

1010258 [2011] RRTA 711 (15 August 2011)

DECISION RECORD

RRT CASE NUMBER: 1010258

DIAC REFERENCE(S): CLF2010/84619

COUNTRY OF REFERENCE: United Arab Emirates

TRIBUNAL MEMBER: Brook Hely

DATE: 15 August 2011

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decisions not to grant the first, second, third, fourth, fifth and sixth named applicants Protection (Class XA) visas.

The Tribunal does not have jurisdiction in this matter in relation to the seventh named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of the United Arab Emirates (UAE) in the case of the first, third, fourth, fifth, sixth and seventh named applicants, and a citizen of the Philippines in the case of the second named applicant, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] June 2010 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] June 2010. Only the first named applicant (hereinafter, 'the applicant') applied for the protection visa on the basis of being a refugee in his own right. The second, third, fourth, fifth and sixth named applicants all applied for the protection visa on the basis of being a member of the applicant's family unit. No application was made to the Department in relation to the seventh named applicant, who was not born until after the delegate's decision. The delegate decided to refuse to grant the visas [in] October 2010 and notified the first, second, third, fourth, fifth and sixth named applicants of the decision and their review rights by letter dated [on the same date].
3. The delegate refused the visa application on the basis that the first, second, third, fourth, fifth and sixth named applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] November 2010 for review of the delegate's decisions.

JURISDICTION

5. The Tribunal's jurisdiction arises if a valid application is made under s.412 of the Act for review of an RRT-reviewable decision, unless it is a decision in relation to which the Minister has issued a conclusive certificate: s.414 of the Act. Section 411 sets out the various decisions that are RRT-reviewable decisions. They include a decision to refuse to grant a protection visa and a decision to cancel a protection visa.
6. 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 first, second, third, fourth, fifth and sixth named applicants have made a valid application for review under s.412 of the Act.
7. In relation to the seventh named applicant, the Tribunal finds on the evidence before it that she was born on [date deleted: s.431(2)], which is after the date of the delegate's decision [in] October 2010. She was also not included in the original application lodged with the Department and was not named as an applicant in the decision record of the delegate. Under r.2.08, a child born to a non-citizen after a primary visa application is made, but before it is decided, is taken to have applied for a visa of the same class as their parent at the time they were born. The child's application is taken to be combined with the non-citizen's application on the basis of being a member of the family unit of the primary application. The key phrase in r.2.08 is 'after the application is made, but before it is decided' However, in *MIMA v Lim* (2001) 112 FCR 589, the court interpreted the phrase 'after the application is made but before

it is decided' in the former r.2.08E to mean before it is decided by the Minister or his delegate. The Tribunal acknowledges that this decision was not directly related to the situation arising in the present matter, but rather arose in the context of an applicant who had not married a prospective spouse before a primary decision for a valid application for a subclass 300 (prospective spouse) visa was made. Nevertheless, the Tribunal accepts that this decision supports the broader contention that children born after a primary decision by the Minister or his delegate are not included in their parent's application for the purposes of r.2.08.

8. Given the above findings, it follows that no primary application has been made in relation to the seventh named applicant. The Tribunal therefore finds that no decision has been made to refuse the seventh named applicant a Class Protection (Class XA) visa. It follows that there is no reviewable decision in relation to the seventh named applicant before the Tribunal to review. Accordingly, the Tribunal finds that it does not have jurisdiction in relation to the seventh named applicant.

RELEVANT LAW

9. 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.
10. 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).
11. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
12. 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'

13. 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.

14. 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.
15. 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.
16. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

22. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

23. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Application to the Department

24. [In] June 2010, the application under review was lodged with the Department. As noted earlier, the first named applicant (the applicant) was the primary applicant of the application, with his wife (the second named applicant) and children (the third, fourth, fifth and sixth named applicants) included in the application as members of his family unit.
25. The applicant set out the nature of his claims for protection in his application form. Whilst the details of those claims are very difficult to follow, the decision record of the delegate contains a convenient summary of the applicant's claims as they emerged during the Department interview, as follows:

The applicant claims that he left his country as the military have issued an arrest warrant against him as he is said to have accused the government of protecting terrorists/Muslim extremists. The applicant claims that he was talking at work about the governments handling of the situation where drug users are released from jail and ignored by the government and in the end are hunted by an extreme religious group, who have a big mosque and prepare people to go to Pakistan and Afghanistan for Jihad. The applicant claims that he expressed his opinion without knowing that one of his colleagues was a spy, who reported against him.

The applicant claims that on issues of politics or Islam you do not have the right to speak against it in his country and there is no justice, and he fears life in prison or being hanged. The applicant claims that if he is not in jail the 'extremely religious Muslim(s)' will hunt him down as they believe they are always right and take justice into their hands. The applicant claims that he is willing to given [sic] the army intelligence information about activity at the mosque, but is seeking protection in Australia so he can be safe with his family from the UAE government and the Muslim extremists.

The applicant was interviewed in relation to his claims on [date] October 2010, and the interview recording is found on the DIAC file relating to the applicant. During the interview the applicant claimed that during his work with the [City A] coast guard he had witnessed corruption and had reported this to senior officers, but not action was taken. During the interview the applicant advanced new claims that he has not been a practising Muslim since 1984 and has attended church on several occasions in the Philippines and in Australia, and claims that he has requested he be baptised but the church had refused. At interview the applicant also submitted several printouts of online news reports, and printouts from Google maps in relation to [City A].

26. Copies of additional documents were provided to the Department in support of the application, including identity documents of the visa applicants and marriage certificate in relation to the marriage of the applicant and [Mrs A, the second named applicant].
27. [In] October 2010, the applicant wrote to the Department describing his living and financial situation in the UAE and attaching various further documents, including: power of attorney from his mother to him in relation to his father's estate; evidence of ownership of various assets in the UAE, including cars, property and a boat; identity documents of two domestic helpers who helped to raise his children; visa stamps permitting travel to the USA, UK and Australia; and documents relating to an apartment he owned in the Philippines; documents relating to the private education of his children at the '[school]' in the UAE.
28. The applicant also subsequently provided print-outs from Google Maps of the [port] where he previously worked as a coast guard; several online articles of country information regarding persecution of Christians, Islamic extremism, and regarding the UAE coast guard and police; four further letters to the Department dated [in] October 2010 regarding his interest in Catholicism and how he was able to escape the UAE despite being wanted by the coast guard; business card of the Archdiocesan Director of Catholic Mission; screen-print from the website of the Philippines Bureau of Immigration website; and certification from the Philippines embassy in Australia confirming that citizens from the UAE are not eligible for the 13(a) permanent residence visa category and that, whilst the President of the Philippines is empowered to admit refugees, the relevant power had not been used since the Vietnam War era.
29. [In] October 2010, a delegate of the Minister refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention. The delegate did not accept the applicant's claims regarding problems in the workplace that led to him fleeing the UAE and was not satisfied that he faced a real chance of serious harm by Islamic extremists generally in the UAE. The delegate accepted that the applicant did not have effective protection in a third country (namely, the Philippines), under s 36(3) of the Act, although noted that his failure to seek protection as a refugee during his 10 month stay in the Philippines prior to arriving in Australia undermined his claim to fear returning to the UAE.

Application to the Tribunal

30. [In] November 2010, the applicants applied to the Tribunal for review of the delegate's decision.
31. Copies of further documents were provided to the Tribunal in support of the application, including: detailed written submission of the applicant's agent responding to the findings of the delegate; detailed written statements of the applicant and [Mrs A] regarding events between [between Date 1 and Date 3, over six days in] July 2009; letter from the applicant's mother in the UAE regarding visits by UAE police and security forces seeking the applicant; report from [Organisation C], dated [in] February 2011, regarding the applicant's mental state; marriage documents in relation to the applicant's marriage to [Mrs A] in [City B]; and further identity documents in relation to the applicant's children.

Tribunal hearing

32. The applicants appeared before the Tribunal [in] February 2011 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's wife, [Mrs A] (the second named visa applicant). The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicants were represented in relation to the review by their registered migration agent. The representative attended the Tribunal hearing.

Personal background

33. The applicant confirmed that his original application form was completed by himself and his wife. He confirmed his education history, as set out in his application form. He gave evidence that, after completing high school in [year deleted: s.431(2)], he worked at [City B] Airport in a flight information role. In 1990 he then travelled to Canada, where he remained as a tourist for a year. He then returned to the UAE and worked as a [technician] in the navy for three years. He then resigned from this employment and managed 11 properties owned by his father. His father died in 1993 and his mother gave him power of attorney to manage their estate. In 1999 he commenced work with the UAE coast guard, where he remained for 11 years prior to his departure from the UAE on [Date 4] July 2009.
34. The applicant confirmed that he has lived in [City A], UAE. He and his wife and children had lived on the 2nd floor of a building they had built, and his mother lived on the 1st floor, together with his disabled sister. He confirmed that he had four children at the time he left the UAE and has subsequently had a fifth child. He also has three sisters and five brothers who all live in [City A], UAE. He explained that one of his sisters lives a block away and all of his brothers live in the city, approximately 30-45 minutes away. He explained that all of his brothers work as privates in the military, aside from his older brother who is not working.

Previous international travel

35. The Tribunal asked the applicant about previous international travel. He stated that he travelled to Australia as a tourist in 2006. He and his family had originally intended to spend two weeks on the Gold Coast, but had to cut their holiday short after only two days due to his wife's father suffering from a medical emergency which required them to fly to the Philippines. He has previously done other international travel, including to London and other parts of Europe, the Philippines and Singapore. He also previously obtained a Tourist Visa for the United States and the United Kingdom, but never ultimately used these visas as he changed his holiday plans. For example, he obtained a visa for the United Kingdom in 2008, but then they changed their holiday plans and went to Singapore instead. He has never previously applied for a Protection Visa. When asked why not, he stated that he has never needed to because, prior to [Date 1] July 2009, he had not experienced any problems.

Employment with the UAE coast guard

36. The Tribunal asked the applicant about the details of his employment with the UAE coast guard. He stated that he was the duty officer responsible for [shipping] at [a port] in [City A]. He was in charge of inspecting ships, picnic boats and fishing boats and alerting soldiers if he noticed something out of the ordinary. He stated that there were [several] members of his team and he was responsible for supervising them. He explained that he was not more senior to these other officers, but he had earned the confidence of the Major of the port so had been

assigned this additional responsibility. He stated that this particular Major was promoted approximately three months before the applicant left the country and became the Deputy Commander in charge of the entire coast guard of all seven States of the UAE. The applicant also gave evidence that there were [number deleted: s.431(2)] people in total working at [the port] on any given day, with different teams working on different days.

The incident on [Date 1] July 2009

37. The Tribunal asked the applicant to explain the problems he experienced in the UAE which led to him fleeing the UAE and seeking protection in Australia. The applicant gave evidence that he started work at 7am on [Date 1] July 2009. At approximately 8am, he was sitting with six fellow officers having a tea break. During this tea break, they were discussing their complaints about the increasing regulation and fees applicable to fishing boats, which was a matter of interest to them all as they were all non-professional fisherman in addition to their roles on with the coast guard. The conversation then moved on to a discussion about people smugglers. After approximately 30 minutes, the applicant began venting his frustration about the government's handling of young people and how they are prosecuted by the authorities and then get on drugs and subsequently join the Islamic extremist groups. He also voiced his belief that the Islamic extremists were operating out of a particular mosque funded by the government, which he explained was well known but no-one speaks about it. He stated that he became increasingly angry and expressed the view that if it was up to him he would have destroyed that mosque. He gave evidence that his rant lasted approximately 10 minutes, during which none of his colleagues spoke. At the end of his rant, one of his colleagues stood up and said it was time to go back to work.
38. Shortly after this meeting, he received a call from management asking him to report to headquarters. He travelled by his own car, which took approximately 50-60 minutes. When he arrived at the headquarters, he was directed to go and see the Major. As he entered, he saw that the Major had been speaking with the military intelligence officer and another soldier, which made him nervous. When he met with the Major, the Major yelled at him for approximately 15-20 minutes, saying such things as 'Who do you think you are to speak about the authorities?' and 'How dare you say you wish you could knock down a mosque, are you an infidel or a Muslim?' When asked whether he said anything in his defence, he stated that he is a soldier and is not allowed to answer back to a Major. The Tribunal asked whether the Major made any comment about what the consequences were going to be for this matter. The applicant stated that he did not. He stated that the Major does not have authority to jail him, as he would have to seek instructions from high command. The Tribunal noted that it could seem unusual that his isolated rant to his colleagues could lead to such serious consequences as the applicant had claimed in his statement. The applicant gave evidence that he was enraged when he was speaking with his colleagues, but because he is in a Muslim country where Sharia law applies, it is forbidden to say such things and he would be considered an infidel.
39. The Tribunal asked the applicant how his meeting with the Major concluded. The applicant gave evidence that the Major directed him to remain on the barracks. He agreed to do so, saluted and then left the Major's office. As he left the office, he overheard the Major directing a Lieutenant to type up a detention order for him to sign. The applicant pretended that he was going to the bathroom, but instead made his way quickly to the main gate. He then drove his car home. He called a soldier he knew who was in charge of incoming and outgoing records to ask what had happened. This soldier told him that they were preparing a

long report to be sent to the coast guard head office. He also learned that the soldier at the main gate had been punished for allowing him to leave.

40. When asked what happened when he went home, the applicant gave evidence that his wife was at home but his children were still at school. He immediately began making plans to leave the country and booked a one-way flight over the internet. He did not disclose to his wife what had happened at work and simply told her that he had 10 days of leave and was intending to take a holiday. The applicant also confirmed that he had already at this stage obtained an Australian Visitor Visa. When asked why he had not yet travelled to Australia on that visa, he stated that they had not had any problems prior to then and he was waiting for his children to finish school around the end of July before travelling to Australia. The Tribunal put to the applicant that it was its understanding that the school term would have already ended in June for the summer break. The applicant confirmed that his children were still at school at this time.

Departure from the UAE

41. The Tribunal asked the applicant about the arrangements he made to depart the UAE. He stated that he booked a flight with Emirates Airlines to fly to the Philippines on [Date 2, four days after Date 1] July 2009. When asked why he booked his flight for that date, he stated that on [Date 3] he received a call from a colleague in the coast guard telling him that orders had been issued accusing him of criticising the government of embracing Islamic fundamentalists and that he would be referred to a Sharia court for saying things critical of Islam due to his comments that he wished he could knock down the local mosque. This colleague told him that he would try and keep the order hidden from the Major, to give him additional time to leave the country. The Tribunal asked why he believed he had until [Date 3] July 2009 to leave the country at the time he booked his flight. He stated that on [Date 1] July 2009 he did not have any idea what could happen and it was not until [Date 3] July 2009 that he received this call from his friend telling him that the orders had been issued so he had to do something. The Tribunal noted that this did not explain why he allowed himself until [Date 3] July 2009 at the time he booked his flight. He stated that he didn't have anything certain at that point and didn't know that they were serious in arresting him. He added that he also needed to get some money. The Tribunal asked when he became aware that the coast guard was serious about its intention to arrest him. He stated that this was on [Date 3] July 2009 when he spoke with his friend.
42. When asked what he was doing between [Date 2 to Date 3] July 2009, the applicant gave evidence that on the [second day] he went to the bank and withdrew his savings and then went home. On the [third day] he sold two of his four cars at a dealership. On [the fourth day, Date 2] he received the news from his friend at work that the orders had been issued. He then went to [City A] Airport to speak with a friend who worked there, to check if his name had been placed on a wanted list. When his friend asked him why he wanted to know this, he told his friend that he was about to go on holiday and wanted to make sure his name was not on the list due to a trivial matter such as an unpaid telephone bill. His friend told him that his name was not on the list.
43. The Tribunal asked the applicant where he was living between [Date 1 and Date 4] July 2009. He stated that he was at home, although was living in fear. He stated that the head office was calling him but he did not answer the phone. The Tribunal noted that it could seem unusual that the authorities did not come looking for him at his house. The applicant gave evidence that he is considered a soldier, not a civilian, so they would have to wait until they received

orders from headquarters in [City D] before they could issue the arrest warrant, which would have to be carried out by the police. The Tribunal noted that, even so, it could seem unusual that nobody came looking for him at his house, especially given that he had defied the order of his Major to remain on the barracks. The applicant gave evidence that the authorities had recently raided the homes of his mother and sisters seeking him. The Tribunal explained that it could seem unusual that he was making such hasty plans to flee the country because of his fears of the authorities, yet was remaining living in his home where he could be so easily found. The applicant gave evidence that the UAE is a very small country with a small population, so if someone is wanted they will be found wherever they go so there was nowhere to hide. He stated that he was fearful that he would be tortured and executed. The Tribunal reiterated that, if he was so fearful of being tortured and interrogated, it seemed unusual that he remained living at home where he could be found. The applicant gave evidence that the coast guard, army and military did not have the authority to arrest him, as this is the job of the police under UAE law.

44. The Tribunal asked the applicant whether an arrest warrant has actually been issued in relation to him. He stated that a warrant was issued after he left. When asked how he knew this, the applicant stated that his family sent him a letter recently explaining this. The applicant gave evidence that he had not made contact with his family prior to this as he was scared that it might put them in danger. When asked when he found out that an arrest warrant had been issued, he stated that on [Date 3] July 2009 his friend at work told him that the order for the warrant had been received from headquarters. The applicant explained that it was a convoluted process before a warrant could be issued, as the orders must be sent to the head office of the coast guard in [City D], then sent to the head office in [City A] and then referred to police.
45. The Tribunal asked the applicant what happened with the education of his children in the UAE and whether they were pulled out of school. The applicant gave evidence that he could not recall exactly whether they had already finished school at that time, but he remembers that he had paid the school fees for the entire year. The Tribunal noted that it would presumably have been unusual from the perspective of his school if the children were hastily withdrawn without any explanation. The applicant stated that he could not recall. The Tribunal discussed with the applicant the possibility of obtaining other evidence demonstrating that he wrapped up his affairs in the UAE in a hurry, such as evidence from his bank of withdrawing all of his funds and evidence relating to the booking of his flights a few days prior to his departure. Following this discussion, the Tribunal agreed to allow further time to enable the applicant to obtain such evidence.
46. The Tribunal asked the applicant whether he had ever been detained, imprisoned, arrested or formally questioned by the authorities in the UAE. The applicant answered in the negative on each of these matters, aside from his meeting with the Major on [Date 1] July 2009.
47. The Tribunal put to the applicant that it could seem an unusual coincidence that he had already obtained an Australian Tourist Visa prior to the alleged incident on [Date 1] July 2009 that led to him leaving the country. The applicant gave evidence that he had intended to come to Australia as a tourist, but it was only after [Date 1] July 2009 that he then was forced to flee the country. The Tribunal put to the applicant that, according to some sources of country information, UAE citizens are prevented from leaving the country if they are the subject of a legal dispute. The Tribunal explained that it could seem unusual that he was able to leave the country without incident if he was such a person of interest to the authorities at

that time. The applicant gave evidence that he did not leave the country easily, as he was very scared and confused when he went to the airport.

Problems relating to his child born out of wedlock

48. The Tribunal asked the applicant whether he had experienced any other problems in the UAE prior to coming to Australia. The applicant gave evidence that his first daughter was born out of wedlock which could have put them in trouble if the authorities found out because the UAE is a Muslim country and children can only be born inside wedlock. He stated that he and his wife hid the truth for five years regarding this, although they were married in May 2002 in [City B]. They eventually obtained a false marriage certificate in the Philippines which was backdated to a date more than nine months before the birth of their first child, to avoid any potential problems with the authorities arising from this child being born out of wedlock. When asked whether he had any other problems in the UAE, he stated that he had not, although he noted that his anger over the problems relating to his children had contributed to his outburst at work on [Date 1] July 2009.

Experiences in the Philippines

49. The Tribunal asked the applicant about his travel to the Philippines. He stated that he travelled with his wife, children and wife's sister who was the nanny to their children. They did not need to obtain a visa prior to travel, as he could obtain a Tourist Visa for 12 months on arrival. He gave evidence that he did not make contact with anyone in the UAE during the approximately nine months that he spent in the Philippines. He also gave evidence that he did not give any explanation to his mother prior to his departure. The Tribunal noted that it could seem unusual that he simply vanished without any explanation to his mother, who lived downstairs from where he was living. The applicant gave evidence that he did not want his mother or other family members to be exposed to any risk of harm. He stated that he did not explain even to his wife what had happened until they had left the UAE.
50. The Tribunal asked the applicant whether he applied for any visas whilst in the Philippines. He stated that he enquired if they were able to apply for some sort of Protection Visa, but was told that he could only apply for a '13A Visa' because he was married to a Filipino citizen. Two days after his arrival, he applied for a 13A Visa, which he would not have done so if he was not at risk because he had a Tourist Visa for one year. The applicant showed a text message referring to a meeting [in] July. The applicant gave evidence that this was a text message in relation to arrangements for a meeting in regard to his visa application. He stated that this proves that he applied for a 13A Visa whilst in the Philippines. The applicant also handed up a letter sent by his wife to the embassy of the Philippines in Australia, which he submitted was further evidence of his application for a visa in the Philippines.
51. The Tribunal asked the applicant when he first told his wife about what had happened at his workplace that had led to him fleeing the country. He stated that it was only when they were in the Philippines. The Tribunal noted that it must have seemed unusual to his wife that he would wrap up their life in such a hurry without him explaining what was going on. He stated that he told his wife that he was leaving the country with or without her and said that he could be put in jail or executed. The Tribunal noted that it could seem unusual that she would not want to know more about what was going on. He stated that she was devastated, but knew the country well enough to know that there was no alternative. The Tribunal asked the applicant to be specific as to when he first told his wife what had happened. The applicant gave evidence that he could not recall. The Tribunal put to the applicant that this

was presumably a significant conversation in their relationship and the Tribunal noted its surprise that he could not give any approximation as to when this conversation took place. The applicant stated that all he can remember is that he talked to her in the early days after their arrival in the Philippines whilst they were at home, but he could not recall when this was.

Religion claims

52. The Tribunal asked the applicant about his claim of fearing being returned to the UAE for reasons of religion. The applicant was emphatic that this was not why he was seeking protection in Australia, but rather because of what happened to him on [Date 1] July 2009. The Tribunal attempted through a number of questions to ascertain whether there were any other reasons he feared returning to the UAE, to which the applicant consistently maintained that there were not and his fear was based on what had happened on [Date 1] July 2009. The Tribunal noted that it appeared from the documents provided to the Tribunal that he might also be seeking to rely on his and his family's religion as an alternate basis for fearing persecution. The applicant gave evidence that he is Muslim according to all of the documents, but inside he does not believe and prefers the Catholic religion. He surmised that, if he were to be tortured, he might disclose this. When asked if he had taken any steps to convert to Catholicism, he stated that he once approached the church in the Philippines but was refused because they did not believe him. He gave evidence that he went to a church in the Philippines seven or eight times and has recently started attending a church in Australia.
53. The Tribunal flagged with the applicant that it may be concerned that his conduct in Australia in connection with Catholicism might have been engaged by him solely for the purpose of strengthening his claims to be a refugee. The applicant again reiterated that his claim to be a refugee was not related to his religion but because of what happened on [Date 1] July 2009.
54. The Tribunal asked the applicant what religion he would practice if he returned to the UAE. He stated that there was no way he could pretend to be anything other than Muslim, because this is his religion according to his documents. The applicant gave evidence that his wife converted to Islam in 2006 as they were ordered by the Islamic court that identity documents could not be issued for his daughters unless his wife could prove her conversion to Islam.
55. The Tribunal put to the applicant that, according to various sources of country information, the UAE has a relatively high level of religious tolerance for religious minorities. The Tribunal also put to the applicant that these sources indicate that, whilst conversion from Islam to another religion is officially forbidden, the consequences for doing so appeared to be confined to social stigma. The applicant reiterated that his claim for protection is not due to religion, but the incident on [Date 1] July 2009. The Tribunal put to the applicant that it could seem unusual that, if he feared persecution in the UAE for reasons of religion, he did not seek protection abroad at an earlier stage given that he appears to have had opportunities to do so. The applicant reiterated again that he was not seeking protection for reasons of religion and was not making any other claims aside from his fears arising from what happened on [Date 1] July 2009.

Third country protection

56. The Tribunal explained to the applicant that, under the Act, Australia does not owe protection obligations to a person who has a right to enter and reside in another country, whether permanently or temporarily. The Tribunal explained that it may be concerned that he has a

right to enter and reside in the Philippines. The applicant responded that UAE citizens are prevented from obtaining residency in the Philippines. The Tribunal noted that it also had to consider whether he might have a right to enter and reside in the Philippines on a temporary basis. The applicant gave evidence that he could not do so and the documents endorsed by the Philippines Embassy in Australia (which he provided to the Department) confirmed this.

57. The Tribunal asked the applicant whether there were any other reasons why he might not be able to enter or reside in the Philippines. The applicant referred to problems with corruption that they had encountered when seeking their Residency Visa in the Philippines and he stated that there were significant problems of corruption in the Philippines.

Police searches of family homes

58. The Tribunal asked the applicant about the recent raid on the home of his mother and sisters in the Philippines. He stated that he attempted to telephone his brothers, but they would not speak to him over the phone. He sent them text messages imploring them to assist him in producing evidence to show that he is wanted in the UAE. He was never able to speak with them or with his mother, but he did receive a letter from his mother which he has provided to the Tribunal. He stated that when he rang his brothers he would say that he is in big trouble and needs to prove that he is wanted by the UAE authorities, but no-one ever spoke on the other end of the line and they would then hang up. When asked why his brothers would not speak with him, he stated that his family is very conservative and devoted to Islam. When asked when he started telephoning his family, he stated that it was three weeks prior to the Tribunal hearing. The applicant agreed to provide copies of relevant text messages that he had sent from his phone. The Tribunal asked whether he ever made contact with the previous Major from the port where he worked, given the high level position occupied by this person and the fact that he previously trusted the applicant. The applicant gave evidence that he did not, as his rant to his colleagues was a serious matter and this former Major was a very religious man.

Fears of returning to the UAE

59. The Tribunal asked the applicant what he feared might happen to him if he were to return to the UAE. He stated that, in these cases, national security takes charge and he would be detained out of sight and tortured. He would then be taken to a high court where he would have no appeal rights and he could be executed without anyone knowing about it. The Tribunal put to the applicant that this description of the consequences for his alleged crimes appeared inconsistent with country information reviewed by the Tribunal regarding the human rights situation in the UAE. The applicant gave evidence that citizens of the UAE can be easily tortured or executed without anyone knowing and this has been supported by reports from Human Rights Watch and Amnesty International. The Tribunal put to the applicant that it could be concerned that his fear of returning to the UAE was due to a fear of criminal prosecution under a law of general application, rather than a fear of persecution. The applicant responded that the law fell under the umbrella of Sharia law and would therefore be referred to an Islamic court where he would have no right to appeal.

Additional matters

60. The Tribunal put to the applicant that he had provided to the Tribunal a detailed description of the events leading up to his departure from the UAE between [Date 1 and Date 4] July 2009, whereas in his Department interview he had indicated that the meeting of his

workplace that led to his problems had occurred two weeks prior to him leaving the country. The applicant gave evidence that he was emotionally disturbed during his interview and his mind was not in a clear state.

61. The Tribunal asked the applicant if there was anything else he wished to say in support of his application for refugee status. The applicant gave evidence that he has travelled to many countries, including coming to Australia in 2006, but had never applied for protection. He stated that in the UAE he was wealthy and had his family inheritance, long service entitlements and a comfortable standard of living. He stated that he was living well with no troubles and had no reason to leave the country prior to the problems that began on [Date 1] July 2009.

[Mrs A]' evidence

62. The Tribunal also received oral evidence in person from the applicant's wife, [Mrs A] (the second named applicant). [Mrs A] gave evidence that she and the applicant were married in [City B] in November 2002, although obtained a backdated marriage certificate in the Philippines due to problems they were facing due to their first daughter being born out of wedlock in March [year deleted: s.431(2)].
63. The Tribunal asked [Mrs A] about the problems that led to them departing the UAE. [Mrs A] gave evidence that she has had difficulty comprehending the events that led to her husband making the sudden decision to leave. She stated that her husband first told her that they were leaving for good on [Date 3] July 2009. Her mind was scattered from that moment because they had been trying to build their life and family in the UAE and she had difficulty understanding that they would be leaving permanently. However, she stated that she genuinely believes that her husband made a quick decision that saved his life. When asked whether the applicant explained to her why they were leaving the country, [Mrs A] stated that he told her that his life was in danger and they did not have much time to discuss. She stated that he initially said that they would be just taking a period of short leave to go to the Philippines, which is what he said when he came home from work early on [Date 1] July 2009. It was then on [Date 3] July 2009 that he told her that his life was in danger. By this stage, they had already booked a flight online which they paid for in cash through a travel agent. It was not until shortly after their arrival in the Philippines that the applicant explained to her what had happened in the UAE that led to them leaving.
64. The Tribunal asked [Mrs A] whether she has contacted anyone in the UAE since she left. She stated that she has not. She gave evidence the applicant has also not contacted anyone until his recent attempts to contact his brother approximately two or three weeks ago. When asked why neither she nor the applicant made contact with anyone in the UAE after leaving, she stated that they felt that things happened to the applicant and they didn't want people talking about it. When asked by the Tribunal, [Mrs A] gave evidence that she was unaware of what the applicant told his mother when they left as she ([Mrs A]) does not speak Arabic. She could recall that the applicant went and spoke to her, but she does not know what they discussed.
65. When asked about her children's schooling, [Mrs A] gave evidence that her children were still at school on [Date 1] July 2009 when the applicant came home early. She also gave evidence that they did not notify the school that they were withdrawing their children from the school and were not coming back, although she gave evidence that the school sent them

some emails asking about the children. [Mrs A] showed the Tribunal a copy of one of these emails still on her telephone.

66. The Tribunal asked [Mrs A] if there was anything else she wished to say in her evidence. She stated that she genuinely believed that the applicant's quick decision to leave the country saved his life. The Tribunal confirmed with the applicant and his agent that there were no further questions or matters that they wished the Tribunal to raise with [Mrs A].

Post-hearing correspondence

Further documents and submission

67. [In] March 2011, the Tribunal received from the applicant's agent a supplementary written submission outlining attempts by the applicant to obtain evidence confirming his airline flight bookings, as well as documents demonstrating attempts made by the applicant in this regard. The submission further claimed that the applicant did not wish to contact his UAE bank for proof as to when he withdrew his funds as he is concerned the bank will then know his whereabouts and the bank has ties to the UAE government. The submission also addressed the reasons as to why the safe third country provisions of the Act do not apply to the applicant's case. The submissions also reiterated the applicant's anger and frustration that his wife had to convert to Islam in order for his children to be granted Emirati citizenship, which he felt was a violation of her basic human rights. The submission also reiterated the applicant's claims on the basis of political opinion and referred to country information regarding human rights problems in the UAE. The submissions also attached various documents as itemised on page 4 of the submission, including correspondence in relation to alleged attempts by the applicant to obtain evidence confirming further details of his flight booking, email communication allegedly between the applicant and his brother; documents relating to the withdrawal of the applicant's children from [a school] in the UAE; text message allegedly from Philippines Immigration; letters from the applicant regarding the booking of his airline flight from the UAE and attempts made to obtain further supporting evidence.

Information from Emirates Airlines

68. [In] March 2011, the Tribunal wrote to Emirates Airlines seeking information in relation to when and how the airline flight taken by the applicant and his family to the Philippines on [Date 4] July 2009 was booked and paid for. [In] May 2011, Emirates Airlines responded to this request, the details of which are set out in the Tribunal's s 424A letter extracted below.

Section 424A letter

69. [In] May 2011, the Tribunal wrote to the applicants pursuant to s 424A of the Act, inviting them to comment on or respond to adverse information, as follows:

I am writing about the application for review made by you in relation to a decision to refuse to grant a Protection (Class XC) visa.

In conducting its review, the Tribunal is required by the Migration Act to invite you to comment on or respond to certain information which the Tribunal considers would, subject to your comments or response, be the reason, or a part of the reason, for affirming the decision under review.

Please note, however, that the Tribunal has not made up its mind about the information.

The particulars of the information are:

1. On [date] March 2011, the Tribunal wrote to Emirates Airlines seeking information in relation to when and how the airline flight taken by you and your family members from United Arab Emirates ('UAE') to the Philippines on [Date 4] July 2009 was booked and paid for. The details of the Tribunal's request are as follows:

The Tribunal is reviewing a decision relating to the application for a visa by the following members of the same family unit:

1. [The applicant] (father, date of birth [date], UAE passport number [number])
2. [Mrs A] (mother, date of birth [date], Philippines passport number [number])
3. [Name] (daughter, date of birth [date], UAE passport number [number])
4. [Name] (daughter, date of birth [date], UAE passport number [number])
5. [Name] (daughter, date of birth [date], UAE passport number [name])
6. [Name] (daughter, date of birth [date], UAE passport number [number])

In conducting a review under the Migration Act, the Tribunal may obtain any information that it considers relevant to the review.

The Tribunal has been advised by [the applicant] that he, [Mrs A] and their four children ([names]) departed the United Arab Emirates on [Date 4] July 2009 on Emirates Airlines flight [number] ([code]) departing at [time] from [City B] destined for Manilla, Philippines. He also claims that their tickets were booked and purchased in the United Arab Emirates on or about [Date 3] July 2009 through '[name] Travel Agency', [city] branch.

You are requested to provide information in writing by no later than [date] April 2011 in relation to **when** and **how** the above tickets were (a) booked and (b) paid for.

2. On [date] May 2011, the Tribunal received the following reply from Emirates Airlines (emphasis added):

Subject:

1. [The applicant]
2. [Mrs A]

3. [Name]
4. [Name]
5. [Name]
6. [Name]
- 7: [Name]

Dear [RRT],

This is with reference to your request dated [date] March 2011, requesting information under the Privacy Act 1988 for the subject passengers. The information requested is hereby furnished from our records.

The following similar named passengers had travelled on flight [number]/[date]JUL2009 from [City B] to Manila. The travel was made vide [sic] tickets [numbers] **obtained on [date]JUN2009** from M/s Emirates office in [City B]. The form of payment was indicated as 'Cash'.

1. [The applicant]
2. [Name]
3. [Name]
4. [Name]
5. [Name]
6. / [Mrs A]
7. / [Mrs A's sister]

Yours sincerely

[Name]

Div Sr. Vice President - Group Security

3. There is also information available from Department records that you were granted an Australian Visitor Visa on [date] June 2009.

You have claimed that you did not experience any problems in UAE prior to the incident at your work on [Date 1] July 2009. You claim that this incident initiated a sequence of events in which you hastily wound up your affairs in UAE and departed the country with your family in fear for your safety. In particular, you claim that on [Date 1] or [Date 2] July 2009 you booked online your tickets for your flights departing UAE and on [Date 3] July 2009 you then collected and paid for your tickets (in cash) before then departing the UAE the following day ([Date 4] July 2009). You have claimed that these arrangements were all made with such haste because you feared being apprehended by the authorities following the incident on [Date 1] July 2009 which meant that you and your family needed to flee the UAE for your protection.

The information contained in paragraphs 1 – 3 is relevant to the review as it could, subject to your comments, indicate that you had already booked your tickets by [date] June 2009, and had already been granted your Australian Visitor Visa by [date] June 2009, which is significantly prior to when you claim your problems in the UAE began. This could lead the Tribunal to not accept your claims regarding the circumstances surrounding when or how you planned your departure from UAE, as well as your claims as to when and how you booked and purchased your airline tickets to depart the UAE. It could also lead to the Tribunal having doubts about your claims and credibility generally. The Tribunal's potential doubts over your credibility could also lead to it placing little or no weight on other evidence produced by you in support of your application, including documentary evidence and the oral evidence at the Tribunal hearing given by your wife. These concerns could lead to the Tribunal not accepting that your claims as to why you face a well-founded fear of persecution if returned to UAE now or in the reasonably foreseeable future. This would be the reason or part of the reason for affirming the decision of the delegate under review.

4. In your Department interview in relation to your protection visa application, held on [date] October 2011, you were asked a number of questions about the incident at your workplace that led to your claimed fears of persecution, including your claims relating to being reprimanded by the Major at the port as a consequence of this incident. In the course of these questions you were asked how long prior to your departure from the UAE on [Date 4] July 2009 this incident took place. You responded: 'About two weeks; within two weeks.'
5. By contrast, in your oral evidence at the Tribunal hearing on [date] February 2011, and in your written statement to the Tribunal, you outlined a detailed chronology of events commencing with the alleged workplace incident on [Date 1] July 2009 and culminating with your departure from the UAE on [Date 4] July 2009.

The information contained in paragraphs 4 – 5 is relevant to the review as the apparent inconsistencies in your evidence as to the period between the relevant incident at your workplace and your departure from the UAE could, subject to your comments, lead to the Tribunal to not accept your claims regarding this sequence of events leading up to your departure from the UAE. It could also lead to the Tribunal having doubts about your claims and credibility generally. The Tribunal's potential doubts over your credibility could also lead to it placing little or no weight on other evidence produced by you in support of your application, including documentary evidence and the oral evidence at the Tribunal hearing given by your wife. These concerns could lead to the Tribunal not accepting that your claims as to why you face a well-founded fear of persecution if returned to UAE now or in the reasonably foreseeable future. This would be the reason or part of the reason for affirming the decision of the delegate under review.

70. The applicants were directed to provide their comments or response by [a date in] June 2011.
71. [In] June 2011, the Tribunal received a request from the applicant's representative for an extension of time to respond to the s 424A letter to enable the applicant to obtain evidence from a lawyer in UAE to substantiate his claim that a warrant had been issued for his arrest. The Tribunal agreed to this request, allowing until [July] 2011 for the s 424A response
72. [In] July 2011, the Tribunal received a further request for an extension of time in which to respond to the s 424A letter to enable the applicant more time to obtain a copy of the relevant

arrest warrant in the UAE. Copies of various email correspondence was provided, in relation to attempts made by the applicant to retain lawyers in the UAE to obtain this warrant, as well as a statement from the applicant about information he had received from his brother who has a friend in the police force who confirmed that a warrant had been issued for his (the applicant's) arrest.

73. The applicant also provided a statement responding to the information from Emirates Airlines as to when the relevant flights from UAE to the Philippines were booked. He acknowledged that the information from Emirates Airlines was correct and conceded that his evidence that he booked these flights on or about [Date 1] or [Date 3] July 2009 was false. However, he claimed that he only made such a false claim because he did not think anyone would believe him that he had already booked his tickets to depart the UAE on a date that coincided with shortly after when his problems began. He stated that he purchased the tickets [in] June 2009 with the intention of going to the Philippines for a family holiday. However, it was simply a coincidence that his problems at his workplace then began on [Date 1] July 2009 which then made it necessary for him to flee the UAE for his safety.
74. In response to the above statements and submission, the Tribunal agreed to allow the applicant until [August] 2011 to provide any further documents in support of his application.
75. [In] August 2011, the applicant provided to the Tribunal a further submission to the effect that he was the subject of various arrest warrants based on unfounded allegations relating to dishonoured cheques. He submitted that these charges had been fabricated as an excuse to then detain him as a political dissident so that he could then be charged with sedition and treason. The submission attached copies of the relevant arrest warrants, as well as two online country information articles about the authorities detaining political dissidents on minor charges.
76. [In] August 2011, the Tribunal provided a final written submission in which he claimed that the police would not provide his UAE lawyers a stamped copy of his warrants as his file was with the prosecution until the authorities catch him. The applicant submitted that the charges against him were false and he would be unable to obtain a fair trial in the UAE in relation to these matters. He submitted that the charges were laid as a means of luring him back to the country. He requested that the Tribunal make further inquiries with his lawyer and the authorities in the UAE in relation to his outstanding warrants. The applicant reiterated that he had previously enjoyed a comfortable standard of living in the UAE. He also noted that he would be at risk if it became known that he had two children born out of wedlock. He reiterated that his fear of persecution was due to the workplace incident on [Date 1] July 2009 and no other reason. The applicant also referred to country information relating to human rights concerns in the UAE and attached copies of several articles of country information to this effect. He also attached an email from his lawyer.
77. In his submission of [August] 2011, the applicant also requested that the Tribunal make further inquiries with the UAE authorities and his lawyer to confirm the information he had given about his arrest warrants. However, the Tribunal does not propose to make any such further inquiries in this matter. To the extent that the applicant wanted the Tribunal to obtain a stamped copy of his arrest warrants, or to confirm their existence, for the reasons below the Tribunal has accepted those arrest warrants as genuine but has given them little weight in supporting the applicant's claim to fear persecution in the UAE. To the extent that the applicant has requested that the Tribunal make further inquiries with the UAE authorities in relation to his situation generally, the Tribunal does not consider that this would be of utility

given that copies of the warrants have already been provided and the applicant's lawyers have been unable to obtain any further information about these matters from the authorities. The Tribunal does not accept that it would be able to obtain any further information of relevance that has not already been obtained by the applicant's UAE lawyers. The Tribunal also does not consider it necessary to contact the applicant's UAE lawyers, given that they have already provided information relating to the warrants they have obtained, which the Tribunal accepts, and the Tribunal does not accept on the evidence before it that they otherwise possess information which would be of assistance. In these circumstances, the Tribunal has proceeded to make its decision on this application without making any further inquiries.

Independent country information

Human rights situation in the UAE generally

78. The United Arab Emirates is a federation of seven emirates with power still residing principally in their ruling families. A Supreme Council comprising the rulers of each of the emirates elects a president and vice-president for five-year terms. Decrees of the Council require the assent of Abu Dhabi and Dubai and at least three other emirates. A prime minister and cabinet is appointed by the President and a Federal National Council of 40 members essentially provides the only consultative mechanism for citizens to express political views. Since 2006 20 of these members have been determined through indirect election.¹
79. There are no political parties and there are practical restrictions on freedom of assembly and expression, even though the constitution recognises freedom of speech and the press. The law expressly forbids criticism of rulers and the judiciary is subject to political intervention. According to Freedom House, discussion of political matters may take place in private but permits are required for public gatherings and all nongovernmental organisations (NGOs) must be registered with the Ministry of Labor and Social Affairs.²

Although the UAE's constitution provides for some freedom of expression, the government has historically restricted this right in practice. The 1980 Printing and Publishing Law applies to all media and prohibits "defamatory material and negative material about presidents, friendly countries, [and] religious issues, and [prohibits] pornography." Consequently, journalists commonly practice self-censorship, and the leading media outlets frequently publish government statements without criticism or comment. However, Dubai has a "Media Free Zone," where few restrictions have been reported on print and broadcast media produced for audiences outside of the UAE. Government officials continue to ban a variety of publications and internet websites. In 2009, the government continued its consideration of a restrictive press law that will reintroduce prison terms for journalists who "disparage" government officials or write stories that "harm the country's economy." The draft law also threatens fines of up to \$136,000 for commentary on the poor economy and up to \$1.35 million for articles "insulting" to the ruling family or government. In July, the Abu Dhabi Federal Court of Appeal suspended the newspaper Emarat al-Yawm for three weeks and fined

¹ 'United Arab Emirates' *Political Handbook of the World Online Political Handbook of the World Online Edition*, originally published in Banks, A., Muller, T., Overstreet, W., and Isacoff, J. (eds.) 2010, *Political Handbook of the World 2010*, Washington: CQ Press
http://library.cqpress.com/phw/document.php?id=phw2010_unitedarabemirates&type=toc&num=190#H2_2 – Accessed 7 February 2011 – Attachment 1

² Freedom House 2010, 'Freedom in the World 2010 – United Arab Emirates' 3 May.

its editor \$5,445 for an October 2006 article that claimed some of the ruling family's thoroughbred race-horses were given steroids.³

80. The US Department of State recorded in 2010 that criticism of government was permissible 'in a limited context, but criticism of ruling families, particularly sheiks, was not permitted. Nevertheless, criticism of sheiks occurred, albeit with extreme caution, and in private.'⁴
81. Human Rights Watch has recently reported that an attempt to organise a peaceful protest over oil prices in July 2010 resulted in the arrest of the four organisers. Even although the protest did not proceed, one of them lost his government job and he was detained for a week whilst another was held for over a month. A popular online discussion forum on political rights and similar subjects UAE Hewart (<http://uachewar.net>) was also blocked.⁵
82. Trade unions are outlawed and cannot be formed and strikes by public sector employees are not permitted. Grievances must be addressed through administrative appeal or civil court action. Protests by workers whose pay had been delayed or over other working conditions in the private sector have taken place in 2009 and 2010 and authorities have sometimes been required to disperse such protestors.⁶

Treatment of terrorism suspects

83. According to the most recent annual report on terrorism by the US State Department, the UAE government 'repeatedly condemned terrorist acts in Iraq, Lebanon, Pakistan, and elsewhere in the region.' In addition,

In order to prevent extremist preaching in UAE mosques, the General Authority of Islamic Affairs and Endowments provided guidelines for all Friday sermons and monitored compliance. The UAE worked to keep its education system free of radical influences and emphasized social tolerance and moderation.

...

The UAE has a cyber-crime law criminalizing the use of the Internet by terrorist groups to "promote their ideologies and finance their activities." The UAE has established a National Security Council charged with formulating and implementing a national strategic plan.

84. During 2009, seven people were charged with terrorist related offences and one US citizen was convicted of supporting a foreign terrorist organisation and deported to Lebanon.⁷
85. In November 2010 Dr Abdulrahim Alawadi, chairman of the National Committee to Combat Terrorism, announced a review of the country's anti-terrorism law to ensure it was consistent with international regulations against money laundering, even though these measures were already being implemented in practice.⁸

³ Freedom House 2010, *Freedom in the World 2010 – United Arab Emirates* 3 May.

⁴ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – United Arab Emirates*, March, Section 2a.

⁵ Human Rights Watch 2011, *World Report – United Arab Emirates*, January.

⁶ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – United Arab Emirates*, March, Section 7.

⁷ US Department of State 2010, *2009 Country Reports on Terrorism – United Arab Emirates*, 5 August - <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4c63b61830> – Accessed 1 February 2011.

⁸ 'UAE begins review of anti-terrorism law' 2010, *The National*, 28 November, <http://www.thenational.ae/news/uae-news/politics/uae-begins-review-of-anti-terrorism-law> - Accessed 7 February 2011.

86. Country information indicates that a genuine terrorist suspect is unlikely to be allowed to depart the country unhindered. UAE legislation allows for the detention of terrorist suspects for up to six months without charge. The US State Department reports that male citizens ‘involved in legal disputes under adjudication were not permitted to travel overseas.’⁹ Sometimes warrants are not obtained although technically police have 48 hours to advise the public prosecutor of an arrest:

Police stations received complaints from the public, made arrests, and forwarded cases to the public prosecutor. The public prosecutor then transferred cases to the courts. In cases involving foreign defendants, especially for crimes of moral turpitude, authorities often summarily deported the defendants upon completion of their jail terms. Police must report an arrest within 48 hours to the public prosecutor, who then must determine within 24 hours whether to charge, release, or further detain the suspect. In practice the public prosecutor did not always meet the 24-hour time limit, although police usually adhered to their 48-hour deadline. Public prosecutors may order detainees to be held as long as 21 days without charge or longer, in some cases, with a court order. Courts may not grant an extension of more than 30 days of detention without charge; however, judges may renew 30-day extensions indefinitely. Public prosecutors may hold suspects in terrorism-related cases without charge for six months. Once a suspect is charged, the Supreme Court handles terrorism cases, which may extend the detention period indefinitely.¹⁰

UAE police force

87. A number of sources indicate that the quality of the police force in the UAE is of a very high standard. The World Economic Forum’s Enabling Trade Index ranks it the fourth most reliable in the world.¹¹ Each police force operates with a degree of autonomy under the general direction of the Ministry of Interior which has the power to enforce compliance with federal policy and law and investigate complaints. There appears to be a very low level of corruption.¹²
88. Information sourced from the Government of Dubai website is consistent with this assessment, which states that it has more than 17,000 police officers, ISO 2000:9001 accreditation, and has been a leader in the adoption of new technologies to improve criminal investigations and general operations.¹³

Religious tolerance in the UAE

89. Information sourced from the UAE Ministry of Economy referred to by the US Department of State indicates that approximately 9% of the population is Christian. The constitution states that Islam is the official religion and of the citizen population approximately 85% are

⁹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – United Arab Emirates*, March, Section 2d.

¹⁰ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – United Arab Emirates*, March, Section 1d.

¹¹ ‘UAE ranks 4th in reliability of police services’ 2010, UAE Interact website [source: Emirates News Agency], 5 September, http://www.uaeinteract.com/docs/UAE_ranks_4th_in_reliability_of_police_services/42455.htm - Accessed 5 February 2011.

¹² US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – United Arab Emirates*, March, Section 1d.

¹³ ‘Dubai Police’ (undated), Government of Dubai website, http://www.dubai.ae/en.portal?topic,DPDEG,0,&_nfpb=true&_pageLabel=dept – Accessed 5 February 2011.

said to be Sunni and about 15% or less are Shi'a.¹⁴ Between 70-85% of the population comprises non-citizens. Proselytizing is not permitted and conversion by Islamic citizens to another religion is not recognised. Churches are not permitted to display crosses or other symbols on the outside of their buildings.¹⁵ ¹⁶ However, despite these restrictions, members of most religions appear to be able to practice their religion with relatively little interference and there is a climate of tolerance. For example, the US Department of State 2010, *International Religious Freedom Report 2010* notes the following in relation to the UAE:

Conversion from Islam to another religion is not recognized, and no data was available to assess if any such conversions took place. The legal punishment for conversion is death, although there have been no known prosecutions nor legal punishments for apostasy in court. Converts may be persuaded to return to Islam, may conceal their new faith, or may travel to another country where their conversion is recognized **to avoid the social stigma of converting from Islam to another religion.** (emphasis added)

90. And further:

Restrictions on Religious Freedom

There was no change in the status of respect for religious freedom by the government during the reporting period. Adherents of most major religions in the country worshipped without government interference, although there were restrictions. As the state religion, Islam was favored over other religious groups, and conversion to Islam was viewed favorably.

...

Forced Religious Conversion

There were no reports of forced religious conversion.

...

Section III. Status of Societal Respect for Religious Freedom

There were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice, although societal pressures discouraged conversion from Islam to other religions.

91. The Christian population of the country as a proportion of the total population is amongst the highest in the Middle East with estimates of at least half a million Christians residing in the UAE. Some estimates are higher, of up to one million, or above.¹⁷ ¹⁸ Catholics comprise the

¹⁴ US Department of State 2010, *International Religious Freedom Report for 2010 – United Arab Emirates*, November.

¹⁵ US Department of State 2010, *International Religious Freedom Report for 2010 – United Arab Emirates*, November.

¹⁶ Institute on Religion and Public Policy 2008, 'United Arab Emirates: Institute Submission to United National Periodic Review: Religious Freedom in the United Arab Emirates', 21 July.

¹⁷ Magister, Sandra 2007, 'The Christians are coming back to Arabia – Fourteen centuries after Mohammed', Chiesa Espresso website [source: Avvenire], <http://chiesa.espresso.repubblica.it/articolo/164081?eng=y> – Accessed 1 February 2011.

¹⁸ 'Holy See announces diplomatic ties with United Arab Emirates' 2007, Catholic Newsagency website, 31 May, http://www.catholicnewsagency.com/news/holy_see_announces_diplomatic_ties_with_united_arab_emirates

largest Christian denomination and this is perhaps not surprising given the large Philippine expatriate community. Christians from other countries such as Bangladesh, India, Lebanon, Iraq and others are also to be found. On 31st May 2007 diplomatic relations were established between the Holy See and the UAE and the official communiqué noted that in establishing these ties, there was an expectation that UAE authorities would ‘maintain cordial relations with the Catholic Church and will approve the building of new centers of worship’.¹⁹

92. There are at least 34 Christian churches in the UAE and these are built on land donated by ruling families of the emirates where they are built. There are reportedly 7 Catholic churches and services are conducted in languages including English, Arabic, French, Malayalam, Tamil, and Tagalog.^{20 21 22}
93. Some church services attract such numbers that they are unable to be accommodated and worshippers are required to follow services from outside.^{23 24} A photograph of worshippers at St Mary’s Church, Oud Metha, Dubai, published in 2008 appears to show what could be hundreds of people in attendance at a service.²⁵ Catholic churches are found in Dubai, Jebel Ali, Sharjah, Fujairah, and Ras al Khaimah.²⁶

Criminal law relating to dishonoured cheques

94. Article 401 of the UAE Penal Code makes it a criminal offence to issue a cheque without adequate funds, as follows:

Article 401:

A punishment of confinement shall be inflicted on any person who, in bad faith draws a check without no existing or drawable provision, or who, after issuing the check,

- Accessed 1 February 2011.

¹⁹ ‘Holy See announces diplomatic ties with United Arab Emirates’ 2007, Catholic Newsagency website, 31 May,

http://www.catholicnewsagency.com/news/holy_see_announces_diplomatic_ties_with_united_arab_emirates

- Accessed 1 February 2011.

²⁰ ‘Being Filipino. Spirit of Christmas is alive in the UAE’ 2008, Inquirer weblog, 22 December,

<http://blogs.inquirer.net/beingfilipino/2008/12/22/spirit-of-christmas-is-alive-in-the-uae/> - Accessed 1 February 2011.

²¹ ‘Churches and temples in the UAE’ 2008, *Gulf News*, 5 April,

<http://gulfnews.com/news/gulf/uae/general/churches-and-temples-in-the-uae-1.96526> - Accessed 1 February 2011.

²² See information concerning mass services for parishes on the St Mary’s Konkan Community website including ‘St Mary’s Catholic Church Sharjah – Regular Weekly Church Services’ 2011,

<http://www.konkanuae.com/home/wpages.asp?id=26> – Accessed 4 February 2011.

²³ Magister, Sandra 2007, ‘The Christians are coming back to Arabia – Fourteen centuries after Mohammed’, *Chiesa Espresso* website [source: *Avvenire*], <http://chiesa.espresso.repubblica.it/articolo/164081?eng=y> – Accessed 1 February 2011.

²⁴ ‘Going to church in Abu Dhabi’ 2008, *Washington Post*, 8 May,

http://onfaith.washingtonpost.com/onfaith/guestvoices/2008/05/going_to_church_in_abu_dhabi.html - Accessed 1 February 2011.

²⁵ ‘Churches and temples in the UAE’ 2008, *Gulf News*, 5 April,

<http://gulfnews.com/news/gulf/uae/general/churches-and-temples-in-the-uae-1.96526> - Accessed 1 February 2011.

²⁶ ‘St Mary’s Catholic Church Sharjah – Regular Weekly Church Services’ 2011,

<http://www.konkanuae.com/home/wpages.asp?id=26> – Accessed 4 February 2011; ‘Churches and temples in the UAE’ 2008, *Gulf News*, 5 April, <http://gulfnews.com/news/gulf/uae/general/churches-and-temples-in-the-uae-1.96526> - Accessed 1 February 2011.

withdraws all or part of the fund to that the balance becomes insufficient to settle the amount of the check, who orders the drawee not to pay check, or deliberately makes or signs the cheque in such a manner as to prevent it from being paid.

Any person who endorses or delivers to another a check payable to bearer, whilst being aware that there are no existing funds covering its value or that it cannot be drawn shall be liable to the same punishment.

The penal action shall lapse if payment is made or waived after the crime has occurred and before it has received a final ruling. If this occurs after the ruling has become final, its execution shall be stayed.

If the court orders withdrawing the check book from the convict and preventing from being given new books according to the provision of article 364 of the commercial transactions law, the public prosecution shall communicate such order to the Central Bank to be generalized to all banks.

If any bank violates the said order, a fine of (100.000) one hundred thousand Dirhams shall be paid.

95. In a September 2010 legal bulletin prepared by international law firm Herbert Smith, *Middle East Exchange*, the following general advice is given in relation to criminal offences in the UAE arising from various corporate offences, including dishonoured cheques. According to that bulletin:

Bouncing cheques: one of the better known provisions of the UAE criminal law relates to dishonoured cheques. It is an offence to deliver a cheque to another person whilst being aware of the fact that there are no funds available to meet its value, as well as intentionally withdrawing funds so that the cheque cannot be cashed. Since market practice in the UAE operates on the basis of post-dated cheques, rather than bank standing orders, writing a cheque with no genuine and realistic belief that the funds will be available at the time it is to be cashed, will constitute a criminal offence. Therefore, if providing post-dated cheques, directors should keep careful records of bank balances at such time, and as much other evidence as possible, in order to be able to prove a genuine belief in the availability of funds on their due date(s).²⁷

96. A recent article on UAE news site, *The National*, notes concerns over the prevalence of criminal charges relating to issuing dishonoured cheques:²⁸

DUBAI // The chief of Dubai Police has renewed his calls to change the law on bounced cheques that has led to hundreds of people being jailed over what are often small debts. Lt Gen Dahi Khalfan Tamim said using police to enforce the law was "not the proper way of doing things". Bouncing cheques is a criminal offence.

"We are not happy and we certainly do not think that is the proper way of doing things, but these are issues of individuals' rights," Lt Gen Tamim told Arabian Business magazine.

"It is important to note that the mere act of writing a cheque without the availability of cash to support it is a criminal offence that is punishable by the law."

²⁷ <http://www.herbertsmith.com/NR/rdonlyres/673A4B14-E446-4E65-8139-B9ADD65E9D3C/0/MiddleEastExchangeSeptember2010finalwithlinks.html> (Accessed 15 August 2011)

²⁸ Awad Mustafa, 2011 'Bounced cheque jailing law needs changing: police chief' *The National*, 19 July 2011, available at <http://www.thenational.ae/news/uae-news/bounced-cheque-jailing-law-needs-changing-police-chief> (Accessed 15 September 2011).

That looks likely to increase this year, with Dh26.6m of cheques returned in the first five months. But the proportion of dishonoured cheques has fallen slightly, to 4.6 per cent of the total value in the first five months of this year from 5.5 per cent last year.

Lt Gen Tamim's opinion has been echoed by lawyers around the country.

"The law is like a living organism. It needs to change and adapt to its ever-changing environment to suit it," said Rashid Tahlak, a criminal lawyer with Dubai Advocates and Legal Consultants.

Mr Tahlak called for Article 401 of the penal code, which criminalises dishonoured cheques, to be changed or dropped.

Ali Musabah, an Emirati lawyer, also called for reform.

"I believe the courts should reform their approach and issue fines for first-time offenders owing small amounts," Mr Musabah said. "If a person was unable to repay his credit card or bank loan for good reason, he should be fined, not jailed."

While no businessmen are in Dubai prisons because of their debts, Lt Gen Tamim said several cases were before the courts.

"Many newcomers or maverick investors became millionaires overnight and they jumped into the wave of excesses in investments without proper plans or informed decisions," he said.

"They had no track record in sound investments and they thought it was easy money."

Lt Gen Tamim said easy access to credit during the boom was not the cause of rapidly rising personal debt.

"I think the problem was not about the ease of lending here," he said. "Banks could offer financing without getting exposed."

FINDINGS AND REASONS

Country of nationality

97. The Tribunal accepts that the applicant is a citizen of the UAE. It accepts as evidence of this the copy of his passport provided to the Department. The Tribunal has assessed the applicant's claims against the UAE as his country of nationality.

Credibility concerns

98. The Tribunal accepts that 'applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.' The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the

applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

99. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
100. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
101. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (see *Randhawa v Milgea* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
102. As flagged at the hearing and in the Tribunal's s 424A letter, and discussed further below, the Tribunal has a number of serious concerns with the applicant's credibility in this matter which, when viewed together, have led to the Tribunal not accepting many of the applicant's claims.

Claims regarding the incident on [Date 1] July 2009 and its aftermath

103. The applicant was clear in his oral evidence at the hearing that he had never held a fear of persecution in the UAE until the incident at his workplace on [Date 1] July 2009. It was this incident that he claimed put in train a sequence of events in which he hastily wrapped up his life in the UAE and fled the country with his family on [Date 4] July 2009 in fear for their safety. He acknowledged obtaining a tourist visa to visit Australia prior to this incident, although stated that this was simply a coincidence as he had already planned a holiday to Australia with his family well prior to the incident on [Date 1] July 2009 that caused him to flee the UAE.
104. The Tribunal accepts from the applicant's documentary evidence that the applicant previously worked for the coast guard in the UAE. The Tribunal also accepts from the documentary evidence that the applicant generally enjoyed a comfortable standard of living in the UAE. The Tribunal also accepts his claim that, prior to the alleged incident on [Date 1] July 2009, he had previously travelled internationally and did not experience any problems with the authorities and he did not otherwise fear persecution in the UAE.
105. However, for the reasons that follow, the Tribunal does not accept the applicant's claims regarding the alleged workplace incident on [Date 1] July 2009 and its aftermath, or that he and his family left the UAE as a consequence of any such incident.
106. As put to the applicant in the Tribunal's s 424A letter, the Tribunal obtained information from Emirates Airlines in relation to his flight from the UAE on [Date 4] July 2009. According to Emirates Airlines, the relevant flights for the applicant and his family were obtained [in] June 2009; in other words almost one month prior to his departure on [Date 4]

July 2009. On the basis of this information, which the Tribunal regards as reliable, the Tribunal does not accept the applicant's evidence that he booked these flights on or about [Date 1] or [Date 3] July 2009. Rather, the Tribunal finds that the applicant had already booked these flights [in] June 2009.

107. As set out above, the applicant has since conceded that his claim of booking his flight from the UAE on or about [Date 1] or [Date 3] July 2009 was false. However, this concession was only made by the applicant in the face of reliable evidence from the relevant airline confirming that the applicant's flights had already been booked [in] June 2009. The Tribunal has taken into consideration the applicant's claim that he only provided false evidence on this matter because he thought he would not be believed if he acknowledged that he already purchased his flights prior to the incident at his workplace. However, in combination with its other credibility concerns in this matter, the Tribunal does not accept this explanation and considers that his false evidence on this matter casts doubt over his credibility generally.
108. The Tribunal also finds on the basis of Department records that the applicant had already been granted an Australian visitor visa [in] June 2009. When combined with the Tribunal's finding above as to when he booked his flights, the Tribunal rejects the applicant's claim that it was a mere coincidence that he had already been granted a visitor visa and booked his flights prior to the incident on [Date 1] July 2009. Rather, based on the information relating to when his Australian visitor visa was granted, combined with the information regarding when his flights were booked, the Tribunal finds that the applicant's departure from the UAE was unrelated to the alleged incident on [Date 1] July 2009.
109. The Tribunal notes further that it also had serious concerns with aspects of the applicant's evidence regarding the relevant sequence of events commencing on [Date 1] July 2009. First, the Tribunal has difficulty accepting as plausible that the applicant's isolated, ten minute rant with colleagues would produce such grave consequences for the applicant as claimed. Second, if the applicant was truly fearful of such grave consequences from this incident, the Tribunal has difficulty accepting as plausible that he would essentially remain at home throughout the period between the incident on [Date 1] July 2009 and his departure on [Date 3, four days later]. In the Tribunal's view, if the applicant was genuinely so fearful of being caught by the coast guard (or any other authorities) as claimed, his home was the most obvious place where he could be found, especially given that his home address would have been known to the coast guard. To the extent that the applicant claimed that the UAE is a small country with a small population so someone will be found wherever they go, when combined with the Tribunal's other concerns with the applicant's credibility, the Tribunal rejects this explanation as implausible in the circumstances. For the same reasons, the Tribunal also rejects as implausible that he considered himself safe at his home because the coast guard, army and military did not have legal authority to arrest him until various procedures had been followed.
110. The Tribunal also has serious concerns with the inconsistency between the applicant's oral evidence and statutory declaration to the Tribunal compared with his responses during his Department interview as to the period of time between the workplace incident that led to his problems and his departure from the UAE. As flagged in the Tribunal's s 424A letter, in his Department interview he claimed that this incident happened two weeks prior to his departure. By contrast, in his statutory declaration and oral evidence to the Tribunal, the applicant provided considerable detail as to what happened on each day between [Date 1] July 2009 when the incident occurred, up until [Date 4] July 2009 when he and his family departed the UAE. To the extent that the applicant claimed that he was upset during the

Department interview, the Tribunal does not accept this explanation. Given the centrality of this brief period of days to his overall claim for protection, combined with the Tribunal's other credibility concerns with the applicant, the Tribunal rejects as implausible that he would mistakenly claim in his Department interview that this critical period lasted two weeks.

111. Having regard to the above findings with respect to when the applicant planned and booked his departure from the UAE, combined with the Tribunal's concerns with aspects of the applicant's evidence regarding the events between [Date 1 and Date 4] July 2009, the Tribunal does not accept the applicant's claims regarding the incident on [Date 1] July 2009 or the sequence of events involving him hastily wrapping up his affairs between [Date 1 and Date 4] July 2009 and departing the UAE due to a fear for his or his family's safety. In particular, the Tribunal does not accept that the applicant delivered a rant to colleagues at the coast guard on or about [Date 1] July 2009 in which he made controversial or inflammatory comments regarding the UAE government, Islam, a local mosque or anything else. It follows that the Tribunal also does not accept that he was reported to his superiors by a colleague who was a spy or that he was directed to report to his headquarters in relation to any such rant or that he was or would be considered an infidel or dissident as a consequence of this rant. Given these findings, combined with the Tribunal's credibility concerns with the applicant generally, the Tribunal also does not accept that the applicant was reprimanded or interrogated by his Major in relation to any such rant, his religious beliefs or for any other reason. It follows that the Tribunal also does not accept that this alleged incident led to the applicant becoming a person of adverse interest to the coast guard (or the authorities generally in the UAE), or that the applicant believed that he was such a person of interest. It follows that the Tribunal does not accept that the applicant absconded by stealth from the coast guard headquarters on or about [Date 1] July 2009 or that any other member of the coast guard was punished in connection with him so absconding. It also follows that the Tribunal does not accept that any charges were ever laid, or warrants or orders issued, in relation to the applicant by the coast guard (or any other UAE authority) in connection with the alleged incident on [Date 1] July 2009, or that the applicant was ever so advised by any friends or colleagues. Nor does the Tribunal accept the applicant's claims that a friend within the coastguard concealed the relevant order or warrant from the Major of the port to afford the applicant more time to depart the country. Nor does the Tribunal accept that any other action was taken by the coast guard (or any other UAE authority) against the applicant in connection with the alleged incident on [Date 1] July 2009. It also follows that the Tribunal does not accept that the applicant remained at home in hiding from the authorities, that he did not answer the phone when the head office was calling him, or that he wrapped up his personal and economic affairs in the UAE, in the period between [Date 1 and Date 4] July 2009 as a consequence of the alleged incident on [Date 1] July 2009 or its aftermath. It also follows that the Tribunal does not accept that the applicant made discrete inquiries with a friend who worked at the airport to check whether he was on a list of persons wanted by the authorities.
112. The Tribunal accepts that the applicant travelled from the UAE to the Philippines with his family on [Date 4] July 2009. The Tribunal accepts that the applicant made some attempts to obtain permanent residency in the Philippines but was unsuccessful in doing so. However, given the above findings, the Tribunal does not accept that the applicant's motivation for departing the UAE with his family on [Date 4] July 2009, or his motivation for seeking permanent residency in the Philippines, was due to the incident on [Date 1] July 2009, the aftermath from this incident, his fear of the authorities as a consequence of this incident or

any other reason connected with his employment with the coast guard or his fear of the authorities.

113. Given the above findings, it follows that the Tribunal also does not accept the applicant's claims that, since his departure from the UAE, the authorities have visited his home, the home of his mother or the home of any other member of his family, in relation to him, including in January 2011. For the same reasons the Tribunal also does not accept that the authorities have otherwise maintained an interest in the applicant or any member of his family as a consequence of the [Date 1] July 2009 incident or its aftermath, his employment in the coast guard or his expression of anti-government or anti-Islam comments. For the same reasons the Tribunal also does not accept the applicant's claims that, until recently, he had avoided contacting his family in the UAE due to his fear of the authorities or that he has recently made unsuccessful efforts to contact his brothers or other family members in order to obtain evidence supportive of his protection visa claims, or that his brothers or other family members have refrained from assisting him for fear of the authorities.
114. In making the above findings, the Tribunal notes that it has had regard to the corroborative oral evidence and written statement of the applicant's wife, [Mrs A] (the second named applicant). The Tribunal acknowledges that her evidence was generally consistent with the evidence of the applicant, including in relation to the events between [Date 1 and Date 4] July 2009. However, given the reliable information from Emirates Airlines which contradicts the applicant's central claim as to when he booked his departure from the UAE, combined with the Tribunal's other concerns with the applicant's claims set out above, the Tribunal has given little weight to [Mrs A]'s evidence. For the same reasons the Tribunal has also given little weight to the written statement from the applicant's mother in the UAE regarding recent visits by the authorities.
115. In making the above findings, the Tribunal notes that it has also had regard to the various documents provided to the Department and Tribunal by the applicant over the course of this application, including the various arrest warrants recently produced to the Tribunal. In assessing the value of this documentation, the Tribunal has had regard to recent authority contained in *MIAC v SZNPG* [2010] FCAFC 51 and *MIAC v SZNSP* [2010] FCAFC 51. However, the Tribunal finds that the significant concerns it has with the applicant's credibility far outweigh any weight the documentation submitted might carry and, accordingly, the Tribunal gives little weight to this documentation.
116. In relation to the several arrest warrants provided to the Tribunal, the Tribunal notes further that none of these warrants relate to the relevant incident at the applicant's workplace on [Date 1] July 2009, but rather relate to dishonoured cheques issued by the applicant at various times. This is contrary to the applicant's claims that various procedures were followed whilst he was still in the UAE for an arrest warrant to be issued as a consequence of the workplace incident on [Date 1] July 2009. Given the applicant's claims that these various arrest procedures were initiated and pursued in the days following the incident on [Date 1] July 2009, which the applicant claimed to have been informed about by a reliable source within the coast guard, it strikes the Tribunal as highly unusual that the relevant arrest warrants he has now produced are unrelated to the incident on [Date 1] July 2009. The Tribunal has had regard to the applicant's claim, and relevant country information, that the authorities sometimes arrest political dissidents on minor charges as a pretext for then charging them with more serious crimes. However, in light of the Tribunal's credibility concerns with the applicant generally the Tribunal does not accept that the applicant is a person with an adverse

political profile within the UAE and has therefore given that country information little weight.

117. Having regard to the above, the Tribunal accepts that there may be a number of outstanding warrants in relation to the applicant for dishonoured cheques. However, having regard to the country information set out earlier in relation to Article 401 of the UAE penal code, the Tribunal finds that the relevant law the subject of the applicant's warrants is, on its face, intent and application, not discriminatory in its terms and applies generally to all members of the UAE community. It follows that the law is one of general application. The applicant has not submitted otherwise. Rather, the applicant has claimed that these warrants are being used as a means of targeting him for political reasons. The Tribunal accepts from the country information provided by the applicant that the UAE authorities at times prosecute minor offences as a means of targeting political dissidents. However, given the Tribunal's finding that the applicant does not hold an adverse political profile with the UAE authorities, as well as the Tribunal's findings rejecting the applicant's claims regarding the workplace incident on [Date 1] July 2009, the Tribunal does not accept there is a real chance that the UAE penal code (the subject of the applicant's arrest warrants) will be enforced or applied in a discriminatory, selective or persecutory manner in relation to the applicant. It follows that the applicant's fear of harm in connection with his outstanding warrants is not a fear of persecution for a Convention reason, but rather a fear of criminal prosecution under a law of general application.
118. The Tribunal has also had regard to the report from [Organisation C] regarding psychological problems affecting the applicant. The Tribunal has also had regard to the Tribunal's Guidance Note on the Assessment of Credibility.²⁹ The Tribunal is mindful that refugee claimants who have experienced traumatic episodes sometimes manifest symptoms of trauma when giving their evidence, including by giving evidence that lacks consistency, plausibility or coherence but which might nevertheless be true. However, even allowing for these matters and affording the applicant considerable latitude in his oral evidence in light of his [Organisation C] report, for the reasons above the Tribunal has ultimately formed the view that the applicant lacks credibility in relation to the [Date 1] July 2009 incident and aftermath.
119. Given the above findings, when looking to what may happen if the applicant were to return to the UAE now or in the reasonably foreseeable future, the Tribunal is satisfied that the applicant does not face a real chance of being seriously harmed for reason of the incident on [Date 1] July 2009 or its aftermath, or any other reason connected with his employment with the coast guard or him expressing anti-government or anti-Islamic views in the course of such employment. It follows that the Tribunal does not accept that the applicant's claimed fear of persecution as a consequence of these matters is well-founded. To the extent that the applicant has produced evidence of several outstanding arrest warrants against him, for the reasons above the Tribunal has found that these warrants do not give rise to a real chance of serious harm for a Convention reason.

Claims relating to religion

120. The Tribunal accepts the applicant's evidence that, whilst a practising Muslim, he is jaded with his religion and is interested in possibly converting to Catholicism. The Tribunal also accepts that he attended a Catholic church on several occasions in the Philippines and made

²⁹ MRT-RRT, *Guidance on the Assessment of Credibility*, August 2008, available at <http://www.mrt-rrt.gov.au/Conduct-of-reviews/default.aspx>.

inquiries about being baptised. The Tribunal also accepts that he has attended a Catholic church on several occasions in Australia and that his sole purpose in doing so was not to strengthen his claim to be a refugee.

121. However, the Tribunal asked the applicant a range of questions at the hearing about any possible fears of returning to the UAE for reasons relating to his, his wife's and his children's religion. The applicant was adamant throughout this questioning that his fear of returning to the UAE had nothing to do with religion, but rather was due to the incident of [Date 1] July 2009 and its aftermath. The applicant also gave evidence that he had travelled internationally a number of times prior to his departure from the UAE on [Date 4] July 2009, including to Europe, the United Kingdom and the United States. The applicant confirmed that he never applied for protection in the course of any such travels, explaining as his reason that, prior to [Date 1] July 2009, he never had any problems, or otherwise held a fear of persecution, in the UAE.
122. The Tribunal also has had regard to relevant country information indicating that the UAE generally enjoys a high degree of religious tolerance and freedom. Whilst conversion from Islam to another religion is technically forbidden, country information indicates that in reality the consequences for someone who converts from Islam are generally confined to social stigma and some administrative disadvantage.
123. The Tribunal acknowledges that the applicant expressed some frustration and disenchantment with Islam and with aspects of life in the UAE, particularly as a result of Islamic conservatism and discrimination against non-Muslims. The Tribunal also notes the applicant's claims, including the statement of his wife and written submissions of his agent, relating to the difficulties they faced in obtaining false documentation to back-date their marriage, as well as his wife having to officially convert from Catholicism to Islam for the benefit of their children which, it was submitted, was a violation of her human rights.
124. However, the Tribunal does not accept that the applicant subjectively fears being seriously harmed for reasons of religion if he were to return to the UAE now or in the reasonably foreseeable future. In addition, the Tribunal also does not accept that the applicant faces a real chance of being seriously harmed for reasons of religion and, accordingly, the Tribunal does not accept that this fear of harm is objectively well-founded. In making these findings, the Tribunal notes the applicant's emphatic and repeated denials in his oral evidence that his claim for protection was in any way connected to religion, but rather was based solely on the incident of [Date 1] July 2009 and its aftermath. The Tribunal also notes his oral evidence that he had never had any reason to seek protection during previous international travel with his family because he had nothing to fear in the UAE prior to [Date 1] July 2009. The Tribunal also notes his oral evidence that the difficulties they faced in back-dating their marriage documentation were ultimately resolved and he did not experience any problems with the authorities in connection with these issues. The documentation provided to the Department also shows that all of his children born in the UAE were ultimately issued UAE passports. The Tribunal also finds on the basis of country information that the UAE has a generally high level of religious tolerance and freedom and that the consequences for religious converts from Islam to other religions is generally confined to social stigma and some administrative disadvantage. Having regard to the non-exhaustive list of examples of 'serious harm' set out in s 91R(2), as well as having regard to other types of serious harm not mentioned in s 91R(2), the Tribunal does not accept that any such future hardship would be sufficient to amount to serious harm. Accordingly, even if the applicant were to convert to

Catholicism or if it became known that the applicant was not a genuine Muslim, the Tribunal does not accept that he would face a real chance of being seriously harmed as a result.

125. The Tribunal has also considered the applicant's claim that, if tortured, he might reveal that he does not believe in Islam. However, given the Tribunal's findings above that he is not a person of adverse interest to the authorities, the Tribunal does not accept that he would ever be tortured or otherwise placed in such a position that his religious views would be interrogated. For the reasons above, including the country information noted earlier regarding the level of religious tolerance in the UAE, the Tribunal does not accept that there is otherwise a real chance that the applicant would be seriously harmed in relation to his religious views.
126. The Tribunal also acknowledges that, in his written submission to the Tribunal dated [in] August 2011, the applicant referred to the risk of harm if the authorities were to discover that his first two children were born out of wedlock. However, the Tribunal notes again that the applicant was adamant in his oral evidence that his claim for protection was based solely on his workplace incident on [Date 1] July 2009. The applicant reaffirmed that view in his written submission dated [in] August 2011, where he reiterated that 'I fear for my life, and persecution resulting from the incident at my work on [Date 1] July 21009. No other reasons.' As noted above, the applicant's oral evidence at the hearing was also to the effect that the difficulties they faced in back-dating their marriage documentation were ultimately resolved and he did not experience any problems with the authorities in connection with these issues. The documentation provided to the Department also shows that all of his children born in the UAE were ultimately issued UAE passports. The Tribunal appreciates that past experiences are not necessarily indicative of what may happen to a person in the future and that the absence of serious harm in relation to a particular matter in the past does not necessarily mean that the person does face a real chance of serious harm in the reasonably foreseeable future. However, given the absence of harm in the past, combined with the applicant's evidence indicating that the issue has since been resolved without incident, and given also the applicant's insistence that his claim for protection was based solely on the workplace incident on [Date 1] July 2009 and he never had any prior cause to seek protection whilst abroad from the UAE, the Tribunal is satisfied that the chance of the applicant being seriously harmed in connection with having had two children born out of wedlock is remote and, accordingly, not well-founded.
127. It follows from the above that the Tribunal is satisfied that the applicant does not have a well-founded fear of persecution for reason of religion (actual or imputed).
128. Based on the same reasoning as in relation to religion above, the Tribunal also does not accept that the applicant subjectively fears being seriously harmed for reason of his membership of a particular social group relating to his and/or his family's religion, including particular social groups comprising Muslims married to Catholics (or non-Muslims generally); actual, imputed or intended converts from Islam to Catholicism (or any other religion); parents of children born out of wedlock; or families comprising children born out of wedlock. For the same reasoning above, the Tribunal also does not accept that any such fears are objectively well-founded.

Other claims

129. The Tribunal notes that, in his application form, when describing his fears of returning to the UAE, the applicant made a number of references to Islamic extremists in the UAE. The

applicant has also made claims relating to witnessing corruption whilst working in the coast guard.

130. As noted above, the Tribunal explored with the applicant in great detail at the hearing why he feared returning to the UAE, including probing him for any other possible reasons as to why he might fear going back to the UAE. As noted, he was adamant that he had not experienced any problems prior to [Date 1] July 2009 and his only fear of returning to the UAE related to the [Date 1] July 2009 incident and its aftermath. In these circumstances, and given the Tribunal's findings and reasoning above that the applicant does not have a well-founded fear of being seriously harmed if he were to return to the UAE now or in the reasonably foreseeable future for reasons of religion (and related matters), the Tribunal is also satisfied that the applicant does not subjectively fear serious harm if he were to return to the UAE now or in the reasonably foreseeable future for reasons of religious extremism or violence in the UAE generally, or for any other reason connected with his employment with the coast guard. Based on the Tribunal's reasoning set out above in relation to religion, the Tribunal also does not accept that the applicant faces a real chance of being seriously harmed in connection with religious extremism or violence in the UAE generally, or for any other reason connected with his employment with the coast guard. It follows that the Tribunal does not accept that any such fear of harm is objectively well-founded.

CONCLUSIONS

131. Having considered all of the applicant's claims, both singularly and cumulatively, the Tribunal is not satisfied that he is a person to whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2)(a) for a protection visa and, accordingly, is not entitled to be granted the visa.
132. The second, third, fourth, fifth and sixth named applicants did not make any claims to be a refugee in their own right, but rather applied for a protection visa on the basis of being a member of the applicant's family unit. Therefore the fate of their application depends on the outcome of the applicant's application. For the reasons above the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations. Therefore he does not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that the second, third, fourth, fifth and sixth named applicants are unable to satisfy the criterion set out in s.36(2)(b) and, accordingly, are also not entitled to be granted the visa.
133. In making the above finding, the Tribunal notes that it has given consideration to whether a potential refugee claim arises from the material before it in relation to any of the applicant's children (excluding the seventh named applicant) in their own right. However, on the evidence before it, the Tribunal finds that no claims have ever been made in relation to the children, despite the applicant being represented before the Tribunal by a registered migration agent. On the evidence before it, and having considered all of the applicant's claims, the Tribunal finds that no separate claims arise in relation to any of his children (excluding the seventh named applicant).
134. The Tribunal has also given consideration to whether a potential refugee claim arises from the material before it in relation to [Mrs A]. Once again, however, on the evidence before it the Tribunal finds that no claim has ever been made in relation to [Mrs A], despite the applicant being represented before the Tribunal by a registered migration agent. The Tribunal notes further that [Mrs A] has at all times claimed to be a citizen of the Philippines. The matters raised by the applicant in relation to his fears of returning to the UAE are therefore

not apposite to [Mrs A], given that this is not her country of nationality. [Mrs A] has at no stage made any claims of fearing persecution if she were to return to the Philippines now or in the reasonably foreseeable future, despite having ample opportunity do so. On the material it, the Tribunal finds that no separate claim arises in relation to [Mrs A].

135. In relation to the seventh named applicant, for the reasons above the Tribunal has found that no protection visa application was made to the Department in relation to the seventh named applicant and, accordingly, the Tribunal does not have jurisdiction in this matter in relation to the seventh named applicant. Whether the seventh named applicant wishes to now lodge a protection visa application with the Department in her own right is ultimately a matter for her.

DECISION

136. The Tribunal affirms the decisions not to grant the first, second, third, fourth, fifth and sixth named applicants Protection (Class XA) visas.
137. The Tribunal does not have jurisdiction in this matter in relation to the seventh named applicant.