

060978937 [2007] RRTA 38 (26 February 2007)

DECISION RECORD

RRT CASE NUMBER: 060978937
DIMA REFERENCE(S): CLF2006/116702
COUNTRY OF REFERENCE: Fiji
TRIBUNAL MEMBER: Patricia Leehy
DATE DECISION SIGNED: 26 February 2007
PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Fiji, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter and posted the same day.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

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

RELEVANT LAW

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.

Section 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) 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 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Convention). Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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.

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

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.

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.

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.

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.

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.

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

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

The applicant appeared before the Tribunal to give evidence and present arguments.

According to his Protection Visa application, the applicant is a Fijian man born in a large town in Fiji. His religion is Hindu. He separated from his wife in recent years. He gives no information about family members. He worked in a senior position with a company for a number of years.

The applicant says that he left Fiji because he did not have the freedom to practise his religion and his rights. He was been robbed and threatened. His religious temple at his home has been ransacked by the indigenous people. He says that racism is a key factor at work, and that during social gatherings drunken natives come and interrupt religious programs, threatening his communities' wives and children. He says that if he retaliates or seeks legal help he has paid heavily by being beaten up, threatened and robbed. He says that when he was coming back from shopping he lost all the shopping, money, watches and valuables. He says that living on native leased land is not easy because whenever the natives run out of money or there is a ceremony in the village, the natives come and threaten them, taking livestock and demanding money. He says that his children were manhandled coming back from school by their native school mates because they did not have money to give them. He says that they could not perform in sport because they were tackled very hard. He says that there were hundreds of incidents that he did not report because they would know that he had lodged the complaint and they could come and threaten his wife and children. They stoned his house.

The applicant says that he fears that what has happened in the past will continue. It has been going on for so long that "it has become a sort of routine for the natives to come and hassle me and my family." He says that even though the police have charged them, he thinks he has taken a wrong step by engaging police help because it has not helped but made his situation worse. He says that he thinks the natives are politically and racially motivated, or that they do not want Indians on their land. He says: "Especially they don't want me on that part of land."

The applicant says that the authorities are doing a good job but they are not in a position to look after every individual physically. He says that in his area the police are operating with only one vehicle, and they have to borrow from another section. By the time they reach a crime scene it is too late. The applicant says that the natives in Fiji have killed people "for just a carton of beer so imagine how low they can go as far as I am concerned because I think they have personal grudge against me."

The applicant attended a hearing. His English is fluent, but the services of an interpreter in Hindi were also used from time to time.

The applicant submitted a number of police reports from his town which he had obtained after contacting the local police station and asking them to forward the reports to him. They had difficulty in locating reports prior to a recent period, and did not locate all the reports he made in that recent period. The applicant was sent the originals which he showed to the Tribunal at the hearing. When asked why he had not submitted the police reports with his Protection Visa application, he said he had not realised that they would be helpful until after he had submitted the application. The reports are issued by the Station Officer at his town's Police Station. The applicant said that he did not recognise the signature of the person who signed. The applicant stated the name of the officer whom he dealt with. There are several reports relating to the following complaints lodged by the applicant at the police station:

- Complaint that applicant's home was broken into on a particular date and named items were stolen;
- Complaint that the applicant's livestock of a given value was stolen from his farm on a certain date;
- Complaint that the applicant's prayer place was destroyed by an unknown person on a given date;
- Complaint that the applicant was man-handled and threatened by Fijian youths at his town (this incident, which is undated in the report, was said by the applicant at hearing to have occurred on a given date).

The applicant said when he and his wife separated. He stated her background. She moved to stay with her relative not too far from the applicant's house. They have children of various ages. The children visited the applicant at weekends after the separation. The reason for the separation was personal, and not connected with the applicant's refugee claims.

The applicant was referred to his Protection Visa application in which he states that his wife and children were threatened. He said that they were harassed. He said that recently, when his children visited at the weekends, they were very upset when stones were thrown at the house, and drunken Fijians entered his compound and threatened and insulted them.

The applicant was asked whether his family members lived in his town. He said that they did, and they have problems of harassment. He was asked whether he had always had problems with the indigenous Fijians. He said that there were some instances, but things had worsened a few years ago.

The applicant was asked about his work. He said that he worked for a company and he described what it did. He indicated who owned it, and it employed a number of people. The applicant worked in administration. He told the company he was coming to Australia on leave before he left work. Since he has been in Australia he has told them that he has applied for a Protection Visa.

The applicant was asked how long he had lived in his house, which is leased from Fijians. He said that he leased the house some years ago, and prior to that lived with his family members who own their own house. He said that initially there were no problems, but that

there had begun to be problems a few years ago. The lease on the property is renewable at regular intervals, but he renewed the lease recently, but not since, because he was not sure whether he should try to do so.

The applicant was asked whether he was involved in a political group. He said that he helped out and went to meetings sometimes of the Indian community, and was a supporter of the Fiji Labour Party, but was not a member, and had not participated in any political activities such as demonstrations.

The applicant was asked to describe problems he had had with the native Fijians. He said that they would come and demand things to eat. They would take animals from the farm. He said that he had a medium sized farm on which he had some livestock to support the family. He said that the farm was borrowed land, separate from his house. He has been running animals on the farm for some years. He said that in recent years, animals sometimes went missing, and he stated when he first reported these incidents. The applicant was asked whether the local police were indigenous Fijians or Indo-Fijians. He said that there were both. He was asked whether he knew any of the native Fijians who harassed him. He said that he knew some by their faces, but not by name.

The applicant was asked whether he had ever been physically harmed by the native Fijians. He said that when he was returning from work on a certain day and doing his shopping in the town, some Fijians took his shopping and a wallet and hurt him in the process. He said that he also struggled with them and there was a scuffle. He said that he recognised them by sight, and reported the matter, but nothing was done. He said that this was not the first time that he had been physically attacked. The problems seemed to have got worse in the last few years. The applicant said that in his village, there were a group of Indo-Fijian families, but a number of houses belonged to native Fijians. It was put to the applicant that if he moved to another area of Fiji he might be able to avoid the problems of being in such a minority. He said that he did not have the money to buy a house or land elsewhere. Besides this, the situation is bad in other places as well.

It was put to the applicant that information before the Tribunal from the US State Department's recent report on religious freedom indicated that religious freedom was generally respected, and that "the Government at all levels sought to protect this right in full and did not tolerate its abuse, either by governmental or private actors". The applicant said that this might be the official version, but the religious shrine he had in his house had been set fire to, and other Indo-Fijians have had the same experience. He said that the Indo-Fijians used to go to a local Hindu temple, but it had also been attacked and set on fire.

The applicant was asked about any other incidents in which he had been physically harmed. He said that Fijian youths had come to his house demanding beer, and when he said that he did not have any, they started to push and kick him. This happened at a stated time, and there were a couple of similar incidents recently. The applicant was asked whether his wife had ever been harmed. He said that she had not been. He was asked about his family members. He said that they suffered harm in the 2000 coup.

It was put to the applicant that it seemed reasonable that he should move elsewhere to avoid the problems in his area. He said that there are problems in places like Suva as well, though the situation is worse in the country. It was put to the applicant that the political situation appeared to have become somewhat more stable, with elections promised for next year. The applicant said that there have been four coups in Fiji in the past, and things will not change.

He said that the police were respectful when there was an Australian police commissioner. When he tried to bring those responsible for the last coup to justice, it was assumed that he was backed by the Indo-Fijian community, so he was got rid of. The applicant said that it seemed to him that things got worse for him when he complained to the police. He was asked whether anyone was ever arrested as a result of his complaints. He said that no-one was. He said that his neighbour had been attacked by an intruder and this person had been arrested, but he had not heard that anyone had ever been tried for things done to the Indo-Fijian community.

It was put to the applicant that he had said in his Protection Visa application that he had tried to negotiate with the indigenous Fijians. He said that he had gone to the village elders of the local indigenous community to complain about the actions of the youth, and the elders had accepted his concerns, but the troubles continued.

The applicant was asked what he feared, given that the incidents that he had described were not, if considered singly, very serious. He said that it was only a matter of time before they damaged the Indo-Fijians seriously. He was asked why he thought he was harassed. He said that they had no reason for doing what they did. It was put to the applicant that the Indo-Fijians were much richer than the indigenous Fijians, and the native Fijians probably wanted to take money and goods, which they did not have, from the Indo-Fijians. He said that the Indo-Fijians were very hard-working, whereas the native Fijians did not want to do anything. The applicant said that he used to be insulted by being called a Hindu and being sworn at. He said that Police Commissioner Andy Hughes had been taken at gunpoint, and what hope did he, the applicant, have? He said that Indo-Fijians living in the interior suffered a lot of pain, but it takes hours to get to the police station, and then nothing happens. He said that the native Fijians even prevent them from access to the sea, so fishermen have lost their jobs. He said that if he went back to Fiji he would get killed, or he would kill someone. He said that there is no religious freedom because they come and destroy the Hindu places of worship. He said that he was living in constant danger. He said that even with a good job, and having to leave his children behind, he felt he had to come to Australia for protection.

The Tribunal wrote to the applicant in accordance with s424A of the Act, saying that it had information which would be the reason or part of the reason for deciding that he was not entitled to a Protection Visa. The information sent to the applicant was that set out below under the headings: "Reports on the Current Situation of Indo-Fijians in Fiji" and "[The applicant's town] and its Indo-Fijian Population". He was invited to comment on this information.

The applicant wrote to the Tribunal in response to its letter. His comments included the following:

- Control of the land in Fiji remains a highly sensitive issue, in that ethnic Fijians communally hold over 80 per cent of the land, so that "worshipping on the land and following the practices of a religion is instituted by the Ethnic Fijians and practising or preaching of a religion on their land is their own prerogative;
- Prior to the political upheaval beginning in May [2006] Indo Fijians were subject to occasional harassment based on race and "there have been no credible allegations of government involvement in such incidents, which the police have investigated, sometimes resulting in arrests";

- Certain areas near the applicant's town experienced a particularly high level of violence including looting, arson and physical intimidation directed against Indo Fijians.

The applicant goes on to argue, referring to *MIMIA v Ibrahim*, that McHugh J's comments ("the fear of a single act of harm done for a Convention reason will satisfy the Convention definition of persecution if it is so oppressive that the individual cannot, be expected to tolerate it, so that refusal to return to the country of the applicant's nationality is the understandable choice of that person") apply in his case.

The applicant also makes reference to the definition of "religion" in Convention cases, referring to *Wang v MIMA* where Merkel J commented that there are two aspects of religion for the purpose of the Convention, "the first is as a manifestation or practice of personal faith or doctrine, and the second is the manifestation or practice of that faith or doctrine in a like-minded community". Merkel J states: "there is no meaningful difference between whether it is the religion of the persecutor, or of the person being persecuted which is the catalyst for serious harm."

Country Information

The Tribunal also had before it independent information relevant to the applicant's claims.

Report on Religious Freedom in Fiji

The US State Department, in its *Annual Report on International Religious Freedom*, released September 2006, for Fiji, states:

The constitution provides for freedom of religion, and the Government generally respected this right in practice. The Government at all levels sought to protect this right in full and did not tolerate its abuse, either by governmental or private actors...

The generally amicable relationship among religious groups in society contributed to religious freedom. However, in 2005 incidents of sacrilege increased for the third year in a row. Of the fifty incidents reported, most (72 percent) consisted of unidentified persons robbing and desecrating Hindu temples. There were ten acts of desecration of churches and four of mosques. Police surmised that these attacks had more to do with theft than with religious intolerance. Several Hindu members of Parliament alleged that the increasing attacks on Hindu temples were examples of a lack of societal respect for the Hindu religion. They called on law enforcement authorities to take more stringent action to prevent attacks and to identify and punish perpetrators.

Reports On The Current Situation Of Indo-Fijians In Fiji

Reports contrast the current coup with the previous coups of 1987 and 2000 in that (1) it was not directed against Indo-Fijian power, (2) it has the support of the Indo-Fijian community and (3) there has been no anti-Indian looting of shops up to this point. Early reports also indicate a lessening of the pressure on the Indo-Fijian community from threats of violence.

On 5 December 2006 Fiji's military chief Commodore "Frank" Bainimarama announced in a televised address that he had taken over the running of the country. The following day he installed a caretaker prime minister and sent troops to shut parliament. A news report states:

While the 1987 and the 2000 coups targeted the Fiji-Indians, the 5 December coup was to put an end to the discriminatory and anti-Fiji Indian policies pursued by Qarase and to promote a pluralistic, multi-cultural society in Fiji.

... Unlike the 1987 and 2000 coups when lumpen Fijians went on the rampage looting Fiji-Indian business establishments and homes, last week's transition from democratic governance to military governance was orderly and peaceful.

The Indian High Commission in Suva functioned normally right through the troubled week of 4 to 8 December whereas in 1987 it was forced to pack up and leave the country, in spite of coup-master Rabuka having had his training in Indian Army's Staff College in Wellington, Nilgiris. The streets of Suva have never been safer than they are today for people of all people as the army has taken over patrolling from the police. Fear of censorship of the media turned out to be unfounded as the three English dailies in Suva are able to publish articles and comments critical of the military take-over. Muggers and pick-pockets are conspicuous by their absence from the city streets. ...

The interim government would "mend the ever widening racial divide that currently besets our multi-cultural nation," said Bainimarama (Rajappa, Sam 2006, 'Fiji: Ethnic Fijians unhappy: A Different Kind Of Military Coup d'etat', *The Statesman*, 12 December)

An AAP report notes both support for the coup and a desire to leave Fiji by Indo-Fijians who feel they have been discriminated against since 2000:

Brothers Shalesh and Bijendra Prasad are tired of the ethnic divisions they believe are destroying Fiji and are among thousands of Indo-Fijians eager to flee their country following its fourth coup in 20 years. Like most Indo-Fijians, the Prasads support military commander Frank Bainimarama's seizure of power last Tuesday, but they are desperate to leave. "If you ask the question, three quarters of Indians want to leave Fiji," Bijendra said.

... Bainimarama's coup contrasts markedly to the 1987 and 2000 uprisings which were ethnically driven in favour of indigenous Fijians and led to an exodus of tens of thousands of Indo-Fijians from the country.

One cause behind Bainimarama's coup was his opposition to Mr Qarase's Qoli Qoli bill which proposes to give native land and sea title to indigenous Fijians.

The bill has been fiercely opposed by the country's 350,000 Indo-Fijians who believed they would be driven off land and not allowed to fish.

"Qoli Qoli has Fijians fighting against Fijians," said Shalesh, a Hindu priest.

Even though Qarase insists he has popular support and most analysts believe he would win another election, opinion of the coup is divided by ethnic lines.

Most indigenous Fijians disapprove of his actions, although many agree with the cause.

But Bainimarama, an indigenous Fijian, has been enthusiastically embraced by Indo-Fijians. ('Fiji: Indians keen to leave' 2006, *Australian Associated Press*, 11 December)

The *Fiji Sun* reported on the law and order situation following the coup:

Temple attacks and break-ins have vastly declined since the army takeover, owners of Hindu temples and prayer places said yesterday. They believe this is because of military checkpoints and warnings that the army will monitor the situation and people involved in such activities would be punished.

.....Mr Chandra said the temple owners lost hope in the police who told them to find their own security and could hardly investigate and punish the culprits. He said the military was doing a fine job maintaining security. ('Fiji: Hindus say temple attacks down under military rule' 2006, *Fiji Sun*, 13 December)

On 9 January 2007, Fiji's coup leader, Commodore Frank Bainimarama appointed Mahendra Chaudhry as the new interim finance minister. Chaudhry, who was the first ethnic Indian to become prime minister after his Labour Party won an election in 1999, was overthrown in the 2000 coup ('Mahendra Chaudhry back in Fiji's interim government' 2007, *India eNews*, 9 January <http://www.indiaenews.com/australia/20070109/35137.htm> – Accessed 12 January 2007)

On 11 January 2007, it was announced that Fiji's Great Council of Chiefs had performed a turnaround and now supported the new Bainimarama regime. Similarly both the Methodist and Catholic churches now supported the new regime. (Davis, Graham 2007, 'Chiefs' about-face bolsters Fiji coup', *The Australian*, 11 January).

The Applicant's Town And Its Indo-Fijian Population

[Information relating to the applicant's town deleted in accordance with s.431 of the *Migration Act* as this information could identify the applicant].

FINDINGS AND REASONS

On the evidence before it, in particular the detailed evidence about his circumstances given by the applicant consistent with his being a national of Fiji, the Tribunal accepts that he is a Fijian citizen. It further accepts on the evidence that he is of Indian ethnicity, and that he is Hindu.

The applicant gave his evidence at the Tribunal hearing in a direct and forthcoming manner, answering questions without equivocation. The Tribunal accepts his evidence as generally credible.

The Tribunal accepts the applicant's evidence that he has been harassed in the past for reasons of his ethnicity as an Indo-Fijian, especially in the last few years. It accepts that the harassment generally consisted of theft and verbal abuse by indigenous Fijians, but that on more than one occasion he has been physically attacked by them, on one occasion recently, in the course of a robbery in the street, and on other occasions when demands for goods or money were not met. While the Tribunal accepts that such incidents were distressing for the applicant, it does not accept that, considered either individually or cumulatively, they are sufficiently serious as to amount to persecution in a Convention sense.

The applicant has claimed that he has been harassed in the past for reasons of his religion. His evidence is to the effect that his religious shrine at home was damaged by indigenous people recently, and that the local Hindu temple has been attacked and set on fire. The Tribunal accepts these claims, but finds that they are not serious enough to amount to persecution in a Convention sense. The applicant has not claimed that he is unable to practise his religion, even though his local temple has been damaged.

The applicant has expressed his concern about the situation in relation to land and indigenous ownership. However, he has given evidence that while he rents his own house which is on indigenous land, his family members own their own home. He himself was able to renew his lease annually, although he has not chosen to do so, and has also stated that he was able to borrow land on which to farm. He has not claimed that land was taken from him. The Tribunal does not accept that the applicant has been deprived of the capacity to obtain shelter for reasons of his ethnicity or of his religion.

The applicant has claimed that racism was a “key factor” at work, however he has given evidence that he has been employed in a senior position with a company in Fiji for many years, and has not put forward any evidence of being discriminated against or mistreated at work. He said that he obtained leave from the company to come to Australia, which suggests that he has been treated reasonably at work. The Tribunal does not accept that the applicant has been deprived of his capacity to earn a living for reasons of his ethnicity or his religion.

The Tribunal does not accept that the applicant has been persecuted in the past in a Convention sense. It is required to consider whether there is a real chance that he will be persecuted if he returns to Fiji in the foreseeable future.

Very recent country information before the Tribunal (pages 8-10) indicates that while the political situation in Fiji has been extremely volatile, the most recent coup has resulted in a more stable, if unconstitutional, state, and that the current regime under Bainimarama is favourable to the interests of Indo-Fijians. The information also indicates that law and order has substantially improved, and in particular that attacks on Hindu temples have decreased. Bainimarama has recently announced that elections will be held in 2010 (Sydney Morning Herald, 20 February 2007 (<http://www.smh.com.au/news/WORLD/Bainimarama-pledges-Fiji-vote-in-2010/2007/02/20/1171733741295.html#>), and conditions in Fiji remain stable.

The applicant has not claimed to have had a high profile politically or in any other way. His evidence is to the effect that he has been harassed in the past because of his ethnicity and his religion, and that things are likely to deteriorate in future, such that he might either suffer serious harm from, or do serious harm to, indigenous Fijians.

The Tribunal has found that the applicant, though he has suffered harassment in the past, has not suffered persecution in a Convention sense, and has not been discriminated against in relation to work or the practice of his religion.

The country information before the Tribunal indicates that Hindus are free to practise their religion, even if temples are sometimes attacked (US State Department report, page 8). The applicant has submitted that majority land ownership by indigenous Fijians interferes with religious practice by Indo-Fijians in some way, but the Tribunal does not find this claim to have been made out, especially in the light of recent country information. The Tribunal is not satisfied that there is a real chance that the applicant will be persecuted for reason of his religion if he returns to Fiji in the foreseeable future.

The Tribunal has considered the situation for Indo-Fijians in Fiji both now and in the foreseeable future. On the evidence of the country information set out above, it is of the view that the situation for Indo-Fijians has not deteriorated, and has in fact somewhat improved. The applicant has said that he fears the situation will worsen for him because of his ethnicity. The applicant is a well-educated man who has in the past maintained himself and his family in a good job. He lives in an area, in his town, where a substantial minority of the population, some 45%, are of Indian background, and where the local mayor and the local police superintendent are Indo-Fijian (page 10). He does not have a high profile either politically or in any other way as an Indo-Fijian. While isolated instances of harassment are likely to recur, the Tribunal is of the view that such instances will not be such as to cause the applicant harm sufficiently serious as to amount to persecution in a Convention sense. The Tribunal is therefore not satisfied that there is a real chance that he will face Convention-based persecution if he returns to Fiji in the foreseeable future.

The Tribunal is not satisfied that the applicant has a well-founded fear of Convention-based persecution in Fiji.

CONCLUSIONS

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

DECISION

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

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

Sealing Officers ID: PRRTIR