

0901933 [2009] RRTA 593 (12 June 2009)

DECISION RECORD

RRT CASE NUMBER: 0901933

DIAC REFERENCE(S): CLF2008/57575

COUNTRY OF REFERENCE: Czech Republic

TRIBUNAL MEMBER: James Silva

DATE: 12 June 2009

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of the Czech Republic, arrived in Australia [in] February 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] March 2008. The delegate decided to refuse to grant the visa [in] May 2008 and notified the applicant of the decision and his review rights.
3. The applicant sought review of the delegate's decision and the Tribunal, differently constituted ('the first Tribunal'), affirmed the delegate's decision [in] September 2008. The applicant sought review of the Tribunal's decision by the Federal Magistrates Court and [in] March 2009, the Court issued consent orders setting aside the decision and remitting the matter to the Tribunal to be determined according to law.
4. The matter is now before the Tribunal ('the current Tribunal') pursuant to the order of the Federal Magistrates Court.

RELEVANT LAW

5. 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.
6. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

8. 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.

9. 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.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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”. ...

16. 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.
17. 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.
18. 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.
19. 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.

Protection Obligations

20. Subsection 36(2) of the Act, which refers to Australia’s protection obligations under the Refugees Convention, is qualified by subsections 36(3), (4) and (5) of the Act. These provisions apply to protection visa applications made on or after 16 December 1999. They provide as follows:

Protection obligations

(3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.

(4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.

(5) Also, if the non-citizen has a well-founded fear that:

(a) a country will return the non-citizen to another country; and

(b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;

subsection (3) does not apply in relation to the first-mentioned country.

21. This means that where a non-citizen in Australia has a right to enter and reside in a third country, that person will not be owed protection obligations in Australia if he or she has not availed himself or herself of that right unless the conditions prescribed in either s.36(4) or (5) are satisfied, in which case the s.36(3) preclusion will not apply.
22. The Full Federal Court has held that the term 'right' in s.36(3) refers to a legally enforceable right: *MIMA v Applicant C* (2001) FCR 154. Gummow J has suggested in *obiter dicta* that the 'right' referred to in s.36(3) is a right in the Hohfeldian sense, with a correlative duty of the relevant country, owed under its municipal law to the applicant personally, which must be shown to exist by acceptable evidence: see *MIMIA v Al Khafaji* (2004) 208 ALR 201 at [19]-[20].
23. In determining whether these provisions apply, relevant considerations will be: whether the applicant has a legally enforceable right to enter and reside in a third country either temporarily or permanently; whether he or she has taken all possible steps to avail himself or herself of that right; whether he or she has a well-founded fear of being persecuted for a Convention reason in the third country itself; and whether there is a risk that the third country will return the applicant to another country where he or she has a well-founded fear of being persecuted for a Convention reason.

CLAIMS AND EVIDENCE

24. The Tribunal has before it the Department's file relating to the applicant.

Primary application

25. The applicant's protection visa application, prepared with the assistance of [name deleted in accordance with s.431(2) of the Migration Act as this information could identify the applicant] (later identified as his mother-in-law), contains the following information.
26. The applicant is a male Czech national, born in Ostrava in 1989. He speaks, reads and writes Czech and Slovak, and also speaks English.
27. The applicant gives his ethnicity as 'Gypsy' and his religion as Christian. (Independent sources indicate that the more common term for the applicant's ethnicity is Roma, and that 'gypsy' is regarded by many as a derogatory term. The applicant and the Tribunal used the term 'Roma' in subsequent correspondence and at hearing, and the Tribunal uses it also in this decision.)
28. The applicant attended school for 9 years, in the Czech town of [town deleted: s.431(2)], near Ostrava.
29. The applicant was unmarried at the time of the application, although he later advised that he married an Australian citizen [in] August 2008. He indicates that his parents are both Czech citizens resident in New Zealand His father is an ethnic Czech born on the territory of current-day Slovakia, and his mother is a Roma born in the Czech Republic.
30. The applicant left Europe, Vienna Airport, [in] August 2004. He holds a Czech passport issued [in] June 2004, valid [for five years]. The applicant states that he lived in New Zealand from September 2004 to February 2008. He claims that he travelled from the Czech Republic to New Zealand for the purpose of recognition as a refugee, and that he applied for refugee status in New Zealand.

31. The applicant's refugee claims are set out in a typewritten statement stapled to the application form, stipulating that he does not wish to return to the Czech Republic or anywhere in the European Union. They are, in summary:

- His father is Czech and his mother is Roma.
- At school, the applicant was verbally and physically abused. Due to his and the family's experiences of discrimination, the family emigrated to New Zealand. The applicant did not know much about what was going on, but resolved to go his own way as soon as he turned 18.
- The applicant recalls skinheads breaking all the windows of his home in the Czech Republic, using abusive anti-Roma terms and threatening to burn them. His father took the family down to the basement. Later, there was threatening graffiti.
- The applicant's grandfather (maternal?) was a very successful businessman who had a very big company. He was identifiably Roma because of his dark skin. Because of this, Czech nationalists were always threatening him, and he went to New Zealand. He has been living there for some 8 or 9 years, 'like a refugee'.
- The applicant wants to establish his own family, and to ensure that they do not suffer as he had to. He states that he remains traumatised by his past experiences.
- The applicant states that the Czech State will not protect him, despite its membership of the European Union. He claims that Roma face harassment and lack of respect throughout Europe.
- The applicant claims to fear verbal and physical harassment, and possibly death, in the Czech Republic. He claims that skinheads murdered an uncle ([name deleted: s.431(2)]) in 1997, and that his great-great grandparents and others were killed in concentration camps.

Delegate's decision

32. The delegate refused the application, finding that Australia does not have protection obligations towards the applicant because he has effective protection in a range of third countries under s.36(3) of the Act, and that the exceptions under s.36(4) and s.36(5) of the Act did not apply. The decision referred primarily to the Member States of the European Union. The delegate noted the applicant's failure to provide details of his and his family's visa status in New Zealand, and considered it probable that he had received protection there.

Other material on the Department's files

33. The Department's file (folio 70) includes a letter from the applicant dated [in] October 2008 in which he seeks the Minister's intervention pursuant to s.417 of the Act. Attached to it are a marriage certificate dated [in] August 2008, and letters of support and a petition from members of his church. In this letter, the applicant appears to state that he was included in his family's protection visa application in New Zealand. The New Zealand authorities granted his other family members permanent residency (it is not clear whether this was as refugees or on some other basis), but the applicant was excluded because he had at that stage already travelled to Australia. He requests the Minister to intervene because he does not wish to be separated from his Australian wife. A letter from the Department dated [in] November 2008 indicates that the Minister considers it would be inappropriate for him to intervene while the applicant was engaged in migration-related litigation.

Review application

The first Tribunal

Printed and other material

34. The Tribunal received a range of material from the applicant, before and during the Tribunal hearing, as follows:
- A CD-rom that appears to include footage of a funeral of a person named [name deleted: s.431(2)], with the date of death being [in] May 1998
 - Selected pages of the Czech passports of the applicant's parents and his sister ([names and dates of births deleted: s.431(2)]), each showing that they were granted NZ permanent residency [in] April 2008 [this is therefore after the applicant's arrival in Australia]. The applicant's grandparents, [Person A] [date of birth deleted: s.431(2)] and [his spouse] ([date of birth deleted: s.431(2)]) obtained NZ permanent residency [in] March 2005.
 - There is a large volume of general reports, some in English and some untranslated in Czech, concerning incidents of violence and other ill-treatment of Roma people.
 - The applicant provided a significant amount of material relating to his grandparents' unsuccessful application for refugee status in New Zealand. These include the following:
 - [Person A]'s statement, entitled *My Story*, in which he details his claimed past experiences in the Czech Republic, including the murder by skinheads of an uncle [name deleted: s.431(2)], and serious threats against him, followed by an attack in early 2000.
 - [Person A]'s curriculum vitae, and various statements of support from the Czech Republic and New Zealand.
 - The submissions include copies of the New Zealand Immigration Service's and the Refugee Status Appeals Authority's decisions, dated [in] February 2002 and [in] June 2004 respectively, that neither [Person A] nor [Person A's spouse] have a well-founded fear of persecution in the Czech Republic.
 - The applicant includes a further copy of his own refugee claims.

Tribunal hearing, [in] August 2008

35. The applicant appeared before the Tribunal as previously constituted [in] August 2008. The hearing was conducted through a Czech/English interpreter. The Tribunal took oral evidence from 2 witnesses.
36. The Tribunal as presently constituted has listened to the audio recording of the first Tribunal hearing.
37. Following is a summary of the applicant's oral evidence.
- The applicant said that his mother-in-law, [name deleted: s.431(2)], had helped him complete his protection visa application. He had nothing to add or alter.
 - The applicant confirmed his personal and family background, consistent with the information given in the protection visa application. He said that his parents and his sister remain in New Zealand.
 - The applicant said that his parents are refugees, and that the New Zealand authorities granted them protection visas 2 or 3 months after he arrived in Australia. He said that his parents did not include him in their NZ protection visa applications, because he had come to Australia.

[Note: this appears to be at odds with the applicant's statements elsewhere that his parents included him in their NZ refugee application.]

- The applicant said that his parents' lawyer had contacted him and told him that his parents would not be granted protection visas if he returned to New Zealand. In response to the Tribunal's queries for further explanation of this, the applicant said that in New Zealand he had committed driving offences, whilst he was on a learners permit. He had received a fine of about \$1,000, and his father is now paying off those fines. He had not been charged with any (other) offences.
- The applicant said that his (older) sister had been included in his parents' applications for protection visas in New Zealand. He believed that his family had entered New Zealand as tourists. He had also applied for a student visa whilst in New Zealand.
- The Tribunal Member explained to the applicant, in general terms, that Australia did not have protection obligations towards him if he had effective protection in a third country.
- The applicant said that, based on what his lawyer had told him, he probably cannot return to New Zealand. The Tribunal noted that any communication or advice between the applicant and his lawyer is privileged information, and he does not need to tell the Tribunal about this unless he wishes to.

38. The applicant gave the following evidence regarding his fears of persecution in the Czech Republic:

- a) The applicant described having been verbally and physically abused at school in the Czech Republic. The teachers joined in the abuse. His father accompanied him to school, and his classmates threatened him.
 - i) On one occasion, the applicant was bashed whilst waiting for his father to collect him.
 - ii) On another occasion, skinheads broke the windows of the house where the applicant lived, and attacked the family. They shouted abuse, calling for 'gypsies' to be sent to the gas chambers. The applicant's father prevented the applicant from shouting back. After the incident, the applicant and his family discovered racist graffiti on the walls of the house.
 - iii) The applicant said that skinheads constantly persecuted him and his family.
- b) The applicant said that skinheads targeted his uncle [name deleted: s.431(2)] in 1998. They also attacked his sister. The applicant said that his grandfather ([Person A]) had been a successful business. However, some people want to destroy Roma who do well. The incidents that occurred to his family made it difficult for him to attend school. He disliked school as a result. Overall, he felt that Roma people in the Czech Republic have no chance, because of discrimination. The applicant said that he attended school for 9 years in the Czech Republic.
- c) The applicant said that he feared that he could be persecuted or killed if he returned to the Czech Republic, because of his grandfather. In response to the Tribunal's questions, he said that his grandfather had had to flee the Czech Republic, and the whole family was being persecuted.

39. On other issues: -

- a) He went to school in New Zealand, but his student visa application was rejected. He and his family appealed the decision twice, without success. The applicant said that he was 'excluded' He

said that he was not sure why his parents did not include him in their applications for New Zealand visas.

- b) The applicant said that he left New Zealand because he doubted that the authorities there would grant his family visas. The applicant said that his partner was in Australia, and he feared never being able to see her. He therefore came to Australia to seek protection.
 - c) The applicant said that he married an Australian citizen, the daughter of [name deleted: s.43192]), [in] August 2008. His wife is an Australian citizen of Czech Roma background, aged 16 at the time of the first hearing. His wife came to Australia some 12 or 13 years earlier. The couple met on the internet a year earlier. She also has relatives in New Zealand whom the applicant's grandfather knows.
 - d) The Tribunal discussed with the applicant the New Zealand authorities' decisions rejecting the applications of his grandparents, [Person A] and [Person A's spouse]. It noted that the NZ authorities had found these persons not to be refugees, findings that did not appear to assist the applicant. The applicant said that he was not sure about these decisions.
 - e) The Tribunal noted the photocopied passports indicating that the applicant's grandparents and immediate family members had all obtained NZ permanent residency, but they did not reveal the basis for this. They do not indicate that these persons have refugee status in that country. The applicant replied that he did not know how various family members had obtained their resident permits.
 - f) The Tribunal discussed with the applicant his potential right to enter and reside in European Union countries. The applicant said that Roma people experience problems throughout Europe, and mentioned Germany, Austria and Italy by name. He said that he has nowhere to go in Europe, and that his wife is in Australia. He added that his wife and her parents were given refugee status in Australia. The applicant said that he wishes to establish a family in Australia.
40. Following is a summary of [Person A]'s oral evidence. [Person A] said that he is the applicant's grandfather, and would like him to be granted refugee status in Australia. [Person A] said that he was born in Slovakia, and lived in the Czech Republic until 2000. He had a successful business in the Czech Republic, but fled there to save his and his family's lives. In the Czech Republic, he had suffered psychological pressure, attempts to burn his house down and the loss of all his property. He also mentioned a police friend who had tried to help him on various occasions, and had later been demoted.
41. [Person A] said that he did not obtain refugee status in New Zealand, but the Minister granted him a different visa to stay. He said that the applicant had been stressed after arriving in New Zealand. He (the applicant) obtained a learner's licence, but was unaware of the conditions and had committed driving offences. He referred to the applicant's girlfriend in Australia, now his wife.
42. Following is a summary of [the applicant's mother-in-law's] oral evidence. [She] told the Tribunal that the applicant married her daughter [in] August 2008. [She] said she is a Roma, originally from the Czech Republic, who came to Australia with her husband and 3 children in 1996 and was granted refugee protection. She is now an Australian citizen. She said that the Roma face an 'inappropriate' situation in the Czech Republic. She gave as an example that she has family who live 20 persons in one room.
43. The Tribunal discussed with the applicant in some detail the rights of European Union citizens to enter and reside in other EU Member States.

The current Tribunal

44. The Tribunal received a pre-hearing submission [in] April 2009. It contains detailed arguments, including the following claims and evidence:
- The applicant's parents and sister were granted refugee status in New Zealand.
 - On the applicant's right to enter and reside in other EU Member States: -
 - The submission addresses the meaning of the 'right to enter and reside'.
 - With reference to EU Directive 2004/38/EU (which the first Tribunal had relied on in its decision), it points out: (a) EU citizens have the right to remain in EU States for less than 3 months, but even this is subject to qualifications such as that the citizen should not be 'an unreasonable burden on the social assistance scheme'; and (b) beyond 3 months, residence rights are qualified because they depend on employment and financial capacity.
 - The submission argues that the applicant would return to Europe with his spouse, and would therefore need to show financial capacity for 2 persons. Because of limited access to social assistance payments, he would not have 'equal rights of residence'.
 - His residency rights are also subject to each EU Member State's right to expel non-citizens, 'on grounds of public policy, public security or public health'. (Art.27.1) It stresses that he will probably be unable to find employment.
 - It notes that the previous Tribunal accepted that the applicant has a well-founded fear of Convention-related persecution in the Czech Republic.
 - It refers to country information about the persecution of Roma in various parts of Europe, in particular relating to : (a) personal security, (b) employment discrimination, and (c) access to basic services.
 - The applicant provides a statutory declaration that includes the following information:
 - He fears being unable to work anywhere in the European Union, due to his Roma ethnicity, his age, his limited skills and his inability to 'speak any European languages' apart from Czech.
 - He states that he has learned from family members, such as his grandfather and his mother being denied work (in the Czech Republic and Poland) because they were Roma. The police beat up a cousin in Berna, causing him to drop his law studies.
 - The applicant states that his Australian wife would join him in Europe. They would face unemployment and homelessness due to discrimination.

Tribunal hearing[s], [in] May 2009

45. The applicant attended a Tribunal hearing in Sydney [in] May 2009. His representative, [Person B] accompanied him. His wife, [name deleted: s.431(2)], was present as an observer. The first hearing was adjourned, and resumed [in late] May 2009 to discuss further legal points and matters that had arisen from the applicant's post-hearing submission. The resumed hearing was held via videolink, with the applicant and [his wife] in Brisbane, and the Tribunal Member, [Person B] and the interpreter in Sydney. The hearing was conducted with the assistance of a Czech/English interpreter. Following is a consolidated summary of the discussion over the 2 sessions.
46. The Tribunal, following its introductory comments, invited the applicant and his representative to make any initial statements. [Person B] gave the Tribunal a recent article on a Neo-Nazi attack against Roma in the Czech Republic, and alerted it to another untranslated article about an incident in Prague. She said that these incidents indicated ongoing anti-Roma sentiment and violence in the Czech Republic. Neo-Nazi activity appeared to be on the rise, particularly in light of the Global Financial Crisis.
47. The Tribunal asked the applicant to clarify and update his personal circumstances, and those of his family. He said that he left the Czech Republic with his parents and older sister in 2004. He initially said that he has no remaining relatives in the Czech Republic, but then qualified this to say that he is not in contact with any of them. In response to further questions, he said that he does not know of any uncles or aunts on his father's side, and that, when the family left the Czech Republic, he believed that there were 2 aunts on his mother's side still living there.
48. The applicant said that his maternal grandparents went to New Zealand some years earlier, 'as refugees'. They are now permanent residents there. The Tribunal noted that documents that the applicant had provided to the Tribunal concerning his grandparents' applications in New Zealand showed that they were not accepted as refugees. The applicant thought that they had received permanent residency on the basis of Ministerial intervention.
49. The applicant repeated the statement in his submission that his parents and younger sister were refugees in New Zealand. They received refugee status some weeks or months after he left the country, hence in early 2008. The Tribunal noted that the applicant had discussed this with the previous Tribunal, and asked if he had further details or evidence. The applicant replied that he did not. The Tribunal flagged its surprise that the applicant had not informed himself about this. It flagged its doubt that the applicant's parents and sister had received refugee status. The documents that the applicant had submitted to the first Tribunal showed that the New Zealand authorities had not accepted his grandparents' refugee claims. Furthermore, New Zealand records of the Appeals Authorities decisions during 2007-2008 indicated that all 5 Czech applications had been dismissed. This information, while not conclusive, suggested that the applicant's family had received permanent residency on some other basis.
50. The applicant said that his family applied for refugee status on arrival in New Zealand, and he was included in the application. He initially had a student visa, and attended college for about 5 months. After that, he just stayed at home. Later, the applicant said that he did various casual jobs, such as gardening and helping his father in a painting business. The Tribunal asked about the applicant's advice on his protection visa application that his occupation in New Zealand had been as a motor mechanic. The applicant replied that he did not receive training or complete any apprenticeship in this field. However, he did work on motor vehicles for himself from time to time.

51. The Tribunal noted the applicant's previous evidence to the Tribunal that his presence in New Zealand had been an obstacle to his family's permanent residency. It sought details of this, alerting him that he did not need to talk about any conversations he had had with lawyers. The applicant said that he had committed traffic speeding offences. 'They', that is, people who lived in New Zealand, told him that that could be a problem for his family. The Tribunal said that it doubted that these would have any impact on a refugee application, and that it suggested that his family had been allowed to stay in New Zealand on some other basis.
52. The applicant later said that he also came to Australia because he had fallen in love with [his future wife] in Queensland. He was worried that he would be unable to see her if his bid to stay in New Zealand failed.
53. The Tribunal asked the applicant about his activities in Australia since his arrival in early 2008. The applicant said that he married [in] August 2008. His family attended the wedding from New Zealand, though he did not discuss with them any issues such as their residency status in that country. The applicant said that he had permission to work in Australia, but had in fact not studied or worked. The Tribunal sought details as to whether there was any reason for this. The applicant said that he had helped [name deleted: s.431(9)], his father-in-law, as a courier for some 4 months. He had been unable to find any other work. His mother-in-law covers his expenses. He has no other source of income.
54. The Tribunal told the applicant that its sole focus was whether he was a refugee and whether Australia had protection obligations towards him. During the course of the discussion, he indicated that he had considered other visas, such as a spouse visa. However, he understood that he had to return to the Czech Republic to seek such a visa. [Person B] said that there appeared to be concerns about the applicant's ability to apply on-shore for a substantive visa (s.48A of the Act), and related issues such as his spouse's ability to provide or arrange an assurance of support.
55. The Tribunal advised that a threshold issue was whether or not the applicant has effective third State protection pursuant to ss.36(3)-(5) of the Act. It explained, in detail, the requirements of those provisions.
56. The Tribunal noted that, as a Czech national, the applicant was also considered an EU national and had certain rights with respect to all of the other EU Member States. The Tribunal discussed each component of the provision, and its application to the applicant's circumstances. It noted recent Canadian analysis, which its own research had confirmed, identifying Spain and Estonia as 2 EU Member States that provide EU nationals with the right to enter and reside in their countries beyond 3 months, without the restrictions (such as labour market restrictions, or the financial and employment qualifications for stays over 3 months) that other EU Member States impose.
57. The Tribunal took Spain as a particular example, and handed to the applicant and his representative an official Spanish publication in English 'Regulations governing EU citizens in Spain'. The Tribunal summarises the following exchange under relevant headings, for convenience.
The right to enter and reside in EU Member States – up to 3 months
58. The Tribunal noted that it appeared uncontroversial that the applicant had a presently existing legal right to enter and reside in any EU Member State for up to 3 months, upon presentation of his Czech passport.

59. [Person B] argued that she doubted that even this right was an unqualified ‘right to residence’ within the meaning of s.36(3) of the Act, even a temporary one. She referred to s.10 of Directive 2004/38/EC which states that EU nationals exercising their right of residence should not ‘become an unreasonable burden on the social assistance system of the host Member State’ (although this provision actually addresses periods of residence *beyond* 3 months, see below). She also pointed to current uncertainties in Europe, with specific examples. She noted, for instance, that transitional arrangements are in place for newly acceded States such as the Czech Republic, to the end of 2009. Many Member States already have labour market restrictions in place, restricting the scope of EU-10 nationals to work. The Global Financial Crisis may lead to further restrictions. She also drew to the Tribunal’s attention a concern raised by the EU Commissioner for Human Rights, in his report¹ on a UK decree from 2001 which authorised UK officials to refuse entry or impose conditions on certain national or ethnic groups, including Roma. The report noted that the UK law breached EU and fundamental laws, and should be amended.
60. The Tribunal noted that there was obviously variation in EU laws, including domestic laws implementing Directive 2004/38/EC. It added that, in this respect, Spanish law was clear: ‘EU citizens are free to enter, leave, travel and live in Spain [there are qualifications relating to certain relatives of EU citizens, not applicable to the applicant] and may also engage in economic activity [...] under the same conditions as Spanish citizens’. The Tribunal noted that the Spanish law had special transitional provisions for nationals of Bulgaria and Romania, but not the Czech Republic.

The right to enter and reside in EU Member States – more than 3 months

61. The Tribunal noted that a number of EU Member States (Austria, Belgium, Denmark and Germany) impose labour market restrictions on Czech nationals (and others). The EU Directive 2004/38/EC provides for the right of residence beyond 6 months, but subject to conditions relating to work (employment or self-employment) and financial self-sufficiency, and with health insurance. These were, arguably, only conditional rights.
62. The Tribunal said that, by way of contrast, Spain had no such conditions. The only requirement was that a person present an EU passport or valid ID card, and apply for registration at the Central Register on Foreigners. Unemployment does not of itself affect this right.
63. The Tribunal advised that it understood Estonia also permitted EU nationals to enter and reside in that country beyond 3 months, but it did not have relevant material to hand at the time of the hearing. (The Tribunal has decided not to undertake research into the situation in Estonia, in light of its findings with respect to Spain.)

Expulsion – the cancellation of an existing right

64. During the course of the hearing, [Person B] alerted the Tribunal to her concern that the applicant may face difficulties accessing social services in the event of unemployment or other need. She said that EU Directive 2004/38/EC contained a further qualification to the right to enter and reside, namely that grounds for expulsion might lie in a person becoming ‘an unreasonable burden to the social assistance system’ of an EU Member State. The Tribunal explained its understanding of Spanish law, namely that the sole grounds for

¹ Final Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, *On the Human Rights Situation of the Roma, Sinti and Travellers in Europe*, Strasbourg, 15 February 2006, see para 100.

expulsion were public policy, public security or public health. The expulsion must be based on the person's conduct alone, and only where it posed a 'genuine, present and sufficiently serious threat affecting a fundamental interest of society' The Tribunal noted further that expulsion of an EU national on economic grounds (ie. in case of high unemployment levels) was explicitly ruled out, in the EU Directive as well as Spanish domestic law.

65. [Person B] also drew to the attention recent reports concerning Italy's expulsion of Romas, including those from EU Member States (such as Romania) The Tribunal acknowledged reports critical of Italian policy and practice towards the Roma minority. However, it understood there to be stark differences between Italian and Spanish practice, including regarding labour market access and general policy approaches. It did not think that the Italian reports could lead one to infer that Spain would renege on or reverse the rights it affords to EU nationals, or its practices.

All possible steps

66. The Tribunal asked the applicant what if any steps he had taken to avail himself of such a right. The applicant replied that he had not taken any steps. The Tribunal formed the impression that the applicant had not turned his mind to questions of possible entry and residence in other EU Member States, at least up to the time of the first hearing session, and that even later, he did not wish to do anything (such as renewing his Czech passport or enquiring about flight tickets) that seemed to run counter to his aim of securing permanent residency in Australia.
67. The applicant's post-hearing submission indicated that the applicant does not intend to renew his Czech passport, which expires [in] June 2009. At the second session, the Tribunal discussed this with the applicant and his representative. [Person B] contended that the applicant should not be required to approach the authorities of the Czech Republic, as a country in which he has or claims to have a well-founded fear of persecution. The Tribunal observed that he did not claim to fear persecution from the authorities of that country. Indeed, his recent submissions to the Tribunal included material that showed that his family had approached the Czech authorities on behalf of themselves and him, and that the authorities had issued police clearances for presentation to the New Zealand authorities. [Person B] argued that a narrow reading of the words 'all possible steps' was contrary to the spirit of the Convention.
68. At the second session, the Tribunal went through with the applicant the documentary and other requirements required for him to have his Czech passport renewed in Australia (see paragraph 85 below). The applicant did not raise any concerns about his ability to meet these requirements, including the birth certificate. (As noted immediately above, the Tribunal drew to his attention that the Czech authorities had assisted with his police clearance.)

Well-founded fear of persecution in another State (in particular Spain)

69. The applicant said emphatically that he feared persecution throughout Europe. He believed that Neo-Nazis were on the rise throughout Europe. They now included physicians and lawyers amongst their numbers, and their reach was expanding. He gave an example of a recent racist attack in Hungary that resulted in 40 deaths. Neo-Nazis and others detested Roma, and he was sure that if he went to any EU country, he would be refused work on the basis of his Czech passport and Roma ethnicity.

70. The Tribunal and [Person B] discussed the situation in Spain. [Person B] said that she had recently returned from southern Spain. It was evident that Roma were highly marginalised and confined to menial work and modest means. She considered that the situation was likely to become more precarious in the light of Spain's unemployment problems. The applicant's lack of Spanish language and lack of skills combined to give him bleak prospects there.
71. She added that the applicant would most likely not have access to social security, health insurance, both of which were mainly contribution-based in Europe, or language training or vocational training. In her view, his poor prospects of obtaining unemployment, combined with minimal access to basic social or health support, could amount to significant economic hardship and hence persecution. The hardship would be exacerbated if [his wife] joined him in Spain as his spouse.
72. The Tribunal discussed with the applicant country information indicating that there was reported discrimination and in some cases ill-treatment of Roma, in Spain. It also noted recent reports that unemployment in that country was amongst the highest in the European Union, and that there had been some reported tensions between local populations and migrant workers. However, the Tribunal went on to note that such reports did not necessarily indicate that Roma in Spain have a well-founded fear of Convention-related persecution. For instance, it noted that many of the reports of tension appeared to involve African migrants in Spain, many of whom were illegal or undocumented. This appeared to be of limited relevance to him as the Roma holder of a Czech passport. The Tribunal noted that, while the applicant may face some challenges in establishing himself in Spain – such as accommodation and work – it was much less certain whether these would amount to serious harm, or to arise from his ethnicity or other Convention-related grounds. In this context, it noted that he was healthy and, even during periods of unemployment in Australia, had enjoyed the financial support of family. The Tribunal noted, too, that [his wife] had an unqualified right to join him in Spain as his spouse, and she could also seek work there.
73. At the second session. [Person B] noted that, in addition to general problems of discrimination, there were reports of Spanish officials abusing Roma and of anti-Roma gang violence. The Tribunal acknowledged these reports. It noted also that the Spanish authorities have recognised the problems of discrimination and occasional violence, and put in place legislation and institutional means to address them. Country information indicated that much remained to be done, as resource constraints and continued stereotyping marred progress. The Tribunal explained its understanding that official abuses were isolated incidents. It doubted that the societal discrimination against Roma was such as to establish a real chance of the applicant facing Convention-related persecution in Spain, even though he might face other challenges. In this context, it noted that the applicant was part-Roma and part-Czech, that he had lived in English-speaking countries for some 4 years, and it was not apparent that he would associate or identify with the larger, and generally disadvantaged Roma (non-Czech speaking) communities in Spain.

Risk of Refoulement

74. At the first session, the Tribunal returned to the earlier discussion on the very restricted legal bases on which the Spanish authorities could expel EU nationals (including Czech nationals), and the absence of any information that the applicant had or would in the future violate public order or security. His past traffic offences did not seem to venture into this realm. The Tribunal noted, in passing, that Spain has signed the Spanish Protocol which allows it to designate asylum applications from EU nationals as 'evidently groundless'. The Tribunal's

understanding was that, in practice, this meant that the Spanish authorities did not accept such applications for processing. The Tribunal noted, however, that as the applicant appeared to have a right to enter and reside in Spain, and was not at risk of being returned to the Czech Republic on any public interest grounds, he did not need to rely on Spanish asylum as a basis for his stay in that country, and was therefore not affected by the Spanish Protocol.

75. At the second session, [Person B] raised a concern that the applicant might nonetheless be at risk of refoulement from Spain to the Czech Republic, particularly if he failed to find work and accommodation, and found himself in trouble in Spain. She alluded to his problems in New Zealand, and contrasted this with his stable, trouble-free stay in Australia. The applicant confirmed that he felt settled in Australia and had had no problems. The Tribunal noted the gravity of [Person B]'s suggestion that the applicant might conduct himself in Spain so as to form a risk to 'public security', and undertook to reflect further on this.

Other issues

76. The Tribunal noted that the threshold issue of whether or not Australia had protection obligations towards the applicant (regardless of whether he has a well-founded fear of persecution in the Czech Republic) was significant and complex.
77. It agreed to [Person B]'s request for 2 weeks within which to provide submissions on this and any other relevant issues, ie. by COB [date deleted: s.431(2)] May 2009. The Tribunal undertook to send to [Person B], in addition to the Spanish Ministry of Employment and Social Services brochure that it had given to her at the hearing, other references that it had drawn on.
78. The Tribunal noted that it would consider any further material regarding the applicant's rights with respect to New Zealand, and his claim to have a well-founded fear of Convention-related persecution in the Czech Republic. On the latter issue, the Tribunal observed that, while there were many critical reports concerning anti-Roma discrimination in the Czech Republic, violence by Neo-Nazis and sometimes inadequate official responses to these problems, there were differing assessments as to whether the mere fact of being a Roma (that is, without any particular profile) established a real chance of Convention-related persecution. [Person B] commented that recent reports on continued Neo-Nazi growth in the Czech Republic and elsewhere in Central Europe strengthened the case that all Czech Roma were at risk of persecution for reason of their race alone. She suggested that earlier decisions to the contrary (such as the NZ assessments of the applicant's grandparents) were now overtaken by these more recent adverse developments.

Post-hearing submission

79. The Tribunal received a submission [in] May 2009. It contains the following information:
- **Risk of persecution in the Czech Republic:** The submission summarises country information about the persecution of Roma in the Czech Republic. It notes in particular that the applicant would be returning there with few relatives, including on his father's side, as they were upset that he married a Roma woman.
 - **Departure from New Zealand:** The submission details discussions between the current representative and the applicant's family's barrister in Auckland. The applicant's immediate family received 'Special Direction' visas in 2008. The New Zealand authorities had posited the applicant's criminal record – his pattern of re-offending with driving problems – as a possible obstacle to the family's chances for permanent residency on this basis. His barrister advises that

the applicant remained in New Zealand without a permit, and will therefore not be permitted to board a flight to that country.

- The representative advises that she also learned from the barrister that the applicant has a learning disability. He was dyslexic and dysgraphic, and attended a school for disabled children in [village deleted: s.431(2)]. The applicant confirmed this to the representative. He had previously concealed it from the Department and the Tribunal because of embarrassment.
- **Residence rights in Spain:** The representative states that Spanish government publications indicate that the applicant has a right to enter and reside in Spain for more than 3 months.
 - However, she questions 'access to that right'. She notes that his passport is due to expire [in] June 2009. He does not intend to renew the passport as he wishes to sever links with that country. Spanish law requires him to register with his passport or national ID card. However, the applicant has no Czech ID card, as these are issued only to persons older than 15 years.
 - The representative contends that, after [his passport expires], the applicant will not have the documentation needed to enter Spain or undertake the necessary registration. He would therefore not have a legally enforceable 'right to enter and reside in that country'.
- The representative claims that the applicant's presence in Spain beyond 3 months will not amount to a right to 'reside'. She states that he will have no connections in that country, poor employment prospects (due to language and vocational skills, and the economic downturn in that country) and no access to Spanish social security benefits (such as unemployment benefits).
- The representative claims that the applicant will face uncertain prospects of permanent residency in Spain, particularly given recent changes to Spanish immigration law. Reference is made to an article: '*Unemployment a social time bomb for Spain*' which is widely published, including Reuters on-line, 31 December 2008: <http://www.reuters.com/article/worldNews/idUSTRE50001420090101?feedType=RSS&feedName=worldNews>, accessed 15 May 2009.
 - This article refers, among other things, to rising unemployment and simmering social unrest. Generous unemployment benefits are at risk. Spanish workers are displacing immigrants in some low-skilled sectors, with examples of hardship for some Africans and Latin American workers (EU nationals are not mentioned). Some employers are resorting to illegal discriminatory practices as unemployment rises.
- **Persecution in Spain:** The submission claims that the applicant may be at risk of persecution as a Roma and a member of a particular social group being 'unemployed Roma non-citizens'. It notes reports, with references, about threats to Roma and foreigners in Spain from neo-Nazis, gang violence, and the possibility of heightened racial tension. It mentions criticism of official responses to anti-Roma violence, including some instances where Spanish security forces have harassed or attacked them. The submission claims that the applicant will, additionally, be at risk of facing such economic hardship and denial of access to basic services as to threaten his capacity to subsist.
- **Rights and Risk of Persecution in Estonia:** The submission comments on the applicant's rights in Estonia, which was identified in the Canadian report as a second EU country that places no restrictions on the rights of EU nationals to live in that country beyond 3 months.

- **Humanitarian issues:** The submission highlights potential humanitarian considerations that may apply, if the Tribunal were to find that Australia does not have protection obligations towards the applicant. These are set out below.
80. The Tribunal received the submission in hard copy [in] May 2009. It has attached further information and documents concerning the applicant's status in New Zealand.
- A NZ Removal Review Authority letter dated [in] December 2007 states that the applicant was convicted of 3 traffic offences during 2007 (speeding, drunk driving and driving without a licence) and a summary offence of disorderly conduct in late 2006.
 - Correspondence from a Justice of the Peace acting on the applicant's behalf explains that the NZ authorities refused the family's refugee applications, and the applicant found himself without permission to either study or work.
 - Further correspondence shows that the NZ authorities were on the verge of making a decision about the applicant's family in early 2008, and that the applicant voluntarily moved to Australia to be with his girlfriend. A letter from his barrister advises that the applicant 'wishes to withdraw his appeal in the hope that it will assist the chances of his parents' and sister's appeal being successful because he is the family member who has had the problems settling in New Zealand.' It states that the Czech Republic authorities have issued police clearances with respect to all family members.
 - Excerpts from a NZ Removal Review Authority decision (undated) indicates that the applicant has shown a 'pattern of irresponsible behaviour [...] which might have continued'. It notes that, should he seek to re-enter New Zealand, 'his character may well be an issue for NZ'.

Independent Information

81. The Tribunal has consulted a large amount of country information relating, among other things, to the treatment of Roma in the Czech Republic and other EU Member States; and the legal rights of Czech citizens in EU Member States.
82. The current Tribunal has checked the information relied upon by the previous Tribunal (case number 0803578). This information remains current and is consistent with the information set out in this decision. The Tribunal therefore finds it unnecessary to replicate it. The Tribunal refers specifically to the following paragraphs from that decision: 'Relevant European Union Law' (paragraphs 52-53); 'Czech Citizens' Rights to Enter and Reside in EU Member States' (paragraphs 54-66); 'Expulsions of EU Citizens' (paragraphs 67-76) and 'The Treatment of Roma People in the Czech Republic' (paragraphs 77-86).

Renewing a Czech passport in Australia

83. On 17 April 2009, Mr Pavel Pitel, Consul at the Consulate General of the Czech Republic in Sydney, provided the following information regarding the procedure for applying for a Czech passport in Australia:

Application for Czech passport

1. Introduction

1.1 Please note that this information is just a brief extract from the full version available only in Czech language, which is available on the Czech version of website www.mzv.cz/sydney.

1.2 In accordance with the EC Regulation No. 2252/2004 on security and biometrics in travel documents issued by the EU Member States, the Czech Republic launched the procedure of issuing new passports as of September 1, 2006.

1.3 These passports will be issued to Czech citizens. Passports will be valid for 10 years, passports of citizens up to 15 years of age will be valid for 5 years.

2. Documents to be presented when applying for new passport

2.1 Czech Birth Certificate,

2.2 Czech Marriage Licence (married and divorced women only),

2.3 Photograph of passport format (50 x 50 mm, clean, light background, en-face, etc.) complying with the ICAO standards.

2.4 Czech university degree/diploma (only applicants with an academic title; wishing to have the title inserted in the passport),

2.5 Original Czech passport,

2.6 Czech Citizenship Certificate; either passport, ID or certificate.

2.7 Birth Number Certificate; can be found either in the birth certificate, passport, ID or in the document issued by the Ministry of Interior.

3. Application process

3.1 Applicants has to come in person to the Consular Section of the Consulate General of the Czech Republic with all the above documents.

3.3 The consular officer will do the following:

3.3.1 check all documents and compare them with data contained in the Central Registry of Citizens and Travel Documents,

3.3.2 print out the filled-out application containing all required data incl. the photograph,

3.3.3 request the applicant to sign the application and scan the signed application, photograph and fingerprints of the applicant

3.3.4 signature of the applicant serves as confirmation that all data are correct, and as an agreement with the issuance of the passport,

3.3.5 scanned application is then sent to the issuing post in the Czech Republic, copies of all other documents remain in the file at the Embassy.

3.4 After the passport is prepared and sent to the Consular Section of the Consulate General of the Czech Republic, the applicant will be called to come in person to collect the passport.

3.5 On collection of the passport the administrative fee has to be paid

84. The website of the Consulate General of the Czech Republic in Sydney states that the application fee for a biometric passport is \$84(AUD) and that the application fee for a non-biometric passport is \$112 (AUD) ('Visa and other consular fees' 2009, Consulate General of the Czech Republic in Sydney website, 1 April http://www.mzv.cz/sydney/en/visa_consular_information/visa_and_consular_fees/index.html - Accessed 27 April 2009).

Czech nationals' rights to enter and reside in EU Member States

85. The Europa website, the portal site for the European Commission, refers to the following categories of EU Member States:

- "EU-15 Member States" means all Member States forming part of the EU before 1 May 2004.

- “EU-10 Member States” means all States that joined the EU on 1 May 2004. The Czech Republic is included in the EU-10 group of Member States.
 - “EU-8 Member States” means all EU-10 Member States except for Malta and Cyprus (‘2004 enlargement’ (undated), Europa website <http://ec.europa.eu/social/main.jsp?catId=507&langId=en> – Accessed 14 April 2009)
86. In general, EU nationals have the right to reside in other EU Member countries as long as they are financially self supportive or working in the country. Information from the Europa website also indicates that in some circumstances EU nationals who are seeking work may be permitted to reside in another EU member country for a period longer than three months. A Europa report states that after continuously residing for a five year period in another EU host country nationals from other EU countries have the right to acquire permanent residency (‘Right of Union citizens and their family members to move and reside freely within the territory of the Member States’ 2007, Europa website, 25 June <http://europa.eu/scadplus/leg/en/lvb/l33152.htm> – Accessed 14 April 2009; ‘Living in Europe – Rights of residence for more than three months – For Union Citizens who are job-seekers’ 2007, Europa website, October http://ec.europa.eu/youreurope/nav/en/citizens/living/right-residence-more-3-months/for-job-seekers/index_en.html – Accessed 14 April 2009)
87. Sources consulted report that an individual’s right to enter and reside in another EU member state can be restricted on the grounds of public policy, public security and public health. An individual can also be expelled from an EU member state on other grounds including if the individual becomes “an unreasonable burden” to the social assistance system of the host EU country. It should also be noted that due to the current transitional arrangements EU-15 Member States have the ability to apply labour markets restrictions to citizens of EU-10 Member States, including the Czech Republic. Reports indicate however, that only Germany, Austria, Denmark and Belgium currently uphold labour market restrictions against workers from the EU-10 Member States (‘Right of Union citizens and their family members to move and reside freely within the territory of the Member States’ 2007, Europa website, 25 June <http://europa.eu/scadplus/leg/en/lvb/l33152.htm> – Accessed 14 April 2009; ‘Living in Europe – Restrictions and limitations of the right to move and reside freely – on any other grounds’ 2007, Europa website, October http://ec.europa.eu/youreurope/nav/en/citizens/living/restrictions-and-limitations/other-grounds/index_en.html – Accessed 24 April 2009; ‘Commission report on transitional arrangements regarding free movement of workers’ 2008, Europa website, 18 November <http://europa.eu/rapid/pressreleasesaction.do?reference=memo/08/718&format=html&aged=0&language=en&uilanguage=en> – Accessed 15 April 2009; ‘Phillips, L. 2008, ‘Berlin maintains restrictions on workers from eastern Europe’, *EU Observer.com*, 17 July <http://euobserver.com/9/26503> – Accessed 15 April 2009)
88. The Tribunal found a detailed and up-to-date analysis of Czech national’s rights to enter and reside in EU Member States in: - Canadian IRB Response to Information Request ZZZ102984.E dated 5 March 2009, European Union/Czech Republic: Freedom of movement, residency and social security regulations for European Union (EU) nationals who move to other EU countries; the situation of Czech nationals who move to other EU countries, including labour rights and access to social services. <http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=452266>, accessed 17 May 2009.
89. Significantly, the second page of this report concluded, with respect to residence in EU Member States beyond 3 months, the following assessment: ‘Estonia and Spain impose no

requirements other than EU citizenship'. The Tribunal focused on Spain, as a country which has a large number of foreigners (including English-speaking ones) and readily accessible information.

Spain – EU Nationals' Right to Reside

90. The Spanish authorities publish an official publication in English that sets out the rights of EU citizens in Spain ('Regulations governing EU citizens in Spain' 2007, Government of Spain, Ministry of Work and Immigration website http://extranjeros.mtas.es/es/informacioninteres/folletosinformativos/archivos/version_ingles.pdf – Accessed 28 April 2009). The Tribunal printed this document and gave it to the applicant at the hearing. The report indicates that EU nationals are entitled to reside in Spain for a period longer than three months. There is no requirement that they have work. Their spouses, including non-EU spouses, may join them in Spain. They must register with the Central Foreigners Registry within the first 3 months of their arrival in Spain, and present their passport or, if it is expired, a copy of the expired passport and of the renewal application. The Tribunal places weight on this document as a reliable statement of Spanish law. Although published in 2007, the Tribunal is confident that it is up to date, as it considers that the Spanish and/or EU authorities would have withdrawn or amended it by mid-2009 if it were inaccurate, misleading or out-of-date.
91. The Tribunal has nonetheless, for completeness, consulted Spanish and English language resources to check whether there are any doubts about the Spanish legislation, either in its details or its treatment of EU citizens in practice. These include: - 'Estancia y residencia' (undated), Government of Spain, Ministry of the Interior website http://www.mir.es/sgacavt/extranje/ciudadanos_ue/estancia_residencia.html – Accessed 28 April 2009; 'Ten Questions on Immigration into Spain' 2007, Legal Advice in Spain.com website http://www.legaladviceinspain.com/dopcms7/opencms/legaladviceinspain/en/residence_in_spain/ten_questions_on_immigration_into_spain.html – Accessed 28 April 2009; 'Residence Requirements' 2009, British Embassy in Spain website <http://ukinspain.fco.gov.uk/en/help-for-british-nationals/living-in-spain/residence-req#> – Accessed 28 April 2009). The Tribunal has found nothing to suggest that these rights are restricted, in practice.

Spain – Circumstances in which EU Citizens may be Expelled

92. The Tribunal referred at the hearing to the information set out in the decision of the first Tribunal, in paragraphs 67-76, indicating that EU permits the expulsion of EU citizens (who are otherwise complying with the conditions of residence beyond 3 months) only on very limited grounds – namely if they are a threat to public policy, public security or public health. This must involve a serious threat, it must relate to the individual's conduct, and it specifically cannot be on broad policy grounds (such as economic conditions).
93. The available information indicates that Spain adheres to this directive. The Tribunal is confident, particularly given the topicality of Spain's economic problems and its treatment of a large migrant labour force, that any divergence from this policy towards EU citizens would attract public attention and comment.
94. The Tribunal noted at the hearing that official Spanish language websites confirm that measures (such as expulsion) may be undertaken against EU nationals residing in Spain on the grounds of public order, public health and public safety, and that they cannot be undertaken for "economic purposes". The Google translation provides the following text. (The Tribunal appreciates the limitations of Google or other on-line automated translation

services. The translated text below so closely mirrors EU and Spanish legislation and practice, as set out in official English language sites, that the Tribunal considers it a relevant and valid confirmation of the main features of Spanish law and practice):

Measures for reasons of public order, public health and safety

- Where imposing grounds of public policy, public security or public health may take any of the following measures to deal with the citizens of a Member State of the European Union or another State party to the Agreement on the European Economic European, or members of your family: [description of expulsion measures follows]
- The adoption of one of the measures provided for in the preceding paragraphs shall abide by the following criteria:
 - Will be adopted in accordance with the laws regulating the public order and public safety and the regulations in force.
 - May be revoked or upon its own survival when they leave the reasons for its adoption.
 - Not be taken for economic purposes.
 - Once adopted, for reasons of public policy or public security shall be based exclusively on the personal conduct of those who is the subject, which in any case, must constitute a genuine, present and sufficiently serious threat affecting a fundamental interest of society, and that will be assessed by the competent body to decide, based on reports from police, prosecutors and court documents in the file. The existence of previous criminal convictions shall not in itself grounds for taking such measures.

(‘Medidas por razones de orden público, seguridad y salud pública’ (undated), Government of Spain, Ministry of the Interior website

http://www.mir.es/sgacavt/extranje/ciudadanos_ue/limitaciones.html – Accessed 28 April 2009)

95. The Tribunal referred at the hearing – for completeness and transparency – to country information that Spain is a signatory to (and was the prime mover for the adoption of) the Spanish Protocol, which essentially bars or severely restricts the scope for EU nationals to seek asylum in other EU countries. A Canadian Research Directorate, Immigration and Refugee Board, Research Response: *European Union (EU) Member States: Application of the Protocol on Asylum for Nationals of Member States*, ZZZ102549.E, dated 12 October 2007, gives a full summary of the Protocol and its implementation. (See: <http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=451504>, accessed 17 May 2009). It gives the following summary for Spain:

An official from the Embassy of the Kingdom of Spain in Ottawa provided the following information in correspondence with the Research Directorate:

The procedure for Spanish asylum provides for a phase of non admissibility to the processing stage of requests for asylum due to a series of evaluation reasons, including requests for asylum that are evidently groundless.

So far, requests for asylum submitted in Spain by nationals from Member States of the European Union have been deemed evidently groundless and, therefore, have not been accepted for processing.

Therefore, and in conformity with the provisions of the ... Protocol on the right to asylum, there has been no need to inform the Council of the European Union on the submission of the said requests. (10 Sept. 2007)

Spain – Treatment of Roma and non-Spanish workers

96. The Tribunal has found numerous references to the treatment of Roma in Spain generally. These refer to widespread discrimination, of various kinds, and to some specific examples of ill-treatment. It identifies as particularly vulnerable those who are illiterate, poor, non-documented or are from communities or localities with entrenched problems. Many reports acknowledge at the same time Spain's efforts and some success to date in improving the situation for Roma.
97. The Tribunal has not found any information that specifically addresses the issue of the protection of EU (including Czech) Roma citizens in Spain.
98. However, the Tribunal has found a number of recent references regarding Roma in general, that indicate: -
 - There is a large, mixed community of Roma/'gitanos' in Spain.
 - Reports of discrimination show problems in areas such as the provision of social services and employment. Some individual incidents involve fighting between young people, sometimes Roma and non-Roma, that then escalate to draw in members of the local communities. The reports suggest that discrimination is widespread, but mainly at a low level that does not involve serious harm. (Fundacion Secretariado Gitano 2007, 'In depth: study of 9 cases of discrimination' in *'Discrimination and the Roma community FSG 2007 Annual Report'*, Fundacion Secretariado Gitano website <http://www.gitanos.org/publicaciones/discriminacion07English/pdf/03.pdf> – Accessed 26 May 2009)
 - Spain has in place extensive legal provisions (international, European and domestic) that address discrimination. There are several institutions for the protection of minorities, including an ombudsman and parliamentary bodies. The authorities have set up a Roma Development Programme. A 2002 report titled *The Situation of Roma in Spain* provides information on minority protection in Spain (pages 292 – 296 provide information on protection from discrimination and pages 349 – 352 contain information on institutions for minority protection) (Open Society Institute 2002, *The Situation of Roma in Spain*, EUMAP.org, 23 October, pp. 292-294 http://www.eumap.org/reports/2002/eu/international/sections/spain/2002_m_spain.pdf- Accessed 25 May 2009)
 - The information suggests that there are some shortcomings in official responses, particularly at a local level. These include resource constraints, lack of dedicated resources and some instances of unfavorable stereotyping. There is public discussion of these issues, and the Spanish authorities have taken serious steps to strengthen protections for Roma.
99. The US Department of State Report on Human Rights Practices in Spain for 2007 sets out:

The Roma population continued to face discrimination. According to the domestic NGO Fundacion Secretariado Gitano (FSG), Roma continued to face discrimination in access to employment, housing, and education. The Roma community, whose estimated size, according to FSG, was 600,000, experienced substantially higher rates of unemployment, poverty, and illiteracy than the general population. A September

2006 FSG study indicated that up to 80 percent of Romani children did not finish their required secondary education.

FSG's August report credited national and regional governments with taking several important steps to improve the cultural acceptance and social wellbeing of the Roma population, including providing assistance to several NGOs dedicated to improving the condition of Roma. In March the government created the Fundacion Instituto de Cultura Gitana to develop and promote Roma history, culture, and language.

100. The report also indicates that:

In 2006 the European Commission against Racism and Intolerance reported that NGOs continued to receive reports from non-citizens, Roma, and citizens of immigrant origin asserting that they were victims of insulting and abusive speech, mistreatment, and violence by security forces. The report indicated that victims rarely filed complaints, and that such incidents were rarely investigated.

...Roma had little representation in government. During the year the government appointed the first Roma to a high-level position, as an advisor in the Women's Institute, a division of the Ministry of Labor and Social Affairs (US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Spain*, March, Sections 1(c), 3 & 5).

101. A second opinion on Spain by the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted on 22 February 2007 and set out in a report dated 2 April 2008, includes the following information on the treatment of the Roma in Spain:

96. According to information received from non-governmental organisations and other sources, a number of racially motivated attacks have taken place in different parts of Spain since the first monitoring cycle. Roma have regrettably been the targets of some of the most violent incidents, including the Cortegana case in Huelva (a province of Andalusia), where a protest demonstration organised by members of the town council in January 2005, in the wake of murders that were attributed to the Roma, escalated into a violent attack on a Roma settlement.

...98. The Advisory Committee is concerned that there is not enough awareness within the Spanish criminal justice system of the offence of racism and ethnically motivated violence. Although the dimensions of the problem are difficult to determine in the absence of official data, according to information at the disposal of the Advisory Committee, Spanish criminal law provisions establishing racist motivation as an aggravating circumstance and laws on incitement to discrimination, hatred and violence on racial grounds are rarely applied. In this respect, the Advisory Committee is encouraged by the recent news it has received concerning the first sentence ever issued by a Spanish court punishing those responsible for the incitement of racial hatred over the Internet.

...102. According to non-governmental organisations, there has been a perceptible improvement in the human rights training received by Spanish police in recent years, although still not enough emphasis is placed in this training on policing in minority communities. The Advisory Committee welcomes the recent decision to pursue courses on Roma culture also in the Academy of the Guardia Civil, based in Baeza, which will include the participation of Roma associations.

103. The human rights training received by the three existing regional autonomous police forces in Spain (the Catalan *Mossos d'Esquadra*, the Basque Autonomous Police and the Navarran Autonomous Police) is reported to be particularly good,

especially as regards intercultural training and treatment of persons belonging to minorities.

...104. The Advisory Committee deeply regrets that, notwithstanding improvements in the human rights training afforded to the police, cases of verbal and physical abuse against Roma and persons of immigrant origin, including minors, by law-enforcement officials are still being reported by non-governmental organisations. Following the bomb attacks in Madrid of March 2004, there seems to be a particular increase in allegations of police abuse against persons belonging to minority groups. The Advisory Committee is also concerned about reports concerning violent attacks on foreigners and Roma by members of private security bodies, including on the underground systems of Madrid and Barcelona but also in bars and clubs in several Spanish cities.

105. The Advisory Committee regrets that steps have not been taken to establish an independent police complaints mechanism in Spain, in accordance with the recommendation made in the last two reports by the European Commission against Racism and Intolerance.¹⁵ According to the information received by the Advisory Committee, current internal systems of supervision of police forces in Spain are not always effective. The Advisory Committee is not aware of any steps taken to encourage the recruitment and retention in the police forces of persons belonging to minority groups in order to achieve a more diverse institution.

102. The report provides the following concluding remarks by the Advisory Committee:

167. Since the adoption of the Advisory Committee's first Opinion in November 2003, Spanish authorities have introduced a number of measures which have improved the implementation of the Framework Convention.

168. Steps have been taken to strengthen Spain's legislative provisions for combating discrimination, including by extending protection against discrimination, by public or private entities, to all relevant fields.

169. Numerous initiatives have been launched, at national and regional levels, to improve access to social services and the labour market for Roma and other vulnerable groups. It is positive that public authorities have recognised the importance of obtaining data on the situation of ethnic groups in order to achieve this aim.

170. There has been considerable progress towards achieving the full education of Roma children at primary level. Recent legislative provisions aimed at improving access to education for students from disadvantaged communities, including by increasing funding for remedial classes and student grants, should add further to this trend.

171. Spanish authorities have publicly endorsed the need to protect and promote the distinct culture and identity of Roma, a positive development that is also reflected in the Spanish Government's intention to open an Institute of Roma Culture to operate at national level.

172. The recent establishment of a nation-wide Consultative Council for the Roma People represents an important step in the direction of involving Roma in the preparation and implementation of policies that are likely to affect them.

Issues of concern

173. Although efforts have been made to improve the situation of persons belonging to minorities, the impact of these efforts remains in many respects limited. Problems persist in

the implementation of existing legislation for combating discrimination, including the continuing delay in setting up a specialized body that will provide assistance to victims of discrimination on racial or ethnic grounds. There is also a need to step up awareness within the judicial system of problems related to racism and racially-motivated crime, bearing in mind that the relevant criminal law provisions are rarely invoked.

174. Notwithstanding various positive initiatives, Roma, and in particular Roma women, still face particular difficulties and discrimination in their access to employment, housing and social services and, reportedly, in the treatment they receive within the criminal justice system. Efforts to collect data on the situation of Roma need to be expanded in order to remedy this state of affairs, while ensuring due respect for the safeguards concerning personal data protection.

175. References to Roma culture, history and traditions continue to be virtually absent in school curricula and teaching materials. It will be necessary to ensure that the new legislative provisions introducing a subject on cultural diversity into school curricula will be implemented in ways that also benefit Roma.

176. Few Roma have the necessary training and resources to participate in the production of radio, television and print media. News items that touch upon the life of Roma tend to perpetuate negative stereotypes.

177. In spite of progress made, difficulties ensuring equal access to education for Roma remain considerable, with Roma students revealing higher levels of absenteeism, higher drop-out rates and lower school performance than non-Roma children, especially at secondary school level. There is an increasing concentration of Roma (and immigrant pupils) in schools that are academically poorer.

178. Roma representatives consider that they are not sufficiently consulted in the design, implementation, monitoring and evaluation of programmes aimed at promoting their social and economic integration, nor in decision-making concerning the allocation of public funds to nongovernmental organisations working with Roma (Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities 2008, 'Second Opinion on Spain, adopted on 22 February 2007', UNHCR Refworld website, 2 April, pp. 21-23 & 33-34 <http://www.unhcr.org/refworld/country,,,ESP,,4858d97a2,0.html>).

103. According to an article in the *International Herald Tribune* dated 16 April 2007, the Roma in Spain "continue to be socially marginalized and suffer discrimination, a study has found." It is stated in the article that:

The survey, commissioned by the Labor and Social Affairs Ministry and carried out in 1,600 Roma households, paints a grim picture of a community of 700,000 people where poverty and illiteracy are high and a sense of injustice pervasive.

... "It is worrying," Amparo Valcarce, deputy minister for social affairs, said in a telephone interview. She called the social gap between the Roma and the Spanish population as a whole "abysmal."

... Three quarters of those polled in the survey, which was conducted by the National Statistical Institute, were on temporary work contracts or were self-employed. Seventeen percent received some kind of social benefit - three times the national average.

The survey showed poor levels of literacy and school attendance among the Roma: 15 percent of those polled were illiterate and the same percentage had attended school

for five years or less. Just a third had attended school to the minimum legal age of 16 and only a tiny 0.2 percent had received university-level education, compared with a national average of 20 percent.

Juan de Dios Ramírez-Heredia, head of Unión Romani, a Spanish organization that represents the Roma, said that illiteracy levels in the community were in fact close to 40 percent, but had fallen from about 80 percent three decades ago as a result of government programs that have helped the younger generation. In the poll, two in five said their father was illiterate and three in five said their mother was illiterate.

...Ramírez, a former member of Parliament and the European Parliament, said the real challenge was not improving social indicators, but changing society's "racist" attitudes.

According to the survey, 47 percent of Roma consider racism or discrimination to be their biggest problem. More than half of those surveyed said they had been discriminated against when trying to get a job or rent an apartment. Four out of 10 said they had encountered discrimination when doing everyday things, like going to a bar, swimming pool or disco, or shopping (Burnett, Victoria 2007, 'New study paints grim picture of life for Roma in Spain', *International Herald Tribune*, 16 April <http://www.ihf.com/articles/2007/04/16/america/roma.php>).

104. An article in *The Economist* (June 21st 2008), Briefing: Europe's Roma *Bottom of the heap; the dismal lives and unhappy prospects of Europe's biggest stateless minority* (pp 31 – 34) sets out the history of the treatment of the Roma population particularly in the former Communist States. In relation to Spain, the article notes:

A well-run country can try to spend large amounts of taxpayers' money on alleviating social problems. The results may be patchy, but at least in western Europe they have got somewhere. Spain, for example, is regarded as a big success story. Its Roma were marginalized and neglected under authoritarian rule; now a mixture of good policy and generous EU funding has brought widespread literacy, better housing and integration in the labour market. But the ex-communist countries have much weaker public administration, and neither politicians nor voters consider Gypsies a priority.

105. A February 2009 report states that Spain has signed the "Declaration on Participating in the Decade of Roma Inclusion". The report states that:

At the 15th International Steering Committee Meeting in Belgrade on February 17, Spanish Ambassador to Serbia Inigo de Palacio Espana signed the Declaration of the Decade of Roma Inclusion on behalf of his government. With this step, Spain became the 12th full member of the Decade of Roma Inclusion.

In remarks before the signing ceremony, Serbian Deputy Prime Minister Bozidar Djelic welcomed Spain's membership in the Decade, noting that Spain is the first "old" European Union member to join the initiative. Djelic expressed his hope that other states from the EU-15 would soon follow Spain's example and also called for the Decade of Roma Inclusion to be given a formal role in the development of a European Roma policy ('Spain joins the decade' 2009, Decade of Roma Inclusion 2005-2015 website, 18 February <http://www.romadecade.org/index.php?content=368> – Accessed 26 May 2009).

106. The Tribunal also discussed at the hearing Italy's much-criticised treatment of Roma in the recent past, and doubted the suggested parallel between the situation in that country and Spain. On the contrary, Spanish criticism of the Italians has provoked sharp exchanges

between officials of the 2 countries. (*Italy and Spain Clash over treatment of Roma* - http://www.upi.com/Top_News/2008/05/21/Italy-Spain-clash-over-treatment-of-Roma/UPI-45981211343314/)

107. The Tribunal has found no information regarding any changes to the Spanish immigration policy for EU or EU-10 citizens due to the current global financial crisis. The EU and Spanish legislation (set out in country information above) indicate that the Spanish authorities have no scope to alter the rights of EU citizens in response to economic issues
108. The Tribunal found some reports pointing to high unemployment in Spain, and resultant tensions between migrant workers and Spanish. Some workers have returned to their home countries (especially from Latin America and Romania), either at their initiative or with incentives from the Spanish government. The tensions between Spanish and migrant workers do not appear to be of the same intensity as elsewhere in Europe The Tribunal has found nothing to suggest support for the withdrawal or curtailment of the existing rights of EU nationals.
 - On 16 March 2009, *Reuters News* reported that according to an online poll “most people in major European countries and the United States believe unemployed immigrants should be asked to leave ...indicating growing fears over competition for scarce jobs”. The report states that according to the poll a majority in Spain, Germany, France and the United States “would support their governments asking immigrants to leave”. The report also states that “most Italians and Spaniards, however, said they did support EU citizens who wanted to work in their countries” (Kelland, K. 2009, ‘UPDATE 1-Most Europeans want jobless immigrants to leave’, *Reuters News*, 16 March)
 - For other references: (Day, P. & Hay, A. 2009, ‘UPDATE 3-Spanish unemployment near 14%, tension grows’, *Reuters News*, 23 January; Grogno, V. 2009, ‘Immigrants first to feel squeeze as Spain’s boom turns to bust’, *Agence France Presse*, 24 January; Bolaños, A. 2009, ‘What now for the foreign workforce?’, *El Pais*, 2 February ; Donadio, R. & Schwartz, N.D. 2009 ‘As Jobs Die, Europe’s Migrants Head Home’, *New York Times*, 25 April http://www.nytimes.com/2009/04/25/world/europe/25migrants.html?_r=1&scp=2&sq=April+25+2009&st=nyt – Accessed 29 April 2009; ‘Global financial crisis sparks xenophobia across EU – Spanish pundit’ 2009, *BBC Monitoring European*, source: *ABC website*, 13 February; Spanish executives should freeze salaries-minister’ 2009, *Reuters News*, 8 February).

FINDINGS AND REASONS

109. The Tribunal accepts that the applicant is a national of the Czech Republic, and that he is outside his country of nationality. He arrived in Australia on a Czech Republic passport, and has provided extensive oral and documentary evidence to support this claim. There is no evidence to suggest that he has the nationality of any other country.
110. Country information indicates that the Czech Republic acceded to the European Union in 2004. EU law confers on the citizens of all EU Member States certain rights, including in relation to entering and residing in the territory of other EU Member States. This law is contained in EU directives, which require each Member State to achieve a particular result without pre-determining the terms of the domestic legislation. The Czech Republic, having joined in 2004, is a designated ‘new EU Member State’, and therefore subject to transitional arrangements of up to 7 years. Based on these circumstances, the Tribunal finds that the applicant has the rights of an EU citizen, although the precise content of these rights varies

according to the domestic legislation of each Member State, including any transitional arrangements that may apply to the Czech Republic.

111. The Tribunal accepts on the evidence that the applicant has Roma ethnicity.
112. The Tribunal considers it unnecessary in this matter to determine whether the applicant has a well-founded fear of persecution in his own country. Because of his status as an EU citizen, a key issue that arises is whether Australia has protection obligations towards the applicant, under section 36(3) of the Act, as qualified by sections 36(4) and 36(5).

Section 36(3)

(3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.

113. The Tribunal has considered whether s.36(3) applies to the applicant, with the following principles in mind:
 - The ‘right to enter and reside’ can be a temporary or permanent right.
 - It must be a legally enforceable right.
 - It must be a presently existing right.
 - It is ‘however that right arose or is expressed’. For instance, it does not require that a person has ever visited that country.
114. The Tribunal has before it a large amount of information in relation to the rights of Czech citizens to enter and reside in other EU Member States. As a general principle, the EU Treaties provide that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States. As noted above, however, this right is subject to the limitations and conditions laid down in the EC Treaty and by the measures that individual Member States adopt to give it effect. According to the Europa website, all EU citizens have a right of residence for up to three months, and a right of residence for more than six months if they are engaged in economic activity or have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. The Tribunal takes this to mean that European law envisages that stays beyond 3 months *may* be qualified or conditional. Country information suggests that, in practice, there is wide variation in the domestic implementation of this Directive, in particular in relation to: (a) the conditions and limitations that may apply to stays beyond 3 months, and (b) in the case of new EU Member States, further restrictions on the freedom of movement and, more generally, access to the labour market (within 3 months as well as beyond that period).
115. The Tribunal finds that there is at least one EU Member State in which the applicant has a right to enter and reside, within the meaning of s.36(3). As noted at the Tribunal hearing and in its correspondence, it has focused on the situation in Spain because its legislation and practice are most unambiguous. The Tribunal considers that there are potentially at least several other EU States in which the applicant also has such a right, although it is not necessary for the Tribunal to assess each individual country.

116. The Tribunal finds on the material before it, in particular country information discussed at hearing (paragraphs 89-90 above), that the applicant, as an EU citizen, has a right to enter and reside in Spain. This is a currently existing right, and legally enforceable in Spanish and EU courts. The Tribunal recognises that the applicant has never visited Spain and is not familiar with the language or culture, but this does not negate the existence of the rights as referred to in s.36(3).
117. The Tribunal notes the applicant's evidence that he has prior convictions in New Zealand, 3 for traffic offences (speeding, drunk driving and driving without a licence) and one for disorderly conduct. The applicant and his adviser did not expressly raise this as a potential impediment to his right to enter and reside in Spain. The issue arose rather in the context of his future conduct in Spain (his possible return to unlawful behaviour, if removed from Australia) and his possible expulsion from Spain. The Tribunal is satisfied, having regard to the nature of the offences and the age at which the applicant committed them, as well as the very limited circumstances in which Spanish restricts the rights of EU nationals, that the applicant's offences in New Zealand do not remove his right to enter and reside in that country.
118. The Tribunal has considered the applicant's submissions during the course of this review that such rights might nonetheless fall short of the meaning of the 'right to enter and reside' as set out in s.36(3). There are several strands to this. First, he and his representative suggested that these rights are not 'equal' to those of others, ie. Spanish citizens. For instance, he would not be eligible for social security benefits if he were unable to find work. It appears that this argument, in essence, seeks to equate s.36(3) with Article 1E of the Convention. There is some suggestion that s.36(3) is "consonant with" Article 1E (*Applicant C v MIMA* [2001] FCA 229 at [28]), and that they are directed to the same concern, although their operation is not co-extensive (*NGBM v MIMIA* [2004] FCA 1373 at [59]; *NGBM v MIMIA* (2006) 150 FCR 522 at [223]). However, while Article 1E of the Convention applies only where the relevant country recognises the person as having "the rights and obligations which are attached to the possession of the nationality of that country", there is no such requirement in s.36(3). In the Tribunal's view, taking also into account the reference to 'temporary' rights in s.36(3), there is no implied requirement that a person have such rights. In sum, the Tribunal does not accept that the applicant's right to enter and reside in Spain is negated on this basis.
119. Second, the applicant and his representative argued that, beyond the period of 3 months, the applicant's rights in Spain would amount to something less than 'residence'. The representative referred to residence as 'the *ability* to establish domicile and establish links with that place', and pointed to practical problems the applicant might face such as unemployment and lack of access to social security benefits, his inability to support himself and (by implication) other problems arising from his lack of language and contacts. The right to reside in the context of s.36(3) clearly refers to the establishment of more than a transitory presence in the place. It might be theoretically possible that an applicant could face such extreme hardship that a right to reside is in effect negated. However, the Tribunal finds it unnecessary to consider this question further. It considers that the challenges the applicant might face in Spain are far removed from such a hypothetical case, and not such as to negate the existence of his right to reside in that country for the purposes of s.36(3). The challenges that the applicant may face in Spain are, however, relevant to the further question posed by s.36(4), namely whether he has a well-founded fear of Convention-related persecution in Spain. The Tribunal considers that question below (paragraphs 128 ff.)

120. Third, the representative suggests that, if it were accepted that the applicant has a well-founded fear of Convention-related persecution in the Czech Republic, he should be offered a 'durable solution', including prospects for assimilation and naturalisation. She contends that the applicant's likely difficulties in Spain will make this illusory. During the review, she also referred to other concerns about his prospects for permanent residency in Spain. The Tribunal does not accept this argument, because s.36(3) specifically does not require that a person have permanent rights of residency in the third country in question.
121. Fourth, the representative states that the applicant's Czech passport will expire [in] June 2009. He has no intention of renewing his passport, as he wishes to sever his links with the Czech Republic. She suggests that this, 'in a practical sense' puts in doubt his right to enter and reside in Spain (or other EU Member States), as: (a) he will need a Czech passport to enter Spain, and (b) he will, as an administrative requirement, need to present a Czech passport or Czech ID card to live there beyond 3 months.
122. The Tribunal finds that the applicant has an existing right to enter and reside in Spain (and possibly elsewhere in the EU). The Tribunal finds that the applicant has a present right to enter Spain. Country information indicates that, any time within 3 months of arriving there, he can present to the Spanish authorities for registration for longer term residency, and secure residency on that basis. As discussed at the hearing, Spanish regulations permit him to do so with a current passport (that is, either his present passport or a newly issued one), and they also contain simple provisions for him to register with an expired passport (in the event that he enters on his current passport, and presents to the Spanish authorities after [the passport expiry date]), provided he has taken the step of applying for a replacement one.
123. The Tribunal finds that up to and as at the date of this decision, it would have been possible for the applicant to either travel to Spain on his current passport, or alternatively apply for a new Czech passport here and travel to Spain on that passport, and on arrival, register with the Spanish authorities, thereby availing himself of his right to enter and reside in Spain. The Tribunal finds further that he has not taken any of those steps. The Tribunal therefore finds that the applicant has not taken all possible steps to avail himself of his right to enter and reside in Spain within the meaning of s.36(3).
124. The Tribunal finds that the imminent expiry of the applicant's current Czech passport does not affect his existing rights in Spain. As noted in the preceding paragraphs, he has at the time of this decision the options to either travel to Spain on his current passport (subject to any practical restrictions that might apply, such as booking flights on a soon-to-expire passport), or to apply for the renewal of his Czech passport (which he can do before or after [its expiry]). The Tribunal notes that, even beyond [the expiry date] and into the reasonably foreseeable future, the applicant will still have the right to enter and reside in Spain, and will still be able to avail himself of that right by applying for a new passport if, by then, he has not already done so.
125. The applicant has indicated that he has no intention of renewing his Czech passport, and that he does not wish to take any other step to live in the EU. He suggests that the Tribunal should take this into account in determining whether he falls within s.36(3). The Tribunal notes the applicant's wishes, but considers that they do not assist him. Section 36(3) refers to all 'possible steps' – it does not imply 'reasonable' (see *NBLC v MIMIA*, *NBLB v MIMIA* (2005) 149 FCR 151 at [64]), it is not prospective, and in the Tribunal's opinion it does not envisage that an applicant opts out of taking steps that he otherwise could have because of a wish to sever links with his home country.

126. At the second session, the representative argued that the applicant should not be required to approach the authorities of a country in which he has (or may have) a well-founded fear of Convention-related persecution. In other words, this should not be considered a 'possible step' This was, she said, in keeping with the spirit of the Convention that any such approach be voluntary. This overlaps with, and appears to be a major reason, for the applicant's wish not to approach the Czech authorities. However, as the Tribunal noted at the hearing, the applicant has not claimed to fear persecution from the Czech authorities. Indeed, his submissions to the Tribunal included references to the Czech authorities having provided police clearances for him and his family, for presentation to the New Zealand authorities. The Tribunal considers that, in these circumstances, the applicant's approach to the Czech authorities in Australia for his passport renewal is a relevant 'possible step' and furthermore, not an unreasonable one and not one that would expose him to any harm
127. The Tribunal also discussed with the applicant the legal, documentary and practical requirements for the renewal of his Czech passport, based on information from the Czech authorities in Australia (paragraphs 83-84 above). The applicant did not identify, and there is nothing evident from the Czech regulations or advice, any potential obstacle to the issuance of a new passport.
128. In sum, the Tribunal finds that the applicant has a presently existing right to enter and reside in Spain, and that he has not taken all possible steps to avail himself of that right.

Section 36(4)

(4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.

129. The applicant claims that he has a well-founded fear of Convention-related persecution in all EU countries, including, relevantly for this decision, Spain. He claims to fear persecution on the grounds of his ethnicity, as a Roma, and, according to the latest submission, as a member of a particular social group 'unemployed Roma non-citizens'. During the course of this review, the applicant and his representative referred to possible harm from, amongst others, Spanish security agents, neo-Nazis, gangs and others who might, in the reasonably foreseeable future, be motivated by rising unemployment and racial tensions to target Roma and other minorities. The applicant also claimed that, as a Roma and as an 'unemployed Roma non-citizen', and also taking into account his particular circumstances, he fears economic hardship and denial of access to basic services, amounting to persecutory harm.
130. As noted above, the Tribunal accepts that the applicant is of Roma ethnicity. The Tribunal accepts for the purpose of this decision, albeit with reservations, that there may be a particular social group in Spain consisting of 'unemployed Roma non-citizens'. Country information indicates that Spanish society recognises groups of people who have each of these attributes, singly, and potentially combined. The Tribunal is satisfied that the feared persecution is not the attribute of being 'unemployed', but rather the consequences of being unemployed, Roma and a non-citizen of Spain. The Tribunal notes that the large amount of available material refers to disadvantages and problems for Roma generally (mainly Spanish citizens and long-term residents), and unemployed non-citizens. The particular social group 'unemployed Roma non-citizens' encompasses non-citizens from EU Member States as well as those from outside, and in this sense, it may therefore not be the descriptor that most accurately reflects the applicant's circumstances.

131. The Tribunal has taken into account that the applicant is only 19 years old, that he does not speak Spanish and that he has no social network in that country. It notes also the reference in the post-hearing submission to the applicant's learning disability, relating to reading and writing. The Tribunal has received no medical or more detailed evidence on this matter, and is not satisfied on the limited available material that the applicant suffers any ongoing functional problems. Overall, the Tribunal formed the view that the applicant exaggerated these issues. It does not accept, for instance, that his only language is Czech, given his exposure to English over some 5 years of living in New Zealand and Australia. The applicant's knowledge of at least some spoken English will help him communicate with Spaniards and with members of Spain's large foreign community. Also relevant to the applicant's particular circumstances is that he is young, appears physically fit and has worked in areas such as painting, gardening, couriering and fixing motors.
132. The Tribunal has examined a large volume of material concerning the treatment of Roma in Spain, and is mindful of the following:
- There have been reported incidents of violence against Roma in Spain, and more general complaints of discrimination and verbal abuse. Country information shows that EU and Spanish authorities are conscious of these problems, and have made efforts to document and analyse the situation. Numerous sources, such as the *Economist* (paragraph 103 above), acknowledge the efforts of the Spanish authorities and others to redress these shortcomings, and contrast the situation with that in other (particularly eastern) European countries.
 - On the other hand, Spain's efforts to tackle discrimination and other harm against Roma, or comparisons with other European countries, do not of themselves indicate whether the applicant has a well-founded fear of persecution in that country now or in the reasonably foreseeable future. In this regard, the Tribunal notes concerns that violence and discrimination against Roma appear to be underreported in Spain, in part due to the position of the Roma community, as well as attitudes on the part of the Spanish authorities.
 - The applicant has stressed his Roma ethnicity and his likely status in Spain as an 'unemployed Roma non-citizen'. Although the Tribunal accepts that he has these attributes (including possible unemployment in Spain), it does not consider that these will define his experiences in Spain. For instance, he does not share a common language or experiences with the Spanish Roma or *gitanos*, many of whom live in defined communities and localities. The Tribunal also considers that the applicant's circumstances differ markedly from other non-citizens, including Roma non-citizens, because he is a Czech citizen (and hence an EU national), and a person who has lived in the English-speaking environments of Australia and New Zealand.
133. The Tribunal notes reports of individual instances of abuses against Roma, including physical violence, by members of Spain's security forces, by private security agents, and by neo-Nazis and other gangs. It also takes into account concerns that the number of violent incidents may be under-reported. However, these incidents do not appear to be widespread, and country information as a whole does not indicate that the mere fact of being a Roma in Spain establishes a real chance of persecutory harm. The Tribunal has also considered the applicant's particular circumstances, including as a Roma who is not a Spanish citizen, who may have difficulty finding work, and who falls within the age group in which gangs tend to operate. However, the Tribunal does not accept that the applicant, particularly given his EU

citizenship and his particular circumstances, will attract the interest of law-enforcement officials, private security agents or gangs, or that he will gravitate to any groups of people who might be vulnerable to such adverse attention. Taking into account the country information as well as the applicant's particular circumstances, the Tribunal finds that there is no real chance of the applicant facing physical harm in Spain and accordingly finds that his fear of persecution in the form of physical harm is not well-founded.

134. The Tribunal has had regard to country information regarding the standard of state protection available to Roma in Spain. Reports, including from the EU and Spain, criticise various aspects of the authorities' response to the Roma as a minority, including shortcomings in recognition and reporting of their problems, officials' responses and the resources available to deal with these issues. Other sources – such as *The Economist* (paragraph 103) and the February 2009 report on Spain's involvement in the 'Declaration on Participating in the Decade of Roma Inclusion' (paragraph 104) – suggest a more favourable overall assessment. The Tribunal notes the detailed report of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (see paragraphs 101-102 above), which sets out details of the measures undertaken by the Spanish Government to address these issues, while also frankly admitting that much remains to be done. The Tribunal is satisfied that the measures taken by Spain to improve the situation of Roma constitute an adequate level of protection from Convention-related harm, in the sense explained in the joint judgement of Gleeson CJ, Hayne and Heydon JJ in *MIMA v Respondents S152/2003* (2004) 222 CLR 1. For this additional reason, the Tribunal finds that the applicant does not have a well-founded fear of being persecuted in Spain.
135. Country information indicates that Roma face widespread discrimination and negative perceptions in Spain. This manifests itself in areas such as accommodation, education, employment and in the provision of services by the State. The Tribunal acknowledges that, in the present case, the applicant will face practical challenges if he were to enter and reside in Spain, such as orienting himself on arrival, and finding accommodation and work. This is particularly so given the tough labour market. However, the Tribunal is not satisfied that the applicant faces a real chance of persecution in the form of significant economic hardship and the like for the essential and significant reason of any Convention ground, such as his ethnicity. As noted above, his circumstances differ markedly from other Roma or other non-citizens, in part because he is an EU passport holder, an arrival from an English speaking country and not part of any established, visible community. In the Tribunal's opinion, the applicant's ethnicity or other Convention attributes do not add significantly to the more general challenges that he may face.
136. The applicant and his representative noted country information that Spain is hard-hit by the economic downturn, and that the significant rise in unemployment has created tensions between Spanish citizens and migrants, particularly lower skilled persons who are now being displaced in some job markets. The reports refer overwhelmingly to non-EU citizens, namely from Africa and Latin America. There have also been some reported instances of Romanian citizens - who along with Bulgarians (but not Czechs), do not yet have full EU Member State rights in Spanish law - being persuaded to return home rather than having work contracts renewed. Among the reports that the applicant submitted to the first Tribunal (file 0803578, folio 46) was the reported eviction of several hundred Romanians from a 'gypsy camp' in Albacete, southern Spain, in August 2007. The Tribunal does not accept that the applicant's situation – as a Roma who is a Czech passport holder, a person who is not part of a larger

camp community – is parallel to that of these people, or that the applicant faces a real chance of Convention-related persecution for any such reason.

137. The applicant contends that there is a real chance that he will be unable to find work – because of the poor job outlook, and exacerbated by his ethnicity and other attributes – and that the Spanish authorities will deny him unemployment and social security benefits because of his nationality (ie as a non-Spanish citizen). The Tribunal appreciates the applicant’s concerns. However, it does not consider that his inability to access vocational training amounts to persecution, taking also into account that he has mainly engaged in casual work, such as painting, couriering and fixing motors in New Zealand and Australia. The Tribunal is also not satisfied that the applicant’s possible unemployment in Spain will amount to Convention-related persecution. While it is true that he faces considerable challenges, because of language issues, his lack of local knowledge and his limited skill set, all against a backdrop of a tough labour market generally, the risk of these may be offset by other factors, such as his English, his age and his past work. Furthermore, the Tribunal does not accept that the essential and significant reason for any period of unemployment will be the applicant’s race, his membership of any particular social group (such as ‘unemployed Roma non-citizens’) or any other Convention ground (such as his nationality, as a non-Spaniard).
138. The applicant and [Person B] also pointed out that, faced with possible unemployment, he will be ineligible for social security benefits because he is a non-citizen of Spain and/or because he has not made past insurance contributions. In other words, the lack of income (perhaps together with accommodation and other difficulties) may put him at risk of serious harm, for instance, ‘significant economic hardship that threatens [his] capacity to subsist’, and ‘denial of access to basic services [with a similar impact].’ The Tribunal acknowledges the applicant’s genuine concern about this, and accepts that his eligibility for social security may rely on his nationality (a Convention ground) and/or his past contributions to any insurance fund. However, the Tribunal considers that any period of unemployment will be short-lived, given the applicant’s age and the nature of his past work, and it is satisfied that there are support groups and social networks in Spain that are available to ensure that he does not suffer harm amounting to persecution
139. At the hearing, the applicant claimed that his risk of persecution, particularly economic hardship, would be made worse because his wife would wish to accompany him abroad. The Tribunal doubts that this is so. The applicant’s wife appears to have modest means, and according to recent submissions, wishes to undertake study in Australia. The Tribunal understands the applicant, particularly through his requests for humanitarian consideration of his case, to emphasise the couple’s wish to remain together in Australia and not in any other country. In any event, the Tribunal considers that the presence of the applicant’s wife in Spain does not add to a real chance of the applicant experiencing Convention-related persecution.
140. The representative drew to the Tribunal’s attention, for the first time in the post-hearing submission, that the applicant has a learning disability and that he attended a school for disabled children in the Czech Republic. The disability relates to dyslexia and dysgraphia. The submission states that his mother drew this to the attention of the New Zealand refugee determination authorities. On this limited evidence and for completeness, the Tribunal has considered whether reading difficulties or other problems might exacerbate the applicant’s situation in Spain. The Tribunal is not satisfied, based on the applicant’s account of his past work, that this contributes significantly to the challenges he may face in Spain or puts him at risk of Convention-related persecution.

141. The Tribunal notes the applicant's implied claim that, as a person who has no Spanish and limited work skills and who may have difficulties finding work and accommodation in Spain, particularly in the short term, he may be vulnerable to other forms of harm. However, the Tribunal is not satisfied on the material as a whole that the applicant faces a real chance of non-Convention-related harm, or that the Spanish withhold protection from Roma from such harm, for any Convention-related reason.
142. Furthermore, having regard to the country information set out above (particularly at paragraphs 99-105), the Tribunal considers that the measures taken by Spain to combat general discrimination against Roma constitute an adequate level of protection from Convention-related harm, in the sense explained in the joint judgement in *MIMA v Respondents S152/2003* (*supra*). For this additional reason, the Tribunal finds that the applicant does not have a well-founded fear of being persecuted in Spain.
143. The Tribunal has considered all the country information and the applicant's circumstances cumulatively. It finds that there is no real chance of the applicant experiencing harm amounting to Convention-related persecution in Spain for these reasons. The challenges he may face in Spain are, however, relevant in any humanitarian consideration of his case.

Section 36(5)

- (5) Also, if the non-citizen has a well-founded fear that:
 - (a) a country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;subsection (3) does not apply in relation to the first-mentioned country.
144. Country information indicates that there are very limited circumstances in which the Spanish authorities can expel an EU national from its territory. These relate to the threats to public order, public health and public safety. Spanish documents indicate that these terms are interpreted narrowly to refer to fundamental threats to society, and not trivial threats. The post-hearing submission advised the Tribunal that the applicant has a criminal record in New Zealand. The record relates to 3 traffic offences (relating to speed, drunk driving and driving without a licence) and one offence of disorderly conduct. Relevantly, the New Zealand authorities referred to the convictions as individually 'less than serious', and expressed concern that it was the applicant's 'pattern of irresponsible behaviour' that was of concern. The Spanish material that the Tribunal sent to the applicant specifically states that a criminal record will not, of itself, be enough to invoke expulsion measures. Given the nature of the applicant's offences in New Zealand, his age when they occurred, and his evidence to the Tribunal that he has committed no further offences in Australia, the Tribunal does not accept that the applicant's past convictions will form the basis for any future expulsion.
145. The Tribunal notes [Person B]'s oral submission in which she contrasted the applicant's conduct in New Zealand with his settled family life in Australia. She suggested that, without the support of his wife and family, and with considerable challenges on his own in Europe, the applicant may be at risk of re-offending and facing refoulement if he were judged to be a threat to public security. The Tribunal considers this to be mere speculation. It is not satisfied on the available material, including in particular the applicant's own evidence, that the applicant will conduct himself in such a way as to pose a risk, or be perceived to pose a risk, to Spain's public order, public health or public safety. It is therefore not satisfied that he has a well-founded fear of being refouled from Spain (or any EU Member State) to the Czech Republic on public security grounds.

146. The EU Directive, as well as Spanish legislation and policy, explicitly rule out expulsions for ‘economic purposes’, for instance in the wake of the Global Financial Crisis. The applicant suggested that Spanish law and policy might change in the light of the economic downturn. However, the Tribunal considers this to be mere speculation and, in any event, it finds no EU or domestic legislative basis that would permit such changes, even if the Spanish authorities were to contemplate them.
147. Country information discussed at the hearing indicates that the Spanish authorities would regard as ‘evidently groundless’, and therefore refuse to process, any asylum application from the applicant. However, having found that the applicant has a right to enter and reside in Spain, and that there is no real chance of this right being curtailed by expulsion grounds, the Tribunal considers that there is also no real chance of him needing to avoid expulsion by seeking asylum.
148. The Tribunal finds on the evidence that there is no real chance of the Spanish authorities returning the applicant to the Czech Republic. In these circumstances, it is not necessary for the Tribunal to go on to determine whether the applicant has in fact a well-founded fear of Convention-related persecution in the Czech Republic.
149. The Tribunal notes that this issue may, however, be relevant in any future consideration of the applicant’s circumstances on a humanitarian basis. The Tribunal as previously constituted was satisfied on the basis of country information about the treatment of Roma in the Czech Republic that the applicant had a well-founded fear of Convention-related persecution in that country. The current Tribunal considers that this country information – considered together with the applicant’s having spent his formative years outside the Czech Republic, and his (claimed) lack of immediate relatives there – tends to support such a finding. However, the Tribunal registers some reservations. It considers that the applicant gave misleading information to the Tribunal (and evidently his adviser) about his family having obtained refugee status in New Zealand, and that he avoided revealing to the Tribunal that the NZ authorities examined his family’s circumstances in detail and found them not to be refugees.
150. In sum, the Tribunal finds on the basis of the applicant’s circumstances and the laws of the EU and Spain, that the applicant has a right to enter and reside in Spain and that he has not taken all possible steps to avail himself of that right (s.36(3)); that the applicant does not have a well-founded fear of persecution in Spain (s.36(4)); and that there is no real chance that Spain will return him to the Czech Republic (whether or not he has a well-founded fear of Convention-related persecution there) (s.36(5)).
151. At the hearing, the Tribunal explained that its immediate task was to determine whether there was effective protection in any third State, such that Australia is taken not to have protection obligations towards the applicant. It addressed only Spain in detail. The Tribunal considers it highly likely that the applicant has a right to enter and reside in other EU Member States and that, as a matter of practical reality, he may consider one of these to be a preferable destination compared with Spain. However, the Tribunal finds it unnecessary to consider other possible States in light of its findings with respect to Spain.
152. The Tribunal therefore finds that 36(3) of the Act applies to the applicant, and that the exceptions in s.36(4) and s.36(5) do not. Australia is therefore taken not to have protection obligations to the applicant.

Humanitarian consideration

153. The applicant has requested that, in the event of an unfavourable decision, the Tribunal refer the case to the Department for consideration by the Minister pursuant to s.417 of Act. This gives the Minister a discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so.
154. The applicant has drawn to the Tribunal's attention the following circumstances relevant to the exercise of the discretion (with Tribunal comments):
- The Tribunal accepts that the applicant has a subjective fear of returning to the Czech Republic, and that this may also be well-founded, although the Tribunal finds it unnecessary to determine this in light of the findings above.
 - The Tribunal has found that Australia does not have protection obligations to the applicant because he has a right to enter and reside in other EU countries (in particular, Spain, and probably others). However, the applicant's return to Europe (Spain or elsewhere) may create hardship for his 18-year old Australian wife, his in-laws and his immediate family members in New Zealand.
 - He would also likely face practical challenges in finding work and accommodation in another EU country, given his limited skills set and languages, although – for the reasons set out above – the Tribunal does not consider that these would amount to Convention-related persecution.
 - The Tribunal has received advice of the applicant's criminal record in New Zealand, relating to some offences during 2006 and 2007 that individually, do not appear to have been serious. He claims to have a settled married life in Australia, with no repeat offences. He has presented statements of support from members of his church community in Australia.
155. The Tribunal has considered the applicant's case and the ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' and will refer the matter to the Department.

CONCLUSIONS

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

DECISION

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

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