

**071372632 [2007] RRTA 125 (29 June 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071372632  
**DIAC REFERENCE(S):** CLF2007/37512  
**COUNTRY OF REFERENCE:** Indonesia  
**TRIBUNAL MEMBER:** Pauline Pope  
**DATE DECISION SIGNED:** 29 June 2007  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and 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 Indonesia, 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 delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

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

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

### **RELEVANT LAW**

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

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the 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 Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

### **Application for Protection visa**

According to the application for the protection visa the applicant was born in Indonesia and he states that he is married. He states that he speaks reads and writes the Indonesian language and he states that he reads and writes English. His ethnicity is described as Chinese and he gives his religion as Catholic, Christian. According to the information provided by the applicant he lived at the same address in Indonesia from the late 1990s until he came to Australia. The information he provides indicates that he completed his schooling. He does not give details but claims that he undertook a university course in Indonesia. The applicant says that he mainly worked as a salesman of various products.

The applicant says that he left his country because of fears for his safety and freedom. He says that as the person of Chinese descent he is a victim and he is haunted by fear for the safety of himself and his family. He refers to the events of 1998 when close friends were seriously harmed.

### **Application for review**

The applicant has provided a lengthy statement in support of his application for review. In that statement, he outlines the reasons he left Indonesia for Australia for the first time. He refers to the riots of 1998 and the affect that these events had on his family. The applicant states that amendments to the law to stop discrimination against ethnic Chinese have recently been introduced, but he does not believe that the law will guarantee safety for persons of Chinese ethnicity. The applicant outlines the circumstances in which he made a previous application for a protection visa whilst in Australia. However, he said that he decided to leave Australia and was hopeful that that the situation would improve after the collapse of the Soeharto regime, but in fact things became worse.

The applicant states that he arrived in Australia for the second time and applied for a protection visa only after he was located by officers of the Department of Immigration and Citizenship. He explains that he had been trying to save money in order to make a further visa application in Australia but his inquiries indicated that he would need large amount money. He says he delayed making an application until he could succeed in saving up money in order to seek advice and assistance.

The applicant says that he is Chinese by descent, although he was born and has always lived in Indonesia. He states that he has been fearful since the riots of 1998. He still is fearful because of sporadic clashes which erupt between Christians and Muslims and he worries about his safety because he is a Christian. He said that every year at Christmas time there are

always threats and rumours of bombs in Christian churches. He said that he cannot live in such a situation with peace of mind. The applicant says that the authorities in his country cannot and will not protect such a weak person as him because basically there is dislike and hatred of ethnic Chinese and feelings of adversity towards them. He said that the police or the army will not protect him as an Indonesian of Chinese ethnicity.

### **At hearing**

The applicant appeared before the Tribunal to give evidence and present arguments. He indicated that he did not require the assistance of an interpreter and was comfortable to provide his evidence in the English language.

At the outset the Tribunal examined the applicant's passport. The passport was issued to him legally. Contained in the passport was a visa for the other country which was issued in Indonesia. The passport evidenced travel to that country and it also indicated travel to country A and a number of visits to country B. According to the passport the applicant arrived in Australia as the holder of a visitor visa.

The Tribunal sought to confirm that the personal particulars provided by the applicant in the application for the protection visa are all true and correct. He confirmed that he was married and he has a child. He said that his child is single and works in Jakarta. He said that his wife is living in Indonesia and is not working at this time. The applicant told the Tribunal that his wife is currently living with his parent. In addition to his parent he said he has few siblings living in Indonesia. His wife's family is also living there.

The Tribunal asked the applicant if it is correct that he commenced tertiary studies at university. He said that he commenced a course but dropped out because of financial problems. The Tribunal asked him what work he did in Indonesia. He replied that he helped his parents who ran a small business. He said that he worked there until he found another job because the business did not generate enough income to employ several members of the family. He said for a time he found work with a company as a salesman. He told the Tribunal that after that he remained unemployed for few years and then went back to assist his parent in the business. He said that in the mid 1990s he came to Australia. He told the Tribunal that his parent provided some funds for his visit on that occasion. The applicant told the Tribunal that his parent still owns this small business and his sibling helps to run it. The applicant told the Tribunal that he also worked for a while again as a salesman. He said that he has been regularly without employment and has not been able to find work.

The Tribunal asked the applicant about his religion, noting that he has stated on the visa application form that he is a Christian. He told the Tribunal that he was baptised in his teenage. He said that his family are all Christian. He said that his mother is a Christian Protestant that he himself made the decision to become a Catholic when he was young. He said that his wife is also Catholic as are all of her family and she has been Catholic since birth. He said that his father was Protestant. His grandmother on his father's side was a devout practising Catholic who influenced him. He told the Tribunal that he and his wife married in the Catholic Church and their child has been baptised as a Catholic. The Applicant told the Tribunal that he attended his local church on a regular basis. He told the Tribunal something about the pastor in charge of his church and the congregation. He said that his mother still attends the Protestant church regularly.

The Tribunal spoke to the applicant about his first visit to Australia and asked the reasons for his return to Indonesia. He said that after the riots in 1998 he was very concerned about his family. Asked about the situation when he went back to Indonesia he said that it was calmer, although there was still sporadic violence. He told the Tribunal that there was a lot of petty crime and violence. The Tribunal asked the applicant whether his family suffered any actual harm during that period in 1998. He said that there was no actual injury sustained by any of them but his mother had a close encounter when she was nearly hit by a projectile in front of the house. He said that his parent's business was also closed at that time for few weeks or so.

The Tribunal asked the applicant to describe the situation from 1998 up until his departure for Australia. The Tribunal asked whether he had experienced any incidence of harm in that time. He said that he was very stressed because of constant threats of bombs, particularly in Christian churches and he said at certain times people were afraid to go to the church. The Tribunal asked whether there were any actual attacks in that time and he said there were not but there were threats and rumours.

The Tribunal asked the applicant what caused him to decide to return to Australia a second time. He said that it was the result of financial pressure. He said that he faced discrimination in employment, adding that there are no jobs in government for ethnic Chinese. He stated that ethnic Chinese face abuse for reasons of their race. The Tribunal asked the applicant if he had ever thought of going to Jakarta to look for work. He replied that he tried that once before but was unable to find work and furthermore the cost of living is prohibitively high.

The Tribunal asked the applicant how he had made his application for the visa to travel to Australia. He said that he made the application through a travel agent. He said that in order to enhance the prospect of success of the visa application money was transferred from his parent's account into his name. He said he needed only to show evidence of the savings. The applicant told the Tribunal that his parent's small business is in the applicant's name. This was done by his parent. Speaking further about the visit to Australia, the applicant said that his wife and child continue to put pressure on him because of the family's shortage of money. He told the Tribunal that he and his wife would like to be able to live separately from his parent however they cannot afford to do so. He decided to come back to Australia and get work and be able to send money back home. He said that he also gives some of his earnings to his parent. He said at this time there is not much business; the city and the area in which the business is located has changed he said. Again, the applicant said that the main reason he came to Australia this time was to earn money and he added that that the political situation and the rioting make it very hard to earn a living.

The Tribunal asked the applicant why, if it is dangerous in his area and town why he left his wife and child behind. He responded that if they were contemplating leaving he would have to go first in any case. He said that if he is successful in remaining in Australia then he will invite his wife to join him here.

The Tribunal again asked the applicant if he ever suffered any actual harm or threats of harm in Indonesia. He said that he has never been harmed and the threats are by way of rumours of bombs and violence particularly in churches during Christmas celebrations. His church has never been attacked.

The Tribunal asked the applicant if he sought work after arriving in Australia. He said that after a short period he commenced work and he is still doing that. He told the Tribunal that he works several hours a week. However, he said that he was located by officers of the

DIAC at his workplace. After he was permitted some time to make arrangements to depart and provide evidence of a ticket to leave Australia.

Again the Tribunal asked the applicant what he fears in Indonesia. He replied he does not want to go back. He said he is getting older and he does not have much money. He said here he enjoys freedom and he has the ability to work and earn a little bit of money.

The Tribunal asked the Applicant if he attends church in Australia. He said he goes to church and he also attends an Indonesian Bible study group.

The applicant told the Tribunal that he wants to be able to assist his parent financially. His sibling has a disability and is unable to work. He described the family home. His parent's business is located on the ground floor of the building. He said that his siblings in Indonesia are not able to find regular work. They say they look but are not able to find anything. There is some conflict in the family about who should assume responsibility for the small business. Further describing some of the difficulties and discrimination encountered by Christians the applicant that there are special laws and rules for church buildings. He said that the process to obtain permission for building and works is long and very demanding. He said furthermore people try to disturb Christians as they worship.

The Tribunal asked the applicant about his travel to country C. He said that we went there and stayed for a short period. The Tribunal asked him what he did in country C. He replied that he did not do anything; he just this visited his friend. He told the Tribunal that all up this visit cost about several thousands Australian dollars. He told the Tribunal that he had thought that there might be some prospect of him remaining there and finding work. However his discussions with his friend proved fruitless. There was no possibility for him to seek work there because in the first place he was not able to speak the language. The Tribunal asked the applicant about his subsequent visit to country A. He said that he and his wife went to there looking for a relative. He said that he thought to ask this relative for some money or support. In the event he told the Tribunal he did not meet with this relative and the relative made it clear he did not want to have anything to do with them. He told the Tribunal that the trip to country A is only a short journey. The Tribunal asked him whether his wife applied for a visa to come to Australia with him. He said that she did. The Tribunal asked why she applied if she did not intend to travel. He explained that his wife wanted to travel and stay with him but he said that as they would have no right to stay, and he did not know the procedure once they were here. He thought it better that he come alone in the first instance. Furthermore, he said that he told her that he believed it would be better that she stay and take care of his parent. He told the Tribunal that she understood and agreed to do this. The Tribunal asked the applicant whether there was anything further he wished to say and he said he had nothing else to add.

### **Information from other sources**

The United States Department of State  
Country Reports on Human Rights Practices (2006)  
Indonesia.

On religion and ethnic minorities the report states:

c. Freedom of Religion

The constitution provides for "all persons the right to worship according to his or her own religion or belief" and states that "the nation is based upon belief in one supreme God." The government generally respected the former provision, but until recently only five faiths--Islam, Protestantism, Catholicism, Hinduism, and Buddhism--received official recognition in the form of representation at the Ministry of Religious Affairs. However, in February the government recognized Confucianism as a formal religion following a statement by President Yudhoyono on the celebration of the Chinese New Year (most Confucians in the country are ethnic Chinese). On February 24, the Home Affairs Ministry issued a regulation requiring local and provincial administrations to provide administrative services to Confucians, such as issuing marriage licenses and identification documents which denote the bearer's Confucian religious affiliation. Other religious groups were able to register with the government, but only with the Ministry of Home Affairs and only as social organizations. These groups experienced official and social discrimination. The law does not recognize atheism, and in practical terms requires all persons to identify themselves with one of the six faiths acknowledged by the government.

The civil registration system continued to discriminate against members of minority religions. Civil registry officials refused to register the marriages or births of children of animists, members of the Baha'i faith, and others because they did not belong to one of the six officially recognized faiths. According to the Hindu association Parisadha Hindu Dharma Indonesia, Hindus, particularly in North Lampung, Southeast Sulawesi, Kalimantan, and some areas in East Java, despite official recognition of their religion, sometimes had to travel some distance to register marriages or births because local officials would not perform the registration.

Persons whose religion was not one of the six officially recognized faiths, as well as persons of Chinese descent, had difficulty obtaining a KTP, which was necessary to register marriages, births, and divorces. Several NGOs and religious advocacy groups urged the government to delete the religion category from the KTPs, but the DPR passed legislation in December retaining it (see section 1.f.). Men and women of different religions experienced difficulties in marrying and in registering marriages. The government refused to register a marriage unless a religious marriage ceremony had taken place. However, very few religious officials were willing to take part in a wedding involving a man and woman of different faiths. For this reason, some brides and grooms converted to their partner's religion. Others resorted to traveling overseas to wed. In July 2005 the Indonesian Council of Ulemas (MUI) reaffirmed its 1980 ban on marriages between persons of different faiths. MUI edicts are influential but do not have legal standing.

#### National/Racial/Ethnic Minorities

The government officially promotes racial and ethnic tolerance. Ethnic Chinese accounted for approximately 3 percent of the population, by far the largest nonindigenous minority group, and played a major role in the economy. Instances of discrimination and harassment of ethnic Chinese continued to decline compared with previous years. Recent reforms increased religious and cultural freedoms. However, some ethnic Chinese noted that public servants still discriminated against them when issuing marriage licenses and in other services and often demanded bribes for a citizenship certificate, although such certificates were no longer legally required. An attorney advocate for the rights of ethnic Chinese noted 50 articles of law, regulation, or decree that discriminated against ethnic Chinese citizens. During the year President Yudhoyono revoked a previous presidential decree that required special permits to engage in Chinese cultural and religious celebrations. The new citizenship law explicitly states that an Indonesian citizenship certificate, which ethnic Chinese often had a difficult time obtaining, is not required to establish citizenship. NGOs such as the Indonesia Anti Discrimination Movement urged the government to revoke the remaining discriminatory articles.

The ethnic Chinese community in Surabaya established an anti discrimination organization, Sikad, on September 27, to address discrimination problems faced by ethnic Chinese.

In May hundreds of students threatened to attack Chinese Indonesians in Makassar, South Sulawesi, if the police failed to investigate the death of a maid after she was allegedly tortured by her Chinese-Indonesian employer.

On August 7, dozens of university students held violent protests and threatened to expel ethnic Chinese from Makassar after a Chinese-Indonesian man was accused of attempting to rape his maid. No casualties were reported during the protests. Five students were detained and questioned at Makassar police headquarters following the protest.

There were no reports of overt discrimination against Acehnese outside the province. Some Acehnese continued using a national identity card specific to Aceh. The 2005 Helsinki MOU between the government and GAM included a provision to issue Acehnese standard national identity cards by April. This had not been completed by the end of the year.

#### **EXTERNAL ADVICE COMMISSIONED BY RRT on ethnic Chinese – 2003**



### **Michael Utama – Indonesian Chinese Association (INTI) – November 2003**

In November 2003, Country Research contacted Professor Arief Budiman of Melbourne University to request information in relation to:

- a). whether or not the Indonesian resident's card, the 'KTP', has a "secret sign" indicating the bearer is of Chinese descent;
- b). a general update on the situation for ethnic Chinese in Indonesia.

Professor Budiman informed Country Research that he thought it best to refer the inquiry to his colleague in Indonesia. The source nominated by Professor Budiman, Mr Michael Utama, is Secretary General and one of the Chairmen of the Indonesian Chinese Association (INTI). Mr Utama stated that the use of a "secret sign" on the KTP which indicated the bearer was of Chinese descent was discontinued in early 1999. He also provided the following update on the situation for ethnic Chinese in Indonesia, stating that under the presidencies of Wahid and Megawati progress has been made to minimise discriminatory practices towards ethnic Chinese:

Since the era of former President Abdurachman Wahid the discrimination against Indonesian Chinese are decreasing. The "secret sign" that shows the bearer is of Chinese descent was finished around early 1999. Wahid and also Megawati period contribute a lot of positives things to minimize discriminations against the Indonesian Chinese. The Indonesian Chinese are free to celebrate their Chinese New Year (since 2003 it was proclaimed formally as public-holiday). They are free to perform "the Barongsay Dancing" (Dragon Dancing). They are free to use Chinese languages both oral and or written. (They have Chinese News in Metro TV and they have also some Chinese News Papers). I could say that in general there are a lot of improvements which decreasing the discrimination against the Indonesian Chinese, on the other side frankly speaking there are still legal discrimination against the Indonesian Chinese. They have to show SBKRI (A Letter of Evident Indonesian Citizenship: special for the Chinese Indonesian) if they want to renew their Indonesian Passport etc, The Public Universities belong to the Governments still have their quota for the Chinese Indonesian (around 1%). But right now the Chinese Indonesian looks like "Pretty Women" who are loved by almost the biggest political parties in Indonesia, because according to the latest investigations/researches done by Djawa Post (Dahlan Ichsan statement during Seminar INTI this year) the Indonesian Chinese Population is 16 million!  
(Mr Michael Utama 2003, Email: 'RE: RRT Information Request: IDN16252 – update on ethnic Chinese in Indonesia', 3 November)

Please consult the full text of the report, available as follows:

RRT location: <\\ntssyd\refer\research\letters\replies\idn16252.lr4.htm>

### **FINDINGS AND REASONS**

On the basis of the passport issued to him the Tribunal accepts that the applicant is a citizen of Indonesia. It accepts that he is of Chinese ethnicity and a Christian.

In his written claims and in his evidence before the Tribunal the applicant said that he does not wish to return to Indonesia because as an ethnic Chinese he faces discrimination and as a Christian he faces threats of violence.

The Tribunal heard from the applicant that he fears for his safety and well being as an ethnic Chinese and practising Catholic. The applicant was not present in Indonesia during the riots in 1998. He told the Tribunal that his wife and child were not harmed at that time but his parent faced injury. She was not actually harmed. The Tribunal heard from the applicant that he returned to Indonesia. He described to the Tribunal his life in Indonesia since that time. As put to the Tribunal his main difficulty has been in finding ongoing employment. In that regard he said that his parent's small business is not now so prosperous. The area has changed and the business opportunities have declined. The business cannot provide a living

for all of the family members. The applicant spoke of a number of jobs he had in sales and he spoke of periods when he returned to his parent's business.

Questioned by the Tribunal on a number of occasions about his fears of harm in Indonesia the applicant referred to his poor financial situation, limited employment opportunities and the pressure exerted by his wife and child to find a means of greater income. It was to this end that the applicant travelled to country A and to country C in an effort to explore options for work or other financial support.

The applicant told the Tribunal that he is a practising Catholic and he has always professed his faith publicly. He did not refer to any instance of harm directed to him or suffered by him as a result of this demonstration and practice of his religious belief. He told the Tribunal that he and Christian congregations more generally are fearful when there are threats and rumours of bombs and attacks against Christian churches. These threats, he said often occur at Christmas time. He has never been involved in or witnessed any attack and conceded that much of his fear emanates from rumours.

The Tribunal appreciates that life for the applicant is difficult in the city where he lives because of limited employment opportunities; particularly given that he does not have specific work skills. He spoke to the Tribunal at length about his family's poor financial situation and the pressure he faces to bring about some improvement in that regard. At the hearing the applicant spoke of his unease and fears about the future. Beyond that he told the Tribunal that he has never faced actual harm or serious threat of harm in Indonesia because of his Chinese ethnicity or because of his religion as a Christian.

It is not possible for the Tribunal to make a decision on the basis that a person fears that something might happen to him in the future. It has to assess whether there is a real chance that harm might befall the applicant in the reasonably foreseeable future. The Tribunal notes the improvement for Sino-Indonesians over the past eight years and the absence of any major anti Chinese activity in Indonesia throughout that time. Substantial structural changes which have occurred indicate that the 1998 situation would not arise in the same way again. There is a publicly stated and demonstrated willingness of post 1998 governments to protect its citizens.

Based on the evidence before it the Tribunal is not satisfied that the applicant faces a real chance of persecution in Indonesia either for reason of his race as an ethnic Chinese or his religion as a Catholic. His fear of Convention based persecution is not well founded.

## **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.

<p>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. PMRTAK</p>
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