

1401757 [2014] RRTA 652 (25 August 2014)

DECISION RECORD

RRT CASE NUMBER: 1401757
COUNTRY OF REFERENCE: Philippines
TRIBUNAL MEMBER: Antoinette Younes
DATE: 25 August 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Statement made on 25 August 2014 at 3:20pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Philippines applied to the Department of Immigration for the visa [in] December 2012 and the delegate refused to grant the visa [in] January 2014. In the application for a protection visa, the applicant included her [child] as a secondary applicant but [the] application was withdrawn as [the child] later acquired Australian citizenship by descent.

CONSIDERATION OF CLAIMS AND EVIDENCE

3. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the ‘refugee’ criterion, or on other ‘complementary protection’ grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
4. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
5. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).
6. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Summary of the applicant’s claims

7. The applicant is a [age] year old female who has a [child] aged [age] years. The father of the child is an Australian citizen whom the applicant met in 2007 in the Philippines. Although the father of the child did not sponsor the applicant for a partner visa, at different times, he has provided financial support to the applicant. The child has been diagnosed with [medical conditions]. There is medical evidence supporting this claim. The child’s birth certificate does not mention the father’s details.

8. The applicant lived with her child in the Philippines for some time until she was sponsored for a Partner visa (subclass 309) by another Australian who later withdrew his support. She and her child arrived in Australia [in] July 2011.
9. The applicant has claimed that she fears significant harm in the Philippines from the “*general public, schools, hospitals, employers and others*” due to her membership of a particular social group, namely, single mother with a disabled mixed-race child born out of wedlock. In submissions supporting the visa application, the applicant’s representative noted that the applicant had been advised that her application has limited prospects of success in that “*the discrimination that she would face may not seem to amount to persecution*” but that there may be prospects of success for Ministerial Intervention owing to the Australian child’s right to access to services as an Australian citizen. The representative submitted that country information supports the applicant’s claim that there is a real chance of serious harm occurring to the applicant and her [child] on the basis of membership of a particular social group and the child’s ethnicity. It was argued that country information supports the applicant’s fear and suggests that women suffer gender bias during hiring practices; the applicant will suffer gender discrimination “*making it difficult for her to become gainfully employed and her child will suffer harm due to lack of fundamental assistance [the child] ought to be entitled to from the government*”. The applicant has a well-founded fear of serious hardship.
10. In submissions to the Tribunal, the representative essentially summarised the applicant’s claims and made extensive submissions relating to Ministerial Intervention guidelines. The representative provided documents including evidence that [in] November 2013, the child became an Australian citizen by descent, letters of support to the applicant and [details deleted].
11. The applicant was invited to attend an interview with the Department but she declined. The applicant appeared before the Tribunal on 12 August 2014 to give evidence and present arguments. The applicant was represented in relation to the review by her registered migration agent, who also attended the hearing.

Does the applicant have a well-founded fear of persecution?

12. In essence, the applicant gave evidence that she has a [tertiary qualification]. Whilst she lived in the Philippines, she had a number of positions, the last of which was a [occupation] for a [company] in which she remained for eleven years. Her father died when she was [a stated age]. Her mother is about [age] years of age and she lives and works in the Philippines. She has [siblings], two of whom are in the Philippines and [another] one lives in [another country] with her family.
13. In Australia, the applicant and her [child] live in shared accommodation. She pays \$180 a week in rent. She receives about \$800 a month in child support. She is currently working at a [workplace], learning to drive, and finishing a [course]. The child attends a special district school. There were custody/access arrangements in place but the father no longer wanted to participate. She stated that the father had difficulties in “*handling*” his [child]. Currently, the child’s father sees [the child] “*occasionally*”.
14. When asked why she did not wish to return to the Philippines, she stated that she did not want to leave her [child] alone in Australia and that she fears that it would be difficult for [the child] because of [the child’s] disability. In the Philippines, [the child] would be discriminated against and [the child] would have limited educational and other opportunities. Special-needs schools are expensive and she would not be able to afford sending her [child] to those schools. She is

concerned that her [child] might be kidnapped for ransom because [the child] is the [child] of an Australian who could be perceived as being wealthy. She does not want to return to the Philippines because she needs to be with her [child] in Australia. She fears that she may have difficulties finding employment in the Philippines and may not receive assistance from the government in relation to her [child].

15. The Tribunal discussed with the applicant country information indicating that the Philippines is a democracy where generally there is respect and protection for all citizens. The Tribunal indicated that it is the Tribunal's task to determine if there is a real chance of serious harm or a real risk of significant harm occurring to the applicant if she were to return to the Philippines. Further, the Tribunal noted that in relation to Ministerial Intervention, this is entirely a matter for the Minister's discretion and that the power is non-compellable and non-reviewable. The applicant stated that all members of her family live in the province and are working in the Philippines. They may not be able to provide her with much assistance and support in case of her return. She fears that as an older person, she could face further challenges in finding employment and she would have to live in the city where there are more employment opportunities, and consequently away from her family.
16. In oral submissions, the advisor reiterated that the applicant's claims may not amount to persecution but that the application was lodged in order to facilitate a request for Ministerial Intervention. The applicant is aware of the low prospects of success but her case comes within Ministerial Intervention guidelines, essentially on the basis of the child's rights to remain in Australia and to have access to both parents. The child needs to be given an opportunity to develop a relationship with [the] father. The advisor referred to RRT [case number] where the Tribunal made a favorable decision in a case factually similar to the current matter. The Tribunal noted that whilst consistency in decision making is desirable and that the Tribunal may give regard to other Tribunal determinations, the Tribunal is not bound by those decisions.

FINDINGS AND REASONS

What does the applicant fear?

17. The applicant is not claiming that she has suffered any harm or mistreatment in the Philippines. Her claims are arguably speculative. The Tribunal recognizes that an applicant does not have to demonstrate past harm in order to establish future harm. However, the past can be a reasonable guide to the future. The applicant fears general harm from employers, the general public, schools, hospitals and others. Specifically, she fears that she may face difficulties in finding employment resulting in financial difficulties. She fears that her child would have difficulties in being able to access appropriate education and that he could be kidnapped.
18. The applicant's claims are based on what she fears might happen to her and her [child] in the future. The Tribunal must consider whether her fears of being harmed on return are 'well-founded'. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
19. The Philippines is a conservative predominantly Catholic society and it is plausible that she may encounter a certain level of moral 'judgment' from various sectors. However, on the basis of the available information, the Tribunal does not accept that any such difficulties would amount to

serious harm. For the same reasons, the Tribunal does not accept that any such difficulties would amount to significant harm.

20. The applicant has tertiary qualifications and has worked for many years, both in the Philippines and in Australia. She is currently undertaking further studies which could potentially enhance her employment opportunities. The Tribunal accepts that if the applicant were to return to the Philippines as a single parent with a young child, it is plausible that she could encounter some difficulties, including employment; the Tribunal accepts that there may be a delay in her being able to find employment but on the basis of the available information, the Tribunal is not satisfied that the applicant would not find a job. On the basis of the available information and for the stated reasons, the Tribunal does not accept that any delay in finding employment would amount to serious harm. For the same reasons, the Tribunal does not accept that any delay would amount to significant harm.
21. The Tribunal asked the applicant if she knew whether she would continue to receive child support if she were to return to the Philippines, the applicant indicated she was not sure. Given the applicant's level of education, employment history and on the basis of the available information, the Tribunal does not accept that the applicant would face financial difficulties or that she would not be able to support herself or provide for her child. For those reasons, the Tribunal does not accept that the applicant would face financial difficulties amounting to serious harm. For the same reasons, the Tribunal does not accept that she would face financial difficulties amounting to significant harm.
22. In relation to the applicant's claim that because of [the] disability, her [child] would have limited access to suitable education, independent sources indicate that the Philippine government provides free elementary and secondary public education for children (US State Government, *Country Reports on Human Rights Practices for 2013*). The Constitution prohibits discrimination against persons with disability. The National Council for the Welfare of Disabled Persons "*formulated policies and coordinated the activities of all government agencies for the rehabilitation, self-development and self-reliance of persons with disabilities and their integration into mainstream society*" (US State Government, *Country Reports on Human Rights Practices for 2013*). On the basis of the available information, the Tribunal is not satisfied that the applicant's [child] will not have access to suitable education because of [the child's] disability, or that [the child] would be discriminated against or denied access on that basis when accessing education.
23. Whilst there are reports indicating that mixed-race children can face discrimination in the Philippines, in 2002, the Department of Foreign Affairs and Trade (DFAT) noted that "*any discrimination is unlikely to take the form of serious persecution*" (Department of Foreign Affairs and Trade 2002, *CIR No 374/02: Filipino single mother*, 23 December CISNET Philippines CX71454). More recently, in August 2009, the United Nations Committee on Elimination of Racial Discrimination (CERD) noted that "*the Philippine society had naturally adopted an open and tolerant disposition with inherent respect for cultural diversity*". Racial discrimination, according to CERD, "*is alien to the prevailing mores and culture of the Filipino people and there has never been any reference to the existence of a discriminatory policy on racial grounds*". CERD further noted that there was no single predominant race in Philippine society and many of the population were of mixed-race backgrounds with the intermingling dating back decades if not centuries, said Ms. Quisumbing [Commissioner, Commission on Human Rights of the Philippines]. Among the major factors affecting the enjoyment and fulfilment of the human rights of all races were the general economic development situation, the global economic crisis, a government policy to promote mining investment and activities and

ongoing internal armed conflicts in areas where indigenous communities resided United Nations Committee on the (Elimination of Racial Discrimination 2009, *Committee on Elimination of Racial Discrimination considers report of the Philippines*, Relief web, 19 August <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-7V4436?OpenDocument>> Accessed 31 August 2010 <CISNET Philippines CX248181>). On the basis of the available information, the Tribunal is not satisfied that the applicant's [child] would face discrimination amounting to serious harm on the basis of being of mixed-race. For the same reasons, the Tribunal is not satisfied that the applicant's [child] would face discrimination amounting to significant harm on the basis of being of mixed-race.

24. In relation to the claim that the [child] would be kidnapped for ransom, the Tribunal finds this claim to be speculative. On the basis of the available information, the Tribunal is not satisfied that the applicant's child would be kidnapped for ransom in if [the child] were to return to the Philippines.

Summary of findings in relation to the refugee criterion

25. The Tribunal has considered the claims individually and cumulatively. The Tribunal has considered the country information provided by the applicant and has also taken into consideration the submissions made in relation to low prospects of success and the concession that this matter is before the Tribunal for the purpose of enabling a request for Ministerial Intervention.
26. In consideration of the evidence as a whole and given the above findings, the Tribunal finds that there is not a real chance that the applicant would suffer Convention-related serious harm in the reasonably foreseeable future if she and her child were to return to the Philippines. Accordingly, the applicant does not have a well-founded fear of persecution in the Philippines for a Convention reason.

Complementary protection criterion

27. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative, complementary protection criterion in s.36(2)(aa).
28. In relation to the applicant's claims to fear harm on the basis of her status as a single mother, in light of the Tribunal's finding that there is not a real chance that she would suffer serious harm for this reason in the reasonably foreseeable future in the Philippines, the Tribunal considers there are no grounds for believing that there is a real risk she will suffer significant harm on that basis. The Tribunal has considered whether any discrimination she might suffer for those reasons could amount to significant harm. However, the evidence before the Tribunal does not indicate that any possible future discrimination or treatment the applicant might suffer on that basis amounts to significant harm for the purposes of s.36(2)(A).
29. In relation to the applicant's claims to fear harm on the basis of being a single mother of a child born to a foreign father, in light of the Tribunal's finding that there is not a real chance that she or the child would suffer serious harm for this reason in the reasonably foreseeable future in the Philippines, the Tribunal considers there are no grounds for believing that there is a real risk she will suffer significant harm on that basis. The Tribunal has also considered whether any discrimination she might suffer in this way or for these reasons could amount to significant harm. However, the evidence before the Tribunal does not indicate that any possible future

discrimination or treatment the applicant might suffer on that basis amounts to significant harm for the purposes of s.36(2)(A).

30. With regards to her claim to fear harm on the basis that her child would suffer harm, in light of the Tribunal's finding that there is not a real chance that the applicant or her child would suffer serious harm, the Tribunal considers there are no grounds for believing that there is a real risk her child will suffer significant harm for whatever reason. The Tribunal has considered whether any discrimination the child might suffer could cause her to suffer significant harm. However, the evidence before the Tribunal does not indicate that any possible future discrimination or treatment the applicant's child might suffer could cause the applicant to suffer significant harm for the purposes of s.36(2)(A).
31. In relation to her claim that she would suffer harm on account of her child suffering serious harm, including being kidnapped, because [the child] could be perceived to be from a wealthy family, in light of the Tribunal's finding that neither she nor her child, would suffer serious harm for this reason, the Tribunal considers there are no grounds for believing that there is a real risk that she will suffer significant harm on that basis. The evidence before the Tribunal does not indicate that any possible future discrimination or treatment the applicant's child might suffer for this reason could cause the applicant to suffer significant harm for the purposes of s.36(2)(A).
32. Having considered the applicant's circumstances, the Tribunal finds there are no substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to the Philippines, there is a real risk that she will suffer significant harm.

Conclusions

33. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations and it finds that she does not satisfy the criterion set out in s.36(2)(a) or (aa). There is no suggestion the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a Protection visa.
34. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a Protection visa.

Decision

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

Ministerial Intervention

36. The applicant has requested that the Tribunal refer the case to the Department for consideration by the Minister pursuant to s.417 of the Act which gives the Minister a discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so. There is strong community support for the applicant as evident from the [deleted] and letters of support. The applicant is the mother of an Australian minor who has a disability, circumstances that could come within Australia's obligations as a signatory to the Convention on the Rights of the Child. The Tribunal has considered the applicant's case and the ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' and will refer the matter to the Department.

Antoinette Younes
Senior Member