

1211848 [2012] RRTA 933 (16 October 2012)

DECISION RECORD

RRT CASE NUMBER:	1211848
DIAC REFERENCE(S):	CLF2012/84745
COUNTRY OF REFERENCE:	Vietnam
TRIBUNAL MEMBER:	Andrew Jacovides
DATE:	16 October 2012
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

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Vietnam, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] June 2012.
3. The delegate refused to grant the visa [in] July 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal has had regard to the material referred to in the delegate's decision and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
21. The applicant was represented in relation to the review by a registered migration agent.

Department file CLF2012/84745

Arrival interview – [in] May 2011

22. The applicant arrived in Australia [in] May 2011. He was interviewed by an officer of the Department on [a date in late] May 2011. He reportedly stated during that interview that he was [name deleted: s.431(2)], born in [City 1] on [date deleted: s.431(2)]; he was educated via home schooling for two years and he achieved Grade 5 education; he lived on a boat; he did not have paid employment but he assisted his family to fish for a living; he was a Roman Catholic; he belonged to the Kinh ethnic group; he had never married; he was adopted at birth

and raised by two uncles and an aunt; he had no means of communicating with his uncles and aunt in Vietnam; and he attended the [Locality 2] church in [City 1].

23. The applicant reportedly stated that he was an orphan who was adopted at birth and raised by [two uncles and an aunt; names deleted: s.431(2)]. He indicated that due to financial hardship he was told by the persons who raised him that he had to leave because they could not feed him. He stated that they told him that they did not want to see him again. He stated that he was expelled from the family. He stated that the persons who raised him took him to [Town 3] and from there he boarded a boat and left the country. He stated that he did not know any of the details of his journey or how his relatives became aware that a boat was leaving. He reportedly stated that he was put on the boat and told not to return. The applicant stated that it was very hard to survive in Vietnam because he did not have education. He stated that the three persons who raised him were not his “blood” relatives. He claimed that they raised him but they did not want to see him again.
24. The applicant reportedly stated that he was not involved in any political groups, or protest activities against the government; and no member of his family was involved in political groups or protest activities; he was not a member of any particular social or religious group but he attended mass with his uncles and aunt in Vietnam; he had no difficulties with the authorities in Vietnam; he was not involved in any conflict; he was not involved in the arrangements which enabled him to leave Vietnam and he left on the same day he was informed that he was leaving; he travelled from [Locality 2] to [Town 3] by bus, which took approximately seven hours, and then he waited with about 20 people until it was dark and they boarded the boat; he came directly from Vietnam to Australia; he was told by his aunt that because he did not receive education he was going to Australia where he could have a better life.
25. The applicant reportedly stated that he did not wish to return to Vietnam because he had no family there and he did not know how he would survive. He reportedly stated that life is better in Australia and he did not wish to return to Vietnam.

Interview [in] September 2011

26. The applicant requested an interview with the Department. He indicated that he wanted to provide further information regarding his circumstances. An account of the interview between the applicant and a case manager is on file. The applicant reportedly stated that he lived on a boat with three other persons, two aunts and one uncle. He stated that these three persons told him that he was born in [City 4] (in northern Vietnam) but they did not know his father and mother. He stated that they took him into their care since the “early days” of his life.
27. The applicant stated that he and the three persons who raised him were constantly harassed by gangs while trying to earn a living by catching and selling fish. He claimed that the local authorities harassed the family because they did not have household registration. The applicant reportedly stated that his aunt and uncle made all the arrangements for him to travel to Australia and they negotiated with the organiser to give him a seat on the boat. He stated that they sent him overseas so he did not have to return to [City 4].
28. The applicant reportedly stated that he faced difficulties in Vietnam because of his lack of identification documents. He stated that he will be harassed by the local authorities because he did not have identification documents; he did not know where he will live; and he was no

longer able to contact his aunts and uncle who raised him. The applicant was reportedly asked if he ever tried to obtain identification documents and he stated that he did not attempt to get registered. He stated that he could not attend school because he did not have identification documents and the only education he received was from the local priests.

Submission [in] October 2011

29. The Department received a submission from the applicant [in] October 2011. He stated that his aunt and uncle made arrangements for him to leave Vietnam and he did not know the details. He stated that they informed him that he was going to Australia. He stated that from the time he was a small child he lived on a raft with his [two uncles and his aunt]. He stated that he was often told that he was not related to them but he was adopted because he was a nice boy and an orphan.
30. The applicant claimed that he was harassed by hooligans throughout his life; and he was detained, threatened, and mistreated by the authorities because he did not have identity papers. He stated that he asked his relatives about their identification papers and they told him that since they lived on a raft they did not need such papers. He stated that he went to church on Sunday but he hated “people living on the ground” because they harassed him for various reasons including his religion.
31. The applicant claimed that he was very surprised to learn that his aunt and uncle arranged for him to come to Australia. He stated that they saved the money and paid for his journey. He stated that they sent him to Australia with instructions that he was never to return and to forget them. He stated that in Vietnam he lived a fearful life, anticipating arrest and expulsion, because he did not have identification documents.

Submission [in] December 2011

32. The Department received a further statement from the applicant [in] December 2011. He stated that he wanted to apologise for not providing a truthful account of his circumstances and he wanted to tell his real story. He stated that he was told by persons on the boat that he should claim to be an orphan. He stated that he wanted to reveal the truth about his background. He stated that he was born [two years before the year-of-birth originally given], as previously stated) and his parents’ names were [names deleted: s.431(2)].
33. The applicant claimed that he left Vietnam because he was bullied by a gang who forced him to participate in illegal activities. He stated that he was subjected to beatings; he had to participate in extortion; he had to threaten shop owners and force them to pay protection money; he was forced to watch gang member have sexual intercourse; he had to threaten people with violence unless they paid protection money; and when he refused to comply he was taken “home” by gang members and beaten. He stated that he was tortured and hot wax was dripped onto his genitals. He stated that he was fed chicken excrement. He claimed that he was constantly threatened by the gang leader and others members of the group; and he was forced to witness their cruel and illegal activities. He stated he did not approach the authorities for assistance because they were implicated in supporting and protecting the gang members. The applicant stated that he watched as gang members tortured and killed another member because that person intended to leave.
34. The applicant claimed that he came to know that a boat was leaving for Australia and he wanted to take the journey so he could flee from the gang. He stated that the fee was 70

million dong but he did not have the money. He stated that an opportunity arose for him to get the money when he went with other gang members to collect money from a brothel. He stated that he was left alone with 120 million dong while the other gang members were entertained in the brothel. He stated that he took 17 million dong (later corrected to 70 million dong); gave the remainder back to the brothel owner; and he gave the people smuggler the 70 million dong required for the passage to Australia. He stated that the boat was not leaving for a few days but he was permitted to hide on the board until the departure.

35. The applicant claimed that if he returned to Vietnam he would be dealt with “gangland style” for stealing the money and running away. He stated that the police cannot protect him from the persons he feared.
36. The applicant claimed that his parents attended a particular church in [City 4]. He stated that his father was an official of the church and he was arrested and imprisoned by the authorities for his religious activities. He claimed that other officials and clergy from the church were also detained. The applicant indicated that his mother tried to intervene when his father was being arrested and the police beat her. He claimed that she died a few days later.
37. The applicant stated that his father was forced to join the communist party and to renounce the church. He stated that the government seized the land belonging to the church and he was made the foster son of [his two uncles]. He claimed that they were close friends of his father and they were also associated with the church. He stated that he was five years old at the time. The applicant stated that in the year 2000 he was taken by his uncles to southern Vietnam. He indicated that by the time they left northern Vietnam his mother had died and his father was in prison.
38. The applicant stated that he and his two uncles took a train to [Locality 2], and then they built a boat, and they lived on that boat together for the following eleven years. He stated that he had his birth certificate when he arrived in the south and he was able to attend the local school for three years. He stated that he went to [Locality 2] Primary School until he was approximately ten years old but his uncles did not have the financial resources to keep him in school and he was forced to leave after three years. He claimed that he remained at home and helped his uncles with catching and selling fish.
39. The applicant claimed that in 2005, during a cyclone, he lost all his identification papers. He stated that the authorities refused to replace the documents and they told them to return to the north. The applicant stated that they remained in the south. He claimed that at the end of 2010 he was forced to join a gang and had to work at “indecent restaurants where they served alcohol” and he was forced to watch other gang members “do things such as smoking and indecent acts”.
40. The applicant claimed that apart from the difficulties he anticipated from the gang members in Vietnam; he was fearful that he will be mistreated by the government for leaving the country illegally.

Nationality Assessment and Identity Assessment Report [in] April 2012

41. The applicant attended a two hour interview with an officer of the Department [in] April 2012 to discuss his identity, nationality, and background. A report relating to the interview is on file. The applicant reportedly stated that he left Vietnam because he did not have identification documents and he was discriminated against in the south because he came from

the north. He reportedly stated that the two men who raised him were training to be priests. He stated that they took him after his mother was killed and his father was put in prison. He stated that he did not know if his father was still alive but he assumed that he had already died. The applicant stated that he did not know the location of the two men who raised him.

42. The applicant reportedly stated that his “uncles” paid for his journey to Australia. He stated that they told him that it was money his parents had left for him but he assumed that it was their own money.
43. The applicant was asked why he came to Australia and he stated that he had no paperwork to prove his identity in Vietnam; and he did not get along with the people in the south as he was from the north. He stated that they were discriminated against in the south for having come from the north.
44. The interviewer commented that the applicant made no references to his earlier claims relating to the gang in Vietnam.

Protection visa application

45. The applicant’s protection visa application was lodged [in] June 2012. His statement is dated [in] 2012.
46. The applicant stated in his protection visa application that he was a citizen of Vietnam; he was born in [City 4] [two years before the year-of-birth originally given]; he belonged to the Kinh ethnic group; he was a Roman Catholic; he spoke Vietnamese; he had never married; he left Vietnam [in] April 2011 and he arrived in Australia [in] May 2011; his parents were deceased; he never worked; he lived in [City 4] from [year deleted: s.431(2)] until 2000 and then in [City 1] from 2000 until April 2011; and he had three years of education from 2001 until 2004.
47. The applicant stated that he was five years old when his mother died and his father was imprisoned. He stated that he was raised by two uncles. He stated that he was not related to those men but they attended the same church as his parents. He claimed that his father was harassed and eventually imprisoned because he worked for the church. The applicant claimed that the government did not want citizens to practice Catholicism and they wanted to expropriate the land belonging to the church. He stated that his parents received many threats from the authorities and they were denied access to services such as identity papers and residency permits.
48. The applicant claimed that his mother was beaten to death by the local authorities and his father was imprisoned. He stated that he was five when he lost his parents and his two uncles took him into their care. He stated that they moved to the south so that the applicant would not suffer the same fate as his parents. The applicant claimed that one or two years after he moved to South Vietnam he was told by one of his uncles that his father had died in prison. He stated that they could not apply for identification papers in the south.
49. The applicant claimed that when the authorities in southern Vietnam asked for their identification, and it was established that they left the north for religious reasons, they were harassed. He stated that they finally settled in [City 1] and they lived on the river with other displaced persons who did not have papers. He stated that they survived by selling fish.

50. The applicant claimed that the authorities tried to evict him and his uncles but they refused to leave. He claimed that without documents he could not attend school.
51. The applicant stated that his family was harassed by a local gang which had connections with the police. He stated that as they did not have papers and they could not seek protection from the authorities. He stated that the gang demanded “protection money”. The applicant claimed that towards the end of 2010 the gang began to target him. He stated he was forced to work for the gang and participate in their cruel and illegal activities. He claimed that when he refused to co-operate they beat him.
52. The applicant claimed that while he was working for the gang he went to a brothel with four others and he collected 120 million dong from the owner. He stated that the other four were invited into the brothel and he remained outside with the money. The applicant claimed that he knew there was a boat leaving for Australia, but his uncles did not have enough money to pay for his journey, so he took 70 million dong, he returned 50 million to the owner, and he immediately went to the port where the boat was leaving for Australia. He stated that it was not due to depart for a few days so he was permitted to hide on board until the departure. The applicant claimed that his uncles left the area after taking him to the boat because they anticipated difficulties with the gang when it became apparent that he had taken the money and fled.
53. The applicant claimed that he was afraid to return to Vietnam. He claimed that he did not have documents to prove his identity. He anticipated that the authorities will arrest him for his parents’ involvement with the Catholic Church and for leaving the country illegally. The applicant claimed that he will be killed by the gang for taking the 70 million dong and for fleeing. He claimed that relocation was not reasonable for him because he had no relatives in Vietnam and there were gangs everywhere.

Interview with the delegate

54. The applicant was interviewed by the delegate [in] May 2012. The Tribunal has listened to the interview. The applicant stated that after his parents died he was taken by two men and the three moved to southern Vietnam. He was asked “the number one reason” he left the country. The applicant stated that it was not safe for him in Vietnam because he was harassed by gangsters who took his money and beat him. He indicated that his uncles suffered similar treatment. The applicant stated that he asked his uncles to return to the north but he was told that they could not go back there.
55. The applicant claimed that he was forced to work for a gang. He stated that he had to go to cafeterias and beat people and threaten them. He stated that once he refused to comply and he was beaten and told that his uncles will be harmed. The applicant provided details regarding his involvement with the gang. He stated that the government just “let them do it” and he assumed that local officials were corrupt.
56. The delegate asked the applicant what harm he anticipated in Vietnam. He stated that he will be executed by the gang for taking the money and disobeying orders; and he anticipated harm by the authorities because of his family background.
57. The delegate referred to the applicant’s claim that he faced harm in Vietnam because he is a Catholic. He commented that information he had regarding circumstances in Vietnam

indicated that Catholics were not persecuted by the authorities. The applicant did not directly respond. He stated that in 2005 or 2006 he lost his identification documents.

58. The delegate stated that information from external sources indicated that people who leave Vietnam illegally were able to return without fear of harm from the authorities and their identity papers were restored once they arrived in Vietnam. The applicant stated that his greatest fear was “the gangsters”.
59. The applicant was asked if he tried to get assistance from the authorities regarding the gangsters. He stated that his uncles told him that gangsters operated with impunity. He was asked if he approached the police. He stated that he did not approach the authorities or seek their assistance.
60. The delegate commented that the applicant did not provide a consistent account of his circumstances. The applicant stated that he was advised to lie regarding certain aspects of his background and circumstances. He stated that a psychologist had told him to tell the truth and he subsequently decided to provide a truthful account of his circumstances. The applicant stated that he lied about his age but he was now presenting the truth. He stated that he lied before because he was ill advised by a “person on the boat” who told him to lie. He asked the delegate to consider only the claims made by the applicant at the interview.
61. The applicant’s adviser stated broadly that there are Catholics in Vietnam being persecuted for reasons of religion. She stated that she did not know how guardianship “works” in Vietnam for unaccompanied minors such as the applicant, but she did not think it would work for him.

Submission from the applicant’s adviser

62. The Department received a submission from the applicant’s adviser [in] June 2012. The adviser argued that the applicant was at risk of harm if he is forced to return to Vietnam because of his family background and the family’s poor relationship with the local authorities. She stated that he was susceptible to persecution, including no access to “proper education [or] access to work” or “documents” She argued that the applicant will face a lengthy prison sentence for leaving the country illegally.
63. The adviser provided a paper by Dr Peter Hansen, a lecturer at the *Catholic Theological College*, in Melbourne, dated 2 September 2011. Dr Hansen stated that there was a “period of relative détente between the Catholic Church and the Vietnamese State”, so taken “as a whole, people are not restricted from partaking in worship” He stated however that there are exceptions and it had been reported to him privately that whilst local residents were able to attend church freely, migrant workers in a place close to Ho Chi Minh City were not permitted to go to church otherwise they faced dismissal by their employer. He stated that in “much of Vietnam, perhaps even most of Vietnam, a Catholic citizen will not be prevented from attending services of worship” but Catholics faced adverse consequences for their faith, including denial of positions in academia or middle and upper echelons of government. He stated that Catholics who have been involved in protest activities against the government have been targeted by the authorities. The author further stated that there are regional variations on how Catholics are treated by the local authorities. He stated that persons who are politically active against the government, and persons with official roles in the church, faced particular vulnerability to persecution by the authorities for reasons of religion, political opinion, and membership of a particular social group, with that group being “Catholics”.

The delegate's decision

64. The delegate noted that the applicant did not provide a consistent account of his claims. He referred to evidence provided by the applicant at the entry interview [in] May 2011, the interview with the case manager [in] September 2011, the letters he submitted [in] October 2011 and [in] December 2011, and the identity interview [in] April 2012. The delegate rejected the applicant's claim that he was targeted by gangsters, that his parents were deceased, or that he lived on a boat in [City 1]. He accepted that the applicant was a Catholic but he found that he will be able to practice his religion freely and safely in Vietnam. The delegate considered whether the applicant will be targeted by the authorities in Vietnam for leaving the country illegally, or for having no identification documents, or for being a failed asylum seeker. He accepted however information from the Department of Foreign Affairs and Trade which indicated that persons with similar circumstances have not been harassed or discriminated against by the authorities in Vietnam. He was satisfied that the applicant will be able to obtain registration and identity documents; and he was not at risk of harm by the authorities for having left the country illegally or being a failed asylum seeker. The delegate found there was no real chance that the applicant was at risk of being targeted or harmed by the authorities in Vietnam for any of the reasons provided.

Tribunal file 1211848

65. The Tribunal did not receive any new claims or submissions in support of the review application.

The hearing

66. The applicant attended the hearing by video link from Adelaide [in] September 2012. He was accompanied by his migration agent and a support person. The Tribunal and the interpreter were in Sydney.
67. The adviser, [name deleted: s.431(2)], indicated that he had a submission dated [the same day as the hearing]. He stated that he did not know if it had been submitted to the Tribunal. It was indicated to him that the Tribunal did not receive any submissions in support of the review application. The submission was faxed to the Tribunal. The Tribunal noted that the submission was not signed. The adviser was asked if he had written it. He stated that he had not written it and he did not who had written it. He contacted [a particular migration advice service] in Sydney and he was told that it was prepared by [name deleted: s.431(2)], a migration agent in Sydney.
68. The migration agent argued in his written submission that the applicant was a child when he arrived in Australia and he did not have adequate assistance to present his case. He stated that "he made a number of contradictory and untruthful statements to the Department, which he now understands were against his own interests and which he regrets" but he stood by his "written statement of claims and in his evidence" at the interview with the delegate [in] May 2012. The adviser argued that there was no basis on which the delegate could reject the applicant's claims on the evidence provided at that interview.
69. The adviser argued that the applicant will be targeted by the authorities in Vietnam because of his family background and illegal departure; and he will be destitute because he had no resources or other means to support himself in Vietnam. He argued that the applicant faced imprisonment by the authorities or he may fall "again into the hands of criminals" and he

“could well be forced to live on the streets”. The adviser argued that he could face various forms of harm because of his membership of a particular social group, with that group being “orphaned children”.

70. The adviser argued that the delegate referred positively to arrangements made in Vietnam for the care of orphans but he argued that other information indicated that “Viet Nam does not have a comprehensive child protection system or formal protection services”. He argued that under those circumstances the applicant faced a real risk that he will suffer significant harm if he is forced to return to Vietnam.
71. The applicant, in his oral evidence, repeated his claim that he faced harm in Vietnam by a criminal gang because he took money from them and he fled from the group. He also claimed that he faced harm by the authorities in Vietnam because of his family background, his religion, and his lack of identification documents. He stated that he had no one in Vietnam who could assist him to survive. He repeated his claim that the two men who raised him had gone into hiding and he had no contact with them.
72. The applicant repeated his claims relating to the death of his parents; the circumstances which led to the two men adopting him; the way he lived in [City 1] on a boat; the difficulties he had with a criminal gang who forced him to join them; and the difficulties he had with the local authorities because he had no identification documents. He stated that he went to the authorities many times to seek their assistance but it was not forthcoming. The Tribunal commented that previously he indicated that he did not approach the authorities. The applicant stated that he went a few times to seek their assistance but they were not helpful. The applicant stated that the authorities in southern Vietnam harassed him for being from the north. He claimed that he will also be discriminated against for being a Catholic, poor, and young. The applicant stated that there were no human rights in Vietnam and he anticipated that he will be mistreated for these reasons.
73. The Tribunal asked the applicant how long he worked for the gang in Vietnam. He stated that it was about one month or two months before he left Vietnam.
74. The Tribunal indicated to the applicant that it had considered information he provided to the Department regarding his background and circumstances, at interviews [in] May 2011, [in] September 2011, [in] April 2012, and [in] May 2012; and in written submissions [dated in] October 2011, [in] December 2011, and [in] April 2012. The Tribunal commented that he did not provide a consistent account of his background, circumstances, or claims. The Tribunal commented that the applicant provided contradictory information regarding his date of birth; his family background; the people who raised him; his education; his involvement with the gang; the sequence of events which led to his departure from Vietnam; who paid for the journey; the reasons he did not wish to return to Vietnam; and the difficulties he anticipated there. The Tribunal commented that the applicant had provided so many different versions regarding his life in Vietnam, and the reasons he left the country, that it had doubts as to whether he was a credible witness. The Tribunal commented that it may find that he did not provide a consistent account of his circumstances in Vietnam because the claims were fabricated and he could not recall and repeat those claims consistently each time he described his circumstances. The applicant stated that he was told by people on the boat that he had to lie about his background. He stated that they told him to say he was a 14 year old orphan. He stated however, that after he spoke to a psychologist he realised that he should tell the truth. The applicant stated that his evidence at the hearing was an accurate account of his circumstances.

75. The Tribunal noted the applicant's claim that he was a Catholic. It referred to information from external sources relating to the treatment of Catholics in Vietnam. The Tribunal noted that Catholicism is an officially recognised religion in Vietnam. It noted that the Vietnamese Government did not recognise the authority of the Vatican.¹ The Tribunal commented however that government reforms increased religious freedom since 2006 which resulted in the opening of new Catholic churches, the training of clergy,² and an increase of citizens joining the Catholic Church.³ The Tribunal noted there has been an increase in participation within the Catholic Church and the government has permitted large groups of Catholics to gather freely. The Tribunal noted that the state continues to regulate religion and it takes action against religious activists who challenge the state's authority and those involved in land disputes. The Tribunal commented that the applicant was not involved in any activities relating to his religion which would attract the adverse interest of the authorities in Vietnam; and he could practice his religion freely and safely in the reasonably foreseeable future. The applicant stated that Vietnam had no human rights and Catholics were not free to practice their religion.
76. The Tribunal referred to the applicant's claim that he faced serious harm from the authorities in Vietnam because he was a person who departed the country illegally, a failed asylum seeker, and a person without documentation. The Tribunal commented that according to advice from the DFAT, failed asylum seekers "are not harassed or discriminated against by authorities on their return to Vietnam".⁴ The Tribunal noted that the US Department of State has reported that the Vietnamese government generally cooperates with the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organisations in providing assistance to returning refugees;⁵ and Vietnamese nationals were entitled to have their *ho khau* (household registration) reinstated, allowing them access to government services, when they returned to Vietnam from overseas.^{6 7}
77. The Tribunal noted that the Immigration and Refugee Board of Canada (IRBC) found that persons who were "absent from their permanent place of residence for more than 6 months without registering their temporary absence and without plausible reasons" had "their names crossed out from the household registration book" They advised however, that when the person returned to their home they could "re-apply for registration of their permanent

¹ US Department of State 2011, *July-December International Religious Freedom Report*, 13 September, p.4 www.state.gov/g/drl/rls/irf/2010_5/168382.htm - Accessed 15 September 2011

² US Commission on International Religious Freedom 2011, *USCIRF Annual Report 2011 – Countries of Particular Concern: Vietnam*, 28 April <http://www.unhcr.org/refworld/docid/4dbe90bdc.html> - Accessed 29 February 2012 ; UK Home Office 2011, *Operational Guidance Note: Vietnam*, November, Refworld website, p. 9 <http://www.unhcr.org/refworld/pdfid/4ed8ab3a2.pdf> – Accessed 15 November 2011

³ US Department of State 2011, *July-December International Religious Freedom Report*, 13 September , p. 2 www.state.gov/g/drl/rls/irf/2010_5/168382.htm - Accessed 15 September 2011 . Also see: 'Growing Vietnam Church Short of Priests' 2006, *Cath News*, 14 June <http://cathnews.acu.edu.au/606/71.php> - Accessed 28 February 2012

⁴ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1364 – Vietnam: RRT Information Request: VNM39900*, 6 March

⁵ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Vietnam*, 24 May, Section 2(d)

⁶ Immigration and Refugee Board of Canada 2009, *VNM103088.E Vietnam: Process for being reinstated onto a household registration*, 26 February, UNHCR Refworld <http://www.unhcr.org/refworld/docid/4b7cee8d23.html> > Accessed 4 January 2012

⁷ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1364 – Vietnam: RRT Information Request: VNM39900*, 6 March

residence as stipulated.”⁸ The IRBC research response listed the requirements which returning Vietnamese nationals had to undertake in order to regain their *Ho Khau*, including: “a Vietnamese passport or travel document which has a stamp verifying entry... at the border gate; Proof of [Vietnamese nationality] granted by the Vietnam representative agencies overseas, accompanied by proof of the permission [to return] to Vietnam issued by the related authority; Certificate of Vietnamese nationality granted by the People's Committee of provinces and cities directly under central authority, accompanied by proof of the permission [to return to] Vietnam for permanent residence issued by the related authority.”⁹ The Tribunal commented that for a person such as the applicant who arrived undocumented, he will have to provide details regarding his background to the Vietnamese authorities so that his identity and nationality can be verified and appropriate documents issued. It commented that UNHCR can assist in this process. The Tribunal commented that there were no apparent reasons for the applicant to be denied Vietnamese identification documents if he returned to Vietnam.

78. The Tribunal noted earlier advice from DFAT which found that “it is unlikely that a person who departed illegally [from Vietnam] would suffer punitive action” from the authorities if they were deported back to Vietnam. DFAT commented that Vietnamese government agencies, including the Ministry of Public Security, indicated to them that the Vietnamese policy on returnees “is that they have a right to return to Vietnam and that they will not face further punishment for offences committed outside Vietnam” DFAT advised that the policy was applied in practice.¹⁰ Similar information was provided again in September 2011 with regards to Vietnamese citizens who were repatriated after having committed a crime overseas.¹¹
79. The Tribunal commented that political activists continue to attract the adverse interest of the authorities in Vietnam; and those persons may be harassed by the authorities when they return to Vietnam. It commented however, that the applicant had no involvement in any activities of a political nature which would attract the attention of the authorities in Vietnam. He was asked if he wanted to comment. He indicated that he did not wish to comment.
80. The Tribunal asked the applicant if he wanted to present any further claims or information. He stated that he was afraid to return to Vietnam for the reasons provided and despite his attempts to get protection from the authorities there was no protection forthcoming. He stated that each time he was threatened by the gang members he reported the matter to the police but they did not assist him. The Tribunal commented again that in his earlier evidence he stated that he never sought the assistance of the authorities in Vietnam because he did not anticipate that they would assist him and he feared that they may harm him. The applicant

⁸ Immigration and Refugee Board of Canada 2009, VNM103087.E – *Vietnam: Circumstances under which an individual’s name may be removed from a household registration; whether an individual’s household registration is affected if he or she travels outside of Vietnam or is outside of Vietnam for an extended period of time; if so, timeframe for which the registration would be affected; reports of the authorities removing individuals from a household registry as a form of punishment*, UNHCR Refworld, 24 February <http://www.unhcr.org/refworld/docid/4b7cee8dc.html> – Accessed 4 January 2012

⁹ Immigration and Refugee Board of Canada 2009, VNM103088.E *Vietnam: Process for being reinstated onto a household registration*, UNHCR Refworld, 26 February <http://www.unhcr.org/refworld/docid/4b7cee8d23.html> - Accessed 4 January 2012

¹⁰ Department of Foreign Affairs and Trade 2007, *CIS Request No VNM 8771: Update on treatment of Vietnamese returnees*, 1 February (CISNET Vietnam CX170139)

¹¹ Department of Foreign Affairs And Trade 2011, *Country Information Report No. 11/55: VNM 12377 Return of a Vietnamese National with Criminal Conviction*, 15 September (CISNET Vietnam CX272689)

stated that he did not seek assistance often, but he did report matters to them from time to time.

81. The adviser commented that he understood the Tribunal's point regarding the credibility of the applicant. He noted that the applicant had provided five different stories when describing his background; and given the inconsistencies in his evidence it would be difficult to determine who the applicant was or what happened to him. He stated however that the issue currently facing the applicant is that he is a minor and an orphan; and he will be at risk of being destitute and mistreated in Vietnam as an unaccompanied minor with no family to look after him.
82. The applicant stated that he had previously made errors in presenting his case but he was presenting the truth at the hearing.

Correspondence after the hearing

83. The Tribunal wrote to the applicant [in] September 2012, raising the following issues and asking him to comment by [a specified date in] October 2012:

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

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

The particulars of the information are:

You presented your claims and circumstances to the Department several times since you arrived in Australia, including at interviews [in] May 2011, [in] September 2011, [in] April 2012, and [in] May 2012; and in written submissions [dated in] October 2011, [in] December 2011, and [in] April 2012. You did not provide consistent information regarding your background and circumstances. You provided contradictory information regarding your date of birth; your family background; the circumstances of your parents; the people who raised you; your education; your involvement with a gang; the sequence of events which led to your departure from Vietnam; how the journey to Australia was arranged and who paid for it; the reasons you did not wish to return to Vietnam; and the difficulties you anticipate there.

This information is relevant to the review because in considering the different versions you have provided regarding your life in Vietnam, and the reasons you left the country, it may find that you are not a credible witness. It may find that you did not present a truthful account of your circumstances in Vietnam. The Tribunal may not accept as credible any of your claims regarding your background and circumstances in Vietnam; and it may not accept as credible your claims regarding your age; or that you are an orphan; or that you do not have family in Vietnam; or that you have no home to return to; or that you were denied identification documents in Vietnam; or that you were denied access to government services in Vietnam; or that you are a person of interest to either a gang or the authorities in Vietnam; or that you were at risk of harm by a gang or the authorities while you lived in Vietnam.

If the Tribunal relies on this information in making its decision, it may not accept your claims, it may affirm the delegate's decision, and you may not be granted a protection visa.

84. The Tribunal received a letter from [an employee of the office of his adviser], [in] October 2012. She stated that they had never received records, written or recorded, regarding the interview [in] April 2012, and they requested a copy so they could advise their client on the appropriate response. A copy of the written report was provided to the adviser [in] September 2012.
85. The Tribunal received a response from the applicant's adviser, [name deleted: s.431(2)], [later in] October 2012. She submitted a copy of the earlier submission, dated [in] September 2012, signed by her, and apologising for its late submission.
86. The adviser stated that they did not seek to ask for records relating to evidence presented by the applicant in 2011, because the applicant accepted that his evidence during that period was "not completely truthful" The adviser argued however, that [since] December 2011, the applicant has been presenting a truthful and consistent account of his circumstances. She stated that the interview [in] April 2012, was undertaken for other purposes and could not be validly used in assessing the applicant's protection visa claims. The adviser continued:

...it would require considerable stretch of the imagination to envisage a scenario in which there is a real chance that the applicant's return to Vietnam would bring him back into contact with [the] gang [he referred to in his claims]. While there is no doubt in our minds that his experience with the gang is part of the reason he fears to return, if the gang were his only problem, it could be solved by relocation. There is an added question as to whether or not there would be a convention nexus to his circumstances, even if his fear of encountering the gang again were well founded.

His situation, however ... is more dire and more complicated than that. His mother was killed and he has been told that his father has died in custody. The men who took care of him have left the [City 1] area. He has no other family. He is still a child and his prospects if he were forced to return are bleak.

FINDINGS AND REASONS

87. The applicant claims to be a citizen of Vietnam. He claims that he has no family in Vietnam and if he returns there he will be destitute. He claims that he is a Roman Catholic and he will be prevented from practicing his religion freely and safely. He claims that he will be targeted by the authorities for various reasons, including his religion, his parent's religion and their religious activities, his parent's former difficulties with the authorities, his own illegal departure from Vietnam, his poverty, his family background, his youth, and his lack of documentation. The applicant claims that he was harassed and mistreated by a criminal group in Vietnam. He claims that he stole money from the group to finance his journey to Australia and he anticipates that he will face life-threatening harm from its leader and members for taking the money and for escaping from the group.
88. The applicant claims that he faces persecution for various Convention related reasons, including religion, political opinion (real and imputed), and his membership of particular social groups, with those groups being his family, orphans, Catholics, citizens without registration or identification documents, citizens who left the country illegally, failed asylum seekers, young people, poor people, and possibly persons from northern Vietnam residing in

southern Vietnam. He claims that he will not have access to protection or assistance by the state in Vietnam.

89. The Tribunal accepts that the applicant is a citizen of Vietnam, a Roman Catholic, and a person who departed from Vietnam illegally. However, in respect to his other main claims, the Tribunal is not satisfied that he provided a credible account of his circumstances.
90. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically.^{12 13} The *Handbook on Procedures and Criteria for Determining Refugee Status*, suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts”.¹⁴
91. In the present matter, the Tribunal is not satisfied as to the applicant’s general credibility and it finds that he fabricated his major claims regarding his circumstances in Vietnam to enhance the application.
92. The applicant admits that prior to his statement [on a date in] December 2011, he fabricated information regarding his background and circumstances in Vietnam in the belief that it would enable him to obtain a protection visa. He claims that since [that date in] December 2011, he has presented only a truthful account of his claims and circumstances. His adviser has argued that his young age, the absence of a migration agent to assist him, and other extenuating circumstances, led to the contradictory evidence provided by the applicant regarding his age; his family background; the circumstances of his parents; the people who raised him; his education; his involvement with a gang; the sequence of events which led to his departure from Vietnam; how the journey to Australia was arranged and paid for; the reasons he did not wish to return to Vietnam; and the difficulties he anticipated there.
93. However, the Tribunal has formed the view that when the applicant arrived in Australia he had the ability and the opportunity to provide an accurate and comprehensive account of his circumstances in Vietnam. He choose instead to fabricate his claims and provided a variety of versions regarding his background, as discussed with him at the hearing and in the Tribunal’s letter dated [in] September 2012. The Tribunal is not satisfied that the applicant’s age, or the lack of legal assistance, prevented him from providing an accurate account of his circumstances. The Tribunal has formed the view that the applicant arrived in Australia with a predetermined and contrived account of his family background and claims; but he was unable to recall and repeat those claims consistently each time he discussed his circumstances in Vietnam.
94. After considering the different versions provided by the applicant regarding his circumstances in Vietnam, the Tribunal does not accept as credible the applicant’s claim that he is an orphan; or that he does not have a family and a home to return to in Vietnam; or that

¹² *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451; *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559 at 596; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70; *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9; see also

Minister for Immigration and Multicultural Affairs v Rajalingam (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241

¹⁴ United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

he was denied identification documents in Vietnam; or prevented from accessing government services such as education; or that he was involved with or harassed by a criminal group in Vietnam; or that he was a person of particular interest and at risk of harm by the authorities in Vietnam because of his parent's religion, their religious activities, the difficulties they had with the authorities, his family background, his youth, his financial situation, for being a person from northern Vietnam living in southern Vietnam, or for not having registration and other official documentation. The Tribunal is not satisfied that the applicant either approached the authorities for assistance or that he was denied assistance by the authorities. The Tribunal finds that all these claims were fabricated by the applicant to enhance his application.

95. The Tribunal has accepted however, that the applicant is a Roman Catholic and citizen of Vietnam. It accepts that he departed the country illegally; and that he currently has no official documentation from the Vietnamese government. The Tribunal accepts that the applicant may return to Vietnam as a failed asylum seeker. He claims that for these reasons he will face harm amounting to persecution by the authorities in Vietnam. The Tribunal has considered whether his fear is well-founded.
96. The 'well-founded fear' aspect of the definition has a subjective and an objective element.¹⁵ The subjective element of "well-founded fear" concerns the state of mind of the applicant. The Tribunal accepts that the applicant is afraid to return to Vietnam. Nevertheless, for a fear to be well-founded there must also be a factual basis for that fear. In *Chan v MIEA*, the court found that a well-founded fear "requires an objective examination of the facts to determine whether the fear is justified".¹⁶ It was further noted that whilst "there must be a fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear"¹⁷ and that the Convention, "in speaking of 'well-founded fear of being persecuted', posits that there should be a factual basis for that fear".¹⁸ A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.¹⁹
97. Information from external sources, discussed with the applicant at the hearing, and which the Tribunal accepts, indicates that the applicant is not at risk of harm amounting to persecution by the authorities in Vietnam for being a Roman Catholic, a citizen who departed the country illegally, a failed asylum seeker, or a person without official documents.
98. The Tribunal is satisfied by information from external sources that Catholicism is an officially recognised religion in Vietnam and even though the government does not recognise the authority of the Vatican,²⁰ the government has implemented reforms since 2006 which resulted in increased religious freedom and led to the opening of new Catholic churches, the training of clergy,²¹ and an increase in the number of citizens joining the Catholic Church.²²

¹⁵ *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 and *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559

¹⁶ *Chan v MIEA* (1989) 169 CLR 379 per McHugh J at 429

¹⁷ *Chan v MIEA* (1989) 169 CLR 379 per Dawson J at 396

¹⁸ *Chan v MIEA* (1989) 169 CLR 379 per Dawson J at 412

¹⁹ *MIEA v Guo* (1997) 191 CLR 559 at 572

²⁰ US Department of State 2011, *July-December International Religious Freedom Report*, 13 September, p.4 www.state.gov/g/drl/rls/irf/2010_5/168382.htm - Accessed 15 September 2011

²¹ US Commission on International Religious Freedom 2011, *USCIRF Annual Report 2011 – Countries of Particular Concern: Vietnam*, 28 April <http://www.unhcr.org/refworld/docid/4dbe90bdc.html> - Accessed 29 February 2012 ; UK Home Office 2011, *Operational Guidance Note: Vietnam*, November, Refworld website, p. 9 <http://www.unhcr.org/refworld/pdfid/4ed8ab3a2.pdf> – Accessed 15 November 2011

The Tribunal noted that the state continues to regulate religion, and that the authorities continue to take action against Catholics who challenge the state's authority and those involved in land disputes, but it is satisfied that the majority of Roman Catholics in Vietnam are able to practice their religion freely and safely. The opinion submitted by the applicant's adviser, from Dr Peter Hansen, a lecturer at the *Catholic Theological College*, in Melbourne, dated 2 September 2011, provides a similar assessment. The Tribunal is satisfied that currently and in the reasonably foreseeable future the applicant will be able to practice his religion freely and safely in Vietnam. It finds that his fear of harm in this regard is not well-founded.

99. The Tribunal considered the applicant's claim that he faced persecution by the authorities in Vietnam because he is a person who departed the country illegally, a failed asylum seeker, and a person without official documentation. The Tribunal accepts advice by the Department of Foreign Affairs and Trade which indicates that failed asylum seekers "are not harassed or discriminated against by authorities on their return to Vietnam".²³ The Tribunal accepts earlier advice from DFAT which found that "it is unlikely that a person who departed illegally [from Vietnam] would suffer punitive action" from the authorities if they were deported back to Vietnam.^{24 25} The Tribunal accepts that the United Nations High Commissioner for Refugees and other humanitarian organisations are permitted by the government of Vietnam to provide assistance to returning refugees;²⁶ and Vietnamese nationals are entitled to have their *ho khau* (household registration) reinstated, allowing them access to government services, when they return to Vietnam from overseas.^{27 28} The Tribunal is satisfied that these conditions will apply in the applicant's case; and it finds that his fear of harm by the authorities in Vietnam for leaving the country illegally, for not having official documents, and for being a failed asylum seeker, is not well-founded.
100. Accordingly, the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to persecution by the authorities in Vietnam for reasons of his religion, political opinion (real and imputed), and his membership of particular social groups, with those groups possibly being his family, orphans, Catholics, citizens without registration or identification documents, citizens who left the country illegally, failed asylum seekers, persons from northern Vietnam residing in southern Vietnam, or for any other Convention related reason.

²² US Department of State 2011, *July-December International Religious Freedom Report*, 13 September, p. 2 www.state.gov/g/drl/rls/irf/2010_5/168382.htm - Accessed 15 September 2011. Also see: 'Growing Vietnam Church Short of Priests' 2006, *Cath News*, 14 June <http://cathnews.acu.edu.au/606/71.php> - Accessed 28 February 2012

²³ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1364 – Vietnam: RRT Information Request: VNM39900*, 6 March

²⁴ Department of Foreign Affairs and Trade 2007, *CIS Request No VNM 8771: Update on treatment of Vietnamese returnees*, 1 February (CISNET Vietnam CX170139)

²⁵ Department of Foreign Affairs and Trade 2011, *Country Information Report No. 11/55: VNM 12377 Return of a Vietnamese National with Criminal Conviction*, 15 September (CISNET Vietnam CX272689)

²⁶ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Vietnam*, 24 May, Section 2(d)

²⁷ Immigration and Refugee Board of Canada 2009, *VNM103088.E Vietnam: Process for being reinstated onto a household registration*, 26 February, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4b7cee8d23.html>> Accessed 4 January 2012

²⁸ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1364 – Vietnam: RRT Information Request: VNM39900*, 6 March

Complementary protection

101. The Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there is a real risk that he will suffer significant harm under the complementary protection criterion. The applicant has claimed that as a young person without a family in Vietnam, and inadequate government services for a person with his circumstances, he will be a homeless and destitute child at risk. His adviser has argued that he faces a real risk of suffering significant harm for these reasons. However, the Tribunal has rejected the applicant's claim that he is an orphan or a young person without family in Vietnam. The Tribunal has already found that the applicant is not at risk of harm for any of the reasons provided. Accordingly, it finds that there is no real risk that the applicant will suffer significant harm under the complementary protection criterion for any of the reasons provided.

CONCLUSIONS

102. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
103. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

DECISION

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