the Tribunal is not satisfied that the Burmese Rohingya Community in Australia or [Mr A] have verified the applicant's identity in any meaningful way as the applicant stated that the people they checked with had no personal connection with him in [Country 2] but had just seen him. He also stated that they verified his identity with [Mr G]. However as discussed elsewhere in this decision the Tribunal has concerns about the applicant's relationship to [Mr G] and no evidence has been provided by [Mr G] as to how he knows the applicant's identity. The Tribunal is willing to accept that members of the Burmese Rohingya Community in Australia and [Mr A] may honestly believe that he is from [Village 1], Sittwe but the Tribunal is not satisfied that this belief is based on any

independently verified information but rather that it is based on the applicant's own evidence to them, the birth certificate (which the Tribunal has found to be fraudulent), evidence of persons who did not know the applicant personally and the evidence of [Ms B] which the Tribunal is not satisfied is truthful. Therefore the Tribunal places little weight on the letter and the evidence of [Mr A] and does not consider that it overcomes the concerns of the Tribunal referred to above.

40. The Tribunal has considered the psychological report provided. The report does not have the name of the person who wrote the report and therefore it is not clear to the Tribunal what qualifications they hold. The report states that the applicant met with the writer of the letter on two occasions in February 2014. It does not state for what length of time the consultations ran. The outline of the applicant's background is based upon "history obtained from [the applicant, Ms B] and the documents provided to me by [the applicant]". As referred to above the Tribunal has serious concerns about the credibility of the applicant and [Ms B] and therefore has concerns about a report based solely on their evidence. The letter refers to complaints made by the applicant about poor concentration and memory loss but does not refer to any independent assessment or diagnosis in relation to those complaints. The Tribunal does not consider that the letter demonstrates that the applicant has memory difficulties or psychological impairments that would affect his ability to provide consistent and credible evidence to the Tribunal. The Tribunal does not consider that it overcomes the concerns discussed above.
41. The applicant claims to be a stateless Rohingya from Myanmar. The applicant has only made claims in relation to Myanmar. While the Tribunal is willing to accept that he is Rohingya it is not satisfied that he is either stateless or from Myanmar. The Tribunal finds that Myanmar is not the applicant's country of nationality or his place of former habitual residence. Given the lack of credible information before it the Tribunal is not able to make a finding on what the applicant's nationality is and the courts have found that it is not necessary for the Tribunal to do so.²
42. Therefore, for the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
43. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal does not accept that the applicant is a national of Myanmar or an habitual resident of Myanmar. Therefore the Tribunal does not accept that Myanmar is the applicant's "receiving country" for the purposes of s.36(2)(aa). The applicant has only made claims in relation to Myanmar. Therefore the Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he will suffer significant harm. Therefore the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

² In *Hussaini v MIMA* [2002] FCAFC 10 (French, Merkel and Gyles JJ, 14 February 2002) at [11]-[13], *Raza v MIMA* [2002] FCAFC 82 (French, Merkel and Gyles JJ, 28 March 2002) at [22]

44. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Rowena Irish
Member

ATTACHMENT 1 - RELEVANT LAW

1. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

2. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
3. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
4. 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.
5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
6. 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)). Examples of 'serious harm' are set out in 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.
7. 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.
8. 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.

9. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A '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.
10. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
11. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

12. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
13. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
14. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

15. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.