

**071169424 [2007] RRTA 61 (13 April 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071169424  
**DIAC REFERENCE(S):** CLF2006/133688  
**COUNTRY OF REFERENCE:** Indonesia  
**TRIBUNAL MEMBER:** Shahyar Roushan  
**DATE DECISION SIGNED:** 13 April 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 on 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 (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Convention). Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### Definition of 'refugee'

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

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

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

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

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

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

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

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

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

The applicant was represented in relation to the review by his registered migration agent.

### *Application for a Protection Visa*

According to his application for a protection visa, the applicant is in his mid 50s and a national of Indonesia. He is of Chinese ethnicity and has provided no information regarding his religion. He speaks, reads and writes Bahasa Indonesian. The applicant claims that in the 1990s his mechanical workshop was firebombed by native Indonesians because of his Chinese ethnicity. The authorities did not arrest or charge any of the perpetrators. His livelihood was ruined and never felt safe again in Indonesia. He claims that because of his Chinese ethnicity he would have to start his own business or work for a Chinese owned business. At times of unrest the ethnic Chinese are targeted and their properties destroyed. He fears being targeted by the locals for the reason of his ethnicity and also fears that the rise in Islamic fundamentalism in "Australia" would interfere with his right to practise his Christianity. He refers to the riots and the unrest in the 1990s and claims that the Indonesian authorities are slow to respond to these problems and no one has ever been charged with destroying his workshop. He claims that over the past 10 years over 500 churches have been destroyed and recently unlicensed churches have been closed down. He claims that sometimes the authorities protect the minorities, but they usually require bribes to do the job and usually they are unable to quell local mobs when they attack the ethnic Chinese, Christians and Christian places of worship.

### *The Hearing*

At the hearing, the applicant appeared highly anxious and displayed signs of trauma. He sobbed at regular intervals and repeatedly stated that he was fearful of returning to Indonesia. He said he was old, his family lives in Australia and would rather die here than in Indonesia. The Tribunal offered him breaks during the course of the proceedings and ensured that he was able to reply to the Tribunal's questions.

The applicant stated that he came to Australia in 1980s and made return visits to Indonesia. In 1990s he returned to Indonesia and remained there until the late 1990s. In the early 1990s the applicant lived at the same address until his departure from Indonesia. He then moved in with friends until his departure. He explained that he married his first wife and had a child. They divorced and he remarried but that marriage ended several months later. He has a sibling in Australia who is an Australian citizen. He has other siblings in Indonesia, but he has not been in contact with them for many years.

With regard to his employment history in Indonesia, he said that previously he bought and sold goods and later he owned and operated his own shop. After the shop was burned down, he did not work in Indonesia and relied on support provided to him by friends. He has completed primary education, but was unable to continue his studies because of the anti-Chinese campaign of 1965.

The applicant said that he is a practising Pentecostal Christian and was baptised.

The Tribunal asked him about the incident. He said there was a demonstration against the Chinese and Christians and he was attacked at his shop while people shouted anti-Chinese and anti-Christian slogans. He was told that he was not allowed to set up a business. When he protested that he had to earn a living, he was hit in the face and attacked by many Muslims. They pushed him into his shop and set the place ablaze. His clothes caught fire and parts of his body were badly burned. He found a tub of water in the toilet and managed to extinguish himself, but was unable to leave the shop as the demonstrators had continued to surround the place. Finally, few other people watching the incident intervened and rescued him.

The Tribunal asked him if he recognised or could identify any of his attackers. He said no. In his opinion, they were people with a political background. He was asked why he had thought that. He said they wore headbands and looked sadistic. When asked to explain further, he said in Indonesia there were many elections and these people were looking for an opportunity to ventilate their anger against ethnic Chinese and Christians. He referred to various anti-Chinese movements in the past and stated that he lost many of his friends in 1973. This was repeated in 1990s when many Chinese were killed and women were raped.

The Tribunal asked him if he reported the shop incident to the police. He said yes, the police did not do anything. The Tribunal put to him whether it was possible that the police did not do anything, because he had been unable to identify his attackers. He said yes, in fact he was asked at the police station if he was able to identify his attackers. He told the police that he did not know who these people were.

The Tribunal asked him if anything else happened to him. He said that President Soeharto's son-in-law was behind the riots in Jakarta. The Tribunal noted that he was not in Jakarta at that time. He agreed.

The Tribunal asked him whether his reference in his application form to his fear of rise of Islamic fundamentalism in Australia was an inadvertent mistake and that he had meant that he had a fear of Islamic fundamentalism in Indonesia. He said yes, his fear is in relation to Indonesia.

The Tribunal asked him why he thought that he would not be able to practise his religion in Indonesia. He said because the government of Indonesia is for Muslims. He said his friend who is Christian wanted to join the army, but was unable to achieve a rank higher than Lieutenant. The higher ranks in the military or in politics are reserved for the natives.

The Tribunal put to him the country information before it which suggests that religious freedom is guaranteed by the constitution and that the government has taken an active role in protecting citizens from sectarian strife. Indonesian Presidents since Soeharto, including current President Susilo Bambang Yudhoyono, have adopted policies designed to ensure and promote tolerance and non-discrimination. He said Yudhoyono is good, but he won't be President for long. He would have to be replaced and there will be new incidents.

It was put to him that the situation in Indonesia had changed after the riots in 1998. Since the era of former President Abdurachman Wahid the instances of discrimination against Indonesian Chinese are decreasing. Several laws that discriminated against the ethnic Chinese have been scrapped and the government now officially promotes racial and ethnic tolerance. He said this is because they want to rectify the situation for sake of all the Chinese people who have died. But the people who are against the Chinese are still there. The Muslims are a clear majority. The current president is good, but he could be replaced and everything will go back to the way it was. If he goes back he will die. He is shocked and he is an “invalid” because his body does not operate like before.

The Tribunal put to him that there have been marked improvements in the way the police respond to ethnic and religious violence. The Indonesian police have greatly improved their efforts to protect ordinary citizens and have become more assertive in their efforts to curb activities of criminal gangs who operated under the garb of Islamist activists. Reports from Indonesia indicate that the authorities take appropriate action to arrest and charge those intent on causing sectarian violence, as well as to take pre-emptive security measures. He said in 1993 and in 1997 when riots occurred in Jakarta there was a cover up. There were no reports in the internet or in newspapers. They treated the Chinese like animals and there were no media reports. During unrest victims could not go to the police, because there was a risk that they could get arrested. He would go back to Indonesia if he was a native Indonesian, but he is Chinese. He has family here and he wants to stay in Australia.

The Tribunal asked him if he did not want to go back to Indonesia why he would be unable to go somewhere else, like Jakarta. He said he would be afraid regardless.

#### *Evidence from other Sources*

##### Ethnic Chinese

According to Mr Michael Utama, Secretary General and one of the Chairmen of the Indonesian Chinese Association (INTI), 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 Ihsan 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)

A June 2004 article from *Inside Indonesia* authored by an ethnic Chinese journalist comments of the “reawakening” of Chinese identity in Indonesia after the 1998 riots and the subsequent legislative reforms. There had been a revival of the use of Chinese language, the Chinese New Year was celebrated without restrictions for the first time in three decades, and there was a resurgence of Chinese organisations and publications. However, “racial discrimination in Indonesia is far from over” and “at least 50 discriminative laws and ordinances were still in force in 2004” (Hoon, Chang-Yau 2004, ‘How to be Chinese: Ethnic Chinese experience a “reawakening”’, *Inside Indonesia*, April-June, [http://www.insideindonesia.org/edit78/p13-14\\_hoon.html](http://www.insideindonesia.org/edit78/p13-14_hoon.html)).

A December 2005 report by Minority Rights International indicates that as a minority the Chinese in Indonesia are better off than other minority groups such as the Papuans and Acehese:

Several laws that discriminated against the ethnic Indonesian Chinese have been scrapped, including the infamous Indonesian Citizenship Certificate (SBKRI) decree. Under this decree, ethnic Chinese Indonesians were given a special code in their ID which identified them as Chinese and gave the bureaucracy the opportunity to discriminate against them. Former President Megawati cancelled the decree in April 2005.

In the 2004 elections, there were several parties that openly claimed to be representing ethnic Chinese, something that was unheard of during the rule of former president Suharto. Although none of these parties made any headway, they did raise the profile of the Chinese community. Many senior Indonesian officials openly proclaimed their Chinese ancestry (Minority Rights Group International 2005, *State of the World’s Minorities 2006 – Indonesia*, December).

The US Department of State provides the following information on the situation of ethnic minorities in Indonesia:

#### 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 declined compared with previous years. Recent reforms increased religious and cultural freedoms. However, some ethnic Chinese noted that public servants still discriminated in issuing marriage licenses and in other services and often demanded bribes or a citizenship certificate, although such

certificates were no longer legally required. In 2004 an attorney advocate for the rights of ethnic Chinese noted that more than 60 articles of law, regulation, or decree were in effect that discriminated against ethnic Chinese citizens. NGOs such as the Indonesia Anti-Discrimination Movement urged the government to revoke these articles. (US Department of State, Country Reports on Human Rights Practices 2005 in relation to Indonesia, released March 2006)

A February 2006 report from *The Economist* comments that apparently “Indonesians’ attitudes towards their ethnic-Chinese compatriots are changing fast”. There are several Chinese media outlets; many ethnic Chinese are exploring and celebrating their own culture; and there have been far more Chinese running for political office. Some structural discrimination remains in areas such as dealing with government officials (‘Indonesia: The happy Chinese: At last, Indonesia is coming to terms with its Chinese community’ 2006, *The Economist*, 2 February).

### Christians

According to information provided in 2002 to the Immigration and Refugee Board of Canada,

The general impression among Indonesian specialists is that incidents of specifically anti-Christian violence have decreased since 1998-1999, while those directed at non-Chinese Christian minorities have increased in a few parts of the country (Immigration and Refugee Board of Canada 2002, *IDN39734.E – Indonesia: The links, if any, between Islamic extremism and anti-Chinese sentiment since the rise of Laskar Jihad*, 12 September

The section on Indonesia in the United States Commission on International Religious Freedom annual report dated May 2006 refers “to a gradual improvement in conditions for human rights, including religious freedom, over the past few years. Nevertheless, the Commission remains concerned about ongoing communal violence, the forcible closures of places of worship belonging to religious minorities, the growing political power and influence of religious extremists, and the lack of civilian control over the military.” The report mentions areas of Indonesia, including “parts of West Java”, in which religiously motivated violence had “continued in the past year”. It is also stated in the report that:

Religious extremist groups in Indonesia continue to be responsible for harassment, intimidation, and acts of violence. Members of these groups intimidate judges and local officials and vandalize and destroy buildings belonging to religious minorities, including Christian churches, Hindu temples, and Ahmadiyah mosques and religious centers. In September 2005, the Islamic Defender Front (FPI) organized protests and intimidated lawyers and judges during the trial of three Christian women who were being tried for allegedly “proselytizing” to Muslim children. Through the intimidation of government officials and the instigation of mob violence, the FPI and another group, the “Alliance for Anti-Apostates,” effectively closed at least 50 Protestant churches in West Java during 2005, a significant increase from the previous year; churches were burned or destroyed by mobs or closed by government officials after intense community pressure. In some cases, police did little to stop the violence and on occasion, even participated in it.



...The Indonesian government continues to restrict the construction and expansion of houses of worship. In the past, Joint Ministerial Decree 1/1969 (“Regulation on Building Houses of Worship) required “community approval” for the expansion of existing or the building of new religious venues. In areas where Christians, Hindus, or Muslims were the minority, new building permits were often difficult, if not impossible, to obtain. In addition, in some places, extremists pressured local government officials to revoke permits of longstanding places of worship and destroyed those operating without permits. In response to public criticism, the Ministry of Religious Affairs issued a new Decree (Joint Ministerial Decree 1/2006), which appears to impose new restrictions and make it even more difficult to obtain a permit. In replacing the vague “community approval” standard, the new decree requires religious groups with 90 or more members to circulate a petition and get 60 local residents to support the building or expansion of their religious venue. The petition then has to gain majority approval from both district and provincial panels of religious leaders. The membership of the panels will be chosen proportionally by the number of religious adherents in the region.

Protestant and Buddhist leaders oppose the measure because many of their religious venues have fewer than 90 members. Other religious leaders believe that extremist groups will intimidate anyone who signs his or her name to a public petition. In addition, critics of the new decree argue that the proportional membership of the district and provincial panels does not protect the rights of religious minorities and opens the permit process to corruption. Muslim leaders are divided about the new decree’s impact. Hazim Muzadi, head of the Nahdatul Ulama (NU), Indonesia’s largest Muslim organization, declared that the new decree was “more restrictive” than the previous one. However, the Chairman of the National Assembly, Hidayat Nur Wahid, pointed out that “restrictive regulation...is needed to avoid sectarian conflicts among religious communities.” The Commission will continue to monitor the implementation of the new decree in the coming year (United States Commission on International Religious Freedom 2006, ‘Annual Report of the United States Commission on International Religious Freedom’, May <http://www.uscirf.gov/countries/publications/currentreport/2006annualrpt.pdf#page=1> – Accessed 23 May 2006).

According to an article dated 25 April 2006 in *The Jakarta Post*, “More Christian places of worship have been vandalized or forcibly closed by local Muslims because they have failed to meet the requirements of a controversial ministerial decree.” The article indicates that “Critics of the 2006 Decree on Places of Worship say the incidents only show the regulation is causing more violence than it is preventing.” The ministerial decree was signed in March 2006 and replaced the previous decree “issued in 1969, which required consent of local administrations and residents to build houses of worship.” Religious minorities had “complained that the requirements in the old decree made it nearly impossible for them to get licenses in majority-Muslim areas and most say the revised decree does little to change the situation.” The article refers to the closure of a church in Mojokerto, East Java, and “a house and shophouses” said by residents to be used by Christians for worship in Gunung Putri, Bogor (Diani, Hera 2006, ‘Revised decree ‘justifies violence’’, *The Jakarta Post*, 25 April).

An *Agence France-Presse* article dated 4 September 2005 indicates that a spokesman for Indonesia's President Yudhoyono had said that the president had "called on all ranks of the government and the community "to prevent violence against [sic] religious worship activities." The article refers to "reports of forcible closures of several Christian places of worship in the staunchly Muslim provinces of West Java and Banten". The spokesman had also said that Yudhoyono had "ordered religious affairs minister Muhammad Basyuni and local administrators quickly to find a solution to the closures of Christian places of worship" ('President stresses freedom of worship should prevail in Indonesia' 2005, *Agence France-Presse*, 4 September).

Another article dated 1 September 2005 in *The Jakarta Post* notes that the Indonesian Ulema Council had "joined the chorus in condemning the much-criticized forced closure of dozens of neighborhood churches in West Java". According to the article:

The Indonesian Ulema Council (MUI) has joined the chorus in condemning the much-criticized forced closure of dozens of neighborhood churches in West Java, saying that such acts were intolerable.

But the MUI has no plans to issue an edict against the violence.

MUI head Umar Shihab said on Wednesday that all actions or efforts that disrupted religious activities were a form of violence, and as such could not be justified.

...MUI, which had been recently criticized for issuing edicts against pluralism, was commenting on the activities of radical Muslim conservatives in forcibly closing Christian places of worship that were not licensed by the authorities.

It was reported that at least 23 churches in the province had been forcibly closed by mobs during the past year, which has led several Christian and Muslim figures to call on the government to take legal action against the so-called hard-liners (Hotland, Tony 2005, 'MUI condemns action against Christian houses of worship', *The Jakarta Post*, 1 September).

#### State Protection

A 2003 research response by the US Citizenship and Immigration Service provides the following information on whether the Indonesian authorities protect the Chinese and Christians from harm:

In regard to whether police and/or other government authorities in Indonesia have improved their efforts to protect Chinese Christians in Jakarta, Indonesia specialists at the U.S. Department of State and at Boston University both told the RIC in telephone interviews that the police in Jakarta have made a significant attempt over the past two years to improve protection of Chinese Christians in Jakarta. Both referenced past incidents in Jakarta involving Chinese Christians but stated that Chinese Christians in Jakarta are not affected necessarily by current violence against Christians elsewhere in Indonesia (U.S. DOS 30 Oct 2003, Professor 30 Oct 2003).

The Boston University expert, who is a professor of anthropology, said that in the aftermath of the 2002 Bali bombings, the police in Jakarta have been

improving efforts to protect all citizens of Jakarta (Professor 30 Oct 2003). He also stated that many Chinese Christians in Indonesia “are ethnically distinguishable from non-Chinese and the subject of some popular resentments by non-Chinese, ‘native’ (pribumi) Indonesians” (Professor 14 Nov 2003). He noted that “Chinese Indonesians as a group also tend to be better off economically, and as such are the target of some discriminatory practices” but said that he does not feel that this discrimination in general would “justify blanket asylum requests” (Professor 14 Nov 2003). He did say, however, that “there have been Chinese individuals who have been the subject of special discrimination whose cases might require individual attention” (Professor 14 Nov 2003).

The Indonesia specialist at the U.S. Department of State told the RIC that there has been a recent up-take in violence against Christians in the Moluccas and in Sulawesi but that instead of “mob violence” involving average Muslims against Christians, these incidents are linked to activity by extremist groups. He said there have been reports that in some of these instances of violence, Muslim bystanders have provided or attempted to provide assistance to the Christian victims (U.S. DOS 30 Oct 2003).

According to the May 2002 US Commission on International Religious Freedom report on Indonesia, conflict between Muslims and Christians in Indonesia’s Moluccan islands starting in May 1999 has resulted in the death of “approximately 9,000 people” (USCIRF 3 May 2002). According to the State Department’s INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002: “During late 2001, the Government worked to end Muslim-Christian violence in Central Sulawesi and the Moluccas by dispatching thousands of soldiers and police officers to the area and by brokering peace agreements between the two communities in December 2001 and February 2002. The agreements reduced but did not end the violence” (U.S. DOS 7 Oct 2002).

The JAKARTA POST reported on December 27, 2002, that police continued to guard churches throughout the country during the Christmas holiday season, in response to bomb blasts that occurred in 2000 and 2001 (Siboro 27 Dec 2002). In contrast, the World Evangelical Alliance reported May 21, 2003, that in Bekasi, 20 kilometers southeast of Jakarta, “churches are being threatened and intimidated by local radical Muslim groups, and local authorities are doing nothing to protect the Christian minority or rein in the Islamist militants” (World Evangelical Alliance 21 May 2003).

On October 14, 2003, Agence France Press reported that the Government of Indonesia was deploying police and troops to avert Muslim-Christian violence in Central Sulawesi province (AFP 14 Oct 2003).

On September 22, 2003, Indonesian President Megawati Sukarnoputri, on a visit to New York, stated that her government pays attention to the interests of all parties, including the minority. This was stated in response to a question on how the government protects Indonesian minorities, especially Christians (INNA 23 Sep 2003).

In regard to Jakarta in particular, the Indonesia desk at the U.S. Department of State reported that in 2002, “religious extremists, such as the Islamic Defenders Front (FPI)...physically attacked a number of nightclubs, bars, and billiard clubs in the name of religion, claiming that the establishments were immoral. The most high-profile attacks occurred in Jakarta on October 5, 2002” (U.S. DOS 30 Oct 2003). According to an AP article, the Government of Indonesia charged the FPI leader, Habib Rizieq, with “inciting violence,” and he is currently on trial in Jakarta. “[In justifying the attacks, Rizieq]...claimed to be destroying immoral establishments that were allowed to operate with the support of the police. But detractors claimed he was only doing the bidding of the police, who were angry at establishments that refused to pay protection money” (Casey 8 May 2003).

According to the Boston University professor, the establishments in Jakarta that were attacked by the FPI were typically Chinese-owned [Chinese Indonesians tend to be Christian], but the attacks were largely economically motivated.

The professor said that there were always police who were very unhappy with “freelance deal-making” between high-ranking police command officers and extortionist groups such as FPI, and that serious physical confrontations between some police officers and the FPI made this tension clear. He also said that the police were not engaged in these extortion schemes for religious but for economic reasons, and that the schemes were not sponsored at the institutional level of the police force (Professor 30 Oct 2003).

The professor also said that, in a couple of instances, the FPI have attacked Christian churches in Jakarta, though not under the name “FPI”. The FPI also burned down an evangelical Christian school in Jakarta in late 2000 or early 2001. The professor’s impression is that the FPI are less active today because while they once enjoyed the blessing of high ranking members of the Indonesian armed forces, this backing has diminished (but not disappeared) (Professor 30 Oct 2003).

The professor said that the Indonesian police have greatly improved their efforts to protect ordinary citizens and have become more assertive in their efforts to curb activities of criminal gangs who operated under the garb of Islamist activists. He feels there is “discrimination” against Christians in Jakarta, but not “systematic persecution” and that the situation has “significantly improved” over the last year partly due to improvements in the Indonesian police force. The professor indicated that the situation in the Moluccas and Sulawesi, where there has been real ethno-religious violence involving Muslims and Christians (although not typically Chinese Christians), is very different from the situation in Jakarta, and that he is not seeing systematized mistreatment of Chinese Christians in Jakarta (Professor 30 Oct 2003). (US Citizenship and Immigration Service 2003, *Indonesia: Information on Attacks by Muslims Against a Chinese Christian Neighborhood in Jakarta in September 2002, and Police Protection of Chinese Christians in Jakarta*, 14 November. <http://uscis.gov/graphics/services/asylum/ric/documentation/IDN04001.htm> – Accessed 2 December 2005).

## FINDINGS AND REASONS

The applicant's claims are based on the Convention grounds of race and religion. His case is essentially that he was attacked and seriously injured for the reason of his Chinese ethnicity and Christian faith. He fears further harm for these reasons if he were to return to Indonesia.

Based on the available evidence, the Tribunal accepts that the applicant is a national of Indonesia. The Tribunal also accepts that he is ethnically Chinese and a Christian.

The Tribunal accepts that the applicant was a victim of a horrific mob attack during the course of which he was assaulted and his business was set ablaze. The Tribunal accepts that as a consequence, he suffered extensive burns to his body and his business was destroyed. The Tribunal accepts that this incident has had a traumatic impact on the applicant's life and continues to cause him much anxiety. The Tribunal accepts that the harm suffered by the applicant is serious enough to amount to persecution for the reason of his race and/or religion. That said, the applicant did not claim to have suffered any other harm in the following years that he remained in Indonesia. He travelled to Australia where he has spent most of the last 10 years and did not suffer the impact of the riots in the late 1990s.

Indonesia has a long history of state sponsored discrimination against ethnic Chinese Indonesians which dates from the colonial period and that government discrimination against ethnic Chinese increased further during the period of the authoritarian Soeharto government (*DFAT Country Information Report, Indonesia: treatment of minorities, ethnic Chinese & ethnic Chinese Christians*, 12 December 2001 [CX60489]). There is no doubt that racial hatred against the ethnic Chinese minority from time to time has had serious consequences for the members of that minority. Many ethnic Chinese Indonesians, including the applicant, were singled out for harm in the past and their properties looted and destroyed. The Tribunal has no hesitation in accepting that there are Muslim groups and individuals in Indonesia whose practices deviate from mainstream Islamic beliefs and that Indonesia as a multiethnic, multireligious society, historically, has experienced outbursts of religious intolerance and violence (see *International Religious Freedom Report*, Released by the Bureau of Democracy, Human Rights, and Labor, US Department of State, October 2001).

That said, the country information consulted by the Tribunal suggests that although some structural discrimination remains in areas, since the era of former President Abdurahman Wahid the discrimination against Chinese Indonesians is decreasing. Several laws that discriminated against the ethnic Indonesian Chinese have been scrapped and in the 2004 elections, there were several parties that openly claimed to be representing ethnic Chinese, something that was unheard of during the rule of former president Suharto. There is no indication that the current government and President Yudhoyono are taking a different approach to the former President Wahid in advocating tolerance as the government officially promotes racial and ethnic tolerance.

The country information before the Tribunal also indicates that although the majority of Indonesia's inhabitants are Muslim, it is a secular and not an Islamic state. Constitutionally, the rights of Christians are protected and Islam in the country traditionally has been moderate. While in some areas, such as Ambon and central Sulawesi, conflict between Muslims and Christians has resulted in a horrific death and injury toll, this is not the case throughout all of Indonesia. The influence of extremist and violent Islamicists is in fact on the decline and that those responsible for such violence are being brought to court. All post-Soeharto governments have endorsed a commitment to religious tolerance and have, when

necessary, deployed resources to clamp down on any indication of religious intolerance or sectarian violence, and to prosecute those found responsible ('Indonesian police arrested 13 suspects over Christmas Eve bombings' Agence France-Presse, 14 September 2001; 'Indonesian gets death penalty for botched bomb attack', Asian Political News, 20 May 2002; "Govt backs firm action against Ambon provocateurs" The Jakarta Post, 7 May 2002; Robert Go, "Indonesian churches and cops beef up security", Straits Times, 23 December 2003; "Bashir charged with bomb plots in Indonesia, Singapore", Agence France Presse, 14 April 2003; "Court jails Makassar bomb suspect for 18 years", Agence France Presse, 22 December 2003; US Department of State report on International Religious Freedom Report 2005, Released by the Bureau of Democracy, Human Rights, and Labor; Karen Michelmore and Olivia Rondonuwu, "JI militant dies in shoot-out with police", Sydney Morning Herald, 22 March 2007; Indonesia has DNA of terrorist suspects, Sydney Morning Herald, 26 March 2007, 20 years for beheading three Christian girls, 21 March 2007, <http://www.canada.com/topics/news/world/story.html?id=c0e94b13-f3ce-41c8-8437-567977ecd8fa&k=43246>).

The Tribunal accepts that there has been an increase in Christian places of worship being vandalized or forcibly closed by local Muslims. However, President Yudhoyono has called on all ranks of the government and the community to prevent violence against religious worship. Yudhoyono had also ordered the Religious Affairs Minister Muhammad Basyuni and local administrators to find a quick solution to the closures of Christian places of worship.

Whether or not President Yudhoyono will remain or will be replaced and whether or not this will result in further unrest that is likely to cause the applicant harm is a matter of pure speculation and the Tribunal is not satisfied that the applicant faces a real chance of serious harm that is essentially and significantly for a Convention reason or reasons. Based on the evidence before it the Tribunal is not satisfied that the applicant faces a real chance of persecution for the reason of his Chinese ethnicity or Christian faith if he returns to Indonesia now or in the reasonably foreseeable future.

Moreover, as the Tribunal put to the applicant at the hearing, there have been marked improvements in the way the police respond to ethnic and religious violence. The Indonesian police have greatly improved their efforts to protect ordinary citizens and have become more assertive in their efforts to curb activities of criminal gangs who operated under the garb of Islamist activists. Country information before the Tribunal indicates that the authorities take appropriate action to arrest and charge those intent on causing sectarian violence, as well as to take pre-emptive security measures. There is continuing evidence that the Indonesian authorities are moving decisively to investigate and charge those suspected of involvement in ethnic or religious violence and continue to arrest and charge those associated with sectarian violence ("Police arrest more JI members, seize guns and explosives", Agence France Presse, 23 April 2003; Nana Rukmana, "Some 3,000 police hunt for top terror suspects", Jakarta Post, 3.11.04). The Tribunal has considered the applicant's claims that the police only provide protection to the ethnic Chinese upon receiving bribes. However, there was no persuasive evidence before the Tribunal to indicate that this practice, if still current, is so pervasive that it renders state protection extended to ethnic Chinese and Christians inadequate. The independent evidence before the Tribunal makes it clear that while responses by the security forces may not be satisfactory in all respects at all times, the government is willing and able to protect its citizens irrespective of their ethnicity or religion. This evidence does not support the view that at times of unrest the police are like to arrest victims of

violence. The Tribunal, therefore, is satisfied that if the applicant were to face harm from private individuals on the basis of his ethnicity or religion, adequate state protection is available to him in Indonesia.

For the reasons outlined above, while the Tribunal accepts that the applicant has suffered serious harm in the past, it is not satisfied that there is a real chance, now or in the reasonably foreseeable future, that he will face persecution in Indonesia for the reason of his race or religion. The Tribunal is not satisfied that the applicant's fear of persecution in Indonesia is well-founded.

The applicants' family live in Australia and are Australian citizens. He has lived in Australia for the past 10 years and has no relatives with whom he is in contact in Indonesia. His past experiences have left a lasting impression on him and he appeared to be traumatised and highly stressed at the hearing. All these factors may give rise to humanitarian arguments in favour of the applicant's desire to remain in Australia. However, the Tribunal's role is limited to determining whether he satisfies the criteria for the grant of a protection visa. A consideration of his circumstances on other grounds is a matter solely within the Minister's discretion.

## **CONCLUSIONS**

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

## **DECISION**

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant.

Sealing Officer's I.D. PRECSA