

**0908370 [2010] RRTA 33 (18 January 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0908370

**DIAC REFERENCE(S):** CLF2009/93329

**COUNTRY OF REFERENCE:** Latvia

**TRIBUNAL MEMBER:** Giles Short

**DATE:** 18 January 2010

**PLACE OF DECISION:** Sydney

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision under cover of a letter and the application for review was lodged with the Tribunal. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicant is stateless. She travelled to Australia on an 'Alien's Passport' issued by the Republic of Latvia, and applied for a Protection (Class XA) visa.

### RELEVANT LAW

3. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:  

'(2) A criterion for a protection visa is that the applicant for the visa is:

  - (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 a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa.'
4. Subsection 5(1) of the Act defines the 'Refugees Convention' for the purposes of the Act as 'the Convention relating to the Status of Refugees done at Geneva on 28 July 1951' and the 'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.
5. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a 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.'
6. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

7. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear ‘persecution’. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve ‘serious harm’ to the person and ‘systematic and discriminatory conduct’. Subsection 91R(2) states that ‘serious harm’ includes a reference to any of the following:
  - (a) a threat to the person’s life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person’s capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.
  
8. In requiring that ‘persecution’ must involve ‘systematic and discriminatory conduct’ subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of ‘persecution’ that an individual be the victim of a series of acts:

‘A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is “being persecuted” for the purposes of the Convention.’
  
9. ‘Systematic conduct’ is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:

‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
  
10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’ Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’. It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions

or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

11. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'
12. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

## **CLAIMS AND EVIDENCE**

13. The Tribunal has before it the Department's file CLF2009/93329 relating to the applicant. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Russian and English languages. The applicant was unrepresented.

### **The applicant's original application**

14. The applicant, according to the details in her original application, was born in City A in Russia and grew up in City B. She said that she had moved to Riga in Latvia in the late 1980s and it appears she remained there after the break-up of the former Soviet Union, marrying a Latvian citizen in the early 1990s. Although the applicant did not reveal this in her application her husband and her two children apparently accompanied her to Australia, travelling on Latvian passports. The applicant herself is not a Latvian citizen and as referred to above she travelled on an 'Alien's Passport' issued by the Republic of Latvia.
15. In her answers to questions 41 to 45 on Part C of the applicant form (seeking her reasons for claiming to be a refugee) the applicant said that she did not have Latvian citizenship and because of this she could not find a job. She said that she was afraid that she could die or she could be sent to gaol in Latvia. She said that she feared that the Latvian Government and the Federal Police might harm her but she provided no details with regard to why she feared they might harm her, instead repeating that she could be sent to gaol or she could be destroyed in Latvia. She said that she did not believe that the authorities in Latvia would protect her because she was not a Latvian citizen.

### **The applicant's evidence at the Departmental interview**

16. The applicant was interviewed by the primary decision-maker in relation to her application. The applicant said that the police offered no protection. She said that she had been beaten up on one occasion but when the police had seen her address they had seen she was Russian and they had not even come. She said that she had had problems for 17 years but it was getting worse. She said that when Latvia had joined the European Union any ill-treatment by the Government had stopped but the authorities did absolutely nothing when the Latvian citizens did something wrong. The applicant said that she could not go to Russia because her children could only stay there for 30 days. With regard to her ability to go somewhere else in the European Union she said that the attitude towards Russians was really bad in all those countries. She said that this was why she and her husband and their two children had come here. She said that her husband and their two children were here on student visas.

### **The applicant's evidence at the hearing before me**

17. At the beginning of the hearing before me the applicant produced a report prepared by a psychologist reciting the applicant's claims regarding a 'wave of anti-Russian sentiment' in Latvia and the fact that 'street harassment and threats were increasing in frequency and severity'. The psychologist recited the applicant's description of her symptoms and stated that in her professional opinion the applicant was suffering from major depressive illness. She recommended assessment by a general practitioner with a view to prescribing medication and continuing psychological treatment in the Russian language.
18. At the hearing before me the applicant said that she had not had the assistance of an interpreter when she had prepared her original application. She said that she had used the Internet to translate the questions on the form and she had also asked some other Russian people whether she was doing things right. She confirmed that she had moved to Riga to live in the late 1980s, after finishing her tertiary education. She said that she had worked in the quality control department of the first employer, where she had worked for one year. She said that because the Soviet Union had been collapsing she had been fired from her first job because she was Russian and no other company had wanted to hire Russian people. She said that the only way for her to survive had been to enrol in a nursing course where they had still accepted people of Russian origin. She confirmed that she had been employed by the second company until the early 1990s.
19. The applicant said that from that time she had been on maternity leave for three years after the birth of her daughter. She said that after these three years on leave she had resigned. She said that this had been because the Latvian patients had refused to have injections made and so on by a Russian nurse. The applicant said that following this she had worked for a number of companies owned by Russian people for varying periods of time. She confirmed her employment history.
20. I asked the applicant if she had ever worked for a named company she referred to in her application for a visitor visa (see the reverse of folio 62 of the Department's file CLF2009/93329). The applicant said that this had been a part-time job in addition to her main job. She said that this was a company which sold medical equipment in Latvia and she had also been involved in training for the staff. She said that she thought that she had worked for this company for a year until her departure.

21. I asked the applicant why she had decided to leave Latvia. The applicant said that she had no longer been able to tolerate the conditions under which Russians had been forced to live in Latvia. She said that on one occasion she had been attacked and bashed. She said that they had kicked the baby in the pram and the pram had turned upside down. The applicant said that prior to this incident they had never thought about leaving Latvia. She said, indeed, that her husband had kept telling her that now they were part of the European Union and things would improve. She said that when her daughter had been born they had refused to give her daughter to her because she had not been a citizen and her daughter had lived in a male dormitory and she had only been able to visit her to wash some clothes. She said that it had only been five years later that they had been able to obtain a court decision and to reunite and live together.
22. The applicant said that after Latvia had become a member of the EU in 2004 things had improved, there had not been as much pressure and they would not drag you through the courts. She said, however, that in terms of finding a job it had still not been easy. She said that the persecution from private people on the street had actually deteriorated. She said that a Russian person would be kicked out of a bus and shop staff would refuse to sell things to a Russian-speaking person. She said that even though she could speak Latvian she spoke it with an accent and people treated her accordingly. The applicant said that she and her daughter had been attacked on a number of occasions. She said that they had lodged statements with the police and on each occasion they had got a reply two weeks later from the police that no culprits had been found. She said that there had been acts of vandalism, for example the front door of their apartment had been set on fire. She said that they had telephoned the police who had been able to tell from their address who the occupants were and who had therefore not bothered to come to the site.
23. The applicant said that she had had to take her child to school herself and to take food and water there because other children put some drugs or some stuff in Russian-speaking children's food and drink. She said that they had enrolled their child in a Latvian-speaking school but this had made no difference whatsoever. She said that when she had applied to the school principal and the teachers they had told her that they knew all about this but there were 30 pupils in the class so they were not able to protect everyone and it was up to her to come to school and to protect her own child. The applicant said that she had not been able to move to Russia because Russia would not accept people like her and even if she had tried to move she would have had to leave her husband and children behind. She said that this had really made her terrified.
24. The applicant said that she had kept telling her husband that she was no longer prepared to put up with this but he had told her to wait and that now that they were part of the EU things would improve. She said that after Latvia had become part of the EU the nationalists had quietened down but then a couple of years later they had realised that the EU was not doing anything so in the last two or three years they had become fairly active again and things had become intolerable. She said that if someone came to your car and damaged it she could put up with that but when they attacked you personally, when physical violence was involved, she could not put up with this. She said that she had been afraid to go out for the last five years.
25. The applicant said that she had proposed to her husband that she would have another child and that she would spend three years with her child in the hope that things would improve. She said that things had not improved; on the contrary, they had deteriorated. She referred to the fact that she had been born into a Country Y family and that they had been sent into exile

in Country Z. She said that they had understood that they could not tell people that they were Country Y and that they were exiled but apart from this they had not had problems. She said that this had been the reason why she had not wanted to leave Latvia, because her children were Latvian citizens and they would not have been scared to talk about their past, unlike her.

26. I noted that as the applicant had mentioned, Latvia was a member of the EU and this meant that there was a lot of information available about the situation in Latvia. I put to her that there was nothing in the information available to me to suggest that the Latvian Government persecuted non-citizen Latvians of Russian origin like herself. The applicant said that this was correct, however, the persecution came from other people in the street and in school.
27. I indicated to the applicant that among the documents available to me were a recent report from European Commission against Racism and Intolerance and a recent report by the UN Special Rapporteur on Racism (European Commission against Racism and Intolerance (ECRI), *Third report on Latvia*, Strasbourg, 12 February 2008; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, *Mission to Latvia*, UN General Assembly - Human Rights Council, A/HRC/7/19/Add.3, 5 March 2008). I put to her that these reports suggested that the complaints of the Russian community in Latvia related to the denial of political rights to non-citizens and issues in relation to the language law (ECRI, paragraphs 109-131, Special Rapporteur, paragraphs 55-60).
28. I noted that non-citizen Latvians faced restrictions in employment in the public sector but that the material available to me indicated that the Russian language continued to play a significant role in the private sector and that Russian-speakers were in the majority in several of Latvia's large cities. I put to the applicant that the material available to me did not suggest that non-citizen Latvians of Russian origin were the victims of racially motivated attacks (Special Rapporteur, cited above, paragraph 32; Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples* in relation to Latvia - Russians, 2008, available at <http://www.unhcr.org/refworld/docid/49749cf2c.html>, accessed 26 November 2009; ECRI, paragraphs 90-93; Special Rapporteur, paragraphs 64, 67-68). I put to the applicant that, given the level of scrutiny Latvia was under as a member of the EU, it was a little difficult to believe that people like herself were being singled out and attacked in the way she claimed.
29. The applicant said that everybody in her family spoke Latvian, they had never tried to get involved in politics or to get a job in the public sector. She said that being of Country Y origin she had never tried to get involved in those kinds of activities in Russia either: they had been second class citizens. She said that what she was talking about had happened to her personally and to her family members and she asked what you could do when the authorities failed to protect people living in the country. She said that they had never thought of leaving the country in the past. She said that the government authorities and the police just pretended not to see you: to them you did not exist. The applicant said that her husband and her children were Latvian citizens but, when they spoke, they spoke with an accent. She said that her husband came from a city or town in Latvia where people spoke Russian. She said that they had seen the UN report and it said that some persecution did take place. She said that it depended on how you interpreted it.
30. I put to the applicant that there was nothing in the material available to me to suggest that the Latvian authorities, in particular the police, discriminated against non-citizen Latvians of Russian origin by failing to protect them from criminal acts by Latvian citizens. The

applicant said that they did not persecute but they did not respond either: if you were bashed in the street they pretended you did not exist. She said that when you were there you did not know how much longer you were going to live, you had no idea whether your children were going to come back alive from school. She said that if there were political demonstrations or disturbances the police always attended but if something happened on a private or personal level the police never came. She said that they knew Latvia was part of the EU but the authorities did their best to work with the media and they did not care about private people. She said that if there was a Russian-speaking person who occupied a prominent position in political life then of course the authorities were afraid because if something happened to such a person it would be known straight away but nobody cared about a small person.

31. I put to the applicant that according to the information available to me there were five national Russian language newspapers in Latvia, up to 20 per cent of the second national Latvian radio channel was broadcast in Russian, there were reportedly 34 private radio channels broadcasting in Russian, the second national television channel broadcast up to 40 per cent in Russian and there were up to ten private or regional television channels broadcasting between 10 and 80 per cent of their programming in Russian (Minority Rights Group International, cited above). The applicant said that those private channels were owned by fairly rich people and they played along political lines and they played up to the EU. She said that if you took the common person in the street it was a very different story. She said that everyone was playing their own political game or role.
32. I put to the applicant that, as I had said, the difficulty I had was that what she was saying about these continual attacks on her and her family and the fact that she had been afraid to go out of her house for five years did not accord with the independent information available to me. The applicant repeated that ever since their front door had been set on fire she had been afraid to go out. She said that the reports to which I had referred had been drawn up on political lines and did not reflect what was happening on the private level. She said that the people who wrote and prepared these reports would never understand the people who lived in Latvia and suffered.
33. I noted that the reports did highlight problems in Latvia. There had, for example, been racist attacks in Latvia but non-citizens of Russian origin had not been the victims of those attacks. Those who had been attacked had been people who were visibly different such as Roma and recent migrants, for example people from Africa (ECRI, cited above, paragraphs 90-93; Special Rapporteur, paragraphs 64, 67-68). The applicant said that this was correct. She said that this information could not be concealed because these people did not live there and eventually they were going to leave the country and disclose this information to others outside the country. She said that if you lived there it was completely different. She said that there were two completely different set-ups and she was surprised I had not heard about this before. She said that Latvia was the only post-Soviet country where people were humiliated to that degree. She said that if she could take her family and move to Russia she would do that but she could not take her family there. She said that the most terrible thing for her was racism. She repeated that she spoke Latvian with an accent and she said that when people kicked you out of the bus she was surprised that I had never heard about this before.
34. I put to the applicant that the reports to which I had referred were based on visits people had made to Latvia. They had spoken to people from the Russian community in Latvia. They had listened to the complaints those people had. The applicant said that this meant that the complaints were there. I noted that, as I had put to her, those complaints had related to things like the denial of political rights to non-citizens and issues in relation to the language law



(ECRI, cited above, paragraphs 109-131, Special Rapporteur, paragraphs 55-60). The applicant said that this meant that the people who had complained were interested in getting into political life and holding certain positions in political life. They were complaining because they were not able to get those political posts. She said that there were a small number of people trying to get into political life but because of that all the rest of the Russian-speaking population were suffering. She said that because of that the Latvian people thought that all the Russian-speaking people wanted to get into political life and they wanted to grab power from the Latvian people and as a result the Russian speaking people suffered at the hands of the Latvian population.

35. I asked the applicant if she understood that it was very difficult for me to believe the sorts of claims she was making about attacks on her, being refused service in shops and being thrown off buses given that there was no support for these claims in the independent information available to me. The applicant said that she understood but she could only prove things by what she said. She said that she had not brought any applications to the police or anything with her because she had wanted to leave everything behind. She said that when they had left Latvia they had left all their belongings behind: she said that she and her family had just wanted to run away and hide somewhere. She said that in 17 years she had been reduced to a cripple, so to speak. She said that her doctor here had said that she would need 10 to 15 years to restore her health. She said that she had been living in a good family and yet she had been diagnosed here as if she was an American soldier suffering from post-traumatic syndrome. She said that if her husband had not tried to restrain her by promising that things would improve perhaps they would have left earlier.
36. I explained to the applicant that the Australian courts had observed that no country could guarantee that people there would at all times, and in all circumstances, be safe from violence. They had said that governments were obliged to take reasonable measures to protect the lives and safety of people and those measures included an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system (see *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 205 ALR 487 at [26] per Gleeson CJ and Hayne and Heydon JJ). I put to the applicant that once again none of the information available to me suggested that there was a failure on the part of the Latvian Government to conform to its obligations in that respect.
37. The applicant said that she objected to this. She said that they did not refuse to accept your statement or application but in a week's time you got a response from them saying that nothing could be established and your case was closed. She said that if you happened to be a Russian-speaking person it was inevitably the case that your case was closed in a week's time. She said that when you got a reply it did not say that your case was closed because you were Russian: it said that the case was closed because no culprits could be established. She said that they just turned a blind eye or ignored you if you happened to be a Russian person. She said that as a result this sort of information would not find its way into those reports. She said that everything looked fine on the surface but they just wanted to shut you up and trample upon you.
38. I put to the applicant that these issues were the focus of well-considered reports. The Russian community in Latvia had not been backward in bringing forward its grievances. However as I had said there was nothing in the information available to me to suggest that the authorities in Latvia discriminated against non-citizen Latvians of Russian origin in the way she was claiming. The applicant said that she had also read media reports and all the other material but she had come from that country and she had seen this with her own eyes. She said that

there were no attacks against a group of people. She said that even if there were three mothers pushing prams they would not be attacked. She said that the attacks were perpetrated against individuals. She said that a lot of people were not able to put up with that and were forced to leave the country. She said that I probably had reports about how many people had left the country leaving everything behind them. The applicant said that it was really difficult for a person to live in those kinds of conditions.

## FINDINGS AND REASONS

39. I accept that the applicant is stateless. I consider that her 'country of former habitual residence' for the purpose of the Refugees Convention is Latvia, the country where she lived from the late 1980s until she came to Australia. The 'Alien's Passport' which she used to travel to Australia entitles her to return to Latvia. The fact that she is stateless does not in itself bring her within the definition of a refugee: see *Minister for Immigration and Multicultural Affairs v Savvin* (2000) 98 FCR 168. The question which I have to address is whether she has a well-founded fear of being persecuted for one or more of the five Convention reasons in her country of former habitual residence, Latvia.
40. As McHugh J observed in *Chan*, referred to above, at 428:

'[T]he State parties to the Convention and Protocol will frequently have detailed knowledge of conditions in the country of the applicant's nationality. It is unlikely, therefore, that a State party was expected to grant refugee status to someone whose account, although plausible and coherent, was inconsistent with the State's understanding of conditions in his or her country of nationality.'
41. In the present case, as I indicated to the applicant in the course of the hearing before me, the fact that Latvia is a member of the EU means that there is a lot of information available about the situation in Latvia. In particular, there are recent reports from the ECRI and the Special Rapporteur for which full citations are given in paragraph 28 above. Ten years ago the information available to the Tribunal was more equivocal. In 1999, for example, the Australian Department of Foreign Affairs and Trade (DFAT) advised that, while there was generally little violence directed against ethnic Russians in Latvia and their situation was improving, claims made by an ethnic Russian applicant that she had been attacked by members of a Latvian nationalist organisation who had threatened to kill her and that the police had refused to offer her protection were not outside the realms of possibility (DFAT Country Information Report No. 286/99, dated 5 August 1999, CX36764).
42. A research response prepared by the Research Directorate of the Canadian Immigration and Refugee Board quoted the Minorities at Risk Project as stating that the extreme right seemed to have a somewhat stronger position in Latvia than in the other two Baltic republics, that there was an atmosphere of social intolerance towards the ethnic Russians and that it had been speculated that the object of Latvian legislation on language and citizenship was to force most of the Russians to emigrate from Latvia (Research Directorate, Immigration and Refugee Board of Canada, 'Latvia: Update to LVA23961.E of 17 May 1996 on the treatment of ethnic Russians (January 2000 - January 2001)', 10 January 2001, LVA36038.E).
43. I accept that problems remain with the integration of the ethnic Russian community in Latvia but, as I put to the applicant, the information available to me suggests that the concerns being raised by the Russian community relate to things like the denial of political rights to non-citizens and issues in relation to the language law (ECRI, cited above, paragraphs 109-131, Special Rapporteur, paragraphs 55-60). The information available to me suggests that racist

attacks target people who are visibly different such as Roma and recent migrants, for example people from Africa (ECRI, cited above, paragraphs 90-93; Special Rapporteur, paragraphs 64, 67-68). The applicant suggested that this information could not be concealed because these people did not live there and eventually they were going to leave the country and disclose this information to others outside the country. However the Special Rapporteur noted at paragraph 61 that some 92 per cent of the Roma were Latvian citizens.

44. As I put to the applicant, there is no support in the independent information available to me for the sorts of claims the applicant has made about attacks on her, being refused service in shops and being thrown off buses. If non-citizen Latvians of Russian origin or Russian-speakers like the applicant were being treated in this way then I would have expected it to be highlighted in reports like those of the ECRI and the Special Rapporteur. I do not accept on the basis of the independent information available to me that the applicant was attacked or otherwise persecuted in the way she has claimed in her country of former habitual residence, Latvia, for reasons of her race or her membership of any particular social group for the purposes of the Refugees Convention such as non-citizen Latvians, non-citizen Latvians of Russian origin or Russian-speakers.
45. I obviously cannot rule out the possibility that the applicant was attacked in the street as she described although not for the reason she has claimed. However, as I put to her, the Australian courts have observed that no country can guarantee that people there will at all times, and in all circumstances, be safe from violence. The courts have said that governments are obliged to take reasonable measures to protect the lives and safety of people and those measures included an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system (see *Respondents S152/2003*, referred to above, at [26] per Gleeson CJ and Hayne and Heydon JJ).
46. As I put to the applicant, none of the information available to me suggests that there is a failure on the part of the Latvian Government to conform to its obligations in this respect. In particular, there is nothing in the material available to me to suggest that the Latvian authorities, in particular the police, discriminate against non-citizen Latvians of Russian origin by failing to protect them from criminal acts by Latvian citizens as the applicant claims occurred in her case. The applicant claimed that when the front door of their apartment was set on fire the police did not bother to come and that on other occasions they took reports or statements but one week or two weeks later they responded saying that no culprits could be found or that nothing could be established and that the case was closed. However, as I put to the applicant in the course of the hearing before me, I do not accept on the basis of the independent information available to me that there is a selective and discriminatory withholding of State protection from non-citizen Latvians of Russian origin for a Convention reason of the sort referred to in *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1.
47. In her original application the applicant said that she because she did not have Latvian citizenship she could not find a job. However at the hearing before me the applicant indicated that she had been able to find work in Latvia and, as I put to her, the information available to me indicates that the Russian language continues to play a significant role in the private sector in Latvia and that Russian-speakers are in the majority in several of Latvia's large cities (Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples* in relation to Latvia - Russians, 2008, available at <http://www.unhcr.org/refworld/docid/49749cf2c.html>, accessed 26 November 2009). In her original application the applicant also said that she feared that the Latvian Government and the Federal Police might

harm her. She said that she feared that she could die or she could be sent to gaol in Latvia. However at the hearing before me she said that it was correct that the Latvian Government and the police did not persecute non-citizen Latvians of Russian origin like her

48. I do not accept on the basis of the independent information available to me that the applicant has a well-founded fear of being persecuted in her country of former habitual residence, Latvia, for reasons of her race or her membership of any particular special group for the purposes of the Convention such as non-citizen Latvians, non-citizen Latvians of Russian origin or Russian-speakers. It follows that I am not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Consequently the applicant does not satisfy the criterion set out in paragraph 36(2)(a) of the Act for the grant of a protection visa.

### **DECISION**

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

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