071969401 [2008] RRTA 296 (12 March 2008)

DECISION RECORD

RRT CASE NUMBER:	**071969401**
DIAC REFERENCE(S):	**CLF2007/167671**
COUNTRY OF REFERENCE:	**Israel**
TRIBUNAL MEMBER:	**Mr S Norman**
DATE DECISION SIGNED:	**12 March 2008**
PLACE OF DECISION:	**Sydney**
DECISION:	**The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.**

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

The applicant, who claims to be a citizen of Israel, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter. The applicant applied to the Tribunal for review of the delegate's decision.

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

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

The Tribunal has before it the (now) Department of Immigration and Citizenship (DIAC) file relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources.

The applicant lodged a Protection Visa application with the Department. By dated and signed statement, the applicant claimed:

> I…[am an] Israeli citizen, was born on…[date] in city Bai Yam. I am the youngest of [number] children in our family. When I was only [number] years old my mother died from [illness]. My father [number] years old at that time left alone with this big family…it is became increasingly difficult for him to look after all of us at home and I and two of my [siblings] were sent to the Boarding School in [town]. Where I spent a long period of time my next [number] years. After completed the Primary school I move to a High School in [town]. When I was [number] year student one of my friend was killed during terrorist act in [town]. I and my school friends we were completely devastated. That was first time when one of my friend was killed. I try to understand how that could happen. Some of my friends couldn't wait to become soldiers and fight Palestinians, but I fill that is not answer. Fights only bring more death. I meet some people who were thinking like me. This people were belong to political party [name]. I can't join this party because I was only [number] years old, but when I found out that they planning demonstration I decide to join them. During demonstration many of us were arrested including me. In Police when they found out how old I am they recorded information about me and release me. The Police sent information about my participation in demonstration to the School and I was expelled. I have to go in Public School in [town]. I completed year [number] in this school but just when I finish class [number].
>
> [A]nother of my friend died in terrorist attack. This time attack was at popular discotheque in [town] on [date] All but one of those killed, who included [number of siblings] aged [ages], were youngsters from [country] who had planned to attend a dance party at the [name].
>
> After that attack me and many my friends, from the [political group], were abused and threaten. We stage demonstration in support of victims, but demonstration became a violent after our group meet with group of radicals and the Police became involved. I was arrested and once more asked to leave the School, because I have bed influence on other student.
>
> I move to other school where I have study the last two years of High School. At the age of [number] I was call for military service, but I refuse to going in Army. Considering that my father was [number] years old and [other circumstances] I was exempted from serving in Army.
>
> Between the age of [number] and [number], I was working in a variety of industries including [occupations] to save up enough many to go to the University and follow my dad's footsteps and study [occupation]. I continue to be involve with Party, but because [relative's] health deteriorated I couldn't participated in many activities. I distribute a Parties brochure on [description] sites where I was working and participate several times in small demonstrations.
>
> After turning [age], I applied for the University, but soon after my [relative] passed away. I was very upset as my [relative] and I were very close and I felt very lost without [relative]. I therefore decided to leave Israel and travel for a few months. During this time, I met many Australians who suggested I come and visit Australia.
>
> When I returned to Israel from my travels, things got worst. In [month, year] has started war with Lebanon. I was call for military service, I refused to go as a fighter, but I understand that it was war and my duties to support my country. Considering that I have no military training they leave me alone.

> After war was over I have call to Army again, but this time it was no war and I refused to go because it was against my political view, but I continues receive invitation from the Army. My friends warn me that if I not go to the Army I would be arrested and put in jail. In [month, year] I went to the Army office and explain that I could not serve in Army because my political view. I was given one month and if during this month I not change my political opinion I would be arrested. Predicting that I already have visa to Australia and I leave country on [date].
>
> After arrival to Australia I think to lodge an application for protection visa straight away, but most of the people who I talk to told me that if I lodge an application I going to receive refusal and I have to leave the country. I can't come back to Israel because I going to be immediately arrested and I decide to stay in Australia as long as it possible and only after that to ask for protection visa.

The Department delegate refused to grant the applicant a Protection Visa.

The applicant applied to the Refugee Review Tribunal (the Tribunal) for a review of the delegate's decision.

The applicant provided oral evidence and submissions at the Tribunal hearing. To the extent that, and all other, evidence and submissions is considered material, I have included same in my below Findings and Reasons.

Military service laws:

With respect to *Military Service Laws*, the Tribunal understands military service and conscientious objection in Israel are regulated by the Defence Service Law of 1986. Every Israeli citizen is regarded as a member of the Israeli Defence Force (**IDF**) on receipt of the draft All Israeli citizens and residents are required to perform military service, three years for men and a period of two years (sometimes recorded as 20 months) for women. Reserve duty, of up to 43 days per year, is required up till the age of 51 for men and up to 24 for women. Men over 35 years of age are often not called up (on notional health grounds) and women are as a rule not called up at all.

Section 36(1) of the Israeli Act gives the Minister of Defence a general discretion to exempt anyone from military service. Exemption is possible for ´reasons connected with the requirements of education, security settlement or the national economy, for family reasons or for other reasons´. The Minister has used his powers to exempt general categories of people as well as specific individuals. Arabs and citizens of Palestinian origin have been exempted from conscription from the outset. Other Muslim communities (the Circassians and Druze) were exempted until 1956. Religious students (Jewish and Druze) have been exempt, although the Minister's ability to grant exemptions to religious students without Knesset approval has been ruled unlawful. Exemptions for ´other reasons´ are broadly referred to as ´unsuitability´ grounds. This includes medical grounds, criminal background and inadequate education. Conscientious objectors have also claimed exemption under this rubric.

There is no express legal provision recognising conscientious objection (here-in-after CO) in the case of men. As a matter of practice, male conscientious objectors usually try to gain an exemption under s.36, on ´unsuitability´ grounds, by applying in writing to the Ministry of Defence before or while serving. Physical or mental health grounds are often used to achieve an exemption. Conscientious objection applies only in relation to total COs, not partial COs (according to Supreme Court rulings).

CO applications are processed as an internal Defence matter. In 1995, a Conscience Committee for male COs was established consisting of five IDF representatives. A civilian representative has since been added. Its legal status, working definitions, processes and outcomes are not subject to documentation or public scrutiny. In short, the issue is dealt with in a non-systematic way. Official figures indicate that few applications are accepted, and many COs (particularly selective COs) are not referred to the Committee. Applications which relate to selective CO (insofar as these are recognised) and/or which are the focus of public attention, appear less likely to succeed.

War Resisters International also refers to selective COs who have been imprisoned for refusing to serve outside the pre-1967 borders, whilst others have been able, at the discretion of his or her commander, to access other options such as assignment in Israel, postponement of service until such time as the unit is not required to serve in the Occupied Territories, other forms of service or discharge on medical, domestic or work grounds.

See for instance, The Observatory for the Protection of Human Rights Defenders 2003, *Israel: Conscientious Objection Tackled by Military Justice: Ben Artzi Trial (7-10 October 2003),* 2 December, pp. 3-4; Conscientious objection to military service in Israel: an unrecognised human right, Report for the Human Rights Committee in relation to Article 18 of the International Covenant on Civil and Political Rights, 31 January 2002, at http://www.wri-irg.org/en/index.html; Institute for Strategic Studies 1997, Military Balance 1997/98. ISS, London; Documentation, Information and Research Branch DIRB of the Immigration and Refugee Board in Canada, 6 September 1996; War Resistors' International 2003, 'Conscientious objection to military service in Israel: an unrecognised human right'. I have seen no more recent country information that would satisfy me the above is not still accurate.

FINDINGS AND REASONS

I have seen the applicant's passport at the Tribunal hearing and accept he is a national of Israel as he claimed. In an effort to simplify my further Findings and Reasons I have set them out under the below sub-headings.

Conscientious objection:

It has been suggested it is 'beyond dispute that sovereign nations have the right to raise and maintain armies' (Conscientious Objection as a Basis for Refugee Status: Protection for the Fundamental Right of Freedom of Thought, Conscience and Religion, Karen Musalo, Professor, University of California, Hastings College of the Law, United States, Refugee Survey Quarterly, Vol. 26, Issue 2, p.69). In the Australian Federal Court in *Erduran*, it was stated *'there is a line of authority establishing that the liability of a person to punishment for failing to fulfil obligations for military service does not give rise to persecution for a Convention reason [cases omitted]…Liability to punishment under a law of general application does not ordinarily provide a foundation for a fear of persecution for a Convention reason*' (*Erduran v MIMA* [2002] FCA 814 (27 June 2002), Gray J [18]). However, in *Erduran* it was also stated, there is an alternate *'line of authority to the effect that a refusal to undergo military service on the ground of conscientious objection to such service may give rise to a well-founded fear of persecution for a Convention reason'* [19]. In *Applicant N403 of 2000 v MIMA*, Hill J stated:

> if the reason [conscientious objectors] did not wish to comply with the draft was their conscientious objection, one may ask what the real cause of their imprisonment would be. It is not difficult … to argue that in such a case the cause of the imprisonment would be the

> conscientious belief, which could be political opinion, not merely the failure to comply with a law of general application. It is, however, essential that an applicant have a real, not a simulated belief. (*Applicant N403 of 2000 v MIMA* [2000] FCA 1088, Hill J, 23 August 2000 [23]; and as noted above, see also *Erduran v MIMA* (2002) 122 FCR 150 for a similar analysis)

Further, if (for instance), a law relating to conscription is inherently discriminatory or applied in a discriminatory manner for reasons of a Convention ground; if persons of eg, a particular race, religion, nationality, political opinion or particular social group are more likely to be either conscripted or punished (ie for failing to comply with a conscription notice), or if their punishment is likely to be of greater severity, or extrajudicially applied; if such persons are more likely to be subject to more serious risk when conscripted (ie more likely to be sent to the front in fighting); then such matters may be taken into account when determining whether refugee protection obligations arise. The above is clearly not meant to be an exhaustive list, simply an acknowledgement that in appropriate circumstances desertion, draft evasion, avoiding conscription, avoiding ongoing military service obligations (how-so-ever described), may give rise to refugee protection obligations in Australia.

For an applicant to invoke refugee protection obligations in Australia, they must have a well founded fear of persecution for a Refugees Convention reason. The Tribunal presumes it to be entirely uncontroversial to state the imprisonment feared by the applicant for refusing to perform miliary service, may be determined to be harm amounting to persecution. However, the applicant must still be found to fear persecution for a Refugees Convention reason; and that fear must be well founded for the purposes of the Refugees Convention.

Further, though not discussed herein, for the purposes of this decision, I have assumed the applicant to be claiming *inter alia* he fears persecution for reason of his conscientious objection and or pacifism.

Refugees Convention ground / well founded fear:

Neither the applicant's claims, nor any country information I have considered, satisfied me the applicant was claiming to fear persecution for reason of his race, religion or nationality. The grounds I have therefore considered are political opinion and membership of a particular social group.

That said, the mere fact of not wishing to perform military service, without more, may not give rise to refugee protection obligations. For instance, in *MIMA v Yusuf* [2001] HCA 30 (2001) 180 ALR 1, the High Court considered a case where an applicant claimed to fear persecution if he returned to Armenia because of his failure to perform compulsory military service. With respect to that case that Tribunal had found the applicant was ‘not opposed to all war’ but that his objection was found to be based, not on ethical, moral or political grounds, but on a desire to avoid personal danger. The present Tribunal understands the High Court accepted such decision may be open to a Tribunal.

In the present case, the applicant explained to the Tribunal that as a school age youth he had participated in at least two demonstrations; apparently organised by a political party which he named. He was not a member of the party. However, he was detained on both occasions. He was only detained for a matter of hours then released to his family members The applicant was expelled from both schools he was then attending and had completed his secondary education at a third school.

When he was 18 years of age, the applicant was called for military service. He explained that he was one of the younger siblings in his family. He had older brothers who had both met their military service obligations. At the time he was first 'called up' the applicant refused to enlist. However, his relative was aged and the applicant was granted an exemption under Israeli law. When asked to explain, the applicant repeated that he was amongst the younger siblings in his family and his older brothers had performed their military service obligations, and he was exempted from performing his military service. He said this was supported by Israeli law. He said however, this would not prevent him being called up 'in time of war'; or otherwise in time of a national emergency.

At hearing the applicant said his relative died a few years ago when the applicant was in his twenties and prior to the applicant travelling to Australia. After his relative's death, the applicant had continued to reside in Israel; though he did travel for several months prior to departing for Australia In his written claims he said he was called up (after the commencement of hostilities with Lebanon). However he refused and stated that 'considering that [he had] no military training they [left him] alone.'

The applicant then claimed he was again called up some time later. He attended the enlistment office and told them he was unable to serve due to his political opinion. He was told to report within the month or he would be arrested. He was however, able to depart Israel shortly after. He was able to depart legally as at that time there was no arrest warrant against him (though he was allegedly on notice he was to be conscripted). When asked, he thought that if he was called up to serve in the army, he may be told to work in a kitchen, or some other support role. However, he believed the army may also require him to serve as a combatant and that was against his political opinion. When this matter was discussed with the applicant, he explained that he did not wish to reside in a country where missiles and bombs were exploded. He also did not wish to fight and or kill or be killed.

The Tribunal has considered the *Handbook on Procedures and Criteria for Determining Refugee Status* (January 1988) (the Handbook). It understands it is not bound by the Handbook. That said, the Handbook states:

> Not every conviction…will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where however the type of military action…is condemned by the international community as contrary to the basic rules of human conduct, punishment for desertion or draft evasion could…in itself be regarded as persecution. (Handbook para 171)

The above reference to a 'type of military action…condemned by the international community' is not, without more, in keeping with Australian jurisprudence. In Australia an essential and significant reason the applicant fears harm must be for a Convention ground. The views of the international community, and or the applicant, while relevant, are not determinative of the matter.

As well as determining whether an essential and significant reason for the harm is based on at least one of the Refugees Convention grounds, Australian authorities support the conclusion there must be an element of motivation on the part of the persecutor/s for the infliction of the harm (see *Ram v MIEA & Anor* (1995) 57 FCR at 568, Burchett J; approved in *Applicant A Anor v MIEA & Anor* (1997) 190 CLR 225 at 284). In *Applicant A* Gummow J considered the phrase ‘for reasons of’ serves to identify the motivation for the infliction of the persecution [at 284].

Further in *Chen Shi Hai v MIMA*, the joint judgment of Gleeson CJ, Gaudron, Gummow & Hayne JJ [at 34-35], approved the statement of French J at first instance, that:

> The majority judgment in *Applicant A* supports the proposition that the apprehended persecution which attracts Convention protection must be motivated by the possession of the relevant Convention attributes on the part of the person or group persecuted.

Accordingly, and for instance, irrespective of whether the applicant is thought to be a 'sincere and genuine' conscientious objector, if that conscientious objection (how-so-ever described) is not found to be a significant and essential reason for motivating the persecutor to harm the applicant, it is difficult to envisage, without more, how refugee protection obligations in Australia may arise. Thus, the harm even a 'sincere and genuine' conscientious objector may fear should they be subject to military service obligations in their country of nationality is not, without more, sufficient to invoke refugee protection obligations in Australia. That is not to say such applicants may not invoke protection obligations under other treaties to which Australia is a party, just that non-refoulement obligations under the Refugee Convention are not owed.

As I believed it material to his application, I asked the applicant why he did not wish to perform military service. As set out above, the applicant's claims included such things as a fear of personal harm, not wishing to harm anyone else, and disagreement with some of the actions of the Israeli military. The applicant had also claimed that while not a member of any political party, he had on occasion supported them through his participation at demonstrations.

I also put to the applicant at hearing that notwithstanding his claimed objection to military service and the actions of the Israeli military, it appeared the Israeli authorities had acted in his case with apparent leniency and tolerance. For instance, even though he had been detained on two occasions (while a school student), he was not forced to undergo military service at 18 years of age. He was in fact exempted under (by his own admission), Israeli law. He was not called up (as punishment), for reason of his alleged subsequent distribution of Party brochures. Later on, he was not (at least immediately) forced to enlist. By his own admission of that time, 'considering that [he had] no military training [he was] left alone.' A further attempt to enlist the applicant took place at a later time. He refused. He was given one month 'to change his mind', otherwise he may be arrested for refusing to undergo military service. However, the applicant was allowed to leave Israel legally when he did (as no warrant had then been issued).

The Tribunal understands that in an appropriate case, an applicant may have sufficiently strong convictions, the suppression of which in order to avoid harm might constitute persecution for that applicant; and the convictions of some applicants are sufficiently strong that there may be a real chance they could give voice to them on return and come to the adverse attention of the authorities, or other persons, in their country of origin. That said, and notwithstanding the applicant's assertions to the contrary, based on the evidence he provided, I am not satisfied his aversion to military service will give rise to a real chance he will be persecuted for reason of his actual or imputed political opinion (or any other Convention ground). Given his apparent lack of involvement in any political activity since his second arrest, neither am I satisfied the applicant's political convictions can be assumed to extend beyond his aversion to military service. Further, I am aware that political opinion may extend to activities beyond more traditional party party politics, however, and as further explained herein, I am not satisfied the applicant's continuing refusal to perform military service will eventually give rise to a real chance of persecution for a Convention reason should he return to Israel.

Based on his own claims, the Israeli authorities have apparently been (at least till the time of his departure), quite reasonable. The actions of the Israeli authorities to date, for instance, do not appear to have the quality of arbitrariness, urgency, discrimination or malice (though obviously persecution may arise though not motivated by malice), that is commonly apparent when an applicant is being targeted for a Refugee Convention reason in their country of origin. That is, not only am I satisfied (for instance), that the laws of conscription in Israel are not inherently discriminatory, at least with respect to the present applicant; I am satisfied their application by the Israeli authorities, with respect to the present applicant, is not motivated by a Convention ground.

It may also be argued the applicant's departure from Israel would give rise to an imputed adverse political opinion. However, I do not accept the country information supports this (including but not limited to US State Department, Israel and the Occupied Territories, Country Reports on Human Rights Practices - 2006; Amnesty International Report 2007, Israel/Palestinian Occupied Territories; Human Rights Watch, World Report 2008, Israel/Occupied Palestinian Territories) Based on the evidence I have seen (including in the other sources cited herein), I am satisfied that if the applicant is arrested on return, an essential and significant reason for such arrest (or any subsequent treatment) will not be for one of the grounds in the Refugees Convention.

Though not stated by the applicant, I have heard it suggested that with the increasing tensions in and around Israel, with the taking of power by Hamas and the incursion into Lebanon, such incidents have led to a 'hardening attitude to pacifists' (actual or imputed) by the Israeli authorities. The Tribunal believes this is *prima facie* plausible; however, it has not seen any recent country information that would satisfy it this supports a conclusion an essential and significant reason for targeting pacifists/draft evaders etc, would necessarily be for a Convention reason. In the present case, and as stated above, the Israeli authorities have continued to act in a manner that does not suggest the applicant's eg membership of a particular social group (how-so-ever formulated) and or his actual or imputed political opinion, is in any way relevant to whether or not he may be arrested for refusing to undergo his military service obligations. The Israeli authorities appear to be simply applying a legitimate Israeli law (on conscription), in a legitimate and measured manner. The Tribunal is therefore satisfied that if the applicant is arrested on return to Israel (of which I am uncertain), an essential and significant reason for so doing is not based in any of the Refugees Convention grounds. Based on his claims and the country information considered, the Tribunal neither accepts that any other harm arising from his refusal to undergo military service would be motivated for any of the Convention grounds. In this case the Tribunal is therefore satisfied the applicant's possible arrest and detention in Israel (should that occur), is for reason of a legitimate application of the laws of a sovereign state.

At the hearing I also discussed whether the applicant's fear was well founded and the reason for his delay in applying for refugee protection in Australia. However, as I believe the above findings and reasons are conclusive of the matter, I have not discussed these issues herein.

Accordingly, the Tribunal is not satisfied the applicant has a well founded fear of persecution for a Convention reason in Israel.

CONCLUSIONS

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

DECISION

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

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

Sealing Officer's I.D. prrt44