1114172 [2012] RRTA 442 (20 June 2012)

DECISION RECORD

RRT CASE NUMBER:	1114172
DIAC REFERENCE(S):	CLF2011/50103
COUNTRY OF REFERENCE:	Israel
TRIBUNAL MEMBER:	Karen Synon
DATE:	20 June 2012
PLACE OF DECISION:	Melbourne
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 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 Israel, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2011.

3. The delegate refused to grant the visa [in] November 2011 and the applicant applied to the Tribunal for review of that decision.

4. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act

RELEVANT LAW

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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.

7. 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.

8. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

9. 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.

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

11. 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.

12. 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.

13. 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.

14. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 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.

15. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

16. 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.

Complementary protection criterion

17. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

18. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.

19. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

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

21. The applicant is a [age deleted: s.431(2)] year old woman who is a citizen of Israel. She describes her ethnicity and religion as Jewish. The applicant lists the details of 13 years of schooling in Israel and lists her de facto partner as being "on a [visa with] a prospect of sponsorship by an Australian business". The applicant also lists her father, mother and 3 [sibling] as living in Israel.

22. In response to question 33 asking the applicant if she has ever served in the military for her own country or another country, that was not considered mandatory service, the applicant responded yes and explained:

> Was required to perform military service with the Israeli army from [2007] to [2009].

23. In response to question 30 asking the applicant if she still has military service obligations in her home country, the applicant responded yes and explained:

> I have an obligation to undertake annual military service of one month per year until I am 45 years of age.

Applicant's Travel History

24. The applicant, in response to questions 33 and 25 and 26 of Form 80, provided the following travel history which has been augmented by information provided at the department interview and in her passport which was provided to the department:

- [countries and dates travelled: s.431(2)]

25. In support of her application the following statement was provided:

I was born into a normal working Israeli family. My parents are still married to each other and living in [town]. I have three [siblings].

I attended primary and secondary school in Israel and after completing my secondary schooling was required to undertake two years of compulsory military service in Israel. All Israeli men and woman are required to undertake military service.

I was posted to a border patrol near the Gaza Strip. Each day I had to watch the border and process individuals who came into Israel from the Gaza Strip. The Palestinian people of the Gaza Strip do not have proper medical treatment or other services. They cannot get work and are very poor. Quite often people would be waiting at the border trying to come into Israel for medical treatment or to try and get work. It is true that sometimes people were coming over from Palestine and were caught carrying bombs and other weapons. Most of the time, however, people were just desperate and trying to get into Israel to get to services that they couldn't access in their own area. Often people were desperate and crying. I can remember instances of old men and women or people with children trying to get over into Israel for medical treatment. These people were required to stand up in the hot sun all day waiting to be processed.

I was very young when I did my military service but I felt very uncomfortable about the process. It seemed that we lived in a land where the services were freely available and where the citizens were comfortable. Whilst of course Israeli's face the constant threat of violence from Gaza and other areas, I couldn't help but be disturbed by the great differences in the way we lived our lives.

I also felt very uncomfortable about the attitude of some of my fellow soldiers towards the Palestinian people. The general attitude of the army is very dismissive and rude and abusive of the people that were waiting in line. I didn't like this behaviour at all and I feel that it reflected a mindset in the Israeli military that I am very unhappy about.

I had no choice but to do my military service. If I had refused to undertake the military service I would have been sent to a special prison for objectors.

Since I did my military service I have matured. I have also travelled to other countries and have had the opportunity to look at the situation in the Middle East, arid the role of the Israeli military. I do understand that Israel is surrounded by other countries that are unfriendly, but I do not agree that Israel's approach of forcibly oppressing the Palestines and other nations is the right way. I feel that the threat to Israel and the security of the Israeli's will continue so long as Israel maintains its position and refuses to seek a peaceful solution in Israel.

I have come to the view that I disagree with Israel's position, particularly in relation to the Palestinians and I would not, on moral grounds, again undertake military service in Israel.

I am obliged to undertake one month military service per year until I reach the age of 40. I will not undertake my military service and in these circumstances would be subject to criminal penalties including imprisonment.

I have visited Australia on more than one occasion. I acknowledge that I came into Australia as a visitor in August 2008 and remained until February 2009 and again applied for a Visitor visa in August 2010. I acknowledge that I have visited other countries and have not claimed asylum in those other countries or in Australia until now.

I was not aware that my objection to undertaking military service could constitute an asylum ground. If I had known that, I would have applied for asylum sooner.

I am in a settled relationship with another Israeli. He is an artist and is currently in Australia on a [visa]. I have not included my partner on this application as he is still on a [visa] and he has the option, potentially, to apply for a work visa based on employment with an Australian employer.

26. Accompanying the visa application were the following relevant documents:

- A copy of the applicant's Israeli passport.
- A previous decision of the Refugee Review Tribunal dated [June] 2009 in which the member remitted a matter on a different fact scenario but in which the member found that the applicant, an Israeli citizen, was a refugee on the basis of her conscientious objection to ongoing military service. In this case the member found that she was within the age group within which continuing military service is required.
- Another previous decision of the Refugee Review Tribunal dated [April] 2004 in which the member remitted a matter on a different fact scenario but in which the member found that the applicant, an Israeli citizen, was a refugee on the basis of his conscientious objection to ongoing military service. This decision quoted country information that continuing military service obligations continue for women until age 24.
- A copy of the decision of the Federal Court in *Erduran v Minister for Immigration & Multicultural Affairs* [2002] FCA 814.
- An article published by *Ynetnews*, titled 'IDF Chief: Draft dodgers have no shame' dated 31 July 2007.
- An article published by *Ynetnews*, titled 'Conscientious objector to IDF service jailed' dated 20 February 2008.

- An article published by *Internationale des Rĕsistnat(e)s á las Guerre* titled 'Israel: Conscientious objector Neta Mishli sentenced to 20 days imprisonment'.

- An article published by *War Resisters' International* titled 'Israel: Four women conscientious objector sentenced to second prison terms', dated 14 October 2008.

- An article published by *War Resisters' International* titled 'Israel: WRI affiliate New Profile raided by police', dated 4 May 2009.

- An article from *Challenge – A Jerusalem Magazine on the Israeli-Palestinian Conflict*, titled 'Conscientious Refusal – Those who say no!', dated January-February 2002.

- An article published by *Amnesty International* titled 'Israel and Occupied Palestinian Territories – Amnesty International Report 2008' which details the human rights situation in the Occupied Territories. It does not address the issue of ongoing military service commitments.

27. A submission dated [June] 2009 (sic) was provided in support of the application. It makes the following points:

    - The applicant is unwilling to return to Israel due to her fear of being persecuted for her political opinion. She is opposed to the Israeli government's military policies and will refuse to undertake annual military service.

    - There is no provision in Israeli law to excuse citizens or permanent residents from service on the basis of their conscientious objection.

    - Section 46 of the Defence Service Law states that a failure to fulfil a military service duty is punishable by up to two years imprisonment and attempting to evade military service is punishable by up to five years imprisonment. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) provides that every person has a right to freedom of thought, conscious and religion. The United Nations Committee on Human Rights has reiterated an individual's right to refuse to perform military service in several resolutions. In 1998 the Committee adopted Resolution 1998/77 that stresses a state should not imprison conscientious objectors.

    - In Israel conscientious objectors are seen as traitors and political dissents. Helping someone to evade military service is also punishable by imprisonment. This suggests that while compulsory military service requirements are of a general application, the law is not applied indiscriminately. It was submitted that the law is in fact used to discriminate against those citizens of Israel who have an alternative political opinion to that of the Israeli

government and those citizens who have a genuine conscientious objection to military service. Citizens who object to military service on religious grounds are exempt from service, while citizens who object to military service on political or moral grounds are imprisoned.

- It was submitted that if the applicant returns to Israel and refuses to perform military service, she will be liable to punishment and should the applicant be imprisoned, there is a real chance that she will be treated more harshly in detention due to her political opinion and the fact that she will be seen as an opponent to Israeli policy in the Occupied Territories.

- The applicant undertook her military service as required between 2007 and 2009 following completion of her secondary schooling. She remains liable to be called to undertake reservist duty on an annual basis. She claims that she is not willing to undertake further military service in the future because of her political opinion

- In *Erduran v Minister for Immigration and Multicultural Affairs* Grey J found: "[f]orcing a conscientious objector to perform military service may itself amount to persecution for a convention reason". In *Minister for Immigration, Local Government and Ethnic Affairs v Che Guang Xiang* the Full Federal Court found "[d]enial of fundamental rights or freedoms, or imposition of disadvantage by an executive act, interrogation or detention for the purpose of intimidating the expression of political opinion will constitute persecution".

- The applicant's conscientious objection to military service is an expression of her political opinion. The applicant fears persecution on the basis of her political opinion. The applicant also fears persecution on the basis of her membership of a particular social group, being individuals in Israel who object to military service on the basis of conscience.

- Each year conscientious objectors are imprisoned in Israel.

- There is a line for authority that refusal to undergo military service on the grounds of conscientious objection may give rise to a well-founded fear of persecution for a Convention reason: *Minister for Immigration and Multicultural Affairs*; *Erduran v Minister for Immigration and Multicultural Affairs*; and the Refugee Review Tribunal No3/47474.

- There is a real risk that the applicant faces serious harm due to her political opinion should she be required to returned to Israel.

Department Interview

28. [In] May 2011 the applicant was interviewed by the department delegate. The Tribunal has listened to a recording of this interview which is filed on the department file at f135. The major issue raised/discussed were:

    - Her mother is a teacher and her father owns his own company;

- She undertook military service from 2005-2007 in a [combat unit] which had [number deleted: s.431(2)] female members in her small group.

- After 2007 she was instructed that she will be required for reserve duty for a month every year and she undertook reserve duty 3 times. The last time she was meant to do reserve duty she was already in Australia.

- During her compulsory military service the applicant worked as a guard, guarding the main gate and checking the female Palestinians who came into Israel. She checked they had no weapons. She did the same work during her reserve duties at the same camp.

- The applicant said that when she was there on reserve duty she could see the degrading way the soldiers were treating the Palestinians and they were cruel to them and she did not want to be a part of that. For example they did not want to let a heavily pregnant woman pass and "they were pestering her all the time" Another example is of a very old man who wanted to come to a hospital and they delayed and delayed and did not let him pass.

- Asked if she spoke up at the time the applicant said she tried to speak about it but "you don't have any say in what is going on".

- The applicant said her father continued to do military reserve duty until he reached the maximum age. Her mother also did this but was not in a combat unit. Her two [siblings] have done their service; her [other sibling] is still in high school. Her [siblings] continue to serve in the reserves but do not have dangerous duties.

- The applicant said that when she came to Australia she could see that you could live a much better life and you could live without this war and this feeling of hatred. She said it is very dangerous in Israel with a lot of shooting and she understood that they [the Palestinians] are the victims of the situation and, as an older woman she did not want to be part of this whole system. She does not want to live in Israel, be part of war or live in the system. It is scary and dangerous to live there and she does not want to be part of the war. The applicant said she has no control; she has to go to the reserve and had to do this service; she didn't want to but she could not stop it; she could not say no and if she said no they would take her to jail.

- The applicant said she was not part of any of the resistance groups in Israel but she feels personally that she cannot continue. She said she has told close friends and her partner and her cousins that she does not want to

continue but no one in the army because there is no one there she can talk to. The applicant said her father is "very military" and there is pride in being associated with the army. Her mother was pleased because she worried for her safety but her father thinks she should not be afraid. The applicant said her [siblings] agree with her. They do different service.

- There is no possibility the applicant can apply to do service elsewhere and she wrote a letter to the person in charge in 2008 and said she did not want to do it anymore and that she did not believe in this war. He said in response "this is the army and you don't have any choice". He laughed and said if you don't do it you go to jail.

- The applicant continued her service duty in 2008, 2009 and 2010 because she did not have any other option. She did not declare herself to be a conscientious objector because the (inaudible) have not been in the army at all whereas she was trained for 2 years and they have made the effort; they have trained her so they want her and they will not accept that.

- The applicant said she was aware of the organisations that oppose conscription and highlight the situation for the Palestinians and she did write a letter to one of the newspapers. She could not remember the name of the newspaper and a friend asked her to write the letter. She has never joined one of these organisations. Asked if she has heard of the organisation 'Courage to Refuse', the applicant said yes and this organisation refers to children who are 17-18 before the army. The applicant has also heard of the organisation 'Breaking the Silence' but has had no contact with anyone in these organisations saying "it was very complex".

- In response to country information in relation to reserve duty for women that states that women are only required until the age of 24, the applicant said "that's not true" and women are required until the age of 40 "or something like that" unless you have children or are pregnant. She said her [sibling] is [age] and is still doing it and that after you have kids you have the choice as to whether you want to go or not.

- Asked if she had applied under the Defense Services Law (Article 39C and Article 40) for an exemption to register her objection and to be exempted from further service the applicant said she did talk to her boss and he said that because she was in an important unit she had no chance that she would win that case so there was no point in going for it.

- The applicant said she did not apply for protection in any of the other countries she has visited because she was only in those countries for up to a week and it was not relevant. Pressed on this by the delegate and asked why she did not seek protection soon as she was in a safe third country the applicant said the delegate was right but when she left before it was just for a trip aboard and she went abroad properly only when she came here for the last eight months. The applicant said that it was only when she came here she could see that she could live a life without war.

- The delegate noted that she had been here first in 2008 and for a second trip in August 2010 and asked why she did not apply on either of these trips. She said she only stared to think about it on this trip. The delegate noted that she has been to Australia on 3 occasions and she had ample opportunity on either one of her first two visits to Australia to apply. Asked why she did not apply for protection in [Country 1] the applicant said "I don't think the life in [Country 1] is a good life, like here".

- The applicant said she will be arrested at the airport on her return because she did not do her reserve duty.

- The applicant said she is now more mature and more determined and understands the situation much better now and today she has more courage to do things according to her belief system that she could and would not have had the courage to do when she was younger. She said her parents and friends are not in the same situation and she could not bring herself to make that decision before hand and now that she does not have her family and friends' influence while here in Australia she has the courage to make the request. The applicant said that if it was up to her she would not be doing service duty because she did not believe in this war.

The Primary Decision

29. [In] November 2011 the delegate refused the protection visa application. In the decision the delegate noted that the applicant last arrived in Australia [in] December 2010 and applied for a protection visa [in] March 2011, 2 days before her visitor's visa was due to expire. The delegate found, in relation to the applicant's claim to being a consciousness objector who would refuse to undertake further reserve service in Israel, that given country information indicates that women are only required to continue reserve army training until age 24, the applicant would not be required to undertake reserve duty in the future and therefore would not face persecution on her return to Israel. In relation to the applicant's claim that she opposes the Israeli government's

policies toward the Palestinians in Israel and for this reason does not want to live in Israel, the delegate found that she would not face persecution in Israel on account of her political opinion.

Application for Review

30. [In] December 2011 an application for review was lodged. The question which asked if the applicant required an interpreter was answered in the negative.

31. [In] April 2012 the applicant was invited to attend a hearing [in] May. In that letter she was informed, in bold, 'Interpreter – please advise immediately if required'.

32. Despite the applicant being represented no response to the hearing invitation was received by the Tribunal but at 4pm the afternoon before the hearing scheduled for a 10am the following day the applicant telephoned to request an interpreter; that is almost 8 weeks after the hearing invitation had been sent by facsimile to her [adviser].

33. [In] May 2012, approximately 15 minutes before the scheduled hearing commencement, the Tribunal received a "courtesy phone call" from the applicant's representative to say that she would not be attending the hearing and that she understood the applicant had requested an interpreter. At 11.05am, over an hour after the hearing was scheduled to commence, the Tribunal received an email to say that the applicant would be attending the hearing. This advice was received almost 8 weeks after the hearing invitation was sent and after the hearing was scheduled to commence. The representative also advised "I have not been retained by [the applicant] to represent her at the hearing".

34. Because the applicant's [representative], made no contact with the Tribunal in the almost 8 weeks after the hearing invitation was sent and because the applicant herself telephoned and asked for an interpreter at 4pm the evening before the hearing, the hearing had to be postponed until 1.30pm until the services of a Hebrew interpreter could be secured. This information and the fact that the hearing would be postponed until the afternoon when an interpreter would be secured was conveyed personally to the applicant by the hearing unit co-ordinator when she arrived for her scheduled 10am hearing. The applicant asked if the hearing would be cancelled and she was told no and that she was welcome to wait in the reception area until the afternoon or return by 1pm. The applicant asked if we (the Tribunal) would like her to proceed in English and she was told no, that as she had requested an interpreter one was then being organised. The applicant presented herself at approximately 1pm at the Tribunal reception area and was told that she should take a seat in the reception area and wait until she was called for the pre hearing preparation. At 1.20pm the hearing officer went to the reception area to greet the applicant but she could not be found. Several searches of the

Tribunal's public areas were unsuccessful and two calls to the applicant's mobile telephone number were unanswered. The Tribunal waited until 2.30pm that is an hour after the scheduled stating time of 1.30pm, and then dismissed the interpreter and recorded the applicant as a no show.

35. The applicant did not appear before the Tribunal on the day and at the time and place at which he was scheduled to appear and has not contacted the Tribunal to explain her failure to attend in the almost 3 weeks since the hearing. In these circumstances, and pursuant to s.426A of the *Act*, the Tribunal has decided to make its decision on the review without taking any further action to enable the applicant to appear before it.

FINDINGS AND REASONS

36. On the basis of the applicant's Israeli passport, a full copy of which was provided to the department with her protection visa application, the Tribunal finds that the applicant is a citizen of Israel and has assessed her claims against Israel.

37. As the applicant has not availed herself of the opportunity to attend a hearing to give evidence and present arguments, the Tribunal has before it only the information contained in the written material and the recording of her department interview from which to make a determination. The applicant provided no additional information or submissions to the Tribunal

38. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR at 596, *Nagalingam v MILGEA* (1992) FCR 191 and *Prasad v MIEA* (1985) 6 FCR 155 at 169-170).

39. The applicant's central claim is that she fears persecution in Israel on account of her conscientious objection to performing ongoing reserve duty. The applicant made the following specific claims in her protection visa application, her written statement to the department, in submissions provided by her representative and in her department interview:

- That she was required to perform military service with the Israeli army from July 2007 to July 2009;
- That she has an obligation to undertake military service of one month per year until she is 45;
- That she was posted to a border patrol near the Gaza strip and was very uncomfortable about the attitude of some of her fellow soldiers towards the Palestinian people;
- That she has come to the view that she disagrees with Israel's position, particularly in relation to Palestinians and would not, on moral grounds, again undertake military service in Israel;
- That she is opposed to the Israeli government's military policies and will refuse to undertake annual military service;
- That if she returns to Israel and refuses to perform military service, she will be liable to punishment and should the applicant be imprisoned, there is a real chance she will be treated more harshly in detention due to her political opinion and the fact that she will be seen as an opponent to Israeli policy in the Occupied Territories;
- That she fears persecution on the basis of her political opinion;
- That she fears persecution on the basis of her membership of a particular social group, being individuals in Israel who object to military service on the basis of conscience;
- That when she was on reserve duty she could see the degrading way the soldiers were treating the Palestinians and they were cruel to them and she did not want to be a part of that;
- That she tried to speak about it but "you don't have any say in what is going on";
- That she does not want to live in Israel, be part of war or live in the system;
- That she wrote a letter to the person in charge in 2008 and said she did not want to do it anymore and that she did not believe in this war. He said in response "this is the army and you don't have any choice". He laughed and said if you don't do it you go to jail;

- That she talked to her boss who said that she had no chance that she would win that case so there was no point in going for it";
- That she continued her reserve duty in 2008, 2009 and 2010 because she did not have any other option;
- That she wrote a letter to a newspaper of an organisation the opposes conscription highlights the situation of the Palestinians; and
- That she will be arrested at the airport on her return because she did not do her reserve duty.

40. The applicant was advised, in the hearing invitation that the Tribunal had considered the material before it but was unable to make a favourable decision on this information alone. Had she attended the hearing the Tribunal would have asked a number of questions about her claim to be a conscientious objector and her refusal to undertake further reserve duty. The Tribunal would also have asked the applicant if she believes she would be persecuted in any way on account of the political opinions she holds in relation to the Palestinians and the Occupied Territories. The Tribunal would have asked why she believes she will be arrested at the airport on her return because she did not do her reserve duty. The Tribunal would have asked the applicant to explain more about her political views and the ways in which she has expressed these in the past and in particular would have asked questions about her claim to have written to the newspaper of an organisation that opposes conscription and highlights the situation of the Palestinians. The Tribunal would have asked the applicant why and in what ways she thinks she would be treated more harshly should she be detained, due to her political opinion and that fact that she will be seen as an opponent to Israeli policy in the Occupied Territories. The Tribunal would have given the applicant the opportunity to provide the details that are lacking in her claims and would have sought more specific information about why she claims to fear harm in Israel.

41. The Tribunal would have liked to have further information from the applicant concerning all aspects her claims. The Tribunal would have sought to test the factual basis of the applicant's claims to be a conscientious objector in light of her stated previous initial duty of 2 years duration and her subsequent 3 occasions of reserve duty in order to be able to assess whether there is a real chance that she might attract persecutory treatment by the authorities in Israel should she return in the reasonably foreseeable future.

42. The Tribunal would also have asked the applicant why she did not seek protection on either of her previous two visits to Australia, while in [Country 1] in 2010 or while in [Western Europe] in 2009. The Tribunal would have put to the applicant that, subject

to her comments, her failure to seek protection at the earliest opportunity and just 2 days before her visitor visa expired undermines her claim to be a genuinely in need of protection.

43. Finally, in seeking to establish if the applicant had any claims for complementary protection not evinced on the evidence before it, the Tribunal would have asked the applicant if there was any other reason, other than those already articulated in the evidence before it, as to why she feared returning to Israel.

44. Because the applicant elected not to attend a hearing, the Tribunal was unable to question her on any of these matters, leaving her claims unclarified and the Tribunal's questions unanswered.

45. On the basis of the limited information before it and in the absence of the ability to question the applicant the Tribunal makes the following findings:

Previous military service

46. The Tribunal accepts that the applicant was required to perform military service with the Israeli army from [2007] to [2009] as this is consistent with country information detailed in the delegate's decision. The Tribunal also accepts that the applicant continued her reserve duty [from 2008 to 2010] because she did not have any other option. Again this is consistent with the county information contained in the delegate's decision that women are required to perform reserve duty until the age of 24 and the applicant was aged under 24 in 2008, 2009 and 2010. The Tribunal is also prepared to accept that the applicant was posted to a border patrol near the Gaza strip and was very uncomfortable about the attitude of some of her fellow soldiers towards the Palestinian people and that when she was on reserve duty she could see the degrading way the soldiers were treating the Palestinians and they were cruel to them and she did not want to be a part of that. The Tribunal is unable to accept, on the basis of the limited information before it and in the absence of the opportunity to question that applicant that she tried to speak about it but was told "you don't have any say in what is going on" For the same reasons the Tribunal is unable to accept that the applicant talked to her boss who said that "she had no chance that she would win that case so there was no point in going for it" or that the applicant wrote a letter to the person in charge in 2008 and said she did not want to do it anymore and that she did not believe in this war and that her boss said in response "this is the army and you don't have any choice" and that he laughed at the applicant and said if you don't do it you go to jail. In order to accept these claims the Tribunal would have needed much more information about the name of the person the applicant spoke to, and wrote to, when she claims to have done these things and who, if anyone was with her when she received these responses. The

Tribunal would have asked if she had a copy of the letter and also if she formally lodged a complaint with anyone.

Future reserve duty

47. The Tribunal does not accept, based on the county information detailed in the delegate's decision that the applicant would be required to perform ongoing reserve duty [after age 24]. On this basis the Tribunal does not accept the applicant's claim that she has an obligation to undertake military service of one month per year until she is 45. It follows that her claims that she is opposed to the Israeli government's military policies and will refuse to undertake annual military service is not accepted and nor does the Tribunal accepts that that on moral grounds the applicant would not undertake military service in Israel. It also follows that the Tribunal does not accept that the applicant, should she return to Israel and refuse to perform military service will be liable to punishment and that should she be imprisoned for this refusal there is a real chance that she will be treated more harshly in detention due to her political opinion and/or the fact that she will be seen as an opponent of Israeli policy in the Occupied Territories.

Arrest at airport because she did not do reserve duty

48. The Tribunal does not accept the applicant's claim that she will be arrested at the airport on her return because she did not do her military service on the basis of there being no evidence presented to support this claim. In none of the written material the applicant provided to the department was this claim supported. If the applicant had chosen to appear before it, the Tribunal would have asked her detailed questions about this claim and on what grounds she bases this fear.

The applicant's political opinions

49. That Tribunal accepts that the applicant may have come to the view that she disagrees with Israel's position, particularly in relation to Palestinians and that she does not want to live in Israel; be part of the war or live in the system. However, relying upon the country information detailed in the delegate's decision that Israel is a parliamentary democracy with an active multi-party system and that Israeli law allows for freedom of speech and freedom of the press and that the government generally respected these rights, the Tribunal does not accept that the applicant will suffer serious harm amounting to persecution for these political views. It follows that the Tribunal does not accept that the applicant fears persecution on the basis of her political opinion or that she fears persecution on the basis of her membership of a particular social group, being individuals in Israel who object to military service on the basis of conscience. The Tribunal does not accept, on the basis of the limited information before it including that during her department interview the applicant could not even remember the name of the

publication, that she wrote a letter to a newspaper of an organisation the opposes conscription highlights the situation of the Palestinians.

50. Finally, the Tribunal has considered the information that the applicant provided to the department in support of her protection visa application detailed above at paragraph 26. The Tribunal notes that both the previous decisions of this tribunal provided by the applicant were decided on different fact scenarios and also notes that previous decisions of the tribunal are not binding on subsequent decision makers. The Tribunal also notes the authority cited that conscious objectors may, in some circumstances, be members of a particular social group but finds that this authority is not relevant in the case before it where the Tribunal has found that the applicant has no continuing reserve duty. The Tribunal has also considered the numerous articles provided in relation to conscientious objectors some of whom have been imprisoned in Israel but finds that this information is not relevant to the case before it as the Tribunal has found that the applicant has no continuing reserve duty requirements. The Tribunal also considered the information from Amnesty International about human rights abuses in the Occupied Territories but finds that this is not relevant to the claims before it as the Tribunal has already found that in Israel's multi-party democracy the applicant would not face a real chance of serious harm amounting to persecution for her political views and did not accept that she will be imprisoned for refusing to undertake further reserve duty and therefore did not accept her claim that she would be treated more harshly in detention due to the fact that she will be seen as an opponent to Israeli policy in the Occupied Territories

51. Therefore, on the basis of the limited evidence before it, the Tribunal is not satisfied there is a real chance that the applicant will be persecuted for a Convention based reason if she returns to Israel now or in the reasonably foreseeable future. The Tribunal is not satisfied, on the evidence before it, that the applicant has a well-founded fear of persecution within the meaning of the Convention. Further, again on the basis of the evidence before it, the Tribunal has no substantial grounds for believing that the applicant will suffer significant harm if she returns to her country of nationality, Israel.

CONCLUSIONS

52. 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).

53. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

DECISION

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