

071554943 [2007] RRTA 270 (30 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071554943

DIAC REFERENCE(S): CLF2007/63282

COUNTRY OF REFERENCE: Morocco

TRIBUNAL MEMBER: Phillipa Wearne

DATE DECISION SIGNED: 30 October 2007

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration the following directions:

- That the third named applicant satisfies s.36(2)(a) of the Act being a person to whom Australia has protection obligations under the Refugees Convention; and
- The remaining applicants satisfy cl.785.222(a) and 866.222(a) of Schedule 2 to the Migration Regulations, being members of the same family unit as the third named applicant.

STATEMENT OF DECISION AND REASONS APPLICATION FOR REVIEW

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).

The first two applicants claim to be citizens of the Kingdom of Morocco. The second two applicants are their children. Three of the four applicants arrived in Australia. The fourth applicant was born in Australia. The applicants applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

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

The applicants 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 applicants have 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 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).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

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:

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] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (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.

Independent information

Foreigners can openly practice Christianity in Morocco while Moroccan Christian converts practice their faith in secret. Moroccan Christian converts face social ostracism and short periods of questioning or detention by the authorities. Proselytism is illegal in Morocco however, voluntary conversion is legal.

According to the US Department of State, “Jewish and foreign Christian communities openly practiced their faiths”. However, the Moroccan government “prohibits the distribution of Christian religious materials, bans all proselytizing”. The US Department of State provides the following information on the situation of foreign Christian communities in Morocco:

expatriate Christian community, Catholic and Protestant, consisted of approximately five thousand practicing members, although some estimates were as high as twenty-five thousand. Most Christians resided in the Casablanca and Rabat urban areas. Government provides tax benefits, land and building grants, subsidies, and customs exemptions for imports necessary for the religious activities of the major religious groups, namely Muslims, Jews, and Christians.

to Article 220 of the penal code, any attempt to stop one or more persons from the exercise of their religious beliefs or from attendance at religious services is unlawful and may be punished by three to six months’ imprisonment and a fine of \$10 to \$50 (115 to 575 dirhams). The article applies the same penalty to “anyone who employs incitements to shake the faith of a Muslim or to convert him to another religion.” Any attempt to induce a Muslim to convert is illegal.

small foreign Christian community operated churches, orphanages, hospitals, and schools without any government restrictions. Missionaries who refrain from proselytizing and conduct themselves in accordance with societal expectations largely are left unhindered; however, those whose activities become public face expulsion.

...Foreigners attended religious services without any restrictions or fear of reprisals (US Department of State 2007, *International Religious Freedom Report 2006 – Morocco*, 15 September, Section I, Section II Legal/Policy Framework & Restrictions on Religious Freedom & Section III).

Moroccan Christians

Article 6 of the 1992 Moroccan Constitution provides that “Islam is the religion of the State which guarantees to all freedom of worship” (*Morocco – Constitution 1992*, International Constitutional Law website http://www.servat.unibe.ch/law/icl/mo00000_.html – Accessed 13 August 2007).

Between 1993 and 1998 Islamic law and tradition called for strict punishment of Muslims who converted from Islam. Converts also faced social ostracism and occasional imprisonment by the authorities. Between 1999 and 2006 converts faced social ostracism and occasional imprisonment by the authorities. At the beginning of this second period converts were no longer imprisoned under Koranic law. ((US Department of State 1994, *Country Reports on Human Rights Practices for 1993 – Morocco*, 31 January, Section 2c; US Department of State 1995, *Country Reports on Human Rights Practices for 1994 – Morocco*, February, Section 2c; US Department of State 1996, *Country Reports on Human Rights Practices for 1995 – Morocco*, March, Section 2c; US Department 1997, *Morocco Country Report on Human Rights*

Practices for 1996, 30 January, Section 2c; US Department of State 1998, *Morocco Country Report on Human Rights Practices for 1997*, 30 January, Introduction & Section 2c)

According to the US Department of State, the Moroccan Constitution “provides for the freedom to practice one’s religion.” notes that while voluntary conversion to Christianity is legal in Morocco converts may face social ostracism and short periods of questioning or detention:

Citizens who convert to Christianity and other religions may face social ostracism, and a small number of converts have faced short periods of questioning or detention by authorities for proselytizing and have been denied issuance of passports. There were no reports of such occurrences during the reporting period.

On January 6, 2005, according to the foreign nongovernmental organization (NGO) Middle East Concern, police arrested on charges of proselytism a Muslim citizen who had converted to Christianity, and whose passport was found on a foreign Christian arrested for distributing Christian materials in Tetouan. On October 27, 2005, the authorities dropped the charges against the person. Middle East Concern also reported that as of mid-July 2004 authorities had either confiscated or refused to renew the passports of five citizens who had converted from Islam to Christianity. Three of the converts received their passports by August 2004, but foreign Christian leaders in the country alleged that two of them experienced police harassment and long interrogations. The remaining two received their passports by the end of the 2005 reporting period. The reports on these individuals could not be confirmed by other sources.

Voluntary conversion is not a crime under the criminal or civil codes.

...While there is generally an amicable relationship among religious groups in society, Muslim converts to Christianity may face social ostracism (US Department of State 2007, *International Religious Freedom Report 2006 – Morocco*, 15 September, Section II Restrictions on Religious Freedom & Section III).

The Pew Global Attitudes Project surveyed more than 17,000 people in 17 countries on a number of issues including how people in predominantly Muslim countries view people of the Christian and Jewish faiths. Sixty-one percent of Moroccans surveyed view Christians unfavourably and 33% view Christians favourably (Pew Global Attitudes Project 2004, ‘Summary of Findings’, *Islamic Extremism: Common Concern for Muslim and Western Publics*, 14 July <http://pewglobal.org/reports/display.php?ReportID=248> – Accessed 9 August 2007).

An article dated 28 January 2007 by *Assabah* reports that “the number of Moroccan and foreign preachers recently increased significantly throughout the country.” *Assabah* reports that “the Christian preaching wave has engulfed the towns of Casablanca, Marrakech, Fes, Assila, Rabat, Agadir and Tangiers where, now and again, foreigners arrive to directly supervise these preaching cells” (‘Christian preachers “swamping” towns – Moroccan paper’ 2007, *BBC Monitoring Middle East*, source: *Assabah*, 28 January).

Evangelical Christian organisation, Open Doors International, received information “which confirmed a certain improvement of the situation of Christians in 2006.” Open Doors International continues:

There were fewer interrogations of Christians in Morocco, and according to our local contacts, the government’s attitude is more open towards believers than in the past. However, it is still illegal under Moroccan law to evangelize. There are Catholic, Orthodox and Protestant churches in the country which are recognized by the government, but only foreigners can worship in these churches. Moroccan Christians are not allowed to join these services (Open Doors International 2007, ‘Morocco’, January http://sb.od.org/index.php?supp_page=ma – Accessed 10 August 2007).

According to Voice of the Martyrs, an evangelical Christian organisation, “Morocco is a hostile environment for Christians.” Voice of the Martyrs continues:

Any citizen who comes to Christ can face charges of treachery. Contact with foreign missions and missionary work are also illegal. A Moroccan church consisting of former Muslims will not be officially recognized. ...Many have endured ostracism from their families, loss of employment, and imprisonment for their faith. A Moroccan church is emerging, but at great cost. About 20 small groups are believed to exist throughout Morocco. In theory, Bibles may be imported legally, but Arabic Bibles have been confiscated (Voice of the Martyrs 2007, ‘Morocco’, *Country Summaries*, p.19 http://www.persecution.com.au/ftp/country_summary.pdf – Accessed 10 August 2007).

An article dated 13 December 2006 by The German Press Agency reports that Moroccan Christian converts practise their religion secretly in Morocco. The article reports that those who reveal their conversion “risk being banished from their families and marginalized in their communities.” The article reports that while the number of Moroccan Christians is impossible to determine, they are mainly Protestants. The article notes that the “Moroccan authorities are aware of the Christians’ activities, and appear to have become more tolerant of them.” According to Lina, a convert from Casablanca, “police used to call us for questioning and watch us closely, almost harassing us...Now it feels as if they wanted to protect us from aggressions by (Muslim) fanatics” (El-Hassouni, Mouhsine 2006, ‘Moroccan Christians celebrate Christmas in secret’, *German Press Agency*, 13 December, The Raw Story website http://rawstory.com/news/2006/Moroccan_Christians_celebrate_Christmas_in_secret.htm – Accessed 10 August 2007).

On 7 March 2006, Mark Willacy for *Foreign Correspondent* reported on Moroccan Christian converts. Extracts of the report follow:

WILLACY: Moroccans are not only born into Islam, they are branded criminals and can be gaoled for up to three years by the State if they abandon their faith. If that’s not enough, an even worse fate awaits them according to one of Casablanca’s leading Imams, Sheik Lahsen Asanhour.

IMAM SHEIK LAHSEN ASANHOUR: Whoever changes their religion should be killed. We should talk to them first and make them understand how serious it is to

convert from Islam to another religion and try to convince them to change their minds. If they persist they should be killed.

...WILLACY: In Casablanca Amal Alami is very much in the minority. She's a Moroccan Christian convert who's stepped from the shadows to publicly proclaim her faith but she's banned from entering a church.

AMAL ALAMI: I would be risking everything. I could risk prison... being kidnapped. I could be hit by people who don't even know what it means to be Christian – who take it as an insult to themselves, to their own faith. It is a real risk.

... WILLACY: While John Gerber is one Christian soldier prepared to run the risk of incurring the wrath of authorities, most Moroccan Christians are far too afraid to go public with their religious beliefs. Converts like Younes genuinely fear being ostracised and alienated.

YOUNES: In Morocco we have a, our culture is based on the family, on relationships you know? On small tribes you know? Small communities so when it comes to someone that says well you guys, if he, if like he says I don't believe in what you believe, it's like he is insulting them. It's like he's bringing, I don't know what I call it... bringing dishonour to the family.

...YOUNES: Some guys with the beard they came to me, they tried to convince me and tell me you need to go back to Islam. Fanatics they, you know they kill you if you say no to Islam.

AMAL ALAMI: I became a Christian about ten years ago and when that happened my family wanted to stone me. Later they calmed down, but that was their first reaction.

IMAM SHEIK LAHSEN ASANHOOR: According to the Koran, Muslims who change their religion and die with their new religion, will go to hell. Islam is everything for Moroccans – it is the basis of their civilisations, their families, relationships. They live and die with it (Willacy, Mark 2006, 'Morocco – Covert Christians', *Foreign Correspondent*, 7 March <http://www.abc.net.au/foreign/content/2006/s1589161.htm> – Accessed 10 August 2007).

An article dated 6 March 2006 in *El Pais* reports on Ali, a Moroccan Christian convert who believes the problem is no longer the authorities. According to Ali the problem is family, neighbours and society in general:

It hasn't been easy to find Ali or his fellow Christians. Moroccan churches do not appear in the telephone book, nor do they have websites. Catholic or protestant churches, which are legal in Morocco and can only serve European and Sub-Saharan Christians, barely know the converts and don't provide their numbers. A long chain of contacts must be followed to locate them. When one of them decides to trust the reporter, the entire community opens up.

“They still bring us Christians into the police station once in a while; the last time I was brought in was a couple of months ago, but it’s just to chat with us in a friendly way, and try to get information out of us,” he adds. “They don’t beat or threaten us, or give us warnings, much less throw us into jail like during the reign of Hassan II.” Ali continues, “There is only what you might call excessive zealotry in small places.”

...Radouan Bencheikroun, president of the Council of Oulemas (religious chiefs) of Casablanca, helps encourage this anti-Christian sentiment: “Evangelicals trick people, attract them with money and social support.” “They spread lies about Islam and Muslims,” he adds. “Rejecting their religion is the worst sin that a Muslim can commit.”

For this reason, as Ali revealed his new faith, he gradually lost friends (‘Morocco’s Muslims who dared to convert’ 2006, *El Pais*, 6 March).

Non-French speakers in Morocco

No reports could be located which addressed the question of whether non-French speakers are discriminated against in Morocco. Although Arabic is the official language of Morocco, French remains, to some degree, the language of the establishment.

According to the US Department of State, although Arabic is the official language “French functions as the language of business, government, and diplomacy” in Morocco (US Department of State 2007, *Background Note: Morocco*, February <http://www.state.gov/r/pa/ei/bgn/5431.htm> – Accessed 15 August 2007).

A book by Moroccan linguist Professor Moha Ennaji published in 2005 provides information on multilingualism, cultural identity and education in Morocco. Today in Morocco, “French and Classical Arabic are used either simultaneously or alternatively in education, government, the public sector and the media. French is widespread in modern and scientific fields like industry, finance, medicine, telecommunications, transports, international trade and the like.” Standard Arabic “competes with French in domains as education and administration.” French “still predominates in Higher Education, Ministries of Post and Telecommunications, Health, Transport, Finance, Fishing Industry, Agriculture, Commerce and Industry, Tourism, Planning, Equipment, and the private sector, where science and technology play a crucial role.” According to Ennaji, “there are no official statistics concerning the number of people who speak and read French in Morocco. According to Santucci (1986: 139), the number of people aged ten and older who have learned French at school has increased remarkably since independence, and thus, over 25% of the population speak French.” Chapter 5 provides information on French in Morocco (Please see ‘Introduction’ p.97, ‘Major Varieties of French in Morocco’ p.98, ‘Functions and Domains of Use of French’ pp.101-102, ‘French in the Media’ pp.103-105, ‘French in Education’ pp.105-107, ‘French in the Private Sector’ pp.108-109, ‘French in the Administration’ pp.109-110) (Ennaji, Moha 2005, *Multilingualism, Cultural Identity, and Education in Morocco*, Springer, USA, pp.102, 106 & 186)

A paper by Dr Dawn Marley, Department of Linguistic, Cultural and International Studies at the University of Surrey, provides information on language attitudes in

Morocco following changes in language policy. In French Morocco, French could not compete with Arabic in religious contexts but became the language of education and administration. The subsequent policy of Arabisation aimed to replace French with Arabic. Despite this policy, French continued to be used. In 2000, after more than 40 years of Arabisation, the Charter for Educational Reform was introduced. The new policy “has three major thrusts: ‘the reinforcement and improvement of Arabic teaching’, ‘diversification of languages for teaching science and technology’ and an ‘openness to Tamazight’.” The Charter does not mention French by name “although at present this is the language of science and technology in much of higher education” (Marley, Dawn 2004, ‘Language attitudes in Morocco following recent changes in language policy’, *Language Policy*, Vol. 3, No. 1, March, pp.25-46).

Jehovah’s Witnesses

The Jehovah’s Witnesses was formed in the USA in the 1870’s.

THE modern history of Jehovah's Witnesses began more than a hundred years ago. In the early 1870's, a rather inconspicuous Bible study group began in Allegheny, Pennsylvania, U.S.A., which is now a part of Pittsburgh. Charles Taze Russell was the prime mover of the group. In July 1879, the first issue of the magazine *Zion's Watch Tower and Herald of Christ's Presence* appeared. By 1880 scores of congregations had spread from that one small Bible study into nearby states. In 1881 *Zion's Watch Tower Tract Society* was formed, and in 1884 it was incorporated, with Russell as president. The Society's name was later changed to *Watch Tower Bible and Tract Society*. Many were witnessing from house to house offering Bible literature. Fifty persons were doing this full time in 1888—now the average number worldwide is about 700,000 (‘Their Modern Development and Growth’ 2000, *Watch Tower Website*, http://www.watchtower.org/e/jt/article_02.htm - Accessed 14 March 2007).

Robert Pollock writes: “Jehovah’s Witnesses have little or no association with other denominations, nor with secular governments. They hold that world powers and political parties are the unwitting allies of Satan.” The goal of the Jehovah’s Witness belief is in the establishment of God’s Kingdom, the Theocracy (a form of government by God.) They believe that this will come about after Armageddon, based on their interpretation of the Biblical books of Daniel and Revelation, which they use to make apocalyptic calculations. The Bible is considered to be infallible and the revealed word of God. Their own version of the Bible is called the *New World Translation of the Holy Scriptures*. Witnesses meet in churches called *Kingdom Halls*. A major and much criticised condition of membership is the prohibition against blood transfusions. Only one day of celebration is acknowledged: memorial of Christ's death at the time of Passover. They believe that Jesus was born on October 2. There is no Sabbath; all days are required as holy. (*The Everything World’s Religions Book* (Pollock, R. 2002, *The Everything World’s Religions Book*, Adams Media Corporation, Massachusetts).

The belief that only 144,000 people will ascend to heaven is confirmed by the official Jehovah’s Witnesses website, which also lists other beliefs (‘What Do They Believe?’ 2000, *Watch Tower website*, http://www.watchtower.org/e/jt/article_03.htm - Accessed 14 March 2007).

deleted under s431 of the Migration Act.]

Military Conscription

In 2006 the Moroccan government ended military conscription in an attempt to stop the infiltration by *jihadists* and Islamists into the security and armed services. A February 2007 article on the Jamestown Foundation's *The Terrorism Monitor* journal refers to this change in the law as occurring on 31 August 2006:

As of late January 2007, the trials of al-Khattab and Ansar al-Mahdi members have been postponed until appropriate legal representation can be agreed upon for all defendants. While officials have disclosed few details on the extent of the Islamist infiltration, the actions taken by the Moroccan government in the wake of the Ansar al-Mahdi arrests provide observers with the most telling signs as to the seriousness of the Islamist threat vis-à-vis the armed forces. On August 31, 2006, the government ended conscription in the armed forces, a move undoubtedly aimed at mitigating the vulnerability of the lower ranks to the influence of radical Islamists. Young men aged 18 were previously required to enter military service for a compulsory period of 18 months. Most were deployed to serve in Western Sahara—which is territorially administered by Morocco—in what has become an increasingly unpopular policy decision by Rabat and desertions were not uncommon.

The move to an all volunteer force is a positive step and should have the effect of reducing the appeal of radical Islamic ideology in the military by removing the most susceptible layer from the ranks. Ending conscription is unlikely to significantly impact manning levels in the armed forces and will allow the kingdom to focus on developing all-volunteer, professional military services (Chebatoris, M. 2007 'Islamist Infiltration of the Moroccan Armed Forces', *The Terrorism Monitor*, 15 February, sourced from The Jamestown Foundation website

<http://www.jamestown.org/terrorism/news/article.php?articleid=2370252> - Accessed 26 September 2007).

An article on a South African news website dated 1 December 2006 also refers to the abolition of compulsory military service, but indicates that the law came into "immediate effect" in December.

Morocco scraps mandatory military service

Morocco is to scrap compulsory military service in a move analysts said on Thursday was aimed at blocking infiltration of the military by Islamists hatching an anti-monarchist plot.

Morocco has been on alert over radical Islamism since 2003 when suicide bombings killed 45 people in Casablanca, Morocco's commercial capital.

Analysts said the security concerns had deepened since the discovery in August of a group, Ansar el Mehdi (Mehdi Partisans), accused by government officials of planning to launch a holy war to establish a caliphate Islamic state.

..."This text of law came to abolish the obligatory military service with immediate effect, according to the instructions of his Majesty King Mohammed, the commander-in-chief and the chief of staff of the royal armed forces," said junior defence minister, Abderrhmane Sbai.

He said conscription had been breeding a "climate of apathy" and had not been meeting "the requirements of professionalism and scientific and technological training".

Sbai was addressing the defence commission of the Chamber of Counsellors, the parliament upper house, to outline the text of the draft law ending the military service.

The commission endorsed the text, making its approval by the whole parliament a technical procedure since it came in the name of the king, government officials said.

All Moroccan men have had to undertake a year's compulsory military service. Morocco's 300 000 troops will instead become paid professional servicemen ('Morocco scraps mandatory military service' 2006, IOL website, 1 December – Cisnet Morocco CX166319)

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's case file CLF2007/63282 and the Tribunal case file 07554943 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.

Protection visa application (PVA)

The Applicant husband named the other three applicants as persons included in his application. In addition, each of the other applicants completed their own PVA.

The Applicant husband

According to the PVA, the Applicant husband was born in Morocco. He states that he speaks, read and writes Arabic, and that he speaks English. He gives his religion as *Jehovah's Witness*. He states that he was married. He received a "basic education". He has been working in Australia.

He claims that:

- He left Morocco because of his Christian religious beliefs.
- Morocco is an Islamic state where there is no religious freedom. He claims that "to believe in Christianity is a crime". He would not be able to "spread the gospel" or "explain the word of God" to his fellow men. If he were to return to Morocco he would be questioned and thrown into jail.
- He would not be protected by the authorities as he would be viewed as an "infidel".

A copy of the Applicant husband's current Kingdom of Morocco passport is held on the Department file (unmarked folios).

A copy of his former Kingdom of Morocco passport is held on the Department file (folios 29-42).

The Applicant wife

According to the PVA, the Applicant wife states that she speaks, reads and writes Arabic. She states that she is "converting to Christianity". She gives no details of her education.

She claims that:

- She left Morocco because she felt she "could not follow her true faith". She states that she has "since embraced Christianity".
- She claims if she were to return to Morocco she would face prejudice and possibly persecution because of her religious beliefs. She would not be able to worship openly and freely.
- The Moroccan authorities would not protect her as she is a Christian.

She attached a copy of the relevant pages of her current Kingdom of Morocco passport. The passport includes both her children "as accompanying children".

She also attached copy of her former passport. The passport included her child.

The Applicant child

According to the PVA, the Applicant child was born in Morocco and speaks, reads and writes English. The child describes himself as a *Christian* and attended school in Australia.

The child claims that:

- The child was brought to Australia as a baby and has lived here all of their formative years.
- The child does not speak Arabic, is not a Muslim, and does not know Moroccan culture and social mores.
- The child does not speak French, which is the official language of Morocco.
- If the child returns to Morocco they would be forced to join the national service.
- The child is pursuing the Christian religion and is now mature enough to choose their own faith. The child has grown up in Christian schools and has treasured Christian beliefs and compassionate understanding.
- The child does not want to be separated from Australia which it views as their "country".
- The child does not want to be forced to settle in a country where there is no democracy, no equality, freedom of speech, and where there is religious oppression.

- The child wants to contribute to Australia. However, they state, "instead the only prospect I face is a non-future, life as an 'invisible' leading to a slow but certain death."
- The child would not be protected by the Moroccan authorities because they are not considered to be a citizen of Morocco and has never lived there.
- The Moroccan authorities have refused to give the child a passport or any other document.
- Moroccan citizens have few rights but many obligations.

The following documents were submitted by the Applicant child:

- A copy of *School Certificate*.
- Copies of *Certificates of Merit*.
- Copies of *Certificates of Participation*.

The younger Applicant

According to the PVA, the younger Applicant was born in Australia and speaks reads and writes English. The child also currently attends school.

The claims in the PVA are:

- The child would be traumatised if removed from Australia.
- The child does not speak Arabic and the "mother tongue" is English.
- The child will be forced to live in an alien environment which is different in outlook, culture and language. There is no cultural diversity in Morocco.
- In Australia the child will be able to choose their own faith and not have it imposed upon them.

A copy of the younger Applicant's Birth Certificate is held on the Department file (folio 22). There is also a *reappraisal and review* report from the child's school.

The applicants were represented by a registered migration agent.

The Tribunal sent the following letter to the applicants.

to Comment on Information in Writing

letter is an invitation to *[the Applicants]*. A reply to this invitation will be regarded as a joint reply, unless the Tribunal is advised otherwise
am writing about your application for review of a decision on a Protection (Class XA) visa.

are invited to comment on information that the Tribunal considers would, subject to any comments you make, be the reason, or a part of the reason, for affirming the decision that is under review.

particulars of the information are:

- Department of Immigration and Citizenship records indicate that *[three of the Applicants]* arrived in Australia in *[month deleted]* on *[visa class deleted]* visas and have not left Australia. You did not apply for a Protection

Visa until *[date deleted]* which is *[several]* years after your arrival in Australia.

information is relevant to the review because a person who claims to fear persecution on return to their country of origin would reasonably have been expected to have claimed asylum at the earliest opportunity, especially given that *[the Applicant parents]* claim that they left Morocco because they could not practice their religious beliefs. In these circumstances the Tribunal may conclude that you do not have a well-founded fear of persecution if you return to Morocco, and may decide to affirm the decision to refuse the visas.

are invited to give comments, in writing, on the above information.

you cannot provide written comments by *[date deleted]* ...*[Consequences set out]*
to Provide Information in Writing

is an invitation to *[the Applicants]*. A reply to this invitation will be regarded as a joint reply, unless the Tribunal is advised otherwise.

are also invited to provide the following additional information:

[The Applicant husband] claims his religion to be a Jehovah's Witness but gives no details about this. *[The applicant should]* please provide full details about:

- when and where you became a Jehovah's Witness,
- activities you participated in as a Jehovah's Witness in Morocco,
- all incidents (if any) in which you were persecuted because of your religious beliefs in Morocco, and
- your activities as a Jehovah's Witness in Australia.

[The Applicant wife] claims that she left Morocco because she could not follow her "true faith", but she does not indicate what her faith was. She claims that she is "converting to Christianity," but also states that she has "embraced Christianity" since leaving Morocco. *[She should]* please provide full details about:

- what religion (if any) you held in Morocco,
- religious activities (if any) in which you participated in Morocco,
- all incidents (if any) in which you were persecuted because of your religious beliefs in Morocco,
- when and where you converted to Christianity (if you have done so) and the Christian denomination to which belong you belong,
- religious activities (if any) in which you have participated in Australia.

additional information requested should be received at the Tribunal by *[date deleted]* ... *[Consequences set out]*

The Tribunal received a facsimile from the applicant. It included:

- a statement from the Applicant husband,
- a letter addressed to "to whom it may concern" from a witness, and

The Applicant husband's statement is set out below, with minor editorial changes made as indicated:

I am able to reply to your letter "invitation to comment" dated *[date deleted]* regarding the issue raised by the Primary Decision Maker, about the timing of my claim/application for refugee status.

you pointed out in your letter, the information, that is, the issue raised by the Primary Decision Maker, about my claim for protection should have been made upon arrival to Australia and not *[several]* years later, as I and my family arrived in Australia on *[date deleted]* and have never left, but, have settled here. This information, it seems is relevant to the review as you would expect that this being the case, I should have applied as soon as I arrived in Australia, and not in *[year deleted]*.

wish to point out, that I have a point of contention, and I would draw your attention to my application form 866C, as you can note I have never claimed that I departed Morocco because I was not free to practice my religious beliefs. I would submit to you that I have become a refugee "sur place" due to my religious beliefs, and, conversion to the Jehovah's Witness faith, should I avail myself to the protection of the Moroccan authorities I will systematically be persecuted, firstly I have change religion, I am in no longer a Muslim and secondly I would not be able to practice the teaching of the Bible.

I would put my case to your attention as follows:

was born in Morocco, my family was of modest means, and not very religious, I attended the French state school, but left as I finished the School certificate, as I had to seek work to help my family.

was then considered an outsider, I being a teenager experimenting for the social liberties and liked the nightlife, as well as the odd drink of alcohol. I was able to secure the position [of] *[occupation deleted]*.

per the evidence on the application and supporting documents, I worked at the *[workplace deleted]* until my departure to Australia. I arrived in Australia with my young family in *[month deleted]* holding a *[visa class deleted]*.

settled into the Australian way of life, my young child *[name deleted]* was born in *[Australia]*, and is presently attending *[school]*, while my oldest *[child]* *[name deleted]* was *[very young]* on upon arrival, and has grown up in Australia, and attended *[a Christian]* School thus receiving a Christian upbringing.

wife, *[name deleted]*, did make a few friends and began her association with *[the school]*, which she attended with *[our child]*, who, had in the meantime become interested in the *[Christian]* faith, as a result the *[child]* encouraged the mother in pursuing the *[Christian]* faith.

for my part descended into hell. [I] was going through self doubts and self-loathing which made me hate myself even more. [I] gambled and [drank] heavily and could not seem to stop the vicious circle of destruction [that] had taken hold of me. It was as if I had lost hope. [I] blamed myself for my predicament and did not know to whom I could talk to about my despair. I could not talk to no one as in my culture men who are fragile bring shame into their family and to their standing.

felt as if God had forsaken me and let me all alone to bear the pain which I carried with me, having lost myself I could not find a way out, and, as a result I would self harm myself, cutting myself was the only way that I could cope.

desperation reach the lowest point on *[date deleted]*; I wanted to die, and I wanted to take my family with me, *[Details deleted.]*. [It] all began to make sense when by chance I was given a Bible to read, by a friend who was a member of the Jehovah's Witness Faith.

began to read a page a day, and, slowly my life [began] to make sense.[All] this time I realised I had lived a Godless life, Jehovah showed me the way through his son

Christ, I realised that he gave his son[’s] life to save mine, his death had absolved me of all my sins and with his resurrection I too would be able to resurrect and find the right path to serenity and peace, as long as I lived the Bible’s teachings.

It took me some time to [enquire] how to pursue their new life and how I could find a religious instructor who could help me to unravel the mystery of life and become closer to God, as not to fall again into the past hell.

A friend, I was introduced to [name deleted], a young Jehovah's Witness Pastor who has become my religious instructor, with whom I do attend the meeting at the Kingdom Hall and together we study the Bible. As I had no cultural background in Christianity and due to the fact that my level of the English language is not so fluent, it is taking the more time to fully understand the meaning and the word of God.

My conversion is genuine, I do not see the reason for which I had to appear before the Tribunal already converted, it would not be fair to God and most of all to me, as, I had to have to understand the reasons for which God has put me through the test of sufferance, and, the reason for which I now finally finds solace in Him. My life has become cleaner, I no longer drink and gamble, I no longer neglect my family, they have become my life, and, I shudder at the thought that I did meet them suffer through my weakness.

Due to the above factors, I cannot avail myself to the Moroccan authorities, as, I will be persecuted due to the fact that I have been made aware of that the new King is more conservative than his own father, and, he has instituted travelling Islamic instructors whose task is to travel throughout the country to make sure that citizens do observe and practise the Islamic faith, the non-followers are first sought out and then reported to the religious authorities who decide their punishment.

Because of the fundamentalist threat to the Moroccan authorities to single out the people who are diverse, and, should I be made to return to Morocco would stand out, firstly due to my children, being Australian, their mother tongue is English, and secondly would be accused of being a threat to the security of the country is being Jehovah's Witness and practising the Christian faith, I would be seen to be subverting the state not only religiously, but, politically as well, as I would not only practise the Bible teachings, and live according to the Bible scripture, I would also proselytise that is spread the word, of God, as, I do in [Australia] with my Elders.

All the above reasons, I cannot be made to return to Morocco, as, I do understand it I became a refugee “sur place” that is whilst in Australia, my life has changed, I have changed, and, my religious beliefs, the [man] who arrived in Australia no longer exists, hence, I am submitting that should the Tribunal formulate an adverse decision my life would certainly be in jeopardy, and, I not only fear that persecution that will face but, I do have an objective fear for myself and my family, whose existence is secure only in Australia.

I also submit to the Tribunal that I will submit further evidence of my Church activities and support from the members of my congregations. [In] the meantime I request that the Tribunal delays its decision to allow me the time to become a baptised Jehovah's Witness to prove genuinity [sic] and good faith.

The letter from the witness stated that:

Applicant wife] and her [child], [name deleted], have been attending religious instruction in the [Christian] faith [recently].

[name deleted] and attended *[school]* ...during *[their]* primary years; subsequently *[the Applicant child]* encouraged *[their]* mother to become a convert to the *[Christian]* faith.

and *[child]* were introduced to our *[conversion]* team by a *[religious]* friend *[name given]* who has done much to introduce the two to the Person of Christ. Formal instructions have been taking place *[for some months]*.

English is *[the Applicant mother]*'s second-language, and since she was born into the Muslim faith, the *[conversion]* course will take longer for her than those born into a Judeo-Christian society such as ours.

converts to the *[Christian]* faith are baptised during the *[period deleted]*.

am an active member of the team which has been instructing *[the Applicants]* ...

have consistently found *[the Applicants]* to be exemplary citizens of great integrity and sincerity.

The hearing

The applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in Arabic (Standard).

The Tribunal explained the elements of the definition of "refugee" while all the applicants were present. It also explained the operation of s.91R(3)(b) of the Act while all were present.

The Applicant husband

The applicant said that he: "did not know about religion in Morocco. I was not a religious person." He said that he was Muslim, but he never practised. The Tribunal referred to his response to question 40 of the PVA (Department file, folio 87) in which he said that "I left my country due to my religious beliefs." The Applicant husband said that this response was incorrect.

He said that he had become very stressed with the long hours he had worked. He said that he was now over those difficulties that he had at that time.

The Tribunal asked him about his religion. He said "my religion now is the Bible." He said that he had become Jehovah's Witness "[a number of] months ago". He said that he started to read the Jehovah's Witness Bible about "[a number of] months ago". He could not remember the name of the church that he attended, but said that it was in a suburb. He said that his wife would know the name of it. He said that she was also a Jehovah's Witness.

The applicant told the Tribunal that he believed in *Isa* (the Muslim name for Jesus). He said that *Isa* directed people "to the right direction" and taught the Christian faith, to "prevent problems and sickness [and help] the needy and poor."

The applicant said that he thought that the religious holidays for Jehovah's Witness were Easter and Christmas day. The Tribunal referred him the independent information that indicated only one day of celebration is acknowledged: the memorial of Christ's death. It also referred him the Jehovah's Witness's belief that Jesus was

born on October 2, not 25 December. The independent information also indicates that for Jehovah's Witness there is no Sabbath; all days are required as holy (above, page 9).

The applicant did not know the name of the Jehovah's Witness Bible. When the applicant was told it was the *New World Translation of the Holy Scriptures*, he agreed it was a "new" Bible. He did not know who founded the Jehovah's Witness religion (*Charles Taze Russell*). The applicant thought that it may have been *Isa* (Jesus) or "James" who founded the religion. He did not know when it was founded (1870's). The applicant had not heard of the word "Armageddon" (above, page 9).

The applicant did not know that the place of worship for a Jehovah's Witness is called a *Kingdom Hall* (above, page 9). The Tribunal pointed out to the applicant that he did not know this even though he had referred to it in the statement sent to the Tribunal (above, page 16).

The applicant said that he had no idea of how many people would ascend to heaven according to Jehovah's Witness belief (*144,000 people*; above, page 9).

The Tribunal asked him about his view of blood transfusions. He said that he believed that a sick person should be assisted with blood transfusions. The Tribunal informed him of the correct view of Jehovah's Witnesses to transfusions (above, page 9).

The Tribunal told the applicant that it considered that he knew very little about the Jehovah's Witness religion.

The Applicant wife

The Applicant wife said that she was a Muslim when she left Morocco.

She said that Arabic was spoken at home.

She said that she was studying Christianity "now". She had been introduced to Christianity by friends. They read the Bible to her. She said that she found that Jehovah's Witness religion to be one of "peace and love."

She said that she is studying to become a Jehovah Witness. She studies twice a week. She started to study "about [*a number of*] months ago". She wanted to be baptised, but she had been told that she was not "ready" yet. She said that she needed to "know everything" or at least the "most important things" before she was baptised.

She said that she studied locally. There was no other church that she attended. She thought that it was a Jehovah Witness Church. The Tribunal said that this was a church of a different denomination, as this denomination had been indicated on the material that the applicants had submitted in regard to the Applicant child's school. The applicant did not know that there is a difference between the two religions. The Tribunal explained that there were different denominations of Christianity. She was not aware of important differences. The applicant agreed that she did not know about Jehovah's Witness religion. She said that she was studying God and the Bible. She

agreed that she was in the process of becoming a Christian. She was starting to learn about Christianity.

The Tribunal read out the independent information from the US Department of States (above, pages 4-5). The applicant stated that Christian converts in Morocco had to practice their faith in secret.

The younger Applicant child

The Applicant wife was present throughout the Tribunal's speaking with her child who agreed to her presence. The younger Applicant was born in Australia.

The Applicant child said that they sometimes went to church.

The Applicant child had commenced attending a Christian school for a number of weeks.

The Applicant child said that their parents spoke Arabic at home. The child communicated with everyone else in English and had not studied Arabic or French.

The elder Applicant child

The other Applicants were present when Tribunal spoke to the elder Applicant child who agreed to their presence.

The child said they were included on their mother's Moroccan passport.

The Applicant child confirmed that they would be turning 18 soon and currently studied towards the Higher School Certificate (HSC). The child said that the school year would finish soon and the HSC exams would begin soon.

The child said that although Arabic was spoken at home, they had not formally studied it and had not studied French. The Tribunal indicated that the official language of Morocco was Arabic, and that French was also spoken (above, page 8).

The child described their religion as *Christian and* said that they had completed all primary education at a Christian school. They had also been attending the Bible classes with their mother for the past few months.

In the PVA, the Applicant child claimed that if they were to return to Morocco they would have to do national service. The Tribunal read out the independent information relating to the ending of military service conscription in Morocco in August 2006 (above, pages 10-11).

They said that they were interested in training to be a tradesperson after leaving school.

They said that they felt "very stressed out". They had come to Australia with their parents as an infant and said that they knew no other home. The child considered

himself to be Australian and their friends were Australian. The child knew nothing about Morocco.

The Tribunal then spoke to all the applicants together and explained the difficulties that it saw with the applications for refugee status based on the evidence which had been presented.

The applicants forwarded a facsimile which included:

- a statement of support from the Applicant husband's employers,
- a statement of support from the family doctor, and
- a statement of support from a Community Services officer.

FINDINGS AND REASONS

The Applicant husband

The Tribunal finds that the applicant is outside his country of nationality, Morocco.

The Tribunal accepts that the Applicant husband was a Muslim when he left Morocco. He has been living in Australia for the several years, and claims to have studied to be a Jehovah's Witness in the last "[few] months."

He claims that he has become a refugee "sur place". It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention. The operation of this section was explained to the applicant.

The Tribunal accepts that the applicant has been studying towards becoming a Christian in the past few months. However, it considers that he has made little headway in that direction. He claims to be a Jehovah's Witness; however, it is obvious to the Tribunal that he knows very little about it. The Tribunal accepts that he may have attended church with his wife on some occasions in the past "[few] months." The Tribunal does not accept that the Applicant husband is a Christian. The Tribunal is not satisfied that he has engaged in his study of Christianity in recent months in Australia otherwise than for the purpose of strengthening his application for a protection visa, and pursuant to s.91R(3), the Tribunal disregards those activities.

In essence and for the stated reasons, the Tribunal is not satisfied that the applicant is a Christian, or that he has a genuine interest in Christianity which he would pursue in Morocco. The Tribunal is not satisfied that he would be perceived as a convert to Christianity, or a non-follower of Islam, or that he would suffer any of the claimed harm.

On the basis of the available information, the Tribunal is not satisfied that the applicant has suffered any Convention-related harm, nor is the Tribunal satisfied that there is a real chance of such harm occurring to the applicant in the reasonably foreseeable future.

Therefore, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention-related reason.

The Applicant wife

The Tribunal finds that the applicant is outside her country of nationality, Morocco.

The Tribunal accepts that the Applicant wife was a Muslim when she left Morocco and that she has been living in Australia for several years.

The Tribunal considers that the Applicant wife is a devoted mother who wants the best for her children. One of her children was born in Australia, the other arrived here as an infant. She sees their future in Australia.

The Tribunal accepts that for the last “[few] months” she has been studying to become a Christian. However, the Tribunal considers that her knowledge of Christianity is scant. She admitted to the Tribunal that she did not know the difference between denominations. She was not aware of the different denominations in Christianity. The Tribunal does not accept that that she is a Christian.

It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention. The operation of this section was explained to the applicant.

The Tribunal accepts that she has been studying towards becoming a Christian in the past few months. However, it considers that she has made little progress. The Tribunal is not satisfied that she has engaged in her study of Christianity in recent months in Australia otherwise than for the purpose of strengthening her application for a protection visa, and pursuant to s.91R(3)(b), the Tribunal disregards those activities.

In essence and for the stated reasons, the Tribunal is not satisfied that the applicant is a Christian, or that she has a genuine interest in Christianity which she would pursue in Morocco. The Tribunal is not satisfied that she would be perceived as a convert to Christianity or a non-follower of Islam.

On the basis of the available information, the Tribunal is not satisfied that the applicant has suffered any Convention-related harm, nor is the Tribunal satisfied that there is a real chance of such harm occurring to the applicant in the reasonably foreseeable future.

Therefore, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention-related reason.

The elder Applicant child

The Tribunal finds that the applicant is outside their country of nationality, Morocco (as an accompanying child on their mother's passport.)

The elder Applicant child is an adult and has been living in Australia since being an infant.

The child claims to fear persecution as a member of a particular social group because if they were to return to Morocco because they would face compulsory military training. However, independent information indicates that compulsory military training has been abandoned in Morocco since late 2006 (above, pages 10-11).

The child also claims persecution as a member of a particular social group because of not speaking French which is the "official language of Morocco". However, independent information indicates that while French is still used to some degree Arabic is the official language of Morocco (above page 8). The applicant acknowledged that Arabic is spoken at their home, although the elder child has not formally studied it.

The applicant claims not to be a Muslim and claims to be a Christian and that they are "pursuing [the] [*Christian*] religion". The child claims that they will be persecuted if they were to return to Morocco because of their beliefs. To support the claim they have given evidence of attending a Christian school. There is also evidence that the encouraged the mother to become a convert to the faith (letter from witness, above, page 18). The child also states that they attended the Church classes with their mother in the last "[few] months." The Tribunal accepts the claim that the child is a Christian and also that the child encouraged their mother to convert to Christianity.

The independent information referred to above (pages 4-7) indicates that despite the Moroccan Constitution providing for "freedom of worship" Moroccan converts to Christianity must practise their faith in secret. They may face social ostracism, and short periods of interrogation and imprisonment by the authorities. Any attempt to induce a Muslim to convert is illegal. The Tribunal accepts that if the applicant were to return to Morocco now or in the reasonably foreseeable future the applicant would continue their Christian faith in the way in which they have done in the past. The applicant child may attempt to convert others to Christianity as they have done with their mother. The Tribunal considers that in this conduct the applicant child may come to the attention of the Moroccan authorities.

Based on all of the above, the Tribunal cannot conclude the possibility the applicant would be seriously harmed by the Moroccan authorities as one that is remote, insubstantial or far fetched. Although the chance of such harm may be less than 50%, the Tribunal is satisfied there is a real substantial basis for finding the applicant would be persecuted for a Convention reason in Morocco should the applicant child return in the reasonably foreseeable future.

The Tribunal accepts that the applicant is a genuine Christian. The Tribunal notes for the sake of completeness that it is satisfied for the purposes of s.91R(3) of the Act that the applicant's conduct in practising Christianity and participating in Christian activities in Australia has been engaged in otherwise than for the purpose of strengthening claims to be a refugee.

In summary, the Tribunal considers that the persecution which the applicant fears involves "serious harm" as required by s.91R(1)(b) of the *Migration Act* in that it involves a threat to their life or liberty or significant physical harassment or ill-treatment. The Tribunal considers that the applicant's religion is the essential and significant reason for the persecution which is feared by them, as required by s.91R(1)(a). The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by s.91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason, namely because of their religion.

For reasons given above, the Tribunal finds that the elder applicant child has a well-founded fear of being persecuted for reasons of their religion if they return to that country now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to a fear of persecution, to avail themselves of the protection of the Government of Morocco.

There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than the child's country of nationality, Morocco. The Tribunal therefore finds that the applicant is not excluded from Australia's protection by s.36(3) of the Act.

The younger Applicant child

The Tribunal finds that the applicant is outside their country of nationality, Morocco (as an accompanying child on their mother's passport.)

The younger Applicant child was born in Australia who claims to fear persecution as a member of a particular social group.

The first question for the Tribunal to determine is whether there is a relevant social group of which the applicant is a member. If so, the next question for the Tribunal is whether the persecution that the applicant fears is for reasons of membership of the group.

The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at

large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

Whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

[Section deleted under s431 of the Migration Act.]

The Tribunal does not accept that the evidence establishes that the applicant as member of any of the particular social groups that the Tribunal has identified will be persecuted or denied services, assistance or benefits for reasons of his membership of the particular social group, or that they will be denied in the future for such a reason.

The Tribunal does not accept that the essential and significant reason for inaction against the applicant would be that they are a member of a particular social group. The Tribunal therefore does not accept that any harm which might result if the child were to return to Morocco would be for the essential and significant reason of the applicant's membership of a particular social group or for any other Convention reason.

Although not expressly raised by the applicant, the Tribunal has also considered whether the applicant faces persecution on the basis of not speaking French. However, the independent information indicates that Arabic is the official language of Morocco. And, while French remains in use in Morocco there is no indication in the sources available to the Tribunal that non-French speakers are discriminated against.

Also, although not expressly raised by the applicant, the Tribunal has also considered whether the applicant faces persecution on the basis that they may be perceived as a Christian convert or a non-Muslim. The applicant attended a Christian primary school and has gone occasionally to church with their mother. The Tribunal does not consider that this is enough to consider them to be a Christian. The Tribunal considers that until such time that the child can determine his own faith, his attitude to religion would be aligned with that of their mother or father. The Tribunal has already found that it does not consider either of them to be Christian or Non-Muslim.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal considers that the third named applicant satisfies s.36(2)(a) of the Act. It considers that the remaining applicants satisfy cl.785.222(a) and 866.222(a) of Schedule 2 to the Regulations, being members of the same family unit as the third named applicant.

DECISION

The Tribunal remits the matter for reconsideration the following directions:

- That the third named applicant satisfies s.36(2)(a) of the Act being a person to whom Australia has protection obligations under the refugees Convention; and
- The remaining applicants satisfy cl.785.222(a) and 866.222(a) of Schedule 2 to the Migration Regulations, being members of the same family unit as the third named applicant.